

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Burgess, Chair
Senator Gibson, Vice Chair

MEETING DATE: Monday, February 7, 2022
TIME: 2:30—4:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Burgess, Chair; Senator Gibson, Vice Chair; Senators Baxley, Boyd, Bradley, Broxson, Mayfield, Polsky, Rodrigues, and Rouson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 58 Rodriguez (Similar CS/H 6517)	Relief of Yeilyn Quiroz Otero by Miami-Dade County; Providing for the relief of Yeilyn Quiroz Otero by Miami-Dade County; providing for the appropriation of funds to Heather Hasandras, as guardian of the property of Yeilyn Quiroz Otero, to compensate Miss Quiroz Otero for injuries sustained as a result of the negligence of an employee of Miami-Dade County; requiring that the funds, less certain fees and costs, be placed in a special needs trust for the exclusive use and benefit of Miss Quiroz Otero; providing a limitation on compensation and the payment of attorney fees; providing legislative intent regarding the waiver of certain liens, etc. SM JU 02/07/2022 Fav/CS CA RC	Fav/CS Yeas 10 Nays 0
2	SB 74 Rodriguez (Similar CS/H 6521)	Relief of Harry Augustin Shumow/Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; Providing for the relief of Harry Augustin Shumow by the Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital; providing for an appropriation to compensate him for injuries sustained as a result of the negligence of an employee of the Public Health Trust of Miami-Dade County; providing a limitation on the payment of compensation and attorney fees, etc. SM JU 02/07/2022 Fav/CS HP RC	Fav/CS Yeas 10 Nays 0
3	CS/SB 796 Criminal Justice / Bradley (Identical CS/H 287)	Tampering with or Fabricating Physical Evidence; Providing enhanced criminal penalties for tampering with or fabricating physical evidence in certain criminal proceedings and investigations, etc. CJ 01/25/2022 Fav/CS JU 02/07/2022 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, February 7, 2022, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1184 Health Policy / Broxson (Similar H 687)	Free Speech of Health Care Practitioners; Prohibiting certain regulatory boards and the Department of Health from reprimanding, sanctioning, or revoking or threatening to revoke a license, certificate, or registration of a health care practitioner for specified use of his or her right of free speech without specified proof; providing for liability; requiring the board or department, as applicable, to provide to a health care practitioner certain complaints within a specified timeframe, etc. HP 01/26/2022 Fav/CS JU 02/07/2022 Favorable AP	Favorable Yeas 7 Nays 3
5	SB 1204 Broxson (Identical H 873)	Public Records/Information or Records/Executions; Providing an exemption from public records requirements for information or records that identify or could reasonably lead to the identification of any person or entity that participates in an execution; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/25/2022 Favorable JU 02/07/2022 Favorable RC	Favorable Yeas 10 Nays 0
6	CS/SB 1222 Health Policy / Bean (Compare CS/H 937)	Acute Care At-home Patients in Nonemergent Community Settings; Authorizing certified paramedics to perform basic life support services, advanced life support services, and additional health care services to acute care at-home patients in nonemergent community settings under certain circumstances; providing that a physician or medical director who supervises or directs the provision of such services by a paramedic is liable for any act or omission during the provision of such services; specifying that Class III institutional pharmacies may dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatients and acute care at-home patients in nonemergent community settings, etc. HP 01/19/2022 Fav/CS JU 02/07/2022 Fav/CS RC	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, February 7, 2022, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 1844 Children, Families, and Elder Affairs / Bean (Compare CS/H 1143, H 1157, CS/H 1179, S 1560, Linked CS/S 1846)	Mental Health and Substance Abuse; Requiring the express and informed consent of a minor's guardian for voluntary admission of the minor to a receiving facility; removing a requirement that a hearing be held to verify the voluntariness of a minor's consent before his or her admission to a facility; requiring law enforcement officers transporting individuals for involuntary treatment to take certain actions, etc. CF 02/01/2022 Fav/CS JU 02/07/2022 Favorable AP	Favorable Yeas 10 Nays 0
8	CS/SB 1846 Children, Families, and Elder Affairs / Bean (Identical H 1157, Compare CS/H 1143, H 7011, S 7008, Linked CS/S 1844)	Public Records/Respondent's Name; Exempting from public records requirements a respondent's name in certain documents at trial and on appeal; expanding exemptions from public records requirements for certain petitions, court orders, and related records to include applications for voluntary and involuntary mental health examinations and substance abuse treatment, respectively; revising the date for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CF 02/01/2022 Fav/CS JU 02/07/2022 Favorable AP	Favorable Yeas 10 Nays 0
9	CS/SB 1502 Banking and Insurance / Powell (Similar H 625)	Estates and Trusts; Providing that the requirement for a claimant to file an independent action is satisfied if specified actions are taken; specifying that claimants, not creditors, are given certain priority of claims; revising the types of trusts deemed to have been contributed by a settlor's spouse and not the settlor; providing that a trustee may resign by specified procedure and with notice to certain parties, etc. BI 01/25/2022 Fav/CS JU 02/07/2022 Favorable RC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Monday, February 7, 2022, 2:30—4:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 1526 Banking and Insurance / Boyd (Similar CS/H 1413)	Public Records/Annuity Contract Payees; Providing an exemption from public records requirements for personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee contained in the court records for a proceeding for the approval of the transfer of structured settlement payment rights; limiting such exemption to a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. BI 01/25/2022 Fav/CS JU 02/07/2022 Favorable RC	Favorable Yeas 10 Nays 0
11	SB 528 Polsky (Compare CS/H 265)	Value of Motor Vehicles Exempt from Legal Process; Revising upward the value of a motor vehicle owned by a natural person that is exempt from legal process, etc. JU 02/07/2022 Fav/CS TR RC	Fav/CS Yeas 10 Nays 0

Other Related Meeting Documents



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
2/2/22	SM	Favorable
2/7/22	JU	Fav/CS

February 2, 2022

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 58** – Judiciary Committee and Senator Ana Maria Rodriguez
HB 6517 – Representative Aloupis
Relief of Yeilyn Quiroz Otero by Miami-Dade County

SPECIAL MASTER'S FINAL REPORT

THIS IS A SETTLED CLAIM BILL FOR \$3.8 MILLION. THE GUARDIAN OF THE PROPERTY OF YEILYN Q. OTERO, A MINOR, SEEKS DAMAGES FROM MIAMI-DADE COUNTY FOR PERSONAL INJURIES CAUSED BY THE NEGLIGENT OPERATION OF A POLICE CAR.

FINDINGS OF FACT:

Yeilyn Quiroz Otero is a 6-year-old paraplegic whose spine was severed in a 2016 car accident. A tracheostomy has been inserted into her windpipe to assist with her breathing. Because of the neurological damage to her spinal cord, her bladder and bowels do not function normally. Three adults contributed to the injuries Yeilyn sustained: Officer Daniel Escarra, the driver of a Miami-Dade police cruiser; Mr. Hector Meraz-Funez, the driver of the vehicle that carried Yeilyn when she was injured; and Fany Otero, Yeilyn's mother who did not place her 13-month-old daughter in a car seat.

Hurricane Matthew

On the evening of October 6, 2016, the outer bands of Hurricane Matthew were approaching Miami. In anticipation of the hurricane, Governor Rick Scott declared a state of

emergency for Florida.¹ The mayor of Miami-Dade County declared a local state of emergency.² The hurricane was projected to make landfall in southeast Florida with high velocity winds. Members of the Miami-Dade police Special Patrol Bureau, which consists of specialized response units including the K-9 unit, marine patrol, and tactical units, were in a meeting mobilizing for the hurricane. Officer Daniel Escarra was in the meeting.

Emergency Announcement for Assistance

A Miami-Dade County police dispatcher interrupted the meeting with an emergency announcement that was transmitted over the officers' radios. She stated that a subject had jumped from a stolen vehicle and was running through a residential neighborhood. According to Police Officer Daniel Escarra, who was then a 23-year-veteran of the department, he could hear other officers "screaming" in the background that they needed a K-9 unit immediately. The officers were chasing the subject and attempting to set up a perimeter to contain him. The subject was reportedly holding his waistband as he ran which suggested to Officer Escarra that the subject may have been carrying a gun.

Officer Daniel Escarra

The dispatcher advised that a K-9 was needed immediately. A "Code 3" or "Level 3" emergency response was authorized.³ Officer Escarra responded by activating the lights and siren on his police car and began driving with his K-9 toward the neighborhood.

Hector Meraz-Funez

At that same time and in another part of town, Mr. Hector Meraz-Funez began driving his 1998 Audi A4 home from Wal-Mart. The car is a compact four-door sedan with five seats.⁴ Eight people were riding in the Audi: three adults and five children. According to the Miami-Dade Police Department

¹ Executive Order Number 16-230 signed on October 3, 2016.

² The Miami-Dade County Declaration was signed by Mayor Carlos A. Gimenez on October 5, 2016.

³ According to the Department's Driving Procedures (Chapter 30 – Part 1- Response Modes) a "Code 3 Emergency" is "a situation or sudden occurrence which poses an actual threat of serious injury or loss of human life and which demands swift police action; e.g., seriously ill or injured person, shooting, sexual battery, etc." In Miami-Dade County's Notice of Serving Answers to Plaintiffs' Second Interrogatories, the defendant states that Officer Escarra was responding to an authorized Code 3 emergency.

⁴ See Cars.com, Research & Reviews, 1998 Audi A4, <https://www.cars.com/research/audi-a4-1998/> for a description of the car model.

Case Summary, Mr. Meraz-Funez did not have a valid Florida Driver License⁵ nor was he wearing a seatbelt.

Section 316.613(1)(a), Florida Statutes (2016), required each operator of a motor vehicle, while transporting a child up to 5 years or younger, to provide for the child's protection by properly using a crash-tested, federally approved child restraint device. If the child is "aged through 3 years," the restraint device must be a separate carrier or a vehicle manufacturer's integrated child seat.

Fany Otero and Passengers

Yeilyn's mother, Fany Otero, was riding in the right front passenger seat holding Yeilyn in her lap.⁶ Yeilyn was not restrained in a car seat, and Ms. Otero was not wearing a seatbelt.

Maria Ortiz, an adult female and Fany Otero's sister, sat behind the driver accompanied by four children. She was not wearing a seatbelt nor were any of the children properly secured in restraint devices.⁷ One child in the back seat was placed in a child safety seat but it was not secured to the vehicle.⁸

The Collision

As Officer Escarra traveled south on NW 57th Avenue, Mr. Meraz-Funez traveled east on West Flagler Street. At 6:28 p.m., Officer Escarra and Mr. Meraz-Funez simultaneously entered the intersection of those streets. Mr. Meraz-Funez was attempting to make a left-hand turn in the intersection.

Their vehicles collided with tremendous force. Each car spun around and traveled some distance before coming to rest.⁹

⁵ Section 322.03(1), F.S. (2016), provides that a person may not drive a motor vehicle on a highway in this state unless he or she has a valid driver license.

⁶ This information was provided in a sworn statement given by Maria Ortiz, the adult passenger riding in the rear left passenger seat, to the Miami Dade Police Department detective while in the hospital after the accident. Yeilyn's location while traveling in the car is contradicted in a Miami-Dade County Memorandum, dated October 19, 2016, but it is unclear who provided that information to the police. However, in the special master hearing, the claimant's counsel confirmed Yeilyn's location in the car as being in the front passenger seat where she was held by her mother.

⁷ According to the Miami-Dade Police Department Case Summary, no one in the vehicle was wearing a seatbelt. However, in a sworn statement given to Miami-Dade Police Traffic Detective, Ms. Ortiz stated that she was wearing a seatbelt.

⁸ *Id.*

⁹ Reports state that Mr. Meraz-Funez intended to make a left turn in the intersection.

Internal data records from Officer Escarra's police cruiser demonstrate that the car had been traveling at 75 mph as he neared the intersection. At the moment of impact, crash data indicates that he applied his brakes but was still traveling at 58 mph. It is unknown how fast Mr. Meraz-Funez was traveling when he entered the intersection. Since the accident, he has remained unable to move and is unable to communicate.

All occupants in both vehicles were taken by ambulance to local hospitals. Yeilyn, who alone had life-threatening injuries, and two children were transported to Nicklaus Children's Hospital. The remaining five occupants were taken to Jackson Memorial Hospital Ryder Trauma Center. Officer Escarra was transported to Doctor's hospital, and his dog was taken to a veterinarian hospital.

Inoperative Traffic Signal at the Intersection

Under normal circumstances, traffic at that intersection is controlled by traffic signal lights. Unfortunately, at the time of the collision, the lights were not operating due to a power failure caused by approaching Hurricane Matthew. The skies were overcast but not dark. The weather was warm, rainy, and windy, and the roads were wet. It was still daylight.

Pursuant to section 316.1235, Florida Statutes (2016), when the traffic signals are not working, each driver at the intersection is required to stop before proceeding into the intersection. Neither driver abided by this statute. Both entered the intersection without stopping and the impact was horrific.

Litigation History

A lawsuit was filed in 2018 on behalf of Yeilyn Quiroz Otero and other passengers against Miami-Dade County.¹⁰ Yeilyn's case was settled through court-ordered mediation on February 26, 2021. Under the terms of the settlement agreement, Miami-Dade County did not admit fault, but it

¹⁰ The case was originally styled *Fanny Gonzalez-Otero, Maria Elena Ortiz, Belkys Gonzalez, Genesis Gonzalez, Jonathan Cordova, Sherlyn Cordova, and Yeilyn s. Quiroz-Otero, as individuals, v. Board of County Commissioners of Miami-Dade County, a political subdivision of the State of Florida, and Miami-Dade Police Department, Defendants*, Case No. 2018-03667-CA-01. The pleadings were later amended to add Hector Enrique Meraz-Funez as a defendant. When Heather Hasandras was appointed guardian for Yeilyn, on June 15, 2021, Heather Hasandras was substituted in place of Fany Otero, as guardian of the property of Y.Q.O., a minor.

agreed to pay the statutory cap of \$200,000, and it agreed not to contest a claim bill for the amount of \$3,800,000.

Claim Bill Hearing

A remote claim bill hearing was conducted on November 5, 2021, before the House and Senate special masters. A claim bill hearing is conducted “de novo” which means that the hearing is held anew, without giving consideration or deference to any previous assumptions, conclusions, or settlement agreements.

Francisco Maderal appeared on behalf of his client, Yeilyn Quiroz Otero, and presented the claimant’s case. Testimony supporting Yeilyn’s future living and medical care needs was presented by Anne Koerner, a life care plan advisor. Heather Hasandras, who is Yeilyn’s court-approved guardian of the property, answered questions about Yeilyn’s current circumstances and the future disbursement of funds held in trust on her behalf.

Richard Schevis, an attorney who represents the respondent Miami-Dade County, also appeared on behalf of his client. Because Miami-Dade County agreed that it would not oppose the claim bill, Mr. Schevis did not present any theories, arguments, witnesses, or evidence on the County’s behalf. He did not object to any portion of Mr. Maderal’s presentation. Mr. Schevis stated that the County supports the settlement agreement and the claim bill, but he was otherwise silent throughout the hearing.

CONCLUSIONS OF LAW:

Under the legal doctrine of *respondeat superior*, Miami-Dade County is responsible for the wrongful acts of its employees when the acts are committed within the scope of their employment. Because Officer Escarra was operating a police vehicle in the course and scope of his employment at the time of the accident and because the vehicle was owned by Miami-Dade County, the County is responsible for any wrongful acts, including negligence, committed by Officer Escarra.

Elements of Negligence

When a plaintiff seeks to recover financial damages in a negligence action, he or she must prove that the injury was caused by the defendant’s negligence. Negligence is defined

as the failure to use reasonable care. It is the care that a reasonably careful person would use under like circumstances.¹¹

The plaintiff bears the burden of proving, by the greater weight of the evidence, that the defendant's action was a breach of the duty that the defendant owed to the plaintiff. The "greater weight of the evidence" burden of proof means the more persuasive and convincing force and effect of the entire evidence in the case.¹² Some explain the "greater weight of the evidence" concept to mean that, if each party's evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

To establish liability, Yeilyn's attorney must prove these elements, by the greater weight of the evidence:

- (1) Duty -That the County owed a duty, or obligation, of care to her;
- (2) Breach -That the County breached that duty by not conforming to the standard required;
- (3) Causation -That the breach of the duty was the legal cause of Yeilyn's injury; and
- (4) Damages -That Yeilyn suffered actual harm or loss.

In this case, the County's liability depends on whether the County breached its duty of care to Yeilyn and whether that breach caused her damages. Stated slightly differently, the issues are whether the police officer negligently operated the police vehicle and whether that negligent operation caused Yeilyn's resulting physical injuries.

Duty

Officer Escarra's Duty to Exercise Reasonable Care

Officer Escarra was responsible for exercising the duty of reasonable care to others while driving his police vehicle. Even though Officer Escarra was driving an authorized emergency vehicle en route to an existing emergency, he was not absolved of his duty to exercise reasonable care to others.

¹¹ Fla. Std. Jury Instr. (Civ.) 401.4, *Negligence*.

¹² Fla. Std. Jury Instr. (Civ.) 401.3, *Greater Weight of the Evidence*.

The police department's Driving Procedures state that when responding in an emergency mode, the three primary elements that must be considered in every situation are "safety, expeditious arrival, and protection of life and property." The Driving Procedures further state that "extreme care and caution must be exercised whenever an emergency response is initiated."¹³

The posted speed limit on NW 57th Avenue was 40 miles per hour. In an emergency situation, internal department procedures authorize an emergency vehicle to exceed the speed limit by no more than 20 miles per hour.¹⁴ Accordingly, Officer Escarra was not authorized to exceed 60 miles per hour en route to the emergency.

As discussed above, the statutes prescribe driving procedures when a traffic signal is not operational in an intersection. Officer Escarra had a duty pursuant to section 316.1235, Florida Statutes (2016), to stop before proceeding through the intersection where the traffic lights were not working.

Breach

Based upon the facts stated above, it is evident that Officer Escarra breached the duty of care owed to Yeilyn.

Officer Escarra

Exceeded the Permissible Speed Limit

As noted above, Officer Escarra was authorized to drive at 60 miles per hour and no faster. However, the internal crash data retrieved from the police vehicle demonstrates that Mr. Escarra was traveling at 75 miles per hour as he approached the intersection. In a split second before the collision, he immediately applied his brakes and collided while traveling at 58 miles per hour. In his deposition testimony, Officer Escarra was surprised to learn that he had been driving at 75 miles per hour. The speed at which he was driving was not authorized, even under emergency circumstances, and was a breach of his duty.

¹³ Miami-Dade County, Chapter 30 – Part I – Driving Procedures; Response Modes, Responding in an Emergency Mode.

¹⁴ *Id.*

Section 316.072(5), Florida Statutes (2016), provides that the driver of an authorized emergency vehicle, when responding to an emergency call, may exceed the maximum speed limit as long as the driver does not endanger life or property. This exception does not relieve the driver “from the duty to drive with due regard for the safety of all persons” and the provision states that it does “not protect the driver from the consequences of his or her reckless disregard for the safety of others.”¹⁵

Failed to Stop at the Intersection Where the Traffic Lights Were Not Working

A video surveillance camera captured live footage of the accident. The video footage shows that Officer Escarra failed to stop at the inoperative traffic signal, which is a violation of section 316.1235, Florida Statutes. (2016). When the traffic lights in an intersection are not working, each driver must stop before determining it is safe to enter.¹⁶ He stated that he was not aware that he was entering an intersection because there were no lights signaling that it was an intersection.

Received a Disciplinary Report

The Special Patrol Bureau of Miami-Dade County issued a Disciplinary Action Report on October 25, 2016. The Crash Review Panel determined that the accident was preventable on Officer Escarra’s part, and he received a written reprimand. While the report noted that his 14-year driving history in the K-9 unit was worthy of recognition and consideration, it stated that “the outcome of the crash cannot be overlooked.” The report further stated that the poor visibility, inclement weather, and non-operating traffic signal were more reasons for Officer Escarra to exercise greater caution. The report concluded that his actions were “neither intentional nor reckless, but rather an unintended consequence of timing and judgment.”

Comparative Negligence

Comparative negligence is the legal theory that a defendant may diminish his or her responsibility to an injured plaintiff by demonstrating that another person, sometimes the plaintiff and sometimes another defendant or even an unnamed party, was also negligent and that negligence contributed to the plaintiff’s injuries. The goal of proving a successful

¹⁵ Section 316.072(5)(c), F.S. (2016).

¹⁶ See s. 316.123(2)(a), F.S. (2016).

comparative negligence defense is to hold other people responsible for the injuries they cause to a plaintiff. By apportioning damages among all who are at fault, it will ultimately reduce the amount of damages owed by a defendant.

If this case had proceeded to trial, it would likely have been disputed that Officer Escarra was solely at fault in the collision or solely responsible for Yeilyn's injuries and damages. The County raised the affirmative defense of comparative negligence in its Answer to the Plaintiffs' Second Amended Complaint in an effort to reduce Officer Escarra's liability in causing the accident and his responsibility for Yeilyn's damages.¹⁷ It is evident from the facts of the collision that Officer Escarra was not alone in breaching the duty of care owed to Yeilyn.

Mr. Hector Meraz-Funez

While the bill seeks damages solely from Miami-Dade County, it should be noted that the civil lawsuit was amended to add Mr. Meraz-Funez as a defendant who was also responsible for Yeilyn's injuries by negligently operating his vehicle.

It is apparent that Mr. Meraz-Funez¹⁸ also breached his duty to exercise reasonable care towards Yeilyn and was partially responsible for her injuries and damages. By violating four separate statutes, Mr. Meraz-Funez failed to operate his vehicle in a safe manner. It is not disputed that Mr. Meraz-Funez operated a vehicle without a valid driver's license.¹⁹ He violated section 316.126, Florida Statutes (2016), when he did not yield the right-of-way to the approaching emergency vehicle where the emergency lights and siren were activated.²⁰ Based upon the surveillance video, Mr. Meraz-Funez also proceeded into the intersection where the traffic signal was not operating. He did this without slowing or stopping in violation of the statute.²¹ It seems likely that Mr.

¹⁷ Section 768.81, F.S., is the comparative fault statute. The apportionment of damages is established in section 768.81(3), Florida Statutes.

¹⁸ No evidence was submitted to demonstrate that a blood alcohol test was ever administered to Mr. Meraz-Funez after the accident.

¹⁹ Section 322.03, F.S. (2016). If Mr. Meraz-Funez had possessed a driver license, there would at least be evidence that he was familiar with the rules for safely operating a vehicle at an intersection where the lights were not working and that a child car seat was required for Yeilyn and other small children in the car. However, driving without a license is not the same thing as driving negligently.

²⁰ Section 316.126, F.S. (2016).

²¹ Section 316.1235, F.S. (2016).

Meraz-Funez would have heard the siren or would have seen the approaching lights of the police car.

Finally, Mr. Meraz-Funez operated a vehicle in which children were not restrained by seat belts or by the use of child car seats as required by law.²² The use of a child car seat might well have prevented Yeilyn's injuries or significantly reduced them.

The child restraint statute, section 316.613, Florida Statutes (2016), also contains an evidentiary provision²³ which states:

"The failure to provide and use a child passenger restraint shall not be considered comparative negligence, nor shall such failure be admissible as evidence in the trial of any civil action with regard to negligence."

At first glance, this evidentiary provision would appear to prohibit the introduction into evidence of the fact that children were not properly restrained and bar a claim for comparative negligence.

However, the statute was construed by the Fifth District Court of Appeal in 2008 to clarify its application.²⁴ In *Quarantello v. Leroy*, a factual situation similar to this case, a court-appointed guardian filed a personal injury lawsuit against a child's grandmother to recover damages for the grandchild's injuries that were sustained in a car accident in which the child was thrown from a booster seat. The booster seat was designed for an older child and was not an appropriate device to insure the young child's safety. The child became a quadriplegic from the accident.

After noting that the statute was not a model of good legislative draftsmanship, and was poorly worded and ambiguous, the court construed the statute to mean that the Legislature only intended "to prohibit evidence of comparative negligence and evidence of negligence *that may be similarly used to reduce an injured child's recovery.*"²⁵ The court held that the statute did not provide a grant of immunity to a

²² Section 316.613, F.S. (2016).

²³ Section 316.613(3), F.S. (2016).

²⁴ *Quarantello v. Leroy*, 977 So. 2d 648 (Fla. 5th DCA 2008). On appeal, the Florida Supreme court declined to accept jurisdiction and denied the petition for review. *Leroy v. Quarantello*, 987 So. 2d 1210 (Fla. 2008).

²⁵ *Quarantello* at 653.

caretaker who did not properly secure a child in a vehicle. The court concluded that the jury should be able to consider that evidence and give it whatever weight the jury felt was appropriate in determining the cause of a child's injuries and make an informed decision whether the injured child was due compensation from the defendant.

Accordingly, the statute as interpreted in *Quarantello* recognizes that fault and liability for damages to a child who should have been secured in a car seat are to be apportioned among those responsible. In this matter, the evidence showed that Officer Escarra, Mr. Meraz-Funez, and Ms. Otero all bear responsibility for Yeilyn's injuries.

Ms. Fany Otero

As Yeilyn's mother, Ms. Otero had a duty to exercise reasonable care to supervise and protect her daughter. Florida courts have recognized that the state imposes this responsibility upon parents whose children are too young to care for themselves.²⁶ In the case of *Machin v. Walgreen Co.*, the Third District Court of Appeal held that a person chargeable with a duty of care and caution toward a child must take the precautions available to them to protect the child. Accordingly, Ms. Otero had a "constant and continuous duty" to watch over, supervise, and protect Yeilyn who was too young to exercise judgment to care for herself.²⁷ Ms. Otero breached this duty of care to Yeilyn by not placing her in a car seat that could have prevented or reduced her injuries. Therefore, Ms. Otero is partially responsible for Yeilyn's injuries.²⁸

²⁶ *Ramos v. State*, 89 So. 3d 1119 (Fla. 1st DCA 2012).

²⁷ *Machin v. Walgreen Co.*, 835 So. 2d 284 (2002). The mother brought an action on behalf of her daughter against a pharmacy that incorrectly dispensed the wrong medicine for the daughter. The court found that the mother was comparatively negligent in not checking the pharmacy's data sheet and the container of the medication before giving it to her daughter. The court upheld the lower court's judgment that assessed 45 percent comparative negligence against the mother.

²⁸ The law is somewhat complicated when the issue involves the comparative negligence of a parent who contributed to his or her child's injuries. While the parent's negligence may not be imputed or assigned to the child, if it is determined that one of the parents was negligent in causing the injury to the child, the parent's name may be added to the jury verdict form so that others will not be held responsible for that parent's proportion of fault. (Thomas D. Sawaya, *Personal Injury and Wrongful Death Actions*, s. 5:7, *Imputed Comparative Negligence* (2021 edition)).

Additionally, a defendant may reduce his or her liability in a negligence action by demonstrating that the actions of a third person, who might not be named as a party in the lawsuit, contributed to the injuries sustained by the plaintiff. A defendant who successfully argues this defense will reduce his or her responsibility by the amount of negligence assigned to the non-party. (Sawaya s. 5:5, *Comparative Negligence of Third Persons Who Are Not Parties to the Suit* (2021 edition)).

Similarly, case law allows the guardian of a child to name a parent as a defendant in a lawsuit. If a jury had found that Yeilyn's mother breached her duty of care to Yeilyn, the jury could have further apportioned fault among the three defendants in a manner that would have further reduced the damages that Miami-Dade County would have been responsible for paying to Yeilyn.

Causation

I find that the greater weight of the evidence demonstrates that Officer Escarra, as an agent of the County, failed to use reasonable care and is responsible, in part, for causing the injuries that Yeilyn sustained in the collision. Officer Escarra operated the police vehicle in a negligent manner and his actions were a legal or proximate cause of the accident. I also find that Mr. Meraz-Funez and Ms. Otero were comparatively negligent because they breached the duty of care owed to Yeilyn. As such, they contributed to Yeilyn's injuries and bear partial responsibility for her damages.

Damages

A plaintiff's damages are computed by adding these elements together:

Economic Damages:

- Past Medical Expenses
- Future Medical Expenses

Non-Economic Damages

- Past Pain and Suffering and Loss of Enjoyment of life
- Future Pain and Suffering and Loss of Enjoyment of Life

The claimant's attorney presented financial data and projected Yeilyn's total damages to be \$13,050,002.62

Economic Damages

Yeilyn's Past Medical Expenses - \$1,772,320.52

2016 - 2019

The medical bills submitted by the claimant's attorney are extensive. From the time of the accident on October 6, 2016,

through the last submitted medical record dated April 8, 2019, Yeilyn was hospitalized or received outpatient treatment at Nicklaus Children's Hospital at least 25 times. The medical records contain 7,841 pages of information. Because Yeilyn is a Medicaid recipient, the bills have been reduced and paid by Medicaid.²⁹ As a result, it does not appear that Yeilyn and her family have paid for any of the services incurred at Nicklaus Children's Hospital.

According to the claimant's attorney, two Medicaid liens were initially asserted by lienholders:

Equian	\$ 819,204.55
Conduent	<u>\$1,772,320.52</u>
Total	\$2,591,525.07

2020 Bills

The claimant's attorney submitted a list of Medicaid lien items that were paid for 2020 which show that Medicaid has paid an additional \$302,815.47 for Yeilyn's bills.

2021 Bills

No bills were submitted by the claimant's attorney for 2021.

Yeilyn's Future Medical Expenses - \$11,277,682.10

The vast majority of Yeilyn's economic damages are projected to come from future medical and living expenses. To support Yeilyn's future expenses, the claimant's attorney hired a physiatrist to establish Yeilyn's medical disabilities and future needs and a life care planner to calculate the costs for those needs.

Disability Rating by Dr. Craig Lichtblau, Physiatrist

Dr. Craig Lichtblau is a physiatrist³⁰ who performed a physical examination of Yeilyn on September 9, 2019, almost 3 years after the accident and more than 2 years before the hearing.

²⁹ It should be noted, in an abundance of transparency, that *before the accident, and in her first 10 months of life*, Yeilyn was hospitalized at Nicklaus Children's Hospital on five separate occasions totaling 25 days at a cost of \$159,049. The admissions appear to be due to asthma-related issues and were paid by Medicaid.

In the admissions that occurred after the accident, the records often note that Yeilyn has a history of asthma and the asthma was "poorly controlled." It would be virtually impossible to discern and apportion which of those hospitalizations were initially due to complications from Yeilyn's pre-existing asthma condition and which were the result of, or complicated by, the accident and the tracheostomy.

³⁰ A physiatrist is a physical medicine and rehabilitation physician. A physiatrist works to rehabilitate injured people and return them to their highest functioning level.

He has estimated that Yeilyn's life expectancy, because of the accident, is 35 years of age.

Dr. Lichtblau assigned to Yeilyn an American Medical Association impairment rating of 87–97 percent permanent partial impairment of the whole person based upon:

Complete Paraplegia	36 – 50 percent
Traumatic Brain Injury	21 – 35 percent
Neurogenic Bowel ³¹	21 – 50 percent
Neurogenic Bladder	21 – 30 percent
Gastrostomy ³²	10 – 15 percent
Open Tracheostomy	45 – 58 percent
Autonomic Dysreflexia ³³	11 – 20 percent

However, I was unable to find any evidence in the hospital records or home health care records to support the existence of a traumatic brain injury or gastrostomy. In contrast, Yeilyn is not reported to be developmentally delayed due to a traumatic brain injury, but is reported to be a verbal, expressive, fully mentally functioning young girl who interacts with visitors, moves about independently in her wheel chair, and plays games on an electronic tablet. Additionally, there was no evidence that she has had a permanent gastrostomy feeding tube. The home health care nurses' records from 2021 report that Yeilyn is fed a "regular diet" supplemented with two cans of Pediasure. No mention is made in the nurses' notes of the presence, or need for care, of a gastro feeding tube. Because of the lack of support for a traumatic brain injury and the presence of a gastrostomy, it appears that the impairment rating should be reduced for accuracy.

Life Care Plan by Ann Koerner

Ann Koerner is a consultant with National Care Advisors, a company that develops life care plans for injured people to substantiate their future needs. Although Ms. Koerner has never met or personally interviewed Yeilyn, Ms. Koerner

³¹ Neurogenic bowel means the loss of someone's normal bowel function, often caused by a spinal cord injury or other nerve-related condition. Source: <https://www.cedars-sinai.org/health-library/diseases-and-conditions/n/neurogenic-bowel.html>

³² A gastrostomy is a surgical opening made through the abdomen into the stomach. It provides a method to insert a gastrostomy tube to send nutrition directly to the stomach. Source: <https://kidshealth.org/en/parents/g-tube.html>

³³ Autonomic dysreflexia is a syndrome that develops in people with spinal cord injuries. It often results in uncontrolled hypertension or high blood pressure. Source: <https://emedicine.medscape.com/article/322809-overview>

assessed Yeilyn's current income and benefits and compiled an analysis of what she believes her future medical, nursing, transportation, and living care costs will be based upon information from Dr. Lichtblau.³⁴

Yeilyn's Current Benefits

Yeilyn currently receives \$794 each month for Supplemental Security Income. All of her medical needs are paid through Medicaid and will be until she turns 18 years of age. Medicaid services include medical care, dental services, diagnostic tests, possible surgical procedures, therapeutic evaluations, and outpatient therapy. Yeilyn currently lives in a home with her father and extended family. Medicaid has authorized payment, through a Children's Medicaid Services Waiver, for a skilled nurse, her primary caregiver, who is with her 24 hours each day.

According to Ms. Koerner, this waiver will end when Yeilyn turns 18 years old. At that time, the only available Medicaid service with 24-hour skilled nursing care is an assisted living facility. The claimant's attorney asserts that this is not an appropriate setting for an 18-year-old and will be a dramatic change in the assistance Yeilyn needs.

Ms. Koerner states:

"In the event that the current level of Medicaid benefits is no longer available to Yeilyn or does not continue to provide for the 24/7 skilled nursing care that she requires, the cost of 24/7 [licensed vocational nurse] level care, in her private family home, over her lifetime will, at a minimum, will approximately be \$6,676,967 (2021 dollars)."

The claimant's attorney estimates that Yeilyn's future medical damages will be \$11,277,682.10. He computed the following four elements for future medical damages:

³⁴While many items seem reasonable, some of Ms. Koerner's values seem quite generous. For example, her projection includes \$450,000 for the purchase of a wheelchair accessible home and an additional \$174,000 to cover the property taxes, insurance, and maintenance on the home over Yeilyn's life expectancy to age 35. If Yeilyn, at age 18, is moved into a facility, it is unclear what happens to title to the home. A wheelchair accessible van with modifications, that would be replaced every 7 years, is also included for \$172,500. An additional \$145,000 is allotted for insurance, maintenance, gas, AAA membership, a cell phone with AT&T, and a handicap parking permit. Approximately \$500 is allotted each month for maintenance on the van, an amount that appears quite liberal.

Medicaid Expenses (2020 Medicaid expenses multiplied by 12 years) ³⁵	\$3,633,785.64
Skilled Nursing Services (From age 18 – 35 years) ³⁶	\$2,856,928.73
Out-of-Pocket Skilled Nursing Services (From age 18 – 35)	\$3,591,000.00
Additional Out-of-pocket expenses	<u>\$1,195,967.73</u>
Total	\$11,277,682.10

Total Economic Damages

Past Medical Damages	\$1,772,320.52
Future Medical Damages	<u>\$11,277,682.10</u>
	\$13,050,002.62

Non-Economic Damages

Past and Future Pain and Suffering and Loss
Of Enjoyment of Life

At the special master hearing, the claimant's attorney did not provide a specific dollar amount for these categories. He noted that the Florida Standard Jury Instructions 501.2a³⁷ state that there is no exact standard for measuring these damages. The jury instructions state that the amount should be a "fair and just" amount in light of the evidence presented to the jury. He suggested that the amount could exceed \$5,000,000 or even \$10,000,000.

Conclusion

The settled claim amount of \$4,000,000 to be paid by the County seems reasonable based on the evidence presented, including the comparative negligence of Mr. Meraz-Funez and Ms. Otero, and in taking into consideration the unpredictable nature of juries.

³⁵ The 2020 Medicaid paid expenses for 2020, \$302,815.47 X 12 years, or ages 6 – 17 years. The claimant's attorney and Ms. Koerner stated that Yeilyn will no longer qualify for 24 hours per day care when she turns 18 year old.

³⁶ 2020 Medicaid paid expenses from age 18 – 35, or \$150,364.67 X 19 years.

³⁷ 501.2 Personal Injury and Property Damages: Elements.

Settlement Agreement

The parties agreed to settle this claim for:

(1) The \$200,000 statutory cap, which the County paid on August 11, 2021, to the Colson Hicks Eidson, P.A. Trust Account for the benefit of Yeilyn Q. Otero and

(2) The right to pursue a claim bill for \$3,800,000 which would not be contested by the Board of County Commissioners of Miami-Dade County.

Settlement Agreement Distribution

To understand what Yeilyn has received from the initial \$200,000 settlement and what she would receive if the \$3,800,000 claim bill should pass, it is necessary to explain two separate closing statements.

The Initial \$200,000 Settlement with Miami-Dade County

Pursuant to s. 409.910(11)(f), F.S., when there is a recovery in a tort action and Medicaid has provided medical goods and services to a plaintiff who is a Medicaid recipient, the amounts recovered are distributed as follows:

- First, the attorneys are authorized to take their attorney fees and taxable costs³⁸ from the gross proceeds.
- Second, one-half of the remaining recovery will be paid to the agency up to the total amount of assistance paid by Medicaid, and the remaining one-half is paid to the recipient. In other words, the lien holders and the client evenly split the proceeds after attorney fees and allowable costs are paid.

According to the statutory formula when a Medicaid lien is involved, the recovery in the initial settlement is as follows:

<u>Recovery</u>		<u>\$200,000</u>
Attorney Fees of 25%		
Colson Hicks Eidson	75%	\$37,500.00

³⁸ Taxable costs are limited to those costs as defined in the Florida Rules of Civil Procedure. See s. 409.910(11)(f)1., F.S.

Aigen Law Firm	25%	\$12,500.00
Total Attorney Fees		\$50,000.00

Costs Incurred		
Colson Hicks Eidson		\$12,256.41
Aigen Law Firm		<u>\$ 0</u>
Total Costs		\$12,256.41

[Medicaid Liens		
Equian (lien waived) ³⁹		\$819,204.55
Conduent ⁴⁰		\$1,772,320.52]

Therefore,	\$200,000.00 settlement
	\$50,000.00 attorney fees
	<u>\$12,256.41 costs</u>
	\$137,743.59

Pursuant to statute, the remaining \$137,743.59 was divided equally between Medicaid recovery and the client. The net recovery is:

Total Lien Proceeds	\$68,871.80
Yeilyn's Proceeds	\$68,871.80

The Proposed \$3,800,000 Settlement

<u>Recovery</u>	<u>\$3,800,000.00</u>
-----------------	-----------------------

Attorney and Lobbying Fees of 25%	(\$950,000.00)
-----------------------------------	----------------

Colson Hicks Eidson	\$522,500.00
Aigen Law Firm	\$237,500.00
Ballard Partners, Lobbyist	<u>\$190,000.00</u>
	\$950,000.00

Costs Incurred	
Colson Hicks Eidson	\$12,272.05
Aigen Law Firm	<u>\$ 0</u>

³⁹ Equian was retained by WellCare, a Medicaid plan, to represent WellCare with its subrogation rights and recovery for the medical claims paid on Yeilyn's behalf. Correspondence was provided showing that Equian did not assert its lien in this settlement because the Agency for Health Care Administration lien (Conduent) exceeded what was recoverable in this case and the AHCA/Conduent lien took priority ahead of the Equian lien.

⁴⁰ Conduent Payment Integrity Solutions, a subcontractor to Health Management Systems, is the authorized agent of the Agency for Health Care Administration and operates the Florida Medicaid Casualty Recovery Program.

\$12,272.05 (\$12,272.05)

\$2,837,727.95

Medicaid Liens

Equian

\$819,204.55

Conduent

\$1,772,320.52

Pursuant to statute, the remaining \$2,837,727.95 is divided equally between Medicaid and the client.

Medicaid Liens

\$1,418,863.98

Yeilyn's Proceeds

\$1,418,863.98

Court Approval of Minor's Settlement

When a case involves a financial settlement for a minor, it requires court approval to ensure that the minor's interests are protected.⁴¹ The Circuit Court in Miami-Dade County approved the proposed settlement after receiving testimony from Jonathan Friedland, the guardian ad litem who determined that the proposed settlement was fair, a reasonable resolution of the matter, and was in Yeilyn's best interest, and from Heather Hasandras, the guardian of the property.⁴² The court authorized Heather Hasandras to collect the proceeds of the settlement and execute any instruments necessary to finalize the settlement. The court approved the distribution of funds as set forth in the closing statement and approved the allocation of Yeilyn's net proceeds into a special needs trust⁴³ created solely for Yeilyn's benefit.⁴⁴

A special needs trust, and in this case, a pooled special needs trust, is a legally recognized tool that creates a safe harbor⁴⁵ to protect the assets of mentally or physically disabled people. In order for Yeilyn to continue to qualify for Medicaid, the assets from a settlement must be protected, so that they will not be counted against her needs-based eligibility and disqualify her from receiving Medicaid in the future.

⁴¹ Section 744.387(3), F.S.

⁴² The hearing was held July 1, 2021. Case No. 2018-003667-CA-01.

⁴³ A special needs trust is a trust, or sheltered arrangement, established to protect the eligibility of a disabled person to receive government benefits that are need-based. Medicaid or Supplemental Security Income are common examples of need-based benefits paid by the government.

⁴⁴ The guardianship of the property was established in Case No. 2018-004040-GD-02.

⁴⁵ AGED Master Trust Declaration, Article 1.7.

The court authorized Ms. Hasandras to execute a Pooled Trust Joinder Agreement on October 15, 2021.⁴⁶ In this case, the Aged Pooled Special Needs Trust will be the trustee of the funds.⁴⁷ Ms. Hasandras must report the value of the pooled trust assets in an annual accounting to the court and the court will retain jurisdiction over the case.

ATTORNEY FEES:

Section 768.28, Florida Statutes, limits the claimant's attorney fees to 25 percent of the claimant's total recovery reached by any judgment or settlement in a sovereign immunity claim. The claimant's attorney has acknowledged this limitation and verified in writing that nothing in excess of 25 percent of the gross recovery will be withheld or paid as attorney and lobbyist fees. This translates into total attorney fees of \$50,000 in the initial \$200,000 settlement and \$950,000 in the \$3,800,000 claim bill, if the claim bill should pass, for a combined total of \$1,000,000. Lobbying fees of \$190,000 are included in the attorney fees for the claim bill, but not in the initial settlement.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 58 be reported FAVORABLY but that certain factual representations in the bill be amended for accuracy.

Respectfully submitted,

Eva M. Davis
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces a provision of the underlying bill which limited attorney fees to 25 percent of the claim bill award with specific dollar amounts that may be used for attorney fees, lobbying fees, and costs.

⁴⁶ Upon Yeilyn's "demise" and after repayment of any Medicaid liens, Yeilyn's estate will be the beneficiary of the account.

⁴⁷ In the Master Trust Declaration, Article I.7 provides that purpose of the trust is to provide supplemental care to disabled beneficiaries and "is created with the express intent that the beneficiaries. . . qualify or continue to be eligible for needs-based governmental or quasi-governmental assistance, including Medicaid, SSI, housing assistance and other need-based programs."



363094

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/04/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment

Delete lines 92 - 94

and insert:

Yeilyn Quiroz Otero. The total amount paid for attorney fees relating to this claim may not exceed \$760,000, the total amount paid for lobbying fees may not exceed \$190,000, and the total amount paid for costs or other similar expenses may not exceed \$12,275.05.



964178

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment

Delete lines 92 - 94

and insert:

Yeilyn Quiroz Otero. The total amount paid for attorney fees relating to this claim may not exceed \$760,000, the total amount paid for lobbying fees may not exceed \$190,000, and the total amount paid for costs or other similar expenses may not exceed \$12,272.05.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 20, 2021

I respectfully request that **Senate Bill #58**, relating to Relief of Yeilyn Quiroz Otero by Miami-Dade County, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39



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
2/2/22	SM	Favorable
2/7/22	JU	Fav/CS
	HP	
	RU	

February 2, 2022

The Honorable Wilton Simpson
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 74** – Judiciary Committee and Senator Ana Maria Rodriguez
HB 6521 – Representative Patt Maney
Relief of Harry Augustin Shumow

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED CLAIM FOR LOCAL FUNDS IN THE AMOUNT OF \$5,000,000. THIS AMOUNT IS THE REMAINING BALANCE OF A \$5,300,000 SETTLEMENT AGREEMENT REGARDING ALLEGED NEGLIGENCE OF MEDICAL STAFF AT JACKSON MEMORIAL HOSPITAL, OPERATED BY THE MIAMI-DADE PUBLIC HEALTH TRUST, A SUBDIVISION OF THE STATE OF FLORIDA.

FINDINGS OF FACT:

Events at Jackson Memorial Hospital

On August 22, 2017, 6-year-old Harry Augustin Shumow (Gus) presented to Joe DiMaggio Children's Hospital with lethargy, dehydration, diarrhea, vomiting, clenched jaw, and a fever.¹ Gus was thought to be experiencing liver failure² and was subsequently transferred to the pediatric intensive care unit (PICU) at Holtz Children's Hospital, a

¹ Bonfiglio, M.D., Richard Paul, Physical Medicine and Rehabilitation Evaluation for Harry Shumow at p. 5 (April 8, 2021).

² Claimant's expert, Dr. Stephen Deputy, testified that Gus was transferred to JMH because Joe DiMaggio medical staff believed Gus may need a liver transplant and JMH was capable of evaluating his transfer suitability, whereas Joe DiMaggio Children's Hospital was not. See Special Master Hearing at 2:40:54-2:41:20.

pediatric hospital within the Jackson Memorial Hospital (JMH) system, where he was treated for hepatitis, acute kidney injury, and encephalopathy.³ Once there, Gus tested positive for Influenza A, and a baseline MRI revealed that Gus had suffered several small strokes,⁴ possibly due to dehydration resulting from rhabdomyolysis.⁵ On August 28, 2017, due to concerns of microangiopathy,⁶ doctors performed a biopsy of Gus's left kidney.⁷

Over the course of approximately the next two weeks, Gus began to slowly recover cognitive and physical function.⁸ He began to smile, recognize his family members, speak, and exhibit gradual motor improvements.⁹ His liver function and renal function also improved substantially over this time.¹⁰

On September 8, 2017, at approximately 3:26 AM, medical staff attending to Gus ordered a complete blood count¹¹ (CBC) from the hospital's lab.¹² At approximately 6:50 a.m., Ms. Mona Lisa Pierre, a lab tech employed by JMH and on duty at the time, performed an analysis of the blood specimen drawn for the CBC.¹³ The analysis

³ Agency for Health Care Administration, Hospital Adverse Incident Report (hereinafter, The AHCA Report) at p. 6, (October 10, 2017).

⁴ *Id.*

⁵ Rhabdomyolysis (often called "rhabdo") is a serious medical condition that can be fatal or result in permanent disability. Rhabdo occurs when damaged muscle tissue releases its proteins and electrolytes into the blood. These substances can damage the heart and kidneys and cause permanent disability or even death. The Center for Disease Control and Prevention, Rhabdomyolysis, available at <https://www.cdc.gov/niosh/topics/rhabdo/default.html> (last visited November 22, 2021).

⁶ Microangiopathy, also known as small vessel disease, is a condition in which the walls of the small arteries in the heart are not working properly. This reduces the flow of oxygen-rich blood to the heart, causing chest pain (angina), shortness of breath, and other signs and symptoms of heart disease. The Mayo Clinic, Small Vessel Disease, available at <https://www.mayoclinic.org/diseases-conditions/small-vessel-disease/symptoms-causes/syc-20352117> (last visited November 22, 2021).

⁷ The AHCA Report at p. 6.

⁸ Special Master Hearing at 2:45:05-2:46:06.

⁹ *Id.*

¹⁰ *Id.* at 2:46:58-2:47:52.

¹¹ A complete blood count (CBC) is a blood test used to evaluate overall health and detect a wide range of disorders, including anemia, infection and leukemia. A complete blood count test measures several components and features of blood, including red blood cells, white blood cells, hemoglobin, hematocrit, and platelets. The Mayo Clinic, Complete Blood Count (CBC), available at <https://www.mayoclinic.org/tests-procedures/complete-blood-count/about/pac-20384919> (last visited November 22, 2021).

¹² JMH Clinical Laboratory/Hematology Records at p. 1.

¹³ The AHCA Report at pp. 4-6.

resulted in a hemoglobin¹⁴ (HGB) value of 3.4.¹⁵ An HGB value of less than 6 is considered a “critical” or “panic” value, per the JMH Pathology Policies and Procedures Manual (JMH Manual).¹⁶ Critical values must be reported to the patient’s attending physician or their designee within 30 minutes of obtaining such values.¹⁷ The 3.4 HGB reading also represented a decrease from the most recently obtained HGB value¹⁸ of more than 25 percent.

Ms. Pierre ran the sample again at 6:52 AM, resulting in an HGB value of 3.3. Ms. Pierre proceeded to recheck the sample again at 7:18 AM and again at 7:44 AM, resulting in HGB values of 3.2 and 3.3, respectively.¹⁹ Ms. Pierre believed the blood sample was contaminated and advised a PICU nurse that the lab had been canceled but did not indicate a reason for cancellation, instead suggesting a blood redraw be performed to obtain a new sample. Ms. Pierre did not advise anyone of the critical HGB value.

The next scheduled CBC blood draw occurred at 2:09 PM that afternoon, and the specimen, analyzed by a different lab tech now on duty, yielded an HGB value of 2.5.²⁰ The second lab tech immediately notified a PICU nurse, and another CBC blood draw was ordered to confirm the result.²¹ An abdominal ultrasound was ordered at 3:30 PM due to Gus complaining of abdominal pain and nausea.²² The ultrasound was initiated at 4:20 PM, and at 4:37 PM, following the results of the next CBC panel (which revealed an HGB value of 2.4), a blood transfusion was ordered.²³

¹⁴ Hemoglobin (Hb or Hgb) is a protein in red blood cells that carries oxygen throughout the body. A low hemoglobin count is generally defined as less than 13.5 grams of hemoglobin per deciliter (135 grams per liter) of blood for men and less than 12 grams per deciliter (120 grams per liter) for women. In children, the definition varies with age and sex. The threshold differs slightly from one medical practice to another. The Mayo Clinic, Low Hemoglobin Count, available at <https://www.mayoclinic.org/symptoms/low-hemoglobin/basics/definition/sym-20050760> (last visited November 22, 2021).

¹⁵ JMH Lab Results for Harry Shumow, Sample No. L2970061660, dated September 8, 2017.

¹⁶ JMH Pathology Services Policy and Procedure Manual, Notification of Critical Values at p. 4.

¹⁷ *Id.*

¹⁸ The most recently obtained HGB value was 8.1. See The AHCA Report at p. 4.

¹⁹ JMH Clinical Laboratory/Hematology Records at pp. 1-4.

²⁰ The AHCA Report at p. 4.

²¹ *Id.*

²² JMH Patient Safety Work Product Timeline for events of September 8, 2017 at p. 3.

²³ *Id.*

The ultrasound ultimately revealed that Gus had been bleeding internally following his earlier kidney biopsy.²⁴ Gus went into cardiac arrest, and although he was ultimately resuscitated by JMH medical staff, the resuscitation process took roughly 1 hour and 11 minutes.²⁵ By the time Gus stabilized, he had suffered severe hypoxic ischemic encephalopathy, a type of brain injury caused by impaired cerebral blood flow and oxygen delivery to the brain.²⁶

JMH performed an internal Root Cause Analysis following the incident. The analysis determined the primary cause of Gus's injuries to be Ms. Pierre's failure to adhere to JMH Manual guidelines.²⁷ In addition to the internal analysis, the AHCA Report similarly stated that Gus's injury was caused by Ms. Pierre's failure to report a change of 25% from the immediately preceding HGB value.²⁸

At the final hearing, Gus's attorney presented MRIs taken before and after Gus's cardiac arrest for comparison. Dr. Stephen Russell Deputy, a practicing physician board certified in neurology and specializing in pediatric neurology, testified that a comparison of the MRIs shows damage to various regions of Gus's brain consistent with severe dystonia, incontinence, and several other conditions Gus is currently experiencing. The MRIs following the cardiac arrest showed significant injury to the basal ganglia, a region of the brain largely responsible for motor skills.²⁹ Dr. Deputy opined that this is a direct result of the cardiac arrest, and that significant rehabilitative progress among patients with neurological injuries similar to those Gus experienced is generally limited to the three months immediately following the date of injury.³⁰

²⁴ The AHCA Report at p. 4.

²⁵ *Id.*

²⁶ Deputy, M.D., Stephen, Report and Opinions Concerning Harry Shumow at p. 11 (May 28, 2021).

²⁷ JMH Root Cause Analysis and Action Plan at p. 3

²⁸ The AHCA Report at p. 6.

²⁹ Special Master Hearing at 2:56:00-2:59:00.

³⁰ Special Master Hearing at 2:47:50-2:48:00.

Dr. Deputy explained that Gus currently suffers from dystonia³¹ and quadriplegic dystonic cerebral palsy.³² He opined that both are permanent conditions that will affect him for the rest of his life,³³ and that Gus likely would have made a full recovery from his original illnesses but for the hemorrhagic stroke caused by the cardiac arrest.³⁴

Gus's Current Condition

At the time of the incident Gus was 6 years old. He is now 10 years old and lives with his mother, Rose, who cares for Gus and his two siblings full time. On October 22, 2019, Rose's husband and Gus's father, Moses Shumow, was killed in a bicycle accident. Following Moses's death, Rose and the children moved to Largo to be closer to her family, and she is now the sole guardian and caretaker of Gus and his siblings.

At the final hearing, Rose detailed the various medications, therapies, and other treatments that she and others provide to Gus. Rose homeschools Gus and takes him to numerous physical therapy appointments, as well as appointments for a dystonia recovery program, targeted development intervention,³⁵ and a number of other therapies.³⁶ She also takes him to appointments with several specialists and his primary care physician. Rose previously worked as a master's level librarian before Gus's accident, however she is not currently employed as all of her available time is spent taking care of Gus and her other two children.

³¹ Dystonia is a movement disorder in which muscles contract involuntarily, causing repetitive or twisting movements. The Mayo Clinic, Dystonia, available at <https://www.mayoclinic.org/diseases-conditions/dystonia/symptoms-causes/syc-20350480> (last visited November 22, 2021).

³² Dystonic cerebral palsy is a condition that causes increased muscle tone and uncontrollable, involuntary posture and movement. American Academy for Cerebral Palsy and Developmental Medicine. (2018), Dystonia in Cerebral Palsy, available at <https://www.aacpdm.org/publications/care-pathways/dystonia-in-cerebral-palsy> (last visited November 22, 2021).

³³ Special Master Hearing at 2:58:40-3:03:56.

³⁴ Special Master Hearing at 2:55:10-2:55:35.

³⁵ Targeted Development Intervention is a therapy program developed by the National Association for Child Development that utilizes a number of therapeutic techniques catered to the individual patient, with the goal of accelerating neurological development and function. The National Association for Child Development, *The Important of TDI Targeted Development Intervention*, available at <http://www.nacd.org/the-importance-of-tdi-targeted-developmental-intervention/> (last visited November 22, 2021).

³⁶ Special Master Hearing at 40:05-48:00.

Dr. Richard Paul Bonfiglio, a physician board certified in physical medicine and rehabilitation, testified at the final hearing regarding Gus's condition. He evaluated Gus in person on April 8, 2021 and explained that Gus has global developmental delays and cannot walk independently or produce words, however he is aware of his environment and can engage with others.³⁷ Dr. Bonfiglio stated that while Gus has made progress with the therapies and care that he has received and will likely continue to do so, it is very unlikely Gus will ever be independent with day-to-day activities, and will require assistance and supervision 24 hours a day for the remainder of his life.³⁸

Settlement and Estimated Economic Losses

The parties have entered into a settlement agreement for a total of \$5,300,000.³⁹ The source of funds for the settlement are as follows: The Public Health Trust has a self-insured retention of \$1,000,000 and an excess insurance policy through Aon UK Limited.⁴⁰ The sovereign immunity cap of \$300,000 has been paid through the self-insured retention, an additional \$700,000 will be paid from the remainder of the self-insured retention, and the remaining \$4,000,000 falls under the excess insurance policy.⁴¹

All proceeds of the settlement agreement are to be invested in a structured settlement/annuity and held in a special needs trust (SNT) that has been established for Gus's benefit. The proceeds are to be disbursed from the SNT in accordance with the details of the structured settlement/annuity and terms of the SNT.⁴² The full amount (\$300,000) of the respondent's statutory limit has been paid into Gus's SNT.

Gus's attorney submitted a future needs analysis based on a life care plan developed for Gus.⁴³ The future needs

³⁷ Special Master Hearing at 2:15:32-2:16:35.

³⁸ Special Master Hearing at 2:20:15-2:21:45.

³⁹ Release of All Claims, Rose Shumow Et Al v. Miami-Dade Public Health Trust, Case No. 2019-015810-CA-01 (Fla. 11th Circ. Ct.) (September 23, 2021).

⁴⁰ Letter from Claimant's Attorney to Special Masters at p. 5 (October 4, 2021).

⁴¹ *Id.*

⁴² Amended Interim Closing Statement submitted by claimant's attorney on November 3, 2021; Claimant's attorney also submitted documentation from each creditor to corroborate the status and values of the liens.

⁴³ Future Needs Analysis for Harry (Gus) Shumow, (October 29, 2021).

analysis produced an estimated total of lifetime costs exclusive of those costs delineated in the life care plan that are likely to be covered by government benefits, including Medicaid and the Medicaid Home and Community Based Services waiver.⁴⁴ The analysis estimated the total lifetime cost of Gus's needs not covered by such collateral sources to be approximately \$6,200,963.99.⁴⁵ After reviewing the life care plan and future needs analysis, Dr. Bonfiglio opined that the treatments and medications listed in the plans are medically necessary, both for maintaining Gus's current health and for preventing additional complications from occurring.⁴⁶ He also testified that the various therapies Gus currently receives are important to Gus's ongoing rehabilitation.⁴⁷

Liens

Several creditors have asserted liens on proceeds due to Gus from the settlement.⁴⁸ AvMed has asserted a medical lien of \$824,962.20, which has conditionally been reduced to \$250,000 upon passage of the claim bill. Harvard Pilgrim has asserted two medical liens, one of \$67,090.58 and another of \$2,479.76. Both of these liens have been reduced to \$0. Mass Health has asserted a medical lien of \$1,079.37. CMS has asserted a medical lien of \$32,674.74, which has been reduced to \$10,000. The total outstanding amount⁴⁹ of the liens is \$266,377.13.

Litigation History

Moses and Rose filed a case in Miami-Dade County seeking relief on behalf of Gus as a result of the incident at JMH.⁵⁰ Prior to trial, the parties arrived at a mediated settlement agreement⁵¹ and the case was subsequently closed.

⁴⁴ Gus is Medicaid eligible until age 21; at that time, Gus will likely be eligible for the Medicaid Home and Community Based Services Waiver for individuals with disabilities.

⁴⁵ The future needs analysis assumed a life expectancy of 65.9 years. At the final hearing, Dr. Bonfiglio opined that this is a reasonable assumption if Gus continues to receive the ongoing care that he has to this point.

⁴⁶ Special Master Hearing at 2:24:00-2:24:57.

⁴⁷ Special Master Hearing 2:27:45-2:28:15.

⁴⁸ *Id.* at p. 2.

⁴⁹ This calculation assumes a negotiated final amount of \$250,000 for the AvMed lien.

⁵⁰ *Rose Shumow Et Al v. Miami-Dade Public Health Trust*, Case No. 2019-015810-CA-01 (Fla. 11th Circ. Ct.).

⁵¹ Special Master Hearing at 16:59:00-17:25:00.

The respondent did not admit liability or responsibility for the incident but did reach a mediated settlement agreement of \$5,300,000.⁵² As part of the agreement, the respondent agreed to not support or oppose the bill, and did not present a case or argument at the special master hearing.⁵³

CONCLUSIONS OF LAW:

A *de novo* hearing was held as the Legislature is not bound by settlements or jury verdicts when considering a claim bill, passage of which is an act of legislative grace.

As a result of section 768.28(5), Florida Statutes, the hospital's liability for medical malpractice claims or judgments is limited to \$200,000 per claim or judgment and \$300,000 for all claims or judgments arising out of the same incident. Sums exceeding this amount are payable by the State and its agencies or subdivisions by further act of the Legislature.

JMH is a public hospital operated by the Miami-Dade Public Health Trust.⁵⁴ Additionally, the hospital or trust, under the doctrine of *respondeat superior*, is responsible for the medical negligence of its employees.⁵⁵ Ms. Pierre was acting within the scope of her employment with JMH while analyzing Gus's blood samples.

There are four elements to a negligence claim: (1) duty – where the defendant has a legal obligation to protect others against unreasonable risks; (2) breach – which occurs when the defendant has failed to conform to the required standard of conduct; (3) causation – where the defendant's conduct is foreseeably and substantially the cause of the resulting damages; and (4) damages – actual harm.⁵⁶

Duty

In cases involving the negligence of medical personnel, the duty of care owed is the level of care, skill, and treatment which, in light of all surrounding circumstances, is recognized

⁵² Order Granting Plaintiff's Motion to Approve Minor Settlement and Dismissing Case, Rose Shumow Et Al v. Miami-Dade Public Health Trust, Case No. 2019-015810-CA-01 (Fla. 11th Circ. Ct.).

⁵³ Mediation Settlement Agreement at p. 2.

⁵⁴ *Public Health Trust Bylaws and Rules and Regulations of the Medical Staff*, available at <https://storage.googleapis.com/jackson-library/Credentialing/2015-05-26-medical-staff-bylaws-final.PDF>

⁵⁵ *Roessler v. Novak*, 858 So. 2d 1158, 1161 (Fla. 2d DCA 2003).

⁵⁶ *Williams v. Davis*, 974 So.2d 1052, at 1056–1057 (Fla. 2007).

as acceptable and appropriate by reasonably prudent similar health care providers.⁵⁷

The JMH Manual clearly delineated the duties owed by JMH laboratory personnel. Specifically, any change in HGB levels that deviate by 25% or more from those derived in the previous blood sample must be reported to a person in charge after investigation and verification of the results. Lab personnel are also required to report critical values to an attending physician or designee within 30 minutes of obtaining such values.⁵⁸

Additionally, Gus's attorney submitted a Verified Affidavit from Dr. Aaron Zucker, a physician board certified in pediatrics with a subspecialty in pediatric critical care, following the final hearing. The Verified Affidavit stated that Ms. Pierre had a duty to do the following:

- Notify Gus's supervising physician that the 3:26 AM CBC resulted in a HGB level of 3.4; and
- Notify a person in charge that 3:26 AM CBC resulted in a HGB level that had changed by more than 25% from the immediately preceding CBC.⁵⁹

Breach

If the duty of care required JMH laboratory personnel to follow up on any critically low values and report them to a person in charge within 30 minutes, Ms. Pierre clearly breached her duty. Ms. Pierre rejected Gus's blood specimen because she believed the sample was contaminated. The JMH Manual details specific criteria for specimen rejection, and a belief that a specimen is contaminated is not among the listed criteria.⁶⁰ By improperly rejecting the sample and failing to notify proper personnel of an HGB value that was both critical, per JMH pathology guidelines, and that represented a change greater than 25% from the immediately preceding HGB value, Ms. Pierre breached her duty to Gus.

⁵⁷ Section 766.102(1), F.S.

⁵⁸ The JMH Manual defines a critical HGB value as less than 6.

⁵⁹ Zucker, M.D., Aaron, Declaration of Aaron Zucker, MD. (November 15, 2021).

⁶⁰ See JMH Pathology Services Policy and Procedure Manual, Specimen Rejection Criteria.

Causation

Dr. Deputy testified that Gus's healing trajectory during the period between his admission to JMH and the events of September 8, 2017, was such that he would have made a full recovery with regard to his mental status but for the events of September 8, 2017.⁶¹

Additionally, Dr. Zucker's Verified Affidavit stated that if Ms. Pierre had followed the JMH Manual guidelines by reporting the panic HGB levels, Gus's medical team likely would have been able to timely diagnose and treat his severe anemia, and Gus ultimately would not have suffered the hemorrhagic stroke that resulted in his cardiac arrest and subsequent injuries.⁶²

The testimony of multiple experts, the JMH Root Cause Analysis, and the AHCA Report all show that Ms. Pierre's actions were a direct and proximate cause of Gus's injuries. Ms. Pierre's failure to report the critical HGB value caused Gus's anemia to go undiagnosed for roughly eight hours. Had Ms. Pierre reported the critical HGB value of 3.4 to a person in charge, Gus's medical team would have been able to order a blood transfusion quickly enough to prevent the cardiac arrest that caused Gus's injuries.

Damages

As a result of the cardiac arrest, doctors indicated Gus suffered traumatic brain and spinal cord injuries. Multiple experts opined that Gus's injuries are permanent and he will require 24-hour supervision and assistance for life. Doctors expect Gus to live into his seventies with proper medical and therapeutic care.

Given the submissions and testimony from various experts, including the life care plan and special needs analysis, the undersigned finds the preponderance of evidence demonstrates \$5.3 million is a reasonable amount of damages.

⁶¹ Special Master Hearing at 2:50:00-2:50:57.

⁶² Zucker, M.D., Aaron, Declaration of Aaron Zucker, MD. (November 15, 2021).

ATTORNEY FEES:

Language in the bill states attorney fees may not exceed 25 percent of the amount awarded. Gus's attorney indicated attorney fees will be 20 percent, and lobbying fees will amount to 5 percent, of the total funds awarded through the claim bill.⁶³

RECOMMENDATIONS:

Based on the foregoing, the undersigned recommends that Senate Bill 74 be reported FAVORABLY.

Respectfully submitted,

Peter Delia
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute replaces a provision of the underlying bill which limited attorney fees to 25 percent of the claim bill award with specific dollar amounts that may be used for attorney fees, lobbying fees, and costs.

⁶³ Amended Interim Closing Statement submitted by claimant's attorney on November 3, 2021. (noting total attorney's/lobbying fees of \$1,325,000.00).



379230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment

Delete lines 72 - 74
and insert:
injuries and damages to Harry Augustin Shumow. The total amount paid for attorney fees relating to this claim may not exceed \$1,000,000, the total amount paid for lobbying fees may not exceed \$250,000, and the total amount paid for costs or other similar expenses may not exceed \$133,344.06.

1
2
3
4
5
6
7
8
9
10



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: October 20, 2021

I respectfully request that **Senate Bill #74**, relating to Relief of Harry Augustin Shumow/Public Health Trust of Miami-Dade County, d/b/a Jackson Memorial Hospital, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 39

2.7.22

The Florida Senate APPEARANCE RECORD

74

Meeting Date

Bill Number or Topic

Judiciary
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Randy M. Weber Phone 305.934.7179

Address 9350 Sam Dixie Highway, #1200 Email Rmweber@pwoLawFirm.com
Street

Miami FL 33156
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 796

INTRODUCER: Criminal Justice Committee and Senator Bradley

SUBJECT: Tampering with or Fabricating Physical Evidence

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.	Bond	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 796 creates a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense. The bill ranks the offense as a Level 6 offense in the Offense Severity Ranking Chart (OSRC).

This bill will likely have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2022.

II. Present Situation:

Tampering With or Fabricating Physical Evidence

Section 918.13, F.S., prohibits a person, knowing that a criminal trial or proceeding, or an investigation by a prosecuting authority, law enforcement agency, grand jury, or legislative committee is pending or about to be instituted, from:

- Altering, destroying, concealing, or removing any record, document, or thing with the purpose to impair its verity or availability in the proceeding or investigation, or
- Making, presenting, or using any record, document, or thing, knowing it to be false.

A person convicted of tampering with or fabricating physical evidence commits a third degree felony.¹ Under current law, the criminal penalty does not vary based on the severity of the underlying crime that is being investigated or prosecuted, so, for example, a person convicted of tampering with evidence in a murder investigation is subject to the same penalty as a person that tampers with evidence in a case involving misdemeanor marijuana possession.

A person may be convicted of tampering with evidence only in circumstances where the person has the specific intent to destroy or conceal evidence to such an extent that it is unavailable for trial or investigation.²

Capital Offenses

A capital felony is the most serious classification of felony offenses. A capital felony is a crime that is punishable by either death or life imprisonment without the possibility of parole.³ Currently, first degree murder, capital sexual battery, and certain drug trafficking offenses are capital offenses.⁴

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.⁵

If an offense is unranked, the Criminal Punishment Code specifies a default level on the OSRC depending on the felony degree of the offense. The criminal offense of altering, destroying, or concealing physical evidence is ranked as a Level 3 offense in the OSRC.⁶

III. Effect of Proposed Changes:

The bill creates a new felony offense building upon the current offense of tampering with or fabricating evidence. The new offense provides that tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense is a second degree felony.⁷ The bill ranks the new second degree felony offense as a Level 6 in the OSRC.

The bill is effective October 1, 2022.

¹ A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

² *E.I. v. State*, 25 So. 3d 626 (Fla. 2d DCA 2009).

³ Section 775.082(1)(a), F.S.

⁴ *See* ss. 782.04(2)(a), 794.011(2)(a), and 893.135, F.S.

⁵ Section 921.0022(3)(c), F.S.

⁶ *Id.*

⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

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

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the State Constitution.

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 Criminal Justice Impact Conference has not yet considered CS/SB 796; however, the Office of Economic and Demographic Research has provided a Proposed Estimate for CS/HB 287 which is identical to CS/SB 796.⁸ The Proposed Estimate for CS/HB 287 is that the bill will have a Positive Indeterminate impact (an unquantifiable increase in prison beds) on the Department of Corrections.⁹

VI. Technical Deficiencies:

None.

⁸ The Proposed Estimates for CS/HB 287 and SB 796 are on file with the Senate Criminal Justice Committee.

⁹ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 918.13 and 921.0022.

IX. Additional Information:

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

CS by Criminal Justice on January 25, 2022:

The committee substitute:

- Includes s. 918.13(1)(b), F.S., the third degree felony crime of fabricating physical evidence in the Offense Severity Ranking Chart at Level 3.
- Ranks the second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a capital offense, or an offense involving the death of a person in the Offense Severity Ranking Chart at Level 6. This offense is created in the bill.
- Deletes a second degree felony offense of tampering with or fabricating evidence relating to a criminal trial or proceeding or an investigation involving a violent felony offense described in s. 775.084(1)(b)1., F.S.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Bradley

591-02277-22

2022796c1

1 A bill to be entitled
 2 An act relating to tampering with or fabricating
 3 physical evidence; amending s. 918.13, F.S.; providing
 4 enhanced criminal penalties for tampering with or
 5 fabricating physical evidence in certain criminal
 6 proceedings and investigations; amending s. 921.0022,
 7 F.S.; ranking offenses on the offense severity ranking
 8 chart of the Criminal Punishment Code; providing an
 9 effective date.

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

11 Section 1. Section 918.13, Florida Statutes, is amended to
 12 read:

13 918.13 Tampering with or fabricating physical evidence.—

14 (1) It is unlawful for any ~~no~~ person, knowing that a
 15 criminal trial, ~~or~~ proceeding, or ~~an~~ investigation by a duly
 16 constituted prosecuting authority, law enforcement agency, grand
 17 jury or legislative committee of this state is pending or is
 18 about to be instituted, to shall:

19 (a) Alter, destroy, conceal, or remove any record,
 20 document, or other item ~~thing~~ with the purpose to impair its
 21 verity or availability in such proceeding or investigation; or

22 (b) Make, present, or use any record, document, or other
 23 item ~~thing~~, knowing it to be false.

24 (2) (a) Except as provided in paragraph (b), a ~~Any~~ person
 25 who violates subsection (1) commits ~~any provision of this~~
 26 ~~section shall be guilty of~~ a felony of the third degree,
 27 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 28
 29

591-02277-22

2022796c1

30 (b) A person who violates subsection (1) relating to a
 31 criminal trial, proceeding, or investigation that relates to a
 32 capital felony commits a felony of the second degree, punishable
 33 as provided in s. 775.082, s. 775.083, or s. 775.084.

34 Section 2. Paragraphs (c) and (f) of subsection (3) of
 35 section 921.0022, Florida Statutes, are amended to read:

36 921.0022 Criminal Punishment Code; offense severity ranking
 37 chart.—

38 (3) OFFENSE SEVERITY RANKING CHART

39 (c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

	591-02277-22		2022796c1
	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
47			
	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
48			
	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
49			
	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
50			
	327.35(2)(b)	3rd	Felony BUI.
51			
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
52			
	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
53			
	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the

	591-02277-22		2022796c1
			Inland Protection Trust Fund.
54			
	379.2431	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
	(1)(e)5.		
55			
	379.2431	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
	(1)(e)6.		
56			
	379.2431	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
	(1)(e)7.		
57			
	400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
58			
	400.9935(4)(e)	3rd	Filing a false license

591-02277-22 2022796c1

application or other required
information or failing to
report information.

59 440.1051(3) 3rd False report of workers'
compensation fraud or
retaliation for making such a
report.

60 501.001(2)(b) 2nd Tampers with a consumer product
or the container using
materially false/misleading
information.

61 624.401(4)(a) 3rd Transacting insurance without a
certificate of authority.

62 624.401(4)(b)1. 3rd Transacting insurance without a
certificate of authority;
premium collected less than
\$20,000.

63 626.902(1)(a) & 3rd Representing an unauthorized
(b) insurer.

64 697.08 3rd Equity skimming.

65 790.15(3) 3rd Person directs another to
discharge firearm from a

591-02277-22 2022796c1

vehicle.

66 806.10(1) 3rd Maliciously injure, destroy, or
interfere with vehicles or
equipment used in firefighting.

67 806.10(2) 3rd Interferes with or assaults
firefighter in performance of
duty.

68 810.09(2)(c) 3rd Trespass on property other than
structure or conveyance armed
with firearm or dangerous
weapon.

69 812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but
less than \$10,000.

70 812.0145(2)(c) 3rd Theft from person 65 years of
age or older; \$300 or more but
less than \$10,000.

71 812.015(8)(b) 3rd Retail theft with intent to
sell; conspires with others.

72 812.081(2) 3rd Theft of a trade secret.

73 815.04(5)(b) 2nd Computer offense devised to
defraud or obtain property.

591-02277-22 2022796c1

74	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
75	817.233	3rd	Burning to defraud insurer.
76	817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
77	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
78	817.236	3rd	Filing a false motor vehicle insurance application.
79	817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
80	817.413(2)	3rd	Sale of used goods of \$1,000 or more as new.
81	817.49(2)(b)1.	3rd	Willful making of a false report of a crime causing great bodily harm, permanent

591-02277-22 2022796c1

82	831.28(2)(a)	3rd	disfigurement, or permanent disability. Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument with intent to defraud.
83	831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
84	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
85	843.19	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
86	860.15(3)	3rd	Overcharging for repairs and parts.
87	870.01(2)	3rd	Riot.
88	870.01(4)	3rd	Inciting a riot.
89	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s.

591-02277-22

2022796c1

893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)6.,
 (2)(c)7., (2)(c)8., (2)(c)9.,
 (2)(c)10., (3), or (4) drugs).

90

893.13(1)(d)2. 2nd Sell, manufacture, or deliver
 s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)6.,
 (2)(c)7., (2)(c)8., (2)(c)9.,
 (2)(c)10., (3), or (4) drugs
 within 1,000 feet of
 university.

91

893.13(1)(f)2. 2nd Sell, manufacture, or deliver
 s. 893.03(1)(c), (2)(c)1.,
 (2)(c)2., (2)(c)3., (2)(c)6.,
 (2)(c)7., (2)(c)8., (2)(c)9.,
 (2)(c)10., (3), or (4) drugs
 within 1,000 feet of public
 housing facility.

92

893.13(4)(c) 3rd Use or hire of minor; deliver
 to minor other controlled
 substances.

93

893.13(6)(a) 3rd Possession of any controlled
 substance other than felony
 possession of cannabis.

94

591-02277-22

2022796c1

893.13(7)(a)8. 3rd Withhold information from
 practitioner regarding previous
 receipt of or prescription for
 a controlled substance.

95

893.13(7)(a)9. 3rd Obtain or attempt to obtain
 controlled substance by fraud,
 forgery, misrepresentation,
 etc.

96

893.13(7)(a)10. 3rd Affix false or forged label to
 package of controlled
 substance.

97

893.13(7)(a)11. 3rd Furnish false or fraudulent
 material information on any
 document or record required by
 chapter 893.

98

893.13(8)(a)1. 3rd Knowingly assist a patient,
 other person, or owner of an
 animal in obtaining a
 controlled substance through
 deceptive, untrue, or
 fraudulent representations in
 or related to the
 practitioner's practice.

99

893.13(8)(a)2. 3rd Employ a trick or scheme in the

591-02277-22 2022796c1

practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

100 893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

101 893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.

102 918.13(1) 3rd Tampering with or fabricating physical evidence ~~Alter, destroy, or conceal investigation evidence.~~

103 944.47(1)(a)1. & 2. 3rd Introduce contraband to correctional facility.

104 944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.

591-02277-22 2022796c1

105 985.721 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

106

107 (f) LEVEL 6

108

109

110 Florida Statute Felony Degree Description

111 316.027(2)(b) 2nd Leaving the scene of a crash involving serious bodily injury.

112 316.193(2)(b) 3rd Felony DUI, 4th or subsequent conviction.

113 400.9935(4)(c) 2nd Operating a clinic, or offering services requiring licensure, without a license.

114 499.0051(2) 2nd Knowing forgery of transaction history, transaction information, or transaction statement.

115

	591-02277-22		2022796c1
	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
116			
	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
117			
	775.0875(1)	3rd	Taking firearm from law enforcement officer.
118			
	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
119			
	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
120			
	784.041	3rd	Felony battery; domestic battery by strangulation.
121			
	784.048(3)	3rd	Aggravated stalking; credible threat.
122			
	784.048(5)	3rd	Aggravated stalking of person under 16.
123			
	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
124			

Page 13 of 19

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

	591-02277-22		2022796c1
	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
125			
	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
126			
	784.081(2)	2nd	Aggravated assault on specified official or employee.
127			
	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
128			
	784.083(2)	2nd	Aggravated assault on code inspector.
129			
	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
130			
	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
131			
	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
132			

Page 14 of 19

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

591-02277-22 2022796c1

133 790.164(1) 2nd False report concerning bomb,
explosive, weapon of mass
destruction, act of arson or
violence to state property, or
use of firearms in violent
manner.

134 790.19 2nd Shooting or throwing deadly
missiles into dwellings,
vessels, or vehicles.

135 794.011(8)(a) 3rd Solicitation of minor to
participate in sexual activity
by custodial adult.

136 794.05(1) 2nd Unlawful sexual activity with
specified minor.

137 800.04(5)(d) 3rd Lewd or lascivious molestation;
victim 12 years of age or older
but less than 16 years of age;
offender less than 18 years.

138 800.04(6)(b) 2nd Lewd or lascivious conduct;
offender 18 years of age or
older.

806.031(2) 2nd Arson resulting in great bodily
harm to firefighter or any

591-02277-22 2022796c1

139 other person.

140 810.02(3)(c) 2nd Burglary of occupied structure;
unarmed; no assault or battery.

141 810.145(8)(b) 2nd Video voyeurism; certain minor
victims; 2nd or subsequent
offense.

142 812.014(2)(b)1. 2nd Property stolen \$20,000 or
more, but less than \$100,000,
grand theft in 2nd degree.

143 812.014(6) 2nd Theft; property stolen \$3,000
or more; coordination of
others.

144 812.015(9)(a) 2nd Retail theft; property stolen
\$750 or more; second or
subsequent conviction.

145 812.015(9)(b) 2nd Retail theft; aggregated
property stolen within 30 days
is \$3,000 or more; coordination
of others.

146 812.13(2)(c) 2nd Robbery, no firearm or other
weapon (strong-arm robbery).

	591-02277-22		2022796c1
147	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
148	817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
149	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
150	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
151	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
152	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
153	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
154	827.03(2)(c)	3rd	Abuse of a child.
155	827.03(2)(d)	3rd	Neglect of a child.

Page 17 of 19

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

	591-02277-22		2022796c1
156	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
157	836.05	2nd	Threats; extortion.
158	836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
159	843.12	3rd	Aids or assists person to escape.
160	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
161	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
162	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
	914.23	2nd	Retaliation against a witness, victim, or informant, with

Page 18 of 19

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

591-02277-22

2022796c1

bodily injury.

163

918.13(2)(b)

2nd

Tampering with or fabricating physical evidence relating to a capital felony.

164

944.35(3)(a)2.

3rd

Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.

165

944.40

2nd

Escapes.

166

944.46

3rd

Harboring, concealing, aiding escaped prisoners.

167

944.47(1)(a)5.

2nd

Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

168

951.22(1)(i)

3rd

Firearm or weapon introduced into county detention facility.

169

170

Section 3. This act shall take effect October 1, 2022.



SENATOR JENNIFER BRADLEY
5th District

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 26, 2021

Senator Danny Burgess, Chairman
Senate Committee on Judiciary
308 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Burgess:

I respectfully request that Senate Bill 796 be placed on the committee's agenda at your earliest convenience. This bill relates to tampering with or fabricating physical evidence.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Tom Cibula, Staff Director
Celia Georgiades, Administrative Assistant

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/7/22

Meeting Date

CS/SB 796

Bill Number or Topic

Judiciary
Committee

Amendment Barcode (if applicable)

Name Buddy Jacobs General Counsel / Phone _____

Address State Attorneys of Fla. FPA Email a.jacobs@comcast.net

Street

Fernandina Bch FL 32034

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: State Attorneys / Fla. Prosecuting Attys Assoc.

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 1184

INTRODUCER: Health Policy Committee and Senator Broxson

SUBJECT: Free Speech of Health Care Practitioners

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1184 seeks to ensure that a health care practitioner is not penalized in a professional capacity for exercising his or her First Amendment constitutional right of free speech.

The bill prohibits regulatory boards within the Department of Health (DOH), or the DOH if there is no applicable board, from reprimanding, sanctioning, revoking or threatening to revoke a license, certificate, or registration of a health care practitioner for exercising his or her constitutional right of free speech, including speech through the use of a social media platform.

The bill requires a regulatory board, or the DOH if there is no applicable board, to prove beyond a reasonable doubt that the use of free speech by a health care practitioner led to the direct physical harm of a person with whom the health care practitioner had a practitioner-patient relationship within the 3 years immediately preceding the incident of physical harm in order to reprimand, sanction, or revoke or threaten to revoke, a license, certificate, or registration of the health care practitioner for his or her speech. The bill specifies that if the board or the DOH fails to meet the burden of proof and reprimands, sanctions, or revokes or threatens to revoke, a license, certificate, or registration of the health care practitioner for his or her speech, the board or the DOH is liable for a sum of up to \$1.5 million per occurrence for direct or indirect damages to the health care practitioner.

The bill requires the regulatory board, or the DOH if there is no applicable board, to provide the health care practitioner with any complaint it has received that may result in revocation of

licensure, certification, or registration, within 7 days after receiving the complaint. If the board or the DOH fails to provide the complaint, it must pay the practitioner an administrative penalty of \$500 for each day the complaint is not provided to the practitioner.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Department of Health Regulation

The Florida Department of Health (DOH) is responsible to regulate health practitioners for the preservation of the health, safety, and welfare of the public.¹ Chapter 456 of the Florida Statutes governs health professions and occupation regulated by the DOH. For purposes of ch. 456, F.S. the term “health care practitioner” includes any person licensed under:

- Chapter 457 (Acupuncturists);
- Chapter 458 (Physicians);
- Chapter 459 (Osteopathic Physicians);
- Chapter 460 (Chiropractors);
- Chapter 461 (Podiatrists);
- Chapter 462 (Naturopathic Physicians);
- Chapter 463 (Optometrists);
- Chapter 464 (Nurses);
- Chapter 465 (Pharmacists);
- Chapter 466; (Dentists, Dental Hygienists);
- Chapter 467 (Midwives);
- Part I of chapter 468 (Speech Language Pathologists, Audiologists);
- Part II of chapter 468 (Nursing Home Administrators);
- Part III of chapter 468 (Occupational Therapists);
- Part V of chapter 468 (Respiratory Therapists);
- Part X of chapter 468 (Dietitian/nutritionists, Nutrition Counselor);
- Part XIII of chapter 468 (Athletic Trainers);
- Part XIV of chapter 468 (Orthotists, Pedorthists, Prosthetists);
- Chapter 478 (Electrologists);
- Chapter 480 (Massage Therapists);
- Part I of chapter 483 (Clinical Laboratory Personnel);
- Part II of chapter 483 (Medical Physicists);
- Part III of chapter 483 (Genetic Counselors);
- Chapter 484 (Opticians and Hearing Aid Specialists);
- Chapter 486 (Physical Therapists);
- Chapter 490 (Psychologists); and
- Chapter 491 (Psychotherapists, Clinical Social Workers, Marriage and Family Therapists, Mental Health Counselors).

¹ Section 20.42(1)(g), F.S.

Due to the diverse practices and differences between these health care professions, various licensing Boards exist within the DOH to ensure that health care practitioners are meeting the minimum requirements for safe practice in each practice area. The Division of Medical Quality Assurance within the DOH serves as the principle administrative support unit for the Boards.² The Boards are supported by a full-time professional staff based in Tallahassee. Board members are appointed by the governor and are subject to confirmation by the Senate. The following Boards exist within the DOH:

- Board of Acupuncture.
- Board of Occupational Therapy.
- Board of Athletic Trainers.
- Board of Opticianry.
- Board of Chiropractic Medicine.
- Board of Optometry.
- Board of Clinical Laboratory Personnel.
- Board of Orthotists and Prosthetists.
- Board of Clinical Social Work, Marriage & Family Therapy, and Mental Health Counseling.
- Board of Osteopathic Medicine.
- Board of Dentistry.
- Board of Pharmacy.
- Board of Hearing Aid Specialists.
- Board of Physical Therapy.
- Board of Massage.
- Board of Podiatric Medicine.
- Board of Medicine.
- Board of Psychology.
- Board of Nursing.
- Board of Respiratory Care.
- Board of Nursing Home Administrators.
- Board of Speech-Language Pathology and Audiology.³

Grounds for Discipline and Penalties

Section 456.072(1), F.S., sets out 45 separate grounds for discipline for health care practitioners. These grounds address criminal activity, fraud, sexual misconduct, practicing under the influence, making misleading, deceptive, untrue or fraudulent representations in or related to the practice of the licensee's profession, and many other situations.

When the board, or the department when there is no board, regulating the applicable health care profession, finds a health care practitioner guilty of any of the grounds set forth in the health care practitioner's applicable practice act or rules adopted thereunder, of violating any of the 45 separate grounds for discipline listed in s. 456.072(1), F.S., or of substantially violating the grounds for discipline within that subsection prior to obtaining a license, the board or department may issue an order:

² Florida Department of Health, *Boards and Councils* (last modified December 26, 2021) available at <http://www.floridahealth.gov/licensing-and-regulation/boards-and-councils.html> (last visited Feb. 2, 2022).

³ *Id.*

- Refusing to license the individual.
- Suspending or permanently revoking a license.
- Restricting the practice or license, including, but not limited to, restricting the licensee from practicing in certain settings, restricting the licensee to work only under designated conditions or in certain settings, restricting the licensee from performing or providing designated clinical and administrative services, restricting the licensee from practicing more than a designated number of hours, or any other restriction found to be necessary for the protection of the public health, safety, and welfare.
- Imposing an administrative fine not to exceed \$10,000 for each count or separate offense. If the violation is for fraud or making a false or fraudulent representation, the board, or the department if there is no board, must impose a fine of \$10,000 per count or offense.
- Issuing of a reprimand or letter of concern.
- Putting the licensee on probation, subject to conditions which may include, but are not limited to, requiring the licensee to undergo treatment, attend continuing education courses, submit to be reexamined, work under the supervision of another licensee, or satisfy any terms which are reasonably tailored to the violations found.
- Issuing corrective action.
- When the health care provider fails to make available to patients a summary of their rights, imposing an administrative fine of up to \$100 for nonwillful violations and up to \$500 for willful violations.⁴
- Requiring the refund of fees billed and collected from the patient or a third party on behalf of the patient.
- Requiring remedial education.⁵

In determining what action is appropriate, the board, or the DOH if there is no board, must first consider what sanctions are necessary to protect the public or to compensate the patient. After those sanctions are considered, the board or department may consider rehabilitating the practitioner. The health care practitioner is responsible for all costs associated with the compliance of such orders.⁶

If the ground for disciplinary action is the first-time violation of a practice act for unprofessional conduct and no actual harm to the patient occurred, the board or department, as applicable, shall issue a citation and assess a penalty as determined by rule of the board or department.⁷

Freedom of Speech

“Congress shall make no law ... abridging the freedom of speech.”⁸

The First Amendment of the United States Constitution protects the right to freedom of expression from government interference. The First Amendment is applicable to the states

⁴ Section 381.0261(4), F.S.

⁵ Section 456.072(2), F.S.

⁶ *Id.*

⁷ Section 456.072(3)(b), F.S.

⁸ U.S. CONST. amend. I.

through the Due Process Clause of the Fourteenth Amendment.⁹ “[T]he First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or informational ends as well.”¹⁰

It is well established that a government regulation based on the content of speech is presumptively invalid and will be upheld only if it is necessary to advance a compelling governmental interest, precisely tailored to serve that interest, and is the least restrictive means available for establishing that interest.¹¹ The government bears the burden of demonstrating the constitutionality of any such content-based regulation.¹² The U.S. Supreme Court has noted that

Even when considering some instances of defamation and fraud, moreover, the Court has been careful to instruct that falsity alone may not suffice to bring the speech outside the First Amendment. The statement must be a knowing or reckless falsehood.¹³

With regard to speech made on internet platforms, the Supreme Court has stated, “We agree with [the District Court’s] conclusion that our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to this medium.”¹⁴

Professional Speech

In 2018, the U.S. Supreme Court issued an opinion underscoring the concept that professional speech is not a separate category of speech that falls outside the protection of First Amendment freedom of speech. The Court stated that the professional speech of individuals who perform personalized services that require a professional license from the state is not exempt from the rule that content-based regulations of speech are subject to strict scrutiny.¹⁵ Justice Thomas delivered the opinion of the court, writing

The dangers associated with content-based regulations of speech are also present in the context of professional speech. As with other kinds of speech, regulating the content of professionals’ speech poses the inherent risk that the Government seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information. ... When the government polices the content of professional speech, it can fail to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.¹⁶

⁹ See *De Jonge v. Oregon*, 299 U.S. 353, 364–65 (1937) (incorporating right of assembly); *Gitlow v. New York*, 268 U.S. 652, 666 (1925) (incorporating right of freedom of speech).

¹⁰ *Douglas v. City of Jeannette (Pennsylvania)*, 319 U.S. 157, 179, (1943) (Jackson, J., concurring in result).

¹¹ *Ashcroft v. Am. Civil Liberties Union*, 542 U.S. 656, 665–66 (2004).

¹² *Id.* at 660.

¹³ See *U.S. v. Alvarez*, 567 U.S. 709, 719 and *New York Times v. Sullivan*, 376 U.S. 254 (1964).

¹⁴ *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997).

¹⁵ *Nat’l Inst. of Family & Life Advocates v. Becerra*, 138 S. Ct. 2361, 2365 (2018).

¹⁶ *Id.* at 234.

III. Effect of Proposed Changes:

The Exercise of Free Speech by a Health Care Practitioner

Prohibition Against Punishing a Practitioner's Exercise of Free Speech

The bill creates s. 456.61, F.S., which prohibits regulatory boards within the DOH, or the DOH if there is no applicable board, from reprimanding, sanctioning, revoking or threatening to revoke a license, certificate, or registration of a health care practitioner for exercising his or her constitutional right of free speech, including speech through the use of a social media platform.¹⁷

Charges Must Be Proved Beyond a Reasonable Doubt; Direct Physical Harm

In order for a regulatory board, or the DOH if there is no applicable board, to reprimand, sanction, or revoke or threaten to revoke, a license, certificate, or registration of the health care practitioner for his or her speech it must prove beyond a reasonable doubt that the health care practitioner's speech led to the direct physical harm of a person with whom he or she had a practitioner-patient relationship within the 3 years immediately preceding the incident of physical harm.

Penalties for Failing to Prove Allegations Beyond a Reasonable Doubt

The bill specifies that if the board or the DOH fails to meet such burden of proof and reprimands, sanctions, or revokes or threatens to revoke, a license, certificate, or registration of the health care practitioner for his or her speech, the board or the DOH is liable for a sum of up to \$1.5 million per occurrence for any direct or indirect damages to the health care practitioner.

Duty to Provide Complaints to a Practitioner; Penalties

The bill requires the regulatory board, or the DOH if there is no applicable board, to provide a health care practitioner with any complaints it has received which may result in the revocation of licensure, certification, or registration, within 7 days after receiving the complaint. If the board or the DOH fails to timely provide a complaint, it must pay the practitioner an administrative penalty of \$500 for each day the complaint is not provided to the practitioner after the specified 7 days.

The bill provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁷ See s. 501.2041(1)(g), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Subsection (2) of s. 456.61, F.S., as created in the bill, establishes a civil cause of action that authorizes a court to award a sum of up to \$1.5 million per occurrence to a health care practitioner when the DOH or a board within its jurisdiction fails to meet the required burden of proof. It is probable that CS/SB 1184 would have a negative fiscal impact resulting from increased litigation for the DOH and its boards.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is possible that this bill may be interpreted to conflict with authorizations in s. 456.072(1)(a) and (m), F.S., and other similar grounds for discipline in a health care practitioner's applicable practice act or rules adopted thereunder.

Section 456.072(1)(a), F.S., authorizes discipline for a practitioner making misleading, deceptive, or fraudulent representations in or related to the practice of the licensee's profession.

Section 456.072(1)(m), F.S., authorizes discipline for a practitioner making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

On July 29, 2021, the Federation of State Medical Boards, issued the following statement:

Physicians who generate and spread COVID-19 vaccine misinformation or disinformation are risking disciplinary action by state medical boards, including the suspension or revocation of their medical license. Due to their specialized knowledge and training, licensed physicians possess a high degree of public trust and therefore have a powerful platform in society, whether they recognize it or not. They also have an ethical and professional responsibility to practice medicine in the best interests of their patients and must share information that is factual, scientifically grounded and consensus-driven for the betterment of public health. Spreading inaccurate COVID-19 vaccine information contradicts that responsibility, threatens to further erode public trust in the medical profession and puts all patients at risk.¹⁸

Ultimately, the DOH and the boards established within it are responsible to regulate health practitioners for the preservation of the health, safety, and welfare of the public. This bill does not protect speech that is not already protected under the U.S. and Florida constitutions. Rather, it prohibits the DOH and its boards from administratively penalizing a person exercising free speech unless it meets a specific burden of proof. The \$1.5 million liability established in the bill may deter the DOH and the boards from taking action against health care practitioners in their efforts to preserve the health, safety, and welfare of the public.

VIII. Statutes Affected:

This bill creates section 456.61 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 Health Policy on January 26, 2022:

The CS clarifies that the provisions of the bill apply to all speech made by a health care practitioner and not solely to speech conveyed through the use of social media. It also clarifies that any cause of action established in the bill must be related to the health care practitioner’s speech. The CS deletes the reference to recognizing agencies approved by the Board of Osteopathic Medicine so that the provisions of the bill would no longer apply to those recognizing agencies.

- B. **Amendments:**

None.

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

¹⁸ Federation of State Medical Boards, FSMB: *Spreading COVID-19 Vaccine Misinformation May Put Medical License at Risk* (July 29, 2021) available at <https://www.fsmb.org/advocacy/news-releases/fsmb-spreading-covid-19-vaccine-misinformation-may-put-medical-license-at-risk/> (last visited Feb. 3, 2022).

By the Committee on Health Policy; and Senator Broxson

588-02352-22

20221184c1

1 A bill to be entitled
 2 An act relating to free speech of health care
 3 practitioners; creating s. 456.61, F.S.; prohibiting
 4 certain regulatory boards and the Department of Health
 5 from reprimanding, sanctioning, or revoking or
 6 threatening to revoke a license, certificate, or
 7 registration of a health care practitioner for
 8 specified use of his or her right of free speech
 9 without specified proof; providing for liability;
 10 requiring the board or department, as applicable, to
 11 provide to a health care practitioner certain
 12 complaints within a specified timeframe; providing a
 13 penalty; providing an effective date.

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

16 Section 1. Section 456.61, Florida Statutes, is created to
 17 read:

18 456.61 Use of free speech by a health care practitioner;
 19 prohibition.-

20 (1) A board, or the department if there is no board, may
 21 not reprimand, sanction, or revoke or threaten to revoke a
 22 license, certificate, or registration of a health care
 23 practitioner for exercising his or her constitutional right of
 24 free speech, including, but not limited to, speech through the
 25 use of a social media platform as defined in s. 501.2041(1)(g).

26 (2) To reprimand, sanction, or revoke or threaten to revoke
 27 a license, certificate, or registration of a health care
 28 practitioner for his or her speech, the board, or the department
 29

Page 1 of 2

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

588-02352-22

20221184c1

30 if there is no board, must prove beyond a reasonable doubt that
 31 the health care practitioner's speech led to the direct physical
 32 harm of a person with whom the health care practitioner had a
 33 practitioner-patient relationship within the 3 years immediately
 34 preceding the incident of physical harm. If the board or the
 35 department, as applicable, reprimands, sanctions, revokes, or
 36 threatens to revoke a license, certificate, or registration of a
 37 health care practitioner for his or her speech, and proof beyond
 38 a reasonable doubt has not been established under this
 39 subsection, the board or the department is liable for a sum of
 40 up to \$1.5 million per occurrence for any direct or indirect
 41 damages to a health care practitioner.

42 (3) The board, or the department if there is no board, must
 43 provide a health care practitioner with any complaints it has
 44 received which may result in the revocation of the health care
 45 practitioner's license, certification, or registration, within 7
 46 days after receipt of the complaint. The board, or the
 47 department if there is no board, must pay the health care
 48 practitioner an administrative penalty of \$500 for each day the
 49 complaint is not provided to the health care practitioner after
 50 the specified 7 days.

51 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 27, 2022

I respectfully request that **Senate Bill # 1184**, relating to Free Speech of Health Care Practitioners, be placed on the:

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

A handwritten signature in black ink, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

02/07/2022

Meeting Date

Judiciary

Committee

SB 1184

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Sophie Rudman

Phone

850-585-0505

Address

1933 Cardinal Ln

Email

rudmanso@mchsi.com

Street

Navarre, FL 32566

City

State

Zip

Reset Form

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

SB 1184

Bill Number or Topic

2/7/22

Meeting Date

JANUARY

Committee

Amendment Barcode (if applicable)

Name

JOEL RUOMAN

Phone

(850) 515-2952

Address

1933 CARDINAL LANE

Street

Email

rudmanjo@mchsi.com

NAVARRE

City

FL

State

32566

Zip

Reset Form

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/7/2022 Meeting Date

SB 1184 Bill Number or Topic

Judiciary Committee

Amendment Barcode (if applicable)

Name Aurelie (OW-RAY-LEE) COLON

Phone 954-881-8595

Address 1951 NW 7th Ave Street

Email aurelie@latinainstitute.org

Miami City

FL State

33130 Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [] In Support [X] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing:

Latina Institute for Reproductive Justice FL

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/7/22

Meeting Date

SB 1184

Bill Number or Topic

Sen. Judiciary

Committee

Amendment Barcode (if applicable)

Name Kara Gross

Phone 786-363-4436

Address 4343 West Flagler

Email kgross@acluf1.org

Street

Miami

FL

33134

City

State

Zip

Speaking: [] For [] Against [] Information OR Waive Speaking: [] In Support [x] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

ACLU of Florida

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/7/22

Meeting Date

SB 484

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Jon Harris Mauer

Phone

850 681 0280

Address

201 E Park Ave, Ste 200A

Email

Street

TLH

City

FL

State

32301

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Equality Florida

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

CS/SB 1184

2/7/22

Meeting Date

Bill Number or Topic

Senate Judiciary

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Avery B Brinkley Jr MD

Phone 352 299 5823

Address 1005 Yachtsmen Ct

Email abbjrm@gmail.com

Street

Panama City

FL

32404

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without
compensation or sponsorship.

I am a registered lobbyist,
representing:

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1, [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

FEB 7, 2022

Meeting Date

1184

Bill Number or Topic

JUDICIARY

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

BILL BUNKLEY

Phone

813.264.2977

Address

PO Box 341644

Email

Bill@FERLC.org

Street

TAMPA

FL

33694

City

State

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FLORIDA ETHICS & RELIGIOUS LIBERTY COMMISSION

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/7/22

Meeting Date

1184

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Aaron DiPietro

Phone 904-608-4471

Address 4853 S. Orange Ave

Street

Email aaron.d@flfamily.org

Orlando

City

FL

State

32806

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: Florida Family Policy Council

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 1204

INTRODUCER: Senator Broxson

SUBJECT: Public Records/Information or Records/Executions

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1204 creates a public records exemption for certain persons or entities involved in executions. Specifically, the bill makes confidential and exempt information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including those who administer, compound, dispense, distribute, maintain, manufacture, order, prepare, prescribe, provide, purchase, or supply drugs, chemicals, supplies, or equipment needed to conduct an execution.

The bill makes the exemption applicable to information and records held by the Department of Corrections (DOC) before, on, or after the effective date of the bill.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The State Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

¹ FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of an exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

Death Penalty

Florida is one of 27 states in which the death penalty is authorized.²⁷ Chapter 922, F.S., charges the DOC with the responsibility of carrying out the executions of those sentenced to death. As of January 18, 2022, there are 321 prisoners on Florida's death row.²⁸

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Death Penalty Information Center, *Facts about the Death Penalty*, (updated Jan. 3, 2022), available at <https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf> (last visited Jan. 18, 2022). The other states that authorize the death penalty are Alabama, Arizona, Arkansas, California, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming. The U.S. Department of Justice and U.S. military are also authorized to impose the death penalty.

²⁸ Department of Corrections, *Death Row Roster*, available at <http://www.dc.state.fl.us/OffenderSearch/deathrowroster.aspx> (last visited Jan. 18, 2022).

Section 922.105(1), F.S., requires that all death sentences be executed by lethal injection, unless the person sentenced to death affirmatively requests to be executed by electrocution. However, if electrocution or lethal injection is held to be unconstitutional by the Florida Supreme Court or a U.S. Court of Appeals that has jurisdiction over Florida, any person sentenced to death must be executed by any constitutional method of execution.²⁹

Confidentiality of Information

Current law makes information that identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection confidential and exempt from public disclosure.³⁰ However, it does not exclude information regarding the other components of the supply chain for obtaining the necessary drugs, chemicals, supplies, or equipment to conduct an execution, such as the manufacturer, distributor, or supplier. Historically, once the DOC's source of drugs used for carrying out executions is publicly known, it is no longer able to procure drugs from that source.³¹ In such cases, the DOC may not be able to obtain the necessary supplies to carry out an execution as required under state law.

III. Effect of Proposed Changes:

The bill creates a public records exemption for certain persons or entities involved in executions. Specifically, the bill makes confidential and exempt information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including those who administer, compound, dispense, distribute, maintain, manufacture, order, prepare, prescribe, provide, purchase, or supply drugs, chemicals, supplies, or equipment needed to conduct an execution.

The bill makes the exemption applicable to any such information held by the DOC before, on, or after the effective date of the bill.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 27, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill provides a public necessity statement as required by Article I, section 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that information or records that identify or could reasonably lead to the identification of those persons or entities that participate in an execution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information or records that identify or that could reasonably lead to the identification of those persons or entities that participate in an execution could jeopardize the safety of such persons or

²⁹ Section 922.105(3), F.S.

³⁰ Section 945.10(1)(g), F.S.

³¹ Department of Corrections, *Senate Bill 1204 Agency Analysis* (Dec. 14, 2021) (on file with the Senate Committee on Criminal Justice).

entities by exposing them to potential harassment, intimidation, or harm and could also thwart the ability of the Department of Corrections to obtain the necessary personnel, drugs, chemicals, supplies, or equipment needed to carry out executions. Therefore, the Legislature finds that it is a public necessity that this information be kept confidential and exempt from public disclosure.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, section 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution; thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the identification of the persons and entities that participate in an execution. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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:

The bill creates a new public records exemption that is partially duplicative of the existing public record exemption in s. 945.10(g), F.S., which provides that information that identifies an executioner or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection is exempt from public disclosure.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 945.10 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

1-00595A-22

20221204__

A bill to be entitled

An act relating to public records; amending s. 945.10, F.S.; providing an exemption from public records requirements for information or records that identify or could reasonably lead to the identification of any person or entity that participates in an execution; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (j) is added to subsection (1) of section 945.10, Florida Statutes, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(j)1. Information or records that identify or could reasonably lead to the identification of any person or entity that participates in, has participated in, or will participate in an execution, including persons or entities administering, compounding, dispensing, distributing, maintaining, manufacturing, ordering, preparing, prescribing, providing, purchasing, or supplying drugs, chemicals, supplies, or equipment necessary to conduct an execution in compliance with chapter 922.

Page 1 of 2

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

1-00595A-22

20221204__

2. The exemption in subparagraph 1. applies to information and records held by the department before, on, or after the effective date of the exemption.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that information or records that identify or could reasonably lead to the identification of those persons or entities that participate in an execution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of information or records that identify or that could reasonably lead to the identification of those persons or entities that participate in an execution could jeopardize the safety of such persons or entities by exposing them to potential harassment, intimidation, or harm and could also thwart the ability of the Department of Corrections to obtain the necessary personnel, drugs, chemicals, supplies, or equipment needed to carry out executions. Therefore, the Legislature finds that it is a public necessity that this information be kept confidential and exempt from public disclosure.

Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 27, 2022

I respectfully request that **Senate Bill # 1204**, relating to Public Records/Information or Records/Executions, 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 1222

INTRODUCER: Judiciary Committee; Health Policy Committee; and Senator Bean, and others

SUBJECT: Acute and Post-acute Hospital Care

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Rossitto-Vanwinkle</u>	<u>Brown</u>	<u>HP</u>	Fav/CS
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1222 authorizes paramedics and Class III institutional pharmacies, a type of hospital pharmacy, to serve hospital patients at their homes. Under the bill, a paramedic, under the supervision of a physician or acting under other standing orders, may provide basic life support services and advanced life support services to a patient receiving acute and post-acute hospital care at his or her permanent residence through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration. A Class III institutional pharmacy may dispense, distribute, compound, and fill prescriptions for medicinal drugs for these same patients.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Florida's Department of Health (DOH)

The Legislature created the Department of Health (DOH) to protect and promote the health, safety and welfare of all residents and visitors in the state.¹ The DOH is charged with the regulation of health practitioners for the preservation of the health, safety, and welfare of the

¹ Sections 20.43 and 456.003, F.S.

public. The Division of Medical Quality Assurance (MQA) is responsible for the boards² and professions within the DOH.³

Boards of Medicine and Osteopathic Medicine

The Board of Medicine regulates allopathic physicians (MD). An MD is a person who is licensed to practice medicine in Florida. Practicing medicine includes the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.⁴ Allopathic standards of practice and standards of care for a particular practice setting include, but are not limited to, education and training, equipment and supplies, medications including anesthetics, assistance of and delegation to other personnel, transfer agreements, sterilization, records, performance of complex or multiple procedures, informed consent, and policy and procedure manuals.⁵

The Board of Osteopathic Medicine regulates osteopathic physicians (DO). A DO is a person who is licensed to practice osteopathic medicine Florida. The practice of osteopathic medicine includes the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition, which practice is based in part upon educational standards and requirements that emphasize the importance of the musculoskeletal structure and manipulative therapy in the maintenance and restoration of health.⁶

Emergency Medical Services (EMS)

The Legislature created ch. 401, F.S., in 1973 with the intent to establish a statewide organized and regulated system of regional EMS providers with two major objectives:

- To develop a statewide system of emergency medical telecommunications to maximize the use of existing radio channels to provide faster and more effective EMS to the general population;⁷ and
- To protect and enhance the public health, safety, and welfare with the establishment a statewide EMS plan to:
 - Monitor the quality of patient care delivered by each licensed service;
 - Certify EMS personnel;
 - Create an EMS advisory council;
 - Develop a comprehensive statewide injury-prevention program; and
 - Development minimum standards for EMS providers, personnel, vehicles, services, medical direction, and inspections.⁸

The Legislature further recognized that a major impediment to meeting its two legislative objectives for s. 401, F.S., was the inability of governmental and private agencies to respond

² Under s. 456.001(1), F.S., “board” is defined as any board, commission, or other statutorily created entity, to the extent such entity is authorized to exercise regulatory or rulemaking functions within the DOH or, in some cases, within the MQA.

³ Section 20.43, F.S.

⁴ Section 458.305, F.S.

⁵ Section 458.331(1)(v), F.S.

⁶ Section 459.003, F.S.

⁷ Section 401.013, F.S.

⁸ Section 401.211, F.S.

cooperatively in order to finance a system of regional EMS. In response, the Legislature found it in the public interest to foster the development of a statewide EMS provider system and created the Florida Emergency Medical Services Grant Act.⁹ This law authorizes the DOH to make grants to local agencies, EMS organizations, and youth athletic organizations to provide EMS, including emergency medical dispatch, and work with local EMS organizations to expand the use of automated external defibrillator (AED) devices.¹⁰

Emergency Medical Service Providers

Before a person or entity, including a government entity, provides prehospital or interfacility advanced life support (ALS) services or basic life support (BLS) transportation services to the public, the person or entity must be licensed as a BLS service or an ALS service. Every ALS ambulance transporting a person who is sick, injured, wounded, incapacitated, or helpless must have a least two persons on-board: one who is a certified paramedic or licensed physician and one who is a certified emergency medical technician (EMT), certified paramedic, or licensed physician and also meets the requirements of an ambulance driver. The person having the highest medical certification must be in charge of patient care.¹¹

Paramedic

A certified paramedic may perform both BLS and ALS.¹² ALS includes the assessment or treatment by a certified paramedic qualified in the use of techniques such as endotracheal intubation, the administration of drugs or intravenous fluids, telemetry, cardiac monitoring, cardiac defibrillation, and other techniques described in the EMT-Paramedic National Standard Curriculum or the National EMS Education Standards, pursuant to DOH administrative rules.¹³

Qualifications for Certification

To be qualified for certification as a paramedic, an individual must either successfully complete an initial Florida paramedic training program that was conducted in accordance with the January 2009 U.S. DOT National EMS Education Standards; or if the individual is from out of state or military trained in accordance with the 1998 U.S. DOT EMT-Paramedic (EMT-P) NSC or the January 2009 U.S. DOT National EMS Education Standards, if he or she currently holds a valid paramedic certification from the National Registry of Emergency Medical Technicians (NR-EMT).

Each applicant must submit an application to the DOH. If the applicant completed his or her initial paramedic training program in Florida, then he or she must pass the DOH-required paramedic certification examination within two years after completing the initial Florida training program. The DOH will accept a passing score for this exam if taken within the 2-year period, whether the exam is taken before or after the application is filed.

⁹ See ss. 401.101 and 401.104, F.S.

¹⁰ Section 401.111, F.S.

¹¹ Section 401.25(1), F.S.

¹² Section 401.23(17), F.S.

¹³ Section 401.23(1), F.S.

To maintain an active certificate, a paramedic must pay the recertification fee and complete 30 hours of paramedic refresher training based on criteria in the January 2009 U.S. DOT National EMS Education Standards which includes adult and pediatric education with a minimum of two hours in pediatric emergencies, and maintain a current Advanced Cardiac Life Support (ACLS) card.¹⁴ The DOH accepts either the affirmation of a licensed EMS provider's medical director, a certificate of completion of refresher training from a DOH-approved Florida training program, or a DOH-approved CE provider's proof of compliance with the CE requirements.

EMS Services in Community Health Care

Section 401.272, F.S., was enacted by the Legislature to encourage more effective use of the skills of EMTs and paramedics by enabling them to perform, in partnership with local county health departments, specific additional health care tasks that are consistent with the public health and welfare. Notwithstanding any other provision of law to the contrary, a paramedic or an EMT may perform "health promotion and wellness"¹⁵ activities and blood pressure screenings in a nonemergency environment, within the scope of his or her training, and under the direction of a medical director.

A paramedic may administer immunizations in a nonemergency environment, within the scope of his or her training, and under the direction of a medical director. There must be a written agreement between the paramedic's medical director and the county health department located in each county in which the paramedic administers immunizations. This agreement must establish the protocols, policies, and procedures under which the paramedic must operate. Each medical director under whose direction a paramedic administers immunizations must verify and document that the paramedic has received sufficient training and experience to administer immunizations. The verification must be documented on forms developed by the DOH, and the forms must be maintained at the service location of the licensee and made available to the DOH upon request.

The Board of Pharmacy

The Board of Pharmacy (BOP) is created within the DOH and is authorized to make rules to regulate the practice of professional pharmacy in pharmacies meeting minimum requirements for safe practice.¹⁶ All pharmacies must obtain a permit before operating, unless exempt by law. This is true whether opening a new establishment or simply changing locations or owners.¹⁷

The Practice of Pharmacy

Florida law recognizes seven types of pharmacies as eligible for various operating permits to be issued by the DOH:

¹⁴ See s 401.27(4)(e)2., F.S., and Fla. Admin. Code R. 64J-1.022, (2021).

¹⁵ "Health promotion and wellness" means the provision of public health programs pertaining to the prevention of illness and injury. Section 401.272(2)(a), F.S.

¹⁶ See ss. 465.002, and 465.0155, F.S.

¹⁷ Fla. Admin. Code R. 64B16-28.100(1) (2021).

- Community pharmacy;¹⁸
- Institutional pharmacy;¹⁹
- Nuclear pharmacy;²⁰
- Special pharmacy;²¹
- Internet pharmacy;²²
- Non-resident sterile compounding pharmacy;²³ and
- Special sterile compounding pharmacy.²⁴

Institutional Pharmacies

An “institutional pharmacy” includes any pharmacy located in a health care institution, which includes a hospital, clinic, nursing home, dispensary, sanitarium, extended care facility, or other facility where medicinal drugs are compounded, dispensed, stored, or sold.²⁵ Institutional pharmacy permits are required for any pharmacy located in any health care institution.²⁶

Currently there are four types of institutional pharmacy permits issued by the BOP to institutional pharmacies: Institutional Class I, Class II, Modified Class II, and Class III.²⁷

Institutional Class I Pharmacy

A Class I institutional pharmacy is an institutional pharmacy in which all medicinal drugs are administered from individual prescription containers to an individual patient and in which medicinal drugs are not dispensed on the premises, except that licensed nursing homes²⁸ may purchase medical oxygen for administration to residents.²⁹

Institutional Class II Pharmacy

A Class II institutional pharmacy is a pharmacy that employs the services of a registered pharmacist who, in practicing institutional pharmacy, provide dispensing and consulting services

¹⁸ The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis. *See* ss. 465.003(11)(a)1. and 465.018, F.S.

¹⁹ *See* ss. 465.003(11)(a)2., and 465.019, F.S.

²⁰ The term “nuclear pharmacy” includes every location where radioactive drugs and chemicals within the classification of medicinal drugs are compounded, dispensed, stored, or sold, but does not include hospitals licensed under ch. 395, F.S., or the nuclear medicine facilities of such hospitals. *See* ss. 465.003(11)(a)3. and 465.0193, F.S.

²¹ The term “special pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold if such locations are not otherwise defined by law. *See* ss. 465.003(11)(a)4. and 465.0196, F.S.

²² The term “internet pharmacy” includes locations not otherwise licensed or issued a permit under ch. 465, F.S., whether or not in Florida, which use the Internet to communicate with or obtain information from consumers in this state and use such communication or information to fill or refill prescriptions or to dispense, distribute, or otherwise engage in the practice of pharmacy in this state. *See* ss. 465.003(11)(a)5. and 465.0197, F.S.

²³ The term “nonresident sterile compounding pharmacy” includes a pharmacy that ships, mails, delivers, or dispenses, in any manner, a compounded sterile product into Florida, and a nonresident pharmacy registered under s. 465.0156, F.S., or an outsourcing facility, must hold a nonresident sterile compounding permit. *See* s. 465.0158(1), F.S.

²⁴ *See* Fla. Admin. Code R. 64B16-28.100 and 64B16-28.802 (2021). An outsourcing facility is considered a pharmacy and must hold a special sterile compounding permit if it engages in sterile compounding.

²⁵ Section 465.003(11)(a)2., F.S.

²⁶ Fla. Admin. Code R. 64B16-28.100(3) (2021).

²⁷ Section 465.019, F.S.

²⁸ *See* part II, ch. 400, F.S., relating to nursing homes.

²⁹ Section 465.019(2)(a), F.S.

on the premises to patients of the institution, for use on the premises of the institution.³⁰ A Class II institutional pharmacy is required to be open sufficient hours to meet the needs of the hospital facility.³¹ The consultant pharmacist of record is responsible for establishing a written policy and procedure manual.³²

Modified Institutional Class II Pharmacy Permits

Modified Institutional Class II pharmacies are institutional pharmacies in short-term, primary care treatment centers which meet all the requirements for a Class II permit, except space and equipment requirements.³³ Modified Class II Institutional pharmacies are designated as Type A, Type B, and Type C according to the specialized type of the medicinal drug delivery system utilized at the facility, either a patient-specific or bulk drug system, and the quantity of the medicinal drug formulary at the facility.³⁴

Institutional Class III Pharmacies

Class III institutional pharmacies are pharmacies, including central distribution facilities, that are affiliated with a hospital that provide the same services authorized by a Class II institutional pharmacy permit. Class III institutional pharmacies may:

- Dispense, distribute, compound, and fill prescriptions for medicinal drugs;
- Prepare prepackaged drug products;
- Conduct other pharmaceutical services for the affiliated hospital and for entities under common control that are each permitted under ch. 465, F.S., to possess medicinal drugs; and
- Provide the services in Class I institutional pharmacies, Class II institutional pharmacies, and Modified Class II institutional pharmacies that hold an active health care clinic establishment permit.^{35, 36}

Institutional Pharmacies – Dispensing Medicinal Drugs

Class II and Class III institutional pharmacies are permitted to dispense medicinal drugs to outpatients only when that institution has been issued a community pharmacy permit from the

³⁰ See s. 465.019(2)(b), F.S. Exceptions apply when there is a state of emergency and for single doses of a drug ordered by physicians in limited circumstances.

³¹ Fla. Admin. Code R. 64B16-28.603 (2021).

³² Section 465.019(5), F.S.

³³ Section 465.019(2)(c), F.S.

³⁴ Fla. Admin. Code R. 64B16-28.702(2) (2021). Modified Class II Institutional Pharmacies provide the following pharmacy services: (1) Type “A” Modified Class II Institutional Pharmacies provide pharmacy services in a facility which has a formulary of not more than 15 medicinal drugs, excluding those medicinal drugs contained in an emergency box, and in which the medicinal drugs are stored in bulk and in which the consultant pharmacist provides on-site consultations not less than once every month, unless otherwise directed by the BOP after review of the policy and procedure manual; (2) Type “B” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and in bulk form and which has an expanded drug formulary, and in which the consultant pharmacist provides on-site consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual; and (3) Type “C” Modified Class II Institutional Pharmacies provide pharmacy services in a facility in which medicinal drugs are stored in the facility in patient specific form and which has an expanded drug formulary, and in which the consultant pharmacist provides onsite consultations not less than once per month, unless otherwise directed by the BOP after review of the policy and procedure manual.

³⁵ Section 465.019(2)(d)1., F.S.

³⁶ See s. 499.01(2)(r), F.S.

DOH.³⁷ However, medicinal drugs may be dispensed by a hospital that operates a Class II or Class III institutional pharmacy to a patient of the hospital's emergency department or a hospital inpatient upon discharge if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise, to the patient. Such prescribing and dispensing must be for a supply of the drug that will last for the greater of the following:

- Up to 48 hours; or
- Through the end of the next business day.³⁸

Notwithstanding those limits, if a state of emergency has been declared and is in effect for a specific area of the state, a supply of a medicinal drug which will last up to 72 hours may be prescribed and dispensed to persons in that area. A prescriber prescribing medicinal drugs in a state of emergency may also provide the patient with a prescription for the drug for use beyond the initial prescription period if the prescriber determines that such use is warranted. Any prescribing or dispensing of a controlled substance during a state of emergency must comply with the applicable requirements of ss. 456.44 and 465.0276, F.S.

III. Effect of Proposed Changes:

CS/CS/SB 1222 amends s. 401.272, F.S., to authorize a paramedic to provide basic and advanced life support to a patient receiving acute and post-acute hospital care at his or her permanent residence through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration.

Moreover, the physician who supervises or provides medical direction to a paramedic who administers the basic life support services or advanced life support services is liable for any act or omission of the paramedic.

The Department of Health is authorized to adopt and enforce rules relating to the expanded scope of services that may be provided by a paramedic under the bill.

The bill amends s. 465.019, F.S., to expand the scope of Class III institutional pharmacies to authorize them to dispense, distribute, compound, and fill prescriptions for medicinal drugs to a patient receiving acute and post-acute hospital care at his or her permanent residence through a program approved by the Centers for Medicare and Medicaid Services and the Agency for Health Care Administration.

The bill makes technical and conforming changes to ss. 401.23, 14.33, 252.515, 395.1027, and 401.245 F.S.

The bill provides an effective date of July 1, 2022.

³⁷ See s. 465.019(2)(a), F.S., which prohibits a Class I institutional pharmacy from dispensing medicinal drugs.

³⁸ Section 465.019(4), F.S.

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:

By allowing private hospitals to serve patients at their homes through the use of paramedics and hospital pharmacies, CS/CS/SB 1222 may allow health care services to be provided in a more cost effective manner. Moreover, the ability to treat a hospital patient at his or her home may make additional hospital beds available for patients having more serious conditions.

C. Government Sector Impact:

By allowing government hospitals or private hospitals receiving government funding to serve patients at their homes through the use of paramedics and hospital pharmacies, the bill may allow health care services to be provided in a more cost effective manner. Moreover, the ability to treat a hospital patient at his or her home may make additional hospital beds available for patients having more serious conditions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 401.23, 401.272, 465.019, 14.33, 252.515, 395.1027, and 401.245.

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

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

CS/CS by Judiciary on February 7, 2022:

The committee substitute limits the expansion of the additional authority granted to paramedics and Class III institutional pharmacies in the underlying committee substitute. The underlying committee substitute would have allowed paramedics and Class III institutional pharmacies to serve patients in a “nonemergent community setting.” Under the committee substitute, the services may be provided only at a patient’s residence through a program approved by both CMS and AHCA. Additionally, the committee substitute no longer authorizes a Class II or Class III institutional pharmacy to provide medicines to a patient where community pharmacy services are not readily accessible.

CS by Health Policy on January 19, 2022:

The CS:

- Authorizes paramedics to perform BLS services, ALS services, and additional health care services to acute care at-home patients in a nonemergent community setting under the supervision of a physician in partnership with specific hospitals;
- Requires a physician supervising a paramedic who provides BLS, ALS, or additional health care services to acute care at home patients under the bill, to be liable for any act or omission of the paramedic when performing the acts or services;
- Authorizes Class III institutional pharmacies to dispense, distribute, compound, and fill prescriptions for medicinal drugs to acute care at home patients and inpatients; and
- Authorizes Class II and III institutional pharmacies that do not have community pharmacy permits to dispense to an acute care at-home patient in a nonemergent community setting if a prescriber treating the patient in the hospital determines that the medicinal drug is warranted and that community pharmacy services are not readily accessible, geographically or otherwise.

B. Amendments:

None.



874244

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/07/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsections (1) through (22) of section
401.23, Florida Statutes, are redesignated as subsections (2)
through (23), respectively, a new subsection (1) is added to
that section, and present subsection (19) of that section is
amended, to read:

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

(1) "Acute hospital care at home" means acute and post-



874244

12 acute health care services provided in a clinically qualified
13 patient's permanent residence, as defined in s. 196.012(17),
14 through a program approved by the Centers for Medicare and
15 Medicaid Services and the Agency for Health Care Administration.

16 ~~(20)-(19)~~ "Physician" means a practitioner who is licensed
17 under ~~the provisions of~~ chapter 458 or chapter 459. For the
18 purpose of providing medical direction ~~"medical direction" as~~
19 ~~defined in subsection (14)~~ for the treatment of patients
20 immediately before ~~prior to~~ or during transportation to a United
21 States Department of Veterans Affairs medical facility,
22 "physician" also means a practitioner employed by the United
23 States Department of Veterans Affairs.

24 Section 2. Paragraph (c) is added to subsection (2) of
25 section 401.272, Florida Statutes, to read:

26 401.272 Emergency medical services community health care.—

27 (2) Notwithstanding any other provision of law to the
28 contrary:

29 (c) Paramedics may provide basic life support services and
30 advanced life support services to patients receiving acute
31 hospital care at home as specified in the paramedic's
32 supervisory relationship with a physician or standing orders as
33 described in s. 401.265, s. 458.348, or s. 459.025. A physician
34 who supervises or provides medical direction to a paramedic who
35 provides basic life support services or advanced life support
36 services to patients receiving acute hospital care at home
37 pursuant to a formal supervisory relationship or standing orders
38 is liable for any act or omission of the paramedic acting under
39 the physician's supervision or medical direction when providing
40 such services. The department may adopt and enforce rules



874244

41 necessary to implement this paragraph.

42 Section 3. Section 465.003, Florida Statutes, is reordered
43 and amended to read:

44 465.003 Definitions.—As used in this chapter, the term:

45 (1) "Acute hospital care at home" means acute and post-
46 acute health care services provided in a clinically qualified
47 patient's permanent residence, as defined in s. 196.012(17),
48 through a program approved by the Centers for Medicare and
49 Medicaid Services and the Agency for Health Care Administration.

50 (2)~~(1)~~ "Administration" means the obtaining and giving of a
51 single dose of medicinal drugs by a legally authorized person to
52 a patient for her or his consumption.

53 (4)~~(2)~~ "Board" means the Board of Pharmacy.

54 (10)~~(3)~~ "Consultant pharmacist" means a pharmacist licensed
55 by the department and certified as a consultant pharmacist
56 pursuant to s. 465.0125.

57 (11)~~(4)~~ "Data communication device" means an electronic
58 device that receives electronic information from one source and
59 transmits or routes it to another, including, but not limited
60 to, any such bridge, router, switch, or gateway.

61 (12)~~(5)~~ "Department" means the Department of Health.

62 (13)~~(6)~~ "Dispense" means the transfer of possession of one
63 or more doses of a medicinal drug by a pharmacist to the
64 ultimate consumer or her or his agent. As an element of
65 dispensing, the pharmacist shall, prior to the actual physical
66 transfer, interpret and assess the prescription order for
67 potential adverse reactions, interactions, and dosage regimen
68 she or he deems appropriate in the exercise of her or his
69 professional judgment, and the pharmacist shall certify that the



874244

70 medicinal drug called for by the prescription is ready for
71 transfer. The pharmacist shall also provide counseling on proper
72 drug usage, either orally or in writing, if in the exercise of
73 her or his professional judgment counseling is necessary. The
74 actual sales transaction and delivery of such drug shall not be
75 considered dispensing. The administration shall not be
76 considered dispensing.

77 ~~(14)(7)~~ "Institutional formulary system" means a method
78 whereby the medical staff evaluates, appraises, and selects
79 those medicinal drugs or proprietary preparations which in the
80 medical staff's clinical judgment are most useful in patient
81 care, and which are available for dispensing by a practicing
82 pharmacist in a Class II or Class III institutional pharmacy.

83 ~~(15)(8)~~ "Medicinal drugs" or "drugs" means those substances
84 or preparations commonly known as "prescription" or "legend"
85 drugs which are required by federal or state law to be dispensed
86 only on a prescription, but shall not include patents or
87 proprietary preparations as hereafter defined.

88 ~~(18)(9)~~ "Patent or proprietary preparation" means a
89 medicine in its unbroken, original package which is sold to the
90 public by, or under the authority of, the manufacturer or
91 primary distributor thereof and which is not misbranded under
92 the provisions of the Florida Drug and Cosmetic Act.

93 ~~(19)(10)~~ "Pharmacist" means any person licensed pursuant to
94 this chapter to practice the profession of pharmacy.

95 ~~(20)(a)(11)(a)~~ "Pharmacy" includes a community pharmacy, an
96 institutional pharmacy, a nuclear pharmacy, a special pharmacy,
97 and an Internet pharmacy.

98 1. The term "community pharmacy" includes every location



874244

99 where medicinal drugs are compounded, dispensed, stored, or sold
100 or where prescriptions are filled or dispensed on an outpatient
101 basis.

102 2. The term "institutional pharmacy" includes every
103 location in a hospital, clinic, nursing home, dispensary,
104 sanitarium, extended care facility, or other facility,
105 hereinafter referred to as "health care institutions," where
106 medicinal drugs are compounded, dispensed, stored, or sold.

107 3. The term "nuclear pharmacy" includes every location
108 where radioactive drugs and chemicals within the classification
109 of medicinal drugs are compounded, dispensed, stored, or sold.
110 The term "nuclear pharmacy" does not include hospitals licensed
111 under chapter 395 or the nuclear medicine facilities of such
112 hospitals.

113 4. The term "special pharmacy" includes every location
114 where medicinal drugs are compounded, dispensed, stored, or sold
115 if such locations are not otherwise defined in this subsection.

116 5. The term "Internet pharmacy" includes locations not
117 otherwise licensed or issued a permit under this chapter, within
118 or outside this state, which use the Internet to communicate
119 with or obtain information from consumers in this state and use
120 such communication or information to fill or refill
121 prescriptions or to dispense, distribute, or otherwise engage in
122 the practice of pharmacy in this state. Any act described in
123 this definition constitutes the practice of the profession of
124 pharmacy ~~as defined in subsection (13)~~.

125 (b) The pharmacy department of any permittee shall be
126 considered closed whenever a Florida licensed pharmacist is not
127 present and on duty. The term "not present and on duty" shall



874244

128 not be construed to prevent a pharmacist from exiting the
129 prescription department for the purposes of consulting or
130 responding to inquiries or providing assistance to patients or
131 customers, attending to personal hygiene needs, or performing
132 any other function for which the pharmacist is responsible,
133 provided that such activities are conducted in a manner
134 consistent with the pharmacist's responsibility to provide
135 pharmacy services.

136 ~~(21)~~ ~~(12)~~ "Pharmacy intern" means a person who is currently
137 registered in, and attending, a duly accredited college or
138 school of pharmacy, or who is a graduate of such a school or
139 college of pharmacy, and who is duly and properly registered
140 with the department as provided for under its rules.

141 ~~(22)~~ ~~(13)~~ "Practice of the profession of pharmacy" includes
142 compounding, dispensing, and consulting concerning contents,
143 therapeutic values, and uses of any medicinal drug; consulting
144 concerning therapeutic values and interactions of patent or
145 proprietary preparations, whether pursuant to prescriptions or
146 in the absence and entirely independent of such prescriptions or
147 orders; and conducting other pharmaceutical services. For
148 purposes of this subsection, the term "other pharmaceutical
149 services" means monitoring the patient's drug therapy and
150 assisting the patient in the management of his or her drug
151 therapy, and includes reviewing, and making recommendations
152 regarding, the patient's drug therapy and health care status in
153 communication with the patient's prescribing health care
154 provider as licensed under chapter 458, chapter 459, chapter
155 461, or chapter 466, or a similar statutory provision in another
156 jurisdiction, or such provider's agent or such other persons as



157 specifically authorized by the patient; and initiating,
158 modifying, or discontinuing drug therapy for a chronic health
159 condition under a collaborative pharmacy practice agreement.
160 This subsection may not be interpreted to permit an alteration
161 of a prescriber's directions, the diagnosis or treatment of any
162 disease, the initiation of any drug therapy, the practice of
163 medicine, or the practice of osteopathic medicine, unless
164 otherwise permitted by law or specifically authorized by s.
165 465.1865 or s. 465.1895. The term "practice of the profession of
166 pharmacy" also includes any other act, service, operation,
167 research, or transaction incidental to, or forming a part of,
168 any of the foregoing acts, requiring, involving, or employing
169 the science or art of any branch of the pharmaceutical
170 profession, study, or training, and shall expressly permit a
171 pharmacist to transmit information from persons authorized to
172 prescribe medicinal drugs to their patients. The practice of the
173 profession of pharmacy also includes the administration of
174 vaccines to adults pursuant to s. 465.189, the testing or
175 screening for and treatment of minor, nonchronic health
176 conditions pursuant to s. 465.1895, and the preparation of
177 prepackaged drug products in facilities holding Class III
178 institutional pharmacy permits. The term also includes the
179 ordering and evaluating of any laboratory or clinical testing;
180 conducting patient assessments; and modifying, discontinuing, or
181 administering medicinal drugs pursuant to s. 465.0125 by a
182 consultant pharmacist.

183 ~~(23)-(14)~~ "Prescription" includes any order for drugs or
184 medicinal supplies written or transmitted by any means of
185 communication by a duly licensed practitioner authorized by the



874244

186 laws of the state to prescribe such drugs or medicinal supplies
187 and intended to be dispensed by a pharmacist. The term also
188 includes an orally transmitted order by the lawfully designated
189 agent of such practitioner. The term also includes an order
190 written or transmitted by a practitioner licensed to practice in
191 a jurisdiction other than this state, but only if the pharmacist
192 called upon to dispense such order determines, in the exercise
193 of her or his professional judgment, that the order is valid and
194 necessary for the treatment of a chronic or recurrent illness.
195 The term "prescription" also includes a pharmacist's order for a
196 product selected from the formulary created pursuant to s.
197 465.186. Prescriptions may be retained in written form or the
198 pharmacist may cause them to be recorded in a data processing
199 system, provided that such order can be produced in printed form
200 upon lawful request.

201 (16)~~(15)~~ "Nuclear pharmacist" means a pharmacist licensed
202 by the department and certified as a nuclear pharmacist pursuant
203 to s. 465.0126.

204 (6)~~(16)~~ "Centralized prescription filling" means the
205 filling of a prescription by one pharmacy upon request by
206 another pharmacy to fill or refill the prescription. The term
207 includes the performance by one pharmacy for another pharmacy of
208 other pharmacy duties such as drug utilization review,
209 therapeutic drug utilization review, claims adjudication, and
210 the obtaining of refill authorizations.

211 (3)~~(17)~~ "Automated pharmacy system" means a mechanical
212 system that delivers prescription drugs received from a Florida
213 licensed pharmacy and maintains related transaction information.

214 (9)~~(18)~~ "Compounding" means combining, mixing, or altering



874244

215 the ingredients of one or more drugs or products to create
216 another drug or product.

217 ~~(17)(19)~~ "Outsourcing facility" means a single physical
218 location registered as an outsourcing facility under the federal
219 Drug Quality and Security Act, Pub. L. No. 113-54, at which
220 sterile compounding of a drug or product is conducted.

221 ~~(8)(20)~~ "Compounded sterile product" means a drug that is
222 intended for parenteral administration, an ophthalmic or oral
223 inhalation drug in aqueous format, or a drug or product that is
224 required to be sterile under federal or state law or rule, which
225 is produced through compounding, but is not approved by the
226 United States Food and Drug Administration.

227 ~~(5)(21)~~ "Central distribution facility" means a facility
228 under common control with a hospital holding a Class III
229 institutional pharmacy permit that may dispense, distribute,
230 compound, or fill prescriptions for medicinal drugs; prepare
231 prepackaged drug products; and conduct other pharmaceutical
232 services.

233 ~~(7)(22)~~ "Common control" means the power to direct or cause
234 the direction of the management and policies of a person or an
235 organization, whether by ownership of stock, voting rights,
236 contract, or otherwise.

237 Section 4. Paragraph (d) of subsection (2) and paragraph
238 (a) of subsection (4) of section 465.019, Florida Statutes, are
239 amended to read:

240 465.019 Institutional pharmacies; permits.—

241 (2) The following classes of institutional pharmacies are
242 established:

243 (d)1. "Class III institutional pharmacies" are those



874244

244 institutional pharmacies, including central distribution
245 facilities, affiliated with a hospital which ~~that~~ provide the
246 same services that are authorized by a Class II institutional
247 pharmacy permit. Class III institutional pharmacies may also:
248 a. Dispense, distribute, compound, and fill prescriptions
249 for medicinal drugs for inpatient treatment or for patients
250 receiving acute hospital care at home.
251 b. Prepare prepackaged drug products.
252 c. Conduct other pharmaceutical services for the affiliated
253 hospital and for entities under common control that are each
254 permitted under this chapter to possess medicinal drugs.
255 d. Provide the services in sub-subparagraphs a.-c. to an
256 entity under common control which holds an active health care
257 clinic establishment permit as required under s. 499.01(2)(r).
258 2. A Class III institutional pharmacy shall maintain
259 policies and procedures addressing:
260 a. The consultant pharmacist responsible for pharmaceutical
261 services.
262 b. Safe practices for the preparation, dispensing,
263 prepackaging, distribution, and transportation of medicinal
264 drugs and prepackaged drug products.
265 c. Recordkeeping to monitor the movement, distribution, and
266 transportation of medicinal drugs and prepackaged drug products.
267 d. Recordkeeping of pharmacy staff responsible for each
268 step in the preparation, dispensing, prepackaging,
269 transportation, and distribution of medicinal drugs and
270 prepackaged drug products.
271 e. Medicinal drugs and prepackaged drug products that may
272 not be safely distributed among Class III institutional



874244

273 pharmacies.

274 (4) (a) Medicinal drugs shall be dispensed by ~~in~~ an
275 institutional pharmacy to outpatients only when that institution
276 has secured a community pharmacy permit from the department.
277 However, medicinal drugs may be dispensed by a hospital that
278 operates a Class II or Class III institutional pharmacy to a
279 patient of the hospital's emergency department or a hospital
280 inpatient upon discharge if a prescriber, as defined in s.
281 465.025(1), treating the patient in such hospital determines
282 that the medicinal drug is warranted and that community pharmacy
283 services are not readily accessible, geographically or
284 otherwise, to the patient. Such prescribing and dispensing must
285 be for a supply of the drug that will last for the greater of
286 the following:

- 287 1. Up to 48 hours; or
288 2. Through the end of the next business day.

289 Section 5. Subsection (1) of section 14.33, Florida
290 Statutes, is amended to read:

291 14.33 Medal of Heroism.—

292 (1) The Governor may award a Medal of Heroism of
293 appropriate design, with ribbons and appurtenances, to a law
294 enforcement, correctional, or correctional probation officer, as
295 defined in s. 943.10(14); a firefighter, as defined in s.
296 112.191(1) (b); an emergency medical technician, as defined in s.
297 401.23 ~~s. 401.23(11)~~; or a paramedic, as defined in s. 401.23 ~~s.~~
298 ~~401.23(17)~~. A recipient must have distinguished himself or
299 herself conspicuously by gallantry and intrepidity, must have
300 risked his or her life deliberately above and beyond the call of
301 duty while performing duty in his or her respective position,



874244

302 and must have engaged in hazardous or perilous activities to
303 preserve lives with the knowledge that such activities might
304 result in great personal harm.

305 Section 6. Subsection (1) of section 125.01045, Florida
306 Statutes, is amended to read:

307 125.01045 Prohibition of fees for first responder
308 services.—

309 (1) A county may not impose a fee or seek reimbursement for
310 any costs or expenses that may be incurred for services provided
311 by a first responder, including costs or expenses related to
312 personnel, supplies, motor vehicles, or equipment in response to
313 a motor vehicle accident, except for costs to contain or clean
314 up hazardous materials in quantities reportable to the Florida
315 State Warning Point at the Division of Emergency Management, and
316 costs for transportation and treatment provided by ambulance
317 services licensed pursuant to part III of chapter 401 ~~s-~~
318 ~~401.23(4) and (5)~~.

319 Section 7. Subsection (1) of section 166.0446, Florida
320 Statutes, is amended to read:

321 166.0446 Prohibition of fees for first responder services.—

322 (1) A municipality may not impose a fee or seek
323 reimbursement for any costs or expenses that may be incurred for
324 services provided by a first responder, including costs or
325 expenses related to personnel, supplies, motor vehicles, or
326 equipment in response to a motor vehicle accident, except for
327 costs to contain or clean up hazardous materials in quantities
328 reportable to the Florida State Warning Point at the Division of
329 Emergency Management, and costs for transportation and treatment
330 provided by ambulance services licensed pursuant to part III of



874244

331 chapter 401 ~~s. 401.23(4) and (5)~~.

332 Section 8. Paragraph (a) of subsection (3) of section
333 252.515, Florida Statutes, is amended to read:

334 252.515 Postdisaster Relief Assistance Act; immunity from
335 civil liability.—

336 (3) As used in this section, the term:

337 (a) "Emergency first responder" means:

338 1. A physician licensed under chapter 458.

339 2. An osteopathic physician licensed under chapter 459.

340 3. A chiropractic physician licensed under chapter 460.

341 4. A podiatric physician licensed under chapter 461.

342 5. A dentist licensed under chapter 466.

343 6. An advanced practice registered nurse licensed under s.
344 464.012.

345 7. A physician assistant licensed under s. 458.347 or s.
346 459.022.

347 8. A worker employed by a public or private hospital in the
348 state.

349 9. A paramedic as defined in s. 401.23 ~~s. 401.23(17)~~.

350 10. An emergency medical technician as defined in s. 401.23
351 ~~s. 401.23(11)~~.

352 11. A firefighter as defined in s. 633.102.

353 12. A law enforcement officer as defined in s. 943.10.

354 13. A member of the Florida National Guard.

355 14. Any other personnel designated as emergency personnel
356 by the Governor pursuant to a declared emergency.

357 Section 9. Subsection (5) of section 395.1027, Florida
358 Statutes, is amended to read:

359 395.1027 Regional poison control centers.—



874244

360 (5) By October 1, 1999, each regional poison control center
361 shall develop a prehospital emergency dispatch protocol with
362 each licensee as defined in s. 401.23 ~~by s. 401.23(13)~~ in the
363 geographic area covered by the regional poison control center.
364 The prehospital emergency dispatch protocol shall be developed
365 by each licensee's medical director in conjunction with the
366 designated regional poison control center responsible for the
367 geographic area in which the licensee operates. The protocol
368 shall define toxic substances and describe the procedure by
369 which the designated regional poison control center may be
370 consulted by the licensee. If a call is transferred to the
371 designated regional poison control center in accordance with the
372 protocol established under this section and s. 401.268, the
373 designated regional poison control center shall assume
374 responsibility and liability for the call.

375 Section 10. Paragraph (b) of subsection (1) of section
376 400.143, Florida Statutes, is amended to read:

377 400.143 Institutional formularies established by nursing
378 home facilities.-

379 (1) For purposes of this section, the term:

380 (b) "Medicinal drug" has the same meaning as provided in s.
381 465.003 ~~s. 465.003(8)~~.

382 Section 11. Paragraph (b) of subsection (2) of section
383 401.245, Florida Statutes, is amended to read:

384 401.245 Emergency Medical Services Advisory Council.-

385 (2) (b) Representation on the Emergency Medical Services
386 Advisory Council shall include: two licensed physicians who are
387 medical directors ~~"medical directors"~~ as defined in s. 401.23 ~~s.~~
388 ~~401.23(15)~~ or whose medical practice is closely related to



874244

389 emergency medical services; two emergency medical service
390 administrators, one of whom is employed by a fire service; two
391 certified paramedics, one of whom is employed by a fire service;
392 two certified emergency medical technicians, one of whom is
393 employed by a fire service; one emergency medical services
394 educator; one emergency nurse; one hospital administrator; one
395 representative of air ambulance services; one representative of
396 a commercial ambulance operator; and two laypersons who are in
397 no way connected with emergency medical services, one of whom is
398 a representative of the elderly. Ex officio members of the
399 advisory council from state agencies shall include, but are
400 ~~shall~~ not be limited to, representatives from the Department of
401 Education, the Department of Management Services, the State Fire
402 Marshal, the Department of Highway Safety and Motor Vehicles,
403 the Department of Transportation, and the Division of Emergency
404 Management.

405 Section 12. Subsection (2) of section 401.27, Florida
406 Statutes, is amended to read:

407 401.27 Personnel; standards and certification.—

408 (2) The department shall establish by rule educational and
409 training criteria and examinations for the certification and
410 recertification of emergency medical technicians and paramedics.
411 Such rules must require, but need not be limited to:

412 (a) For emergency medical technicians, proficiency in basic
413 life support as defined techniques identified in s. 401.23 s.
414 401.23(7) and in rules of the department.

415 (b) For paramedics, proficiency in advanced life support as
416 defined techniques identified in s. 401.23 s. 401.23(1) and in
417 rules of the department.



874244

418 Section 13. Paragraph (a) of subsection (1) of section
419 409.9201, Florida Statutes, is amended to read:

420 409.9201 Medicaid fraud.—

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

422 (a) "Prescription drug" means any drug, including, but not
423 limited to, finished dosage forms or active ingredients that are
424 subject to, defined in, or described in s. 503(b) of the Federal
425 Food, Drug, and Cosmetic Act or in s. 465.003 ~~s. 465.003(8)~~, s.
426 499.003(17), s. 499.007(13), or s. 499.82(10).

427

428 The value of individual items of the legend drugs or goods or
429 services involved in distinct transactions committed during a
430 single scheme or course of conduct, whether involving a single
431 person or several persons, may be aggregated when determining
432 the punishment for the offense.

433 Section 14. Paragraph (pp) of subsection (1) of section
434 458.331, Florida Statutes, is amended to read:

435 458.331 Grounds for disciplinary action; action by the
436 board and department.—

437 (1) The following acts constitute grounds for denial of a
438 license or disciplinary action, as specified in s. 456.072(2):

439 (pp) Applicable to a licensee who serves as the designated
440 physician of a pain-management clinic as defined in s. 458.3265
441 or s. 459.0137:

442 1. Registering a pain-management clinic through
443 misrepresentation or fraud;

444 2. Procuring, or attempting to procure, the registration of
445 a pain-management clinic for any other person by making or
446 causing to be made, any false representation;



874244

447 3. Failing to comply with any requirement of chapter 499,
448 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
449 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
450 the Drug Abuse Prevention and Control Act; or chapter 893, the
451 Florida Comprehensive Drug Abuse Prevention and Control Act;

452 4. Being convicted or found guilty of, regardless of
453 adjudication to, a felony or any other crime involving moral
454 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
455 the courts of this state, of any other state, or of the United
456 States;

457 5. Being convicted of, or disciplined by a regulatory
458 agency of the Federal Government or a regulatory agency of
459 another state for, any offense that would constitute a violation
460 of this chapter;

461 6. Being convicted of, or entering a plea of guilty or nolo
462 contendere to, regardless of adjudication, a crime in any
463 jurisdiction of the courts of this state, of any other state, or
464 of the United States which relates to the practice of, or the
465 ability to practice, a licensed health care profession;

466 7. Being convicted of, or entering a plea of guilty or nolo
467 contendere to, regardless of adjudication, a crime in any
468 jurisdiction of the courts of this state, of any other state, or
469 of the United States which relates to health care fraud;

470 8. Dispensing any medicinal drug based upon a communication
471 that purports to be a prescription as defined in s. 465.003 ~~or~~
472 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
473 has reason to believe that the purported prescription is not
474 based upon a valid practitioner-patient relationship; or

475 9. Failing to timely notify the board of the date of his or



874244

476 her termination from a pain-management clinic as required by s.
477 458.3265(3).

478 Section 15. Paragraph (rr) of subsection (1) of section
479 459.015, Florida Statutes, is amended to read:

480 459.015 Grounds for disciplinary action; action by the
481 board and department.—

482 (1) The following acts constitute grounds for denial of a
483 license or disciplinary action, as specified in s. 456.072(2):

484 (rr) Applicable to a licensee who serves as the designated
485 physician of a pain-management clinic as defined in s. 458.3265
486 or s. 459.0137:

487 1. Registering a pain-management clinic through
488 misrepresentation or fraud;

489 2. Procuring, or attempting to procure, the registration of
490 a pain-management clinic for any other person by making or
491 causing to be made, any false representation;

492 3. Failing to comply with any requirement of chapter 499,
493 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
494 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
495 the Drug Abuse Prevention and Control Act; or chapter 893, the
496 Florida Comprehensive Drug Abuse Prevention and Control Act;

497 4. Being convicted or found guilty of, regardless of
498 adjudication to, a felony or any other crime involving moral
499 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
500 the courts of this state, of any other state, or of the United
501 States;

502 5. Being convicted of, or disciplined by a regulatory
503 agency of the Federal Government or a regulatory agency of
504 another state for, any offense that would constitute a violation



874244

505 of this chapter;

506 6. Being convicted of, or entering a plea of guilty or nolo
507 contendere to, regardless of adjudication, a crime in any
508 jurisdiction of the courts of this state, of any other state, or
509 of the United States which relates to the practice of, or the
510 ability to practice, a licensed health care profession;

511 7. Being convicted of, or entering a plea of guilty or nolo
512 contendere to, regardless of adjudication, a crime in any
513 jurisdiction of the courts of this state, of any other state, or
514 of the United States which relates to health care fraud;

515 8. Dispensing any medicinal drug based upon a communication
516 that purports to be a prescription as defined in s. 465.003 ~~s.~~
517 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
518 has reason to believe that the purported prescription is not
519 based upon a valid practitioner-patient relationship; or

520 9. Failing to timely notify the board of the date of his or
521 her termination from a pain-management clinic as required by s.
522 459.0137(3).

523 Section 16. Subsection (1) of section 465.014, Florida
524 Statutes, is amended to read:

525 465.014 Pharmacy technician.—

526 (1) A person other than a licensed pharmacist or pharmacy
527 intern may not engage in the practice of the profession of
528 pharmacy, except that a licensed pharmacist may delegate to
529 pharmacy technicians who are registered pursuant to this section
530 those duties, tasks, and functions that do not fall within the
531 purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts
532 must be performed under the direct supervision of a licensed
533 pharmacist who is responsible for all such acts performed by



874244

534 persons under his or her supervision. A registered pharmacy
535 technician, under the supervision of a pharmacist, may initiate
536 or receive communications with a practitioner or his or her
537 agent, on behalf of a patient, regarding refill authorization
538 requests. A licensed pharmacist may not supervise more than one
539 registered pharmacy technician unless otherwise permitted by the
540 guidelines adopted by the board. The board shall establish
541 guidelines to be followed by licensees or permittees in
542 determining the circumstances under which a licensed pharmacist
543 may supervise more than one pharmacy technician.

544 Section 17. Paragraph (c) of subsection (2) of section
545 465.015, Florida Statutes, is amended to read:

546 465.015 Violations and penalties.—

547 (2) It is unlawful for any person:

548 (c) To sell or dispense drugs as defined in s. 465.003 ~~s.~~
549 ~~465.003(8)~~ without first being furnished with a prescription.

550 Section 18. Subsection (9) of section 465.0156, Florida
551 Statutes, is amended to read:

552 465.0156 Registration of nonresident pharmacies.—

553 (9) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
554 of this section, the registered pharmacy and the pharmacist
555 designated by the registered pharmacy as the prescription
556 department manager or the equivalent must be licensed in the
557 state of location in order to dispense into this state.

558 Section 19. Paragraph (s) of subsection (1) of section
559 465.016, Florida Statutes, is amended to read:

560 465.016 Disciplinary actions.—

561 (1) The following acts constitute grounds for denial of a
562 license or disciplinary action, as specified in s. 456.072(2):



563 (s) Dispensing any medicinal drug based upon a
564 communication that purports to be a prescription as defined in
565 s. 465.003 by ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist
566 knows or has reason to believe that the purported prescription
567 is not based upon a valid practitioner-patient relationship.

568 Section 20. Subsection (4) of section 465.0197, Florida
569 Statutes, is amended to read:

570 465.0197 Internet pharmacy permits.—

571 (4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
572 of this section, the Internet pharmacy and the pharmacist
573 designated by the Internet pharmacy as the prescription
574 department manager or the equivalent must be licensed in the
575 state of location in order to dispense into this state.

576 Section 21. Paragraph (j) of subsection (5) of section
577 465.022, Florida Statutes, is amended to read:

578 465.022 Pharmacies; general requirements; fees.—

579 (5) The department or board shall deny an application for a
580 pharmacy permit if the applicant or an affiliated person,
581 partner, officer, director, or prescription department manager
582 or consultant pharmacist of record of the applicant:

583 (j) Has dispensed any medicinal drug based upon a
584 communication that purports to be a prescription as defined in
585 s. 465.003 by ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist
586 knows or has reason to believe that the purported prescription
587 is not based upon a valid practitioner-patient relationship that
588 includes a documented patient evaluation, including history and
589 a physical examination adequate to establish the diagnosis for
590 which any drug is prescribed and any other requirement
591 established by board rule under chapter 458, chapter 459,



592 chapter 461, chapter 463, chapter 464, or chapter 466.

593

594 For felonies in which the defendant entered a plea of guilty or
595 nolo contendere in an agreement with the court to enter a
596 pretrial intervention or drug diversion program, the department
597 shall deny the application if upon final resolution of the case
598 the licensee has failed to successfully complete the program.

599 Section 22. Paragraph (h) of subsection (1) of section
600 465.023, Florida Statutes, is amended to read:

601 465.023 Pharmacy permittee; disciplinary action.—

602 (1) The department or the board may revoke or suspend the
603 permit of any pharmacy permittee, and may fine, place on
604 probation, or otherwise discipline any pharmacy permittee if the
605 permittee, or any affiliated person, partner, officer, director,
606 or agent of the permittee, including a person fingerprinted
607 under s. 465.022(3), has:

608 (h) Dispensed any medicinal drug based upon a communication
609 that purports to be a prescription as defined in s. 465.003 ~~by~~
610 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has
611 reason to believe that the purported prescription is not based
612 upon a valid practitioner-patient relationship that includes a
613 documented patient evaluation, including history and a physical
614 examination adequate to establish the diagnosis for which any
615 drug is prescribed and any other requirement established by
616 board rule under chapter 458, chapter 459, chapter 461, chapter
617 463, chapter 464, or chapter 466.

618 Section 23. Section 465.1901, Florida Statutes, is amended
619 to read:

620 465.1901 Practice of orthotics and pedorthics.—The



874244

621 provisions of chapter 468 relating to orthotics or pedorthics do
622 not apply to any licensed pharmacist or to any person acting
623 under the supervision of a licensed pharmacist. The practice of
624 orthotics or pedorthics by a pharmacist or any of the
625 pharmacist's employees acting under the supervision of a
626 pharmacist shall be construed to be within the meaning of the
627 term "practice of the profession of pharmacy" as defined ~~set~~
628 ~~forth~~ in s. 465.003 ~~s. 465.003(13)~~, and shall be subject to
629 regulation in the same manner as any other pharmacy practice.
630 The Board of Pharmacy shall develop rules regarding the practice
631 of orthotics and pedorthics by a pharmacist. Any pharmacist or
632 person under the supervision of a pharmacist engaged in the
633 practice of orthotics or pedorthics is not precluded from
634 continuing that practice pending adoption of these rules.

635 Section 24. Paragraph (j) of subsection (2) of section
636 465.1902, Florida Statutes, is amended to read:

637 465.1902 Prescription Drug Donation Repository Program.—

638 (2) DEFINITIONS.—As used in this section, the term:

639 (j) "Prescription drug" has the same meaning as the term
640 "medicinal drugs" or "drugs," as those terms are defined in s.
641 465.003 ~~s. 465.003(8)~~, but does not include controlled
642 substances, cancer drugs donated under s. 499.029, or drugs with
643 an approved United States Food and Drug Administration risk
644 evaluation and mitigation strategy that includes elements to
645 assure safe use.

646 Section 25. Subsection (40) of section 499.003, Florida
647 Statutes, is amended to read:

648 499.003 Definitions of terms used in this part.—As used in
649 this part, the term:



874244

650 (40) "Prescription drug" means a prescription, medicinal,
651 or legend drug, including, but not limited to, finished dosage
652 forms or active pharmaceutical ingredients subject to, defined
653 by, or described by s. 503(b) of the federal act or s. 465.003
654 ~~s. 465.003(8)~~, s. 499.007(13), subsection (31), or subsection
655 (47), except that an active pharmaceutical ingredient is a
656 prescription drug only if substantially all finished dosage
657 forms in which it may be lawfully dispensed or administered in
658 this state are also prescription drugs.

659 Section 26. Paragraph (c) of subsection (24) of section
660 893.02, Florida Statutes, is amended to read:

661 893.02 Definitions.—The following words and phrases as used
662 in this chapter shall have the following meanings, unless the
663 context otherwise requires:

664 (24) "Prescription" includes any order for drugs or
665 medicinal supplies which is written or transmitted by any means
666 of communication by a licensed practitioner authorized by the
667 laws of this state to prescribe such drugs or medicinal
668 supplies, is issued in good faith and in the course of
669 professional practice, is intended to be dispensed by a person
670 authorized by the laws of this state to do so, and meets the
671 requirements of s. 893.04.

672 (c) A prescription for a controlled substance may not be
673 issued on the same prescription blank with another prescription
674 for a controlled substance that is named or described in a
675 different schedule or with another prescription for a medicinal
676 drug, as defined in s. 465.003 ~~s. 465.003(8)~~, that is not a
677 controlled substance.

678 Section 27. This act shall take effect July 1, 2022.



874244

679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707

===== 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 acute hospital care at home;
amending s. 401.23, F.S.; defining the term "acute
hospital care at home"; amending s. 401.272, F.S.;
authorizing paramedics to perform certain life support
services to patients receiving acute hospital care at
home under certain circumstances; providing that a
physician or medical director who supervises or
directs the provision of such services by a paramedic
is liable for any act or omission during the provision
of such services; authorizing the Department of Health
to adopt and enforce rules; amending s. 465.003, F.S.;
defining the term "acute hospital care at home";
amending s. 465.019, F.S.; specifying that Class III
institutional pharmacies may dispense, distribute,
compound, and fill prescriptions for medicinal drugs
for inpatient treatment and patients receiving acute
hospital care at home; amending ss. 14.33, 125.01045,
166.0446, 252.515, 395.1027, 400.143, 401.245, 401.27,
409.9201, 458.331, 459.015, 465.014, 465.015,
465.0156, 465.016, 465.0197, 465.022, 465.023,
465.1901, 465.1902, 499.003, and 893.02, F.S.;
conforming cross-references; providing an effective
date.



773004

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

1 **Senate Substitute for Amendment (874244) (with title**
2 **amendment)**

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

6 Section 1. Present subsections (1) through (22) of section
7 401.23, Florida Statutes, are redesignated as subsections (2)
8 through (23), respectively, a new subsection (1) is added to
9 that section, and present subsection (19) of that section is
10 amended, to read:

11 401.23 Definitions.—As used in this part, the term:



773004

12 (1) "Acute and post-acute hospital care at home" means
13 acute and post-acute health care services provided in a
14 clinically qualified patient's permanent residence, as defined
15 in s. 196.012(17), through a program approved by the Centers for
16 Medicare and Medicaid Services and the Agency for Health Care
17 Administration.

18 ~~(20)~~~~(19)~~ "Physician" means a practitioner who is licensed
19 under the provisions of chapter 458 or chapter 459. For the
20 purpose of providing medical direction ~~"medical direction" as~~
21 ~~defined in~~ subsection (14) for the treatment of patients
22 immediately before ~~prior to~~ or during transportation to a United
23 States Department of Veterans Affairs medical facility,
24 "physician" also means a practitioner employed by the United
25 States Department of Veterans Affairs.

26 Section 2. Paragraph (c) is added to subsection (2) of
27 section 401.272, Florida Statutes, to read:

28 401.272 Emergency medical services community health care.-

29 (2) Notwithstanding any other provision of law to the
30 contrary:

31 (c) Paramedics may provide basic life support services and
32 advanced life support services to patients receiving acute and
33 post-acute hospital care at home as specified in the paramedic's
34 supervisory relationship with a physician or standing orders as
35 described in s. 401.265, s. 458.348, or s. 459.025. A physician
36 who supervises or provides medical direction to a paramedic who
37 provides basic life support services or advanced life support
38 services to patients receiving acute and post-acute hospital
39 care at home pursuant to a formal supervisory relationship or
40 standing orders is liable for any act or omission of the



773004

41 paramedic acting under the physician's supervision or medical
42 direction when providing such services. The department may adopt
43 and enforce rules necessary to implement this paragraph.

44 Section 3. Section 465.003, Florida Statutes, is reordered
45 and amended to read:

46 465.003 Definitions.—As used in this chapter, the term:

47 (1) "Acute and post-acute hospital care at home" means
48 acute and post-acute health care services provided in a
49 clinically qualified patient's permanent residence, as defined
50 in s. 196.012(17), through a program approved by the Centers for
51 Medicare and Medicaid Services and the Agency for Health Care
52 Administration.

53 (2)~~(1)~~ "Administration" means the obtaining and giving of a
54 single dose of medicinal drugs by a legally authorized person to
55 a patient for her or his consumption.

56 (4)~~(2)~~ "Board" means the Board of Pharmacy.

57 (10)~~(3)~~ "Consultant pharmacist" means a pharmacist licensed
58 by the department and certified as a consultant pharmacist
59 pursuant to s. 465.0125.

60 (11)~~(4)~~ "Data communication device" means an electronic
61 device that receives electronic information from one source and
62 transmits or routes it to another, including, but not limited
63 to, any such bridge, router, switch, or gateway.

64 (12)~~(5)~~ "Department" means the Department of Health.

65 (13)~~(6)~~ "Dispense" means the transfer of possession of one
66 or more doses of a medicinal drug by a pharmacist to the
67 ultimate consumer or her or his agent. As an element of
68 dispensing, the pharmacist shall, prior to the actual physical
69 transfer, interpret and assess the prescription order for



773004

70 potential adverse reactions, interactions, and dosage regimen
71 she or he deems appropriate in the exercise of her or his
72 professional judgment, and the pharmacist shall certify that the
73 medicinal drug called for by the prescription is ready for
74 transfer. The pharmacist shall also provide counseling on proper
75 drug usage, either orally or in writing, if in the exercise of
76 her or his professional judgment counseling is necessary. The
77 actual sales transaction and delivery of such drug shall not be
78 considered dispensing. The administration shall not be
79 considered dispensing.

80 (14)~~(7)~~ "Institutional formulary system" means a method
81 whereby the medical staff evaluates, appraises, and selects
82 those medicinal drugs or proprietary preparations which in the
83 medical staff's clinical judgment are most useful in patient
84 care, and which are available for dispensing by a practicing
85 pharmacist in a Class II or Class III institutional pharmacy.

86 (15)~~(8)~~ "Medicinal drugs" or "drugs" means those substances
87 or preparations commonly known as "prescription" or "legend"
88 drugs which are required by federal or state law to be dispensed
89 only on a prescription, but shall not include patents or
90 proprietary preparations as hereafter defined.

91 (18)~~(9)~~ "Patent or proprietary preparation" means a
92 medicine in its unbroken, original package which is sold to the
93 public by, or under the authority of, the manufacturer or
94 primary distributor thereof and which is not misbranded under
95 the provisions of the Florida Drug and Cosmetic Act.

96 (19)~~(10)~~ "Pharmacist" means any person licensed pursuant to
97 this chapter to practice the profession of pharmacy.

98 (20) (a)~~(11)~~~~(a)~~ "Pharmacy" includes a community pharmacy, an



773004

99 institutional pharmacy, a nuclear pharmacy, a special pharmacy,
100 and an Internet pharmacy.

101 1. The term "community pharmacy" includes every location
102 where medicinal drugs are compounded, dispensed, stored, or sold
103 or where prescriptions are filled or dispensed on an outpatient
104 basis.

105 2. The term "institutional pharmacy" includes every
106 location in a hospital, clinic, nursing home, dispensary,
107 sanitarium, extended care facility, or other facility,
108 hereinafter referred to as "health care institutions," where
109 medicinal drugs are compounded, dispensed, stored, or sold.

110 3. The term "nuclear pharmacy" includes every location
111 where radioactive drugs and chemicals within the classification
112 of medicinal drugs are compounded, dispensed, stored, or sold.
113 The term "nuclear pharmacy" does not include hospitals licensed
114 under chapter 395 or the nuclear medicine facilities of such
115 hospitals.

116 4. The term "special pharmacy" includes every location
117 where medicinal drugs are compounded, dispensed, stored, or sold
118 if such locations are not otherwise defined in this subsection.

119 5. The term "Internet pharmacy" includes locations not
120 otherwise licensed or issued a permit under this chapter, within
121 or outside this state, which use the Internet to communicate
122 with or obtain information from consumers in this state and use
123 such communication or information to fill or refill
124 prescriptions or to dispense, distribute, or otherwise engage in
125 the practice of pharmacy in this state. Any act described in
126 this definition constitutes the practice of the profession of
127 pharmacy ~~as defined in subsection (13).~~



773004

128 (b) The pharmacy department of any permittee shall be
129 considered closed whenever a Florida licensed pharmacist is not
130 present and on duty. The term "not present and on duty" shall
131 not be construed to prevent a pharmacist from exiting the
132 prescription department for the purposes of consulting or
133 responding to inquiries or providing assistance to patients or
134 customers, attending to personal hygiene needs, or performing
135 any other function for which the pharmacist is responsible,
136 provided that such activities are conducted in a manner
137 consistent with the pharmacist's responsibility to provide
138 pharmacy services.

139 (21) ~~(12)~~ "Pharmacy intern" means a person who is currently
140 registered in, and attending, a duly accredited college or
141 school of pharmacy, or who is a graduate of such a school or
142 college of pharmacy, and who is duly and properly registered
143 with the department as provided for under its rules.

144 (22) ~~(13)~~ "Practice of the profession of pharmacy" includes
145 compounding, dispensing, and consulting concerning contents,
146 therapeutic values, and uses of any medicinal drug; consulting
147 concerning therapeutic values and interactions of patent or
148 proprietary preparations, whether pursuant to prescriptions or
149 in the absence and entirely independent of such prescriptions or
150 orders; and conducting other pharmaceutical services. For
151 purposes of this subsection, the term "other pharmaceutical
152 services" means monitoring the patient's drug therapy and
153 assisting the patient in the management of his or her drug
154 therapy, and includes reviewing, and making recommendations
155 regarding, the patient's drug therapy and health care status in
156 communication with the patient's prescribing health care



773004

157 provider as licensed under chapter 458, chapter 459, chapter
158 461, or chapter 466, or a similar statutory provision in another
159 jurisdiction, or such provider's agent or such other persons as
160 specifically authorized by the patient; and initiating,
161 modifying, or discontinuing drug therapy for a chronic health
162 condition under a collaborative pharmacy practice agreement.
163 This subsection may not be interpreted to permit an alteration
164 of a prescriber's directions, the diagnosis or treatment of any
165 disease, the initiation of any drug therapy, the practice of
166 medicine, or the practice of osteopathic medicine, unless
167 otherwise permitted by law or specifically authorized by s.
168 465.1865 or s. 465.1895. The term "practice of the profession of
169 pharmacy" also includes any other act, service, operation,
170 research, or transaction incidental to, or forming a part of,
171 any of the foregoing acts, requiring, involving, or employing
172 the science or art of any branch of the pharmaceutical
173 profession, study, or training, and shall expressly permit a
174 pharmacist to transmit information from persons authorized to
175 prescribe medicinal drugs to their patients. The practice of the
176 profession of pharmacy also includes the administration of
177 vaccines to adults pursuant to s. 465.189, the testing or
178 screening for and treatment of minor, nonchronic health
179 conditions pursuant to s. 465.1895, and the preparation of
180 prepackaged drug products in facilities holding Class III
181 institutional pharmacy permits. The term also includes the
182 ordering and evaluating of any laboratory or clinical testing;
183 conducting patient assessments; and modifying, discontinuing, or
184 administering medicinal drugs pursuant to s. 465.0125 by a
185 consultant pharmacist.



773004

186 ~~(23)(14)~~ "Prescription" includes any order for drugs or
187 medicinal supplies written or transmitted by any means of
188 communication by a duly licensed practitioner authorized by the
189 laws of the state to prescribe such drugs or medicinal supplies
190 and intended to be dispensed by a pharmacist. The term also
191 includes an orally transmitted order by the lawfully designated
192 agent of such practitioner. The term also includes an order
193 written or transmitted by a practitioner licensed to practice in
194 a jurisdiction other than this state, but only if the pharmacist
195 called upon to dispense such order determines, in the exercise
196 of her or his professional judgment, that the order is valid and
197 necessary for the treatment of a chronic or recurrent illness.
198 The term "prescription" also includes a pharmacist's order for a
199 product selected from the formulary created pursuant to s.
200 465.186. Prescriptions may be retained in written form or the
201 pharmacist may cause them to be recorded in a data processing
202 system, provided that such order can be produced in printed form
203 upon lawful request.

204 ~~(16)(15)~~ "Nuclear pharmacist" means a pharmacist licensed
205 by the department and certified as a nuclear pharmacist pursuant
206 to s. 465.0126.

207 ~~(6)(16)~~ "Centralized prescription filling" means the
208 filling of a prescription by one pharmacy upon request by
209 another pharmacy to fill or refill the prescription. The term
210 includes the performance by one pharmacy for another pharmacy of
211 other pharmacy duties such as drug utilization review,
212 therapeutic drug utilization review, claims adjudication, and
213 the obtaining of refill authorizations.

214 ~~(3)(17)~~ "Automated pharmacy system" means a mechanical



773004

215 system that delivers prescription drugs received from a Florida
216 licensed pharmacy and maintains related transaction information.

217 (9)~~(18)~~ "Compounding" means combining, mixing, or altering
218 the ingredients of one or more drugs or products to create
219 another drug or product.

220 (17)~~(19)~~ "Outsourcing facility" means a single physical
221 location registered as an outsourcing facility under the federal
222 Drug Quality and Security Act, Pub. L. No. 113-54, at which
223 sterile compounding of a drug or product is conducted.

224 (8)~~(20)~~ "Compounded sterile product" means a drug that is
225 intended for parenteral administration, an ophthalmic or oral
226 inhalation drug in aqueous format, or a drug or product that is
227 required to be sterile under federal or state law or rule, which
228 is produced through compounding, but is not approved by the
229 United States Food and Drug Administration.

230 (5)~~(21)~~ "Central distribution facility" means a facility
231 under common control with a hospital holding a Class III
232 institutional pharmacy permit that may dispense, distribute,
233 compound, or fill prescriptions for medicinal drugs; prepare
234 prepackaged drug products; and conduct other pharmaceutical
235 services.

236 (7)~~(22)~~ "Common control" means the power to direct or cause
237 the direction of the management and policies of a person or an
238 organization, whether by ownership of stock, voting rights,
239 contract, or otherwise.

240 Section 4. Paragraph (d) of subsection (2) and paragraph
241 (a) of subsection (4) of section 465.019, Florida Statutes, are
242 amended to read:

243 465.019 Institutional pharmacies; permits.-



773004

244 (2) The following classes of institutional pharmacies are
245 established:

246 (d)1. "Class III institutional pharmacies" are those
247 institutional pharmacies, including central distribution
248 facilities, affiliated with a hospital which ~~that~~ provide the
249 same services that are authorized by a Class II institutional
250 pharmacy permit. Class III institutional pharmacies may also:

251 a. Dispense, distribute, compound, and fill prescriptions
252 for medicinal drugs for inpatient treatment or for patients
253 receiving acute and post-acute hospital care at home.

254 b. Prepare prepackaged drug products.

255 c. Conduct other pharmaceutical services for the affiliated
256 hospital and for entities under common control that are each
257 permitted under this chapter to possess medicinal drugs.

258 d. Provide the services in sub-subparagraphs a.-c. to an
259 entity under common control which holds an active health care
260 clinic establishment permit as required under s. 499.01(2)(r).

261 2. A Class III institutional pharmacy shall maintain
262 policies and procedures addressing:

263 a. The consultant pharmacist responsible for pharmaceutical
264 services.

265 b. Safe practices for the preparation, dispensing,
266 prepackaging, distribution, and transportation of medicinal
267 drugs and prepackaged drug products.

268 c. Recordkeeping to monitor the movement, distribution, and
269 transportation of medicinal drugs and prepackaged drug products.

270 d. Recordkeeping of pharmacy staff responsible for each
271 step in the preparation, dispensing, prepackaging,
272 transportation, and distribution of medicinal drugs and



773004

273 prepackaged drug products.

274 e. Medicinal drugs and prepackaged drug products that may
275 not be safely distributed among Class III institutional
276 pharmacies.

277 (4) (a) Medicinal drugs shall be dispensed by ~~in~~ an
278 institutional pharmacy to outpatients only when that institution
279 has secured a community pharmacy permit from the department.
280 However, medicinal drugs may be dispensed by a hospital that
281 operates a Class II or Class III institutional pharmacy to a
282 patient of the hospital's emergency department or a hospital
283 inpatient upon discharge if a prescriber, as defined in s.
284 465.025(1), treating the patient in such hospital determines
285 that the medicinal drug is warranted and that community pharmacy
286 services are not readily accessible, geographically or
287 otherwise, to the patient. Such prescribing and dispensing must
288 be for a supply of the drug that will last for the greater of
289 the following:

- 290 1. Up to 48 hours; or
291 2. Through the end of the next business day.

292 Section 5. Subsection (1) of section 14.33, Florida
293 Statutes, is amended to read:

294 14.33 Medal of Heroism.—

295 (1) The Governor may award a Medal of Heroism of
296 appropriate design, with ribbons and appurtenances, to a law
297 enforcement, correctional, or correctional probation officer, as
298 defined in s. 943.10(14); a firefighter, as defined in s.
299 112.191(1)(b); an emergency medical technician, as defined in s.
300 401.23 ~~s. 401.23(11)~~; or a paramedic, as defined in s. 401.23 ~~s.~~
301 ~~401.23(17)~~. A recipient must have distinguished himself or



773004

302 herself conspicuously by gallantry and intrepidity, must have
303 risked his or her life deliberately above and beyond the call of
304 duty while performing duty in his or her respective position,
305 and must have engaged in hazardous or perilous activities to
306 preserve lives with the knowledge that such activities might
307 result in great personal harm.

308 Section 6. Subsection (1) of section 125.01045, Florida
309 Statutes, is amended to read:

310 125.01045 Prohibition of fees for first responder
311 services.—

312 (1) A county may not impose a fee or seek reimbursement for
313 any costs or expenses that may be incurred for services provided
314 by a first responder, including costs or expenses related to
315 personnel, supplies, motor vehicles, or equipment in response to
316 a motor vehicle accident, except for costs to contain or clean
317 up hazardous materials in quantities reportable to the Florida
318 State Warning Point at the Division of Emergency Management, and
319 costs for transportation and treatment provided by air ambulance
320 services or emergency medical services vehicles, as those terms
321 are defined in s. 401.23 ~~ambulance services licensed pursuant to~~
322 ~~s. 401.23(4) and (5).~~

323 Section 7. Subsection (1) of section 166.0446, Florida
324 Statutes, is amended to read:

325 166.0446 Prohibition of fees for first responder services.—

326 (1) A municipality may not impose a fee or seek
327 reimbursement for any costs or expenses that may be incurred for
328 services provided by a first responder, including costs or
329 expenses related to personnel, supplies, motor vehicles, or
330 equipment in response to a motor vehicle accident, except for



773004

331 costs to contain or clean up hazardous materials in quantities
332 reportable to the Florida State Warning Point at the Division of
333 Emergency Management, and costs for transportation and treatment
334 provided by air ambulance services or emergency medical services
335 vehicles, as those terms are defined in s. 401.23 ~~ambulance~~
336 ~~services licensed pursuant to s. 401.23(4) and (5).~~

337 Section 8. Paragraph (a) of subsection (3) of section
338 252.515, Florida Statutes, is amended to read:

339 252.515 Postdisaster Relief Assistance Act; immunity from
340 civil liability.—

341 (3) As used in this section, the term:

342 (a) "Emergency first responder" means:

- 343 1. A physician licensed under chapter 458.
- 344 2. An osteopathic physician licensed under chapter 459.
- 345 3. A chiropractic physician licensed under chapter 460.
- 346 4. A podiatric physician licensed under chapter 461.
- 347 5. A dentist licensed under chapter 466.
- 348 6. An advanced practice registered nurse licensed under s.
349 464.012.
- 350 7. A physician assistant licensed under s. 458.347 or s.
351 459.022.
- 352 8. A worker employed by a public or private hospital in the
353 state.
- 354 9. A paramedic as defined in s. 401.23 ~~s. 401.23(17)~~.
- 355 10. An emergency medical technician as defined in s. 401.23
356 ~~s. 401.23(11)~~.
- 357 11. A firefighter as defined in s. 633.102.
- 358 12. A law enforcement officer as defined in s. 943.10.
- 359 13. A member of the Florida National Guard.



360 14. Any other personnel designated as emergency personnel
361 by the Governor pursuant to a declared emergency.

362 Section 9. Subsection (5) of section 395.1027, Florida
363 Statutes, is amended to read:

364 395.1027 Regional poison control centers.—

365 (5) By October 1, 1999, each regional poison control center
366 shall develop a prehospital emergency dispatch protocol with
367 each licensee as defined in s. 401.23 ~~by s. 401.23(13)~~ in the
368 geographic area covered by the regional poison control center.
369 The prehospital emergency dispatch protocol shall be developed
370 by each licensee's medical director in conjunction with the
371 designated regional poison control center responsible for the
372 geographic area in which the licensee operates. The protocol
373 shall define toxic substances and describe the procedure by
374 which the designated regional poison control center may be
375 consulted by the licensee. If a call is transferred to the
376 designated regional poison control center in accordance with the
377 protocol established under this section and s. 401.268, the
378 designated regional poison control center shall assume
379 responsibility and liability for the call.

380 Section 10. Paragraph (b) of subsection (1) of section
381 400.143, Florida Statutes, is amended to read:

382 400.143 Institutional formularies established by nursing
383 home facilities.—

384 (1) For purposes of this section, the term:

385 (b) "Medicinal drug" has the same meaning as provided in s.
386 465.003 ~~s. 465.003(8)~~.

387 Section 11. Paragraph (b) of subsection (2) of section
388 401.245, Florida Statutes, is amended to read:



773004

389 401.245 Emergency Medical Services Advisory Council.-
390 (2) (b) Representation on the Emergency Medical Services
391 Advisory Council shall include: two licensed physicians who are
392 medical directors ~~"medical directors"~~ as defined in s. 401.23 ~~s.~~
393 ~~401.23(15)~~ or whose medical practice is closely related to
394 emergency medical services; two emergency medical service
395 administrators, one of whom is employed by a fire service; two
396 certified paramedics, one of whom is employed by a fire service;
397 two certified emergency medical technicians, one of whom is
398 employed by a fire service; one emergency medical services
399 educator; one emergency nurse; one hospital administrator; one
400 representative of air ambulance services; one representative of
401 a commercial ambulance operator; and two laypersons who are in
402 no way connected with emergency medical services, one of whom is
403 a representative of the elderly. Ex officio members of the
404 advisory council from state agencies shall include, but are
405 ~~shall~~ not be limited to, representatives from the Department of
406 Education, the Department of Management Services, the State Fire
407 Marshal, the Department of Highway Safety and Motor Vehicles,
408 the Department of Transportation, and the Division of Emergency
409 Management.

410 Section 12. Subsection (2) of section 401.27, Florida
411 Statutes, is amended to read:

412 401.27 Personnel; standards and certification.-

413 (2) The department shall establish by rule educational and
414 training criteria and examinations for the certification and
415 recertification of emergency medical technicians and paramedics.
416 Such rules must require, but need not be limited to:

417 (a) For emergency medical technicians, proficiency in basic



773004

418 life support as defined techniques identified in s. 401.23 s.
419 401.23(7) and in rules of the department.

420 (b) For paramedics, proficiency in advanced life support as
421 defined techniques identified in s. 401.23 s. 401.23(1) and in
422 rules of the department.

423 Section 13. Paragraph (a) of subsection (1) of section
424 409.9201, Florida Statutes, is amended to read:

425 409.9201 Medicaid fraud.—

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

427 (a) "Prescription drug" means any drug, including, but not
428 limited to, finished dosage forms or active ingredients that are
429 subject to, defined in, or described in s. 503(b) of the Federal
430 Food, Drug, and Cosmetic Act or in s. 465.003 s. 465.003(8), s.
431 499.003(17), s. 499.007(13), or s. 499.82(10).

432
433 The value of individual items of the legend drugs or goods or
434 services involved in distinct transactions committed during a
435 single scheme or course of conduct, whether involving a single
436 person or several persons, may be aggregated when determining
437 the punishment for the offense.

438 Section 14. Paragraph (pp) of subsection (1) of section
439 458.331, Florida Statutes, is amended to read:

440 458.331 Grounds for disciplinary action; action by the
441 board and department.—

442 (1) The following acts constitute grounds for denial of a
443 license or disciplinary action, as specified in s. 456.072(2):

444 (pp) Applicable to a licensee who serves as the designated
445 physician of a pain-management clinic as defined in s. 458.3265
446 or s. 459.0137:



773004

- 447 1. Registering a pain-management clinic through
448 misrepresentation or fraud;
- 449 2. Procuring, or attempting to procure, the registration of
450 a pain-management clinic for any other person by making or
451 causing to be made, any false representation;
- 452 3. Failing to comply with any requirement of chapter 499,
453 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
454 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
455 the Drug Abuse Prevention and Control Act; or chapter 893, the
456 Florida Comprehensive Drug Abuse Prevention and Control Act;
- 457 4. Being convicted or found guilty of, regardless of
458 adjudication to, a felony or any other crime involving moral
459 turpitude, fraud, dishonesty, or deceit in any jurisdiction of
460 the courts of this state, of any other state, or of the United
461 States;
- 462 5. Being convicted of, or disciplined by a regulatory
463 agency of the Federal Government or a regulatory agency of
464 another state for, any offense that would constitute a violation
465 of this chapter;
- 466 6. Being convicted of, or entering a plea of guilty or nolo
467 contendere to, regardless of adjudication, a crime in any
468 jurisdiction of the courts of this state, of any other state, or
469 of the United States which relates to the practice of, or the
470 ability to practice, a licensed health care profession;
- 471 7. Being convicted of, or entering a plea of guilty or nolo
472 contendere to, regardless of adjudication, a crime in any
473 jurisdiction of the courts of this state, of any other state, or
474 of the United States which relates to health care fraud;
- 475 8. Dispensing any medicinal drug based upon a communication



773004

476 that purports to be a prescription as defined in s. 465.003 ~~s.~~
477 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
478 has reason to believe that the purported prescription is not
479 based upon a valid practitioner-patient relationship; or

480 9. Failing to timely notify the board of the date of his or
481 her termination from a pain-management clinic as required by s.
482 458.3265(3).

483 Section 15. Paragraph (rr) of subsection (1) of section
484 459.015, Florida Statutes, is amended to read:

485 459.015 Grounds for disciplinary action; action by the
486 board and department.—

487 (1) The following acts constitute grounds for denial of a
488 license or disciplinary action, as specified in s. 456.072(2):

489 (rr) Applicable to a licensee who serves as the designated
490 physician of a pain-management clinic as defined in s. 458.3265
491 or s. 459.0137:

492 1. Registering a pain-management clinic through
493 misrepresentation or fraud;

494 2. Procuring, or attempting to procure, the registration of
495 a pain-management clinic for any other person by making or
496 causing to be made, any false representation;

497 3. Failing to comply with any requirement of chapter 499,
498 the Florida Drug and Cosmetic Act; 21 U.S.C. ss. 301-392, the
499 Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq.,
500 the Drug Abuse Prevention and Control Act; or chapter 893, the
501 Florida Comprehensive Drug Abuse Prevention and Control Act;

502 4. Being convicted or found guilty of, regardless of
503 adjudication to, a felony or any other crime involving moral
504 turpitude, fraud, dishonesty, or deceit in any jurisdiction of



773004

505 the courts of this state, of any other state, or of the United
506 States;

507 5. Being convicted of, or disciplined by a regulatory
508 agency of the Federal Government or a regulatory agency of
509 another state for, any offense that would constitute a violation
510 of this chapter;

511 6. Being convicted of, or entering a plea of guilty or nolo
512 contendere to, regardless of adjudication, a crime in any
513 jurisdiction of the courts of this state, of any other state, or
514 of the United States which relates to the practice of, or the
515 ability to practice, a licensed health care profession;

516 7. Being convicted of, or entering a plea of guilty or nolo
517 contendere to, regardless of adjudication, a crime in any
518 jurisdiction of the courts of this state, of any other state, or
519 of the United States which relates to health care fraud;

520 8. Dispensing any medicinal drug based upon a communication
521 that purports to be a prescription as defined in s. 465.003 ~~s.~~
522 ~~465.003(14)~~ or s. 893.02 if the dispensing practitioner knows or
523 has reason to believe that the purported prescription is not
524 based upon a valid practitioner-patient relationship; or

525 9. Failing to timely notify the board of the date of his or
526 her termination from a pain-management clinic as required by s.
527 459.0137(3).

528 Section 16. Subsection (1) of section 465.014, Florida
529 Statutes, is amended to read:

530 465.014 Pharmacy technician.—

531 (1) A person other than a licensed pharmacist or pharmacy
532 intern may not engage in the practice of the profession of
533 pharmacy, except that a licensed pharmacist may delegate to



773004

534 pharmacy technicians who are registered pursuant to this section
535 those duties, tasks, and functions that do not fall within the
536 purview of s. 465.003 ~~s. 465.003(13)~~. All such delegated acts
537 must be performed under the direct supervision of a licensed
538 pharmacist who is responsible for all such acts performed by
539 persons under his or her supervision. A registered pharmacy
540 technician, under the supervision of a pharmacist, may initiate
541 or receive communications with a practitioner or his or her
542 agent, on behalf of a patient, regarding refill authorization
543 requests. A licensed pharmacist may not supervise more than one
544 registered pharmacy technician unless otherwise permitted by the
545 guidelines adopted by the board. The board shall establish
546 guidelines to be followed by licensees or permittees in
547 determining the circumstances under which a licensed pharmacist
548 may supervise more than one pharmacy technician.

549 Section 17. Paragraph (c) of subsection (2) of section
550 465.015, Florida Statutes, is amended to read:

551 465.015 Violations and penalties.—

552 (2) It is unlawful for any person:

553 (c) To sell or dispense drugs as defined in s. 465.003 ~~s.~~
554 ~~465.003(8)~~ without first being furnished with a prescription.

555 Section 18. Subsection (9) of section 465.0156, Florida
556 Statutes, is amended to read:

557 465.0156 Registration of nonresident pharmacies.—

558 (9) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
559 of this section, the registered pharmacy and the pharmacist
560 designated by the registered pharmacy as the prescription
561 department manager or the equivalent must be licensed in the
562 state of location in order to dispense into this state.



773004

563 Section 19. Paragraph (s) of subsection (1) of section
564 465.016, Florida Statutes, is amended to read:

565 465.016 Disciplinary actions.—

566 (1) The following acts constitute grounds for denial of a
567 license or disciplinary action, as specified in s. 456.072(2):

568 (s) Dispensing any medicinal drug based upon a
569 communication that purports to be a prescription as defined in
570 s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist
571 knows or has reason to believe that the purported prescription
572 is not based upon a valid practitioner-patient relationship.

573 Section 20. Subsection (4) of section 465.0197, Florida
574 Statutes, is amended to read:

575 465.0197 Internet pharmacy permits.—

576 (4) Notwithstanding s. 465.003 ~~s. 465.003(10)~~, for purposes
577 of this section, the Internet pharmacy and the pharmacist
578 designated by the Internet pharmacy as the prescription
579 department manager or the equivalent must be licensed in the
580 state of location in order to dispense into this state.

581 Section 21. Paragraph (j) of subsection (5) of section
582 465.022, Florida Statutes, is amended to read:

583 465.022 Pharmacies; general requirements; fees.—

584 (5) The department or board shall deny an application for a
585 pharmacy permit if the applicant or an affiliated person,
586 partner, officer, director, or prescription department manager
587 or consultant pharmacist of record of the applicant:

588 (j) Has dispensed any medicinal drug based upon a
589 communication that purports to be a prescription as defined in
590 s. 465.003 ~~by s. 465.003(14)~~ or s. 893.02 when the pharmacist
591 knows or has reason to believe that the purported prescription



773004

592 is not based upon a valid practitioner-patient relationship that
593 includes a documented patient evaluation, including history and
594 a physical examination adequate to establish the diagnosis for
595 which any drug is prescribed and any other requirement
596 established by board rule under chapter 458, chapter 459,
597 chapter 461, chapter 463, chapter 464, or chapter 466.

598

599 For felonies in which the defendant entered a plea of guilty or
600 nolo contendere in an agreement with the court to enter a
601 pretrial intervention or drug diversion program, the department
602 shall deny the application if upon final resolution of the case
603 the licensee has failed to successfully complete the program.

604 Section 22. Paragraph (h) of subsection (1) of section
605 465.023, Florida Statutes, is amended to read:

606 465.023 Pharmacy permittee; disciplinary action.—

607 (1) The department or the board may revoke or suspend the
608 permit of any pharmacy permittee, and may fine, place on
609 probation, or otherwise discipline any pharmacy permittee if the
610 permittee, or any affiliated person, partner, officer, director,
611 or agent of the permittee, including a person fingerprinted
612 under s. 465.022(3), has:

613 (h) Dispensed any medicinal drug based upon a communication
614 that purports to be a prescription as defined in s. 465.003 ~~by~~
615 ~~s. 465.003(14)~~ or s. 893.02 when the pharmacist knows or has
616 reason to believe that the purported prescription is not based
617 upon a valid practitioner-patient relationship that includes a
618 documented patient evaluation, including history and a physical
619 examination adequate to establish the diagnosis for which any
620 drug is prescribed and any other requirement established by



773004

621 board rule under chapter 458, chapter 459, chapter 461, chapter
622 463, chapter 464, or chapter 466.

623 Section 23. Section 465.1901, Florida Statutes, is amended
624 to read:

625 465.1901 Practice of orthotics and pedorthics.—The
626 provisions of chapter 468 relating to orthotics or pedorthics do
627 not apply to any licensed pharmacist or to any person acting
628 under the supervision of a licensed pharmacist. The practice of
629 orthotics or pedorthics by a pharmacist or any of the
630 pharmacist's employees acting under the supervision of a
631 pharmacist shall be construed to be within the meaning of the
632 term "practice of the profession of pharmacy" as defined ~~set~~
633 ~~forth~~ in s. 465.003 ~~s. 465.003(13)~~, and shall be subject to
634 regulation in the same manner as any other pharmacy practice.
635 The Board of Pharmacy shall develop rules regarding the practice
636 of orthotics and pedorthics by a pharmacist. Any pharmacist or
637 person under the supervision of a pharmacist engaged in the
638 practice of orthotics or pedorthics is not precluded from
639 continuing that practice pending adoption of these rules.

640 Section 24. Paragraph (j) of subsection (2) of section
641 465.1902, Florida Statutes, is amended to read:

642 465.1902 Prescription Drug Donation Repository Program.—

643 (2) DEFINITIONS.—As used in this section, the term:

644 (j) "Prescription drug" has the same meaning as the term
645 "medicinal drugs" or "drugs," as those terms are defined in s.
646 465.003 ~~s. 465.003(8)~~, but does not include controlled
647 substances, cancer drugs donated under s. 499.029, or drugs with
648 an approved United States Food and Drug Administration risk
649 evaluation and mitigation strategy that includes elements to



773004

650 assure safe use.

651 Section 25. Subsection (40) of section 499.003, Florida
652 Statutes, is amended to read:

653 499.003 Definitions of terms used in this part.—As used in
654 this part, the term:

655 (40) "Prescription drug" means a prescription, medicinal,
656 or legend drug, including, but not limited to, finished dosage
657 forms or active pharmaceutical ingredients subject to, defined
658 by, or described by s. 503(b) of the federal act or s. 465.003
659 ~~s. 465.003(8)~~, s. 499.007(13), subsection (31), or subsection
660 (47), except that an active pharmaceutical ingredient is a
661 prescription drug only if substantially all finished dosage
662 forms in which it may be lawfully dispensed or administered in
663 this state are also prescription drugs.

664 Section 26. Paragraph (c) of subsection (24) of section
665 893.02, Florida Statutes, is amended to read:

666 893.02 Definitions.—The following words and phrases as used
667 in this chapter shall have the following meanings, unless the
668 context otherwise requires:

669 (24) "Prescription" includes any order for drugs or
670 medicinal supplies which is written or transmitted by any means
671 of communication by a licensed practitioner authorized by the
672 laws of this state to prescribe such drugs or medicinal
673 supplies, is issued in good faith and in the course of
674 professional practice, is intended to be dispensed by a person
675 authorized by the laws of this state to do so, and meets the
676 requirements of s. 893.04.

677 (c) A prescription for a controlled substance may not be
678 issued on the same prescription blank with another prescription



773004

679 for a controlled substance that is named or described in a
680 different schedule or with another prescription for a medicinal
681 drug, as defined in s. 465.003 ~~s. 465.003(8)~~, that is not a
682 controlled substance.

683 Section 27. This act shall take effect July 1, 2022.

684

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

686 And the title is amended as follows:

687 Delete everything before the enacting clause
688 and insert:

689 A bill to be entitled
690 An act relating to acute and post-acute hospital care
691 at home; amending s. 401.23, F.S.; defining the term
692 "acute and post-acute hospital care at home"; amending
693 s. 401.272, F.S.; authorizing paramedics to perform
694 certain life support services to patients receiving
695 acute and post-acute hospital care at home under
696 certain circumstances; providing that a physician or
697 medical director who supervises or directs the
698 provision of such services by a paramedic is liable
699 for any act or omission during the provision of such
700 services; authorizing the Department of Health to
701 adopt and enforce rules; amending s. 465.003, F.S.;
702 defining the term "acute and post-acute hospital care
703 at home"; amending s. 465.019, F.S.; specifying that
704 Class III institutional pharmacies may dispense,
705 distribute, compound, and fill prescriptions for
706 medicinal drugs for inpatient treatment and patients
707 receiving acute and post-acute hospital care at home;



773004

708 amending ss. 14.33, 125.01045, 166.0446, 252.515,
709 395.1027, 400.143, 401.245, 401.27, 409.9201, 458.331,
710 459.015, 465.014, 465.015, 465.0156, 465.016,
711 465.0197, 465.022, 465.023, 465.1901, 465.1902,
712 499.003, and 893.02, F.S.; conforming cross-
713 references; providing an effective date.

By the Committee on Health Policy; and Senator Bean

588-02106-22

20221222c1

A bill to be entitled

An act relating to acute care at-home patients in nonemergent community settings; amending s. 401.272, F.S.; revising a legislative purpose regarding emergency medical services community health care; authorizing certified paramedics to perform basic life support services, advanced life support services, and additional health care services to acute care at-home patients in nonemergent community settings under certain circumstances; providing that a physician or medical director who supervises or directs the provision of such services by a paramedic is liable for any act or omission during the provision of such services; requiring supervising physicians and medical directors to verify and document that paramedics providing such services under their supervision or direction are sufficiently trained and experienced to do so; revising the Department of Health's rulemaking authority to conform to changes made by the act; amending s. 465.019, F.S.; specifying that Class III institutional pharmacies may dispense, distribute, compound, and fill prescriptions for medicinal drugs for inpatients and acute care at-home patients in nonemergent community settings; authorizing hospitals to dispense medicinal drugs to certain patients without first securing a community pharmacy permit under certain circumstances; amending ss. 14.33, 252.515, 395.1027, 401.23, and 401.245, F.S.; making technical changes; providing an effective date.

Page 1 of 9

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

588-02106-22

20221222c1

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

Section 1. Section 401.272, Florida Statutes, is amended to read:

401.272 Emergency medical services community health care.—

(1) The purpose of this section is to encourage more effective ~~use utilization~~ of the skills of emergency medical technicians and paramedics in nonemergent community settings by enabling them to perform, in partnership with local county health departments and hospitals as defined in s. 395.002(13), specific additional health care tasks that are consistent with the public health and welfare.

(2) Notwithstanding any other provision of law to the contrary:

(a) Certified paramedics or emergency medical technicians may perform health promotion and wellness activities and blood pressure screenings in a nonemergency environment, within the scope of their training, and under the supervision of a physician or the direction of a medical director. As used in this paragraph, the term "health promotion and wellness" means the provision of public health programs pertaining to the prevention of illness and injury.

(b) Certified paramedics may administer immunizations in a nonemergency environment, within the scope of their training, and under the supervision of a physician or the direction of a medical director. There must be a written agreement between the paramedic's supervising physician or medical director and the county health department located in each county in which the

Page 2 of 9

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

588-02106-22

20221222c1

59 paramedic administers immunizations. This agreement must
60 establish the protocols, policies, and procedures under which
61 the paramedic must operate.

62 (c) Certified paramedics may provide basic life support
63 services, advanced life support services, and additional health
64 care services to acute care at-home patients in a nonemergent
65 community setting as specified in the paramedic's formal
66 supervisory relationship with a physician or standing orders as
67 described in s. 401.265, s. 458.348, or s. 459.025. Each
68 physician who supervises or provides medical direction to a
69 paramedic who administers basic life support services, advanced
70 life support services, or additional health care services to
71 acute care at-home patients in a nonemergent community setting
72 pursuant to a formal supervisory relationship or standing orders
73 is liable for any act or omission of the paramedic acting under
74 the physician's supervision or medical direction when performing
75 such services.

76 (3) Each physician or medical director under whose
77 supervision or direction a paramedic administers immunizations
78 or provides basic life support services, advanced life support
79 services, or additional health care services to acute care at-
80 home patients in a nonemergency community setting must verify
81 and document that the paramedic has received sufficient training
82 and experience to administer immunizations or provide basic life
83 support services, advanced life support services, or additional
84 health care services to acute care at-home patients in a
85 nonemergency community setting, as applicable. The verification
86 must be documented on forms developed by the department, and the
87 completed forms must be maintained at the service location of

Page 3 of 9

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

588-02106-22

20221222c1

88 the licensee and made available to the department upon request.

89 (4) The department may adopt and enforce all rules
90 necessary to enforce the provisions relating to paramedics and
91 emergency medical technicians practicing in a nonemergent
92 community setting under subsection (2) ~~a paramedic's~~
93 ~~administration of immunizations and the performance of health~~
94 ~~promotion and wellness activities and blood pressure screenings~~
95 ~~by a paramedic or emergency medical technician in a nonemergency~~
96 ~~environment.~~

97 Section 2. Paragraph (d) of subsection (2) and paragraph
98 (a) of subsection (4) of section 465.019, Florida Statutes, are
99 amended to read:

100 465.019 Institutional pharmacies; permits.—

101 (2) The following classes of institutional pharmacies are
102 established:

103 (d)1. "Class III institutional pharmacies" are those
104 institutional pharmacies, including central distribution
105 facilities, affiliated with a hospital which ~~that~~ provide the
106 same services that are authorized by a Class II institutional
107 pharmacy permit. Class III institutional pharmacies may also:

108 a. Dispense, distribute, compound, and fill prescriptions
109 for medicinal drugs for inpatient treatment or for acute care
110 at-home patients in a nonemergent community setting.

111 b. Prepare prepackaged drug products.

112 c. Conduct other pharmaceutical services for the affiliated
113 hospital and for entities under common control that are each
114 permitted under this chapter to possess medicinal drugs.

115 d. Provide the services in sub-subparagraphs a.-c. to an
116 entity under common control which holds an active health care

Page 4 of 9

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

588-02106-22 20221222c1

117 clinic establishment permit as required under s. 499.01(2)(r).

118 2. A Class III institutional pharmacy shall maintain

119 policies and procedures addressing:

120 a. The consultant pharmacist responsible for pharmaceutical

121 services.

122 b. Safe practices for the preparation, dispensing,

123 prepackaging, distribution, and transportation of medicinal

124 drugs and prepackaged drug products.

125 c. Recordkeeping to monitor the movement, distribution, and

126 transportation of medicinal drugs and prepackaged drug products.

127 d. Recordkeeping of pharmacy staff responsible for each

128 step in the preparation, dispensing, prepackaging,

129 transportation, and distribution of medicinal drugs and

130 prepackaged drug products.

131 e. Medicinal drugs and prepackaged drug products that may

132 not be safely distributed among Class III institutional

133 pharmacies.

134 (4)(a) Medicinal drugs shall be dispensed in an

135 institutional pharmacy to outpatients only when that institution

136 has secured a community pharmacy permit from the department.

137 However, ~~medicinal drugs may be dispensed by~~ a hospital that has

138 not secured a community pharmacy permit but operates a Class II

139 or Class III institutional pharmacy may dispense medicinal drugs

140 to a patient of the hospital's emergency department, an acute

141 care at-home patient in a nonemergent community setting, or a

142 hospital inpatient upon discharge if a prescriber, as defined in

143 s. 465.025(1), treating the patient in such hospital determines

144 that the medicinal drug is warranted and that community pharmacy

145 services are not readily accessible, geographically or

588-02106-22 20221222c1

146 otherwise, to the patient. Such prescribing and dispensing must

147 be for a supply of the drug that will last for the greater of

148 the following:

149 1. Up to 48 hours; or

150 2. Through the end of the next business day.

151 Section 3. Subsection (1) of section 14.33, Florida

152 Statutes, is amended to read:

153 14.33 Medal of Heroism.—

154 (1) The Governor may award a Medal of Heroism of

155 appropriate design, with ribbons and appurtenances, to a law

156 enforcement, correctional, or correctional probation officer, as

157 defined in s. 943.10(14); a firefighter, as defined in s.

158 112.191(1)(b); an emergency medical technician, as defined in s.

159 401.23 ~~s. 401.23(11)~~; or a paramedic, as defined in s. 401.23 ~~s.~~

160 ~~401.23(17)~~. A recipient must have distinguished himself or

161 herself conspicuously by gallantry and intrepidity, must have

162 risked his or her life deliberately above and beyond the call of

163 duty while performing duty in his or her respective position,

164 and must have engaged in hazardous or perilous activities to

165 preserve lives with the knowledge that such activities might

166 result in great personal harm.

167 Section 4. Paragraph (a) of subsection (3) of section

168 252.515, Florida Statutes, is amended to read:

169 252.515 Postdisaster Relief Assistance Act; immunity from

170 civil liability.—

171 (3) As used in this section, the term:

172 (a) "Emergency first responder" means:

173 1. A physician licensed under chapter 458.

174 2. An osteopathic physician licensed under chapter 459.

588-02106-22 20221222c1

175 3. A chiropractic physician licensed under chapter 460.
 176 4. A podiatric physician licensed under chapter 461.
 177 5. A dentist licensed under chapter 466.
 178 6. An advanced practice registered nurse licensed under s.
 179 464.012.
 180 7. A physician assistant licensed under s. 458.347 or s.
 181 459.022.
 182 8. A worker employed by a public or private hospital in the
 183 state.
 184 9. A paramedic as defined in s. 401.23 ~~s. 401.23(17)~~.
 185 10. An emergency medical technician as defined in s. 401.23
 186 ~~s. 401.23(11)~~.
 187 11. A firefighter as defined in s. 633.102.
 188 12. A law enforcement officer as defined in s. 943.10.
 189 13. A member of the Florida National Guard.
 190 14. Any other personnel designated as emergency personnel
 191 by the Governor pursuant to a declared emergency.
 192 Section 5. Subsection (5) of section 395.1027, Florida
 193 Statutes, is amended to read:
 194 395.1027 Regional poison control centers.—
 195 (5) By October 1, 1999, each regional poison control center
 196 shall develop a prehospital emergency dispatch protocol with
 197 each licensee as defined in s. 401.23 ~~by s. 401.23(13)~~ in the
 198 geographic area covered by the regional poison control center.
 199 The prehospital emergency dispatch protocol shall be developed
 200 by each licensee's medical director in conjunction with the
 201 designated regional poison control center responsible for the
 202 geographic area in which the licensee operates. The protocol
 203 shall define toxic substances and describe the procedure by

588-02106-22 20221222c1

204 which the designated regional poison control center may be
 205 consulted by the licensee. If a call is transferred to the
 206 designated regional poison control center in accordance with the
 207 protocol established under this section and s. 401.268, the
 208 designated regional poison control center shall assume
 209 responsibility and liability for the call.
 210 Section 6. Subsection (19) of section 401.23, Florida
 211 Statutes, is amended to read:
 212 401.23 Definitions.—As used in this part, the term:
 213 (19) "Physician" means a practitioner who is licensed under
 214 ~~the provisions of~~ chapter 458 or chapter 459. For the purpose of
 215 providing "medical direction" as defined in this section
 216 ~~subsection (14)~~ for the treatment of patients immediately before
 217 ~~prior to~~ or during transportation to a United States Department
 218 of Veterans Affairs medical facility, "physician" also means a
 219 practitioner employed by the United States Department of
 220 Veterans Affairs.
 221 Section 7. Paragraph (b) of subsection (2) of section
 222 401.245, Florida Statutes, is amended to read:
 223 401.245 Emergency Medical Services Advisory Council.—
 224 (2)
 225 (b) Representation on the Emergency Medical Services
 226 Advisory Council shall include ~~+~~ two licensed physicians who are
 227 ~~"medical directors"~~ as defined in s. 401.23 ~~s. 401.23(15)~~ or
 228 whose medical practice is closely related to emergency medical
 229 services; two emergency medical service administrators, one of
 230 whom is employed by a fire service; two certified paramedics,
 231 one of whom is employed by a fire service; two certified
 232 emergency medical technicians, one of whom is employed by a fire

588-02106-22

20221222c1

233 service; one emergency medical services educator; one emergency
234 nurse; one hospital administrator; one representative of air
235 ambulance services; one representative of a commercial ambulance
236 operator; and two laypersons who are in no way connected with
237 emergency medical services, one of whom is a representative of
238 the elderly. Ex officio members of the advisory council from
239 state agencies shall include, but are ~~shall~~ not ~~be~~ limited to,
240 representatives from the Department of Education, the Department
241 of Management Services, the State Fire Marshal, the Department
242 of Highway Safety and Motor Vehicles, the Department of
243 Transportation, and the Division of Emergency Management.
244 Section 8. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 19, 2022

I respectfully request that **Senate Bill #1222**, relating to non-emergent patient care, be placed on the:

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

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2-7-22

SB 1222

Meeting Date
Judiciary
Committee

Bill Number or Topic

Amendment Barcode (if applicable)

Name LAYNE SMITH

Phone 904-343-3213

Address 4500 SAN PABLO RD

Email smith.layne@mayo.edu

Street
Jacksonville FL 32224
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

MAYO CLINIC

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

02/07/2022

Meeting Date

The Florida Senate
APPEARANCE RECORD

SB 1222

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Judiciary

Committee

Amendment Barcode (if applicable)

Name **David Mica, Jr.**

Phone **352-222-8700**

Address **306 E College Ave**

Email **DavidM@fha.org**

Street

Tallahassee

FL

32312

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Hospital Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 1844

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bean

SUBJECT: Mental Health and Substance Abuse

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1844 removes the requirement for Baker Act receiving facilities to hold voluntariness hearings for patients under 18 years of age seeking voluntary admission. Voluntariness hearings are not consistently used in practice, as minors generally lack the legal capacity to voluntarily consent, and any hearing would need to take place before the child's voluntary admission at a facility, regardless of the parents' consent.

The bill provides that receiving facilities may instead admit minors on a voluntary basis if the following conditions are met:

- The patient is found to show evidence of mental illness;
- The patient is suitable for treatment; and
- The patient's guardian provides express and informed consent to admission.

Under the bill, before a minor patient is admitted for a voluntary examination under the Baker Act, providers at a receiving facility must determine that a minor patient has shown evidence of mental illness and suitability for treatment, and the express and informed consent of a parent or guardian must be obtained.

The bill also:

- Provides law enforcement officers with discretion in deciding whether to detain someone and transfer them to a receiving facility under both the Baker and Marchman Acts;

- Requires law enforcement officers transporting an individual to a receiving facility for an involuntary examination under the Baker or Marchman Acts to:
 - Consider the person’s mental and behavioral state; and
 - Restrain the individual in the least restrictive manner possible, especially if the person is a minor.

The bill may have an indeterminate fiscal impact on receiving facilities. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2022.

II. Present Situation:

The Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.¹ The Baker Act deals with Florida’s mental health commitment laws, and includes legal procedures for mental health examination and treatment, including voluntary and involuntary examinations.² The Baker Act also provides protections for all individuals examined or treated for mental illness in Florida.³

Involuntary Examination

Individuals suffering from an acute mental health crisis may require emergency treatment to stabilize their condition. Emergency mental health examination and stabilization services may be provided on a voluntary or involuntary basis.⁴ An involuntary examination is required if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination or is unable to determine for himself or herself whether examination is necessary; and
- Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
- There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.⁵

The involuntary examination may be initiated by:

- A court entering an ex parte order stating that a person appears to meet the criteria for involuntary examination, based on sworn testimony;⁶

¹ Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

² Sections 394.451-394.47891, F.S.

³ Section 394.459, F.S.

⁴ Sections 394.4625 and 394.463, F.S.

⁵ Section 394.463(1), F.S.

⁶ Section 394.463(2)(a)1., F.S. Additionally, the order of the court must be made a part of the patient’s clinical record.

- A law enforcement officer taking a person who appears to meet the criteria for involuntary examination into custody and delivering the person or having him or her delivered to a receiving facility for examination;⁷ or
- A physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker executing a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination, including a statement of the professional's observations supporting such conclusion.⁸

Involuntary patients must be taken to either a public or private facility that has been designated by the Department of Children and Families (DCF) as a Baker Act receiving facility. The purpose of receiving facilities is to receive and hold, or refer, as appropriate, involuntary patients under emergency conditions for psychiatric evaluation and to provide short-term treatment or transportation to the appropriate service provider.⁹ The patient must be examined by the receiving facility within 72 hours after the initiation of the involuntary examination and specified actions must be taken within that time frame to address the individual needs of the patient.¹⁰

Voluntary Admissions and Transfer to Voluntary Status

Baker Act receiving facilities also admit any person 18 years of age or older making application by express and informed consent for admission, or any person age 17 or under for whom such application is made by his or her guardian.¹¹ If found to show evidence of mental illness, to be competent to provide express and informed consent, and to be suitable for treatment, a person 18 years of age or older may be admitted to the facility.¹²

A patient admitted on an involuntary basis who applies to be transferred to voluntary status must be transferred to voluntary status immediately, unless the patient has been charged with a crime, or has been involuntarily placed for treatment by a court pursuant to s. 394.467, F.S., and continues to meet the criteria for involuntary placement.¹³

Voluntary Admissions for Minor Patients

Any person age 17 or under may be admitted only after a hearing to verify the voluntariness of their consent.¹⁴ However, in 1997 a joint legislative committee determined that the "voluntariness hearing"¹⁵ described in the Florida Administrative Code at that time did not

⁷ Section 394.463(2)(a)2., F.S. The officer must execute a written report detailing the circumstances under which the person was taken into custody, and the report must be made a part of the patient's clinical record.

⁸ Section 394.463(2)(a)3., F.S. The report and certificate must be made a part of the patient's clinical record

⁹ Section 394.455(40), F.S.

¹⁰ Section 394.463(2)(g), F.S.

¹¹ Section 394.4625(1)(a), F.S.

¹² *Id.*

¹³ Section 394.4625(4), F.S.

¹⁴ *Id.*

¹⁵ Prior to 1997, Fla. Admin. R. 10E-5.21(4), F.A.C., defined a "voluntary hearing" as follows: "An informal hearing between a facility administrator or his designee and an individual under 18 years of age who has requested voluntary admission. The purpose of this meeting is to verify and ensure the voluntariness of the applicant's request. This is a nonjudicial procedure and is solely for the purpose of safeguarding against an individual being coerced, pressured, misled, or

conform to a “hearing” as intended elsewhere in statute, as all other references to “hearings” in the Baker Act are judicial in nature.¹⁶ Moreover, minors lack the legal capacity to independently consent to admission or treatment.¹⁷ As a result, all reference to “voluntary hearings” were removed from the Code.¹⁸ The DCF states that only a judicial hearing would suffice to meet this legal requirement, and that such hearings would need to be conducted before the minor’s voluntary admission, despite the consent of the parents or assent of the child to the admission.¹⁹

The majority of patients under the age of 18 years who are admitted under the Baker Act are admitted under involuntary status and either discharged or later transferred to voluntary status, and the DCF states that it is unlikely that pre-admission court hearings for voluntary admission of minors are being conducted anywhere in the state.²⁰ Some facilities, however, require staff to conduct a nonjudicial “voluntariness hearing”; some review voluntary admissions with the court magistrate at the time involuntary placement hearings are conducted; and others do not hold any type of hearing.²¹

The Marchman Act

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.²² The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.²³ Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.²⁴ However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida’s substance abuse problem.²⁵

in any way forced to seek voluntary admission to a facility.” Fla. Admin. Code R. 10E-5.21(4) (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁶ The DCF, *Frequently Asked Questions*, p. 7-9, available at <https://www.myflfamilies.com/service-programs/samh/crisis-services/laws/Minors.pdf> (last visited Feb. 1, 2022) (hereinafter, “The DCF FAQs”)

¹⁷ *Id.*, p. 8.

¹⁸ Prior to 1997, Fla. Admin. Code R 10E-5.050: Voluntary Admissions of Civil Patients, contained special requirements pertaining to the voluntary admission of minor patients at Baker Act receiving facilities. Specifically, a hearing must be conducted by the facility administrator or their designee, in such a manner as to ensure the applicant’s ability to freely express their desires. Participation in the hearing was to be limited to the individual seeking voluntary admission, and the facility administrator or their designee was to ensure the uninfluenced response of the applicant. At the specific request of the administrator or the patient, another facility staff member or an attorney may be present. Findings of the hearing were to be recorded in the patient’s clinical record and subject to review in the same manner as other items in the record. In the event the voluntary nature of the request was not confirmed, the facility was required to release the patient, unless the patient met the criteria for involuntary examination and a “Certificate of Professional Initiating Involuntary Examination” was executed. *See* Fla. Admin. Code R 10E-5.050(3) (1996) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁹ The DCF FAQs, p. 11.

²⁰ *Id.*

²¹ *Id.*

²² The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

In 1993, legislation was adopted to combine chs. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).²⁶

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.²⁷ However, denial of addiction is a prevalent symptom of substance abuse disorder, creating a barrier to timely intervention and effective treatment.²⁸ As a result, treatment typically must stem from a third party providing the intervention needed for substance abuse disorder.²⁹

Involuntary Admissions

The Marchman Act establishes a variety of methods under which substance abuse assessment, stabilization, and treatment can be obtained on an involuntary basis. There are five involuntary admission procedures that can be broken down into two categories depending upon whether the court is involved.³⁰ Three of the procedures do not involve the court, while two require direct petitions to the circuit court. The same criteria for involuntary admission apply regardless of the admission process used.³¹

An individual meets the criteria for an involuntary admission under the Marchman Act if there is good faith reason to believe the individual is substance abuse impaired and, because of such impairment, has lost the power of self-control with respect to substance use, and either:

- Is in need of substance abuse services and, by reason of substance abuse impairment, his or her judgment has been so impaired that he or she is incapable of appreciating his or her need for such services and of making a rational decision in that regard;³² or
- Without care or treatment:
 - The person is likely to suffer from neglect or refuse to care for himself or herself;
 - Such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and
 - It is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
 - There is substantial likelihood that the person:
 - Has inflicted, or threatened to or attempted to inflict physical harm on himself, herself, or another; or
 - Is likely to inflict, physical harm on himself, herself, or another unless he or she is admitted.³³

²⁶ Chapter 93-39, s. 2, Laws of Fla., which codified current ch. 397, F.S.

²⁷ See s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment if sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

²⁸ Darran Duchene and Patrick Lane, State University of Florida, Self-Insurance Programs, Risk Rx, *Fundamentals of the Marchman Act*, Vol. 6 No. 2 (Apr.–Jun. 2009), available at <http://fbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited Feb. 1, 2022) (hereinafter cited as “Fundamentals of the Marchman Act”).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Section 394.675(2)(a), F.S. However, mere refusal to receive services does not constitute evidence of lack of judgment with respect to the person’s need for such services.

³³ Section 397.675(2)(b), F.S.

Non-Court Involved Involuntary Admissions

The three types of non-court procedures for involuntary admission for substance abuse treatment under the Marchman Act include protective custody, emergency admission, and the alternative involuntary assessment for minors.

Law enforcement officers use the protective custody procedure when an individual is substance-impaired or intoxicated in public and such impairment is brought to the attention of the officer.³⁴ The purpose of this procedure is to allow the person to be taken to a safe environment for observation and assessment to determine the need for treatment. A law enforcement officer may take the individual to their residence, to a hospital, a detoxification center, or an addiction receiving facility, whichever the officer determines is most appropriate.³⁵

If the individual in these circumstances does not consent to protective custody, the officer may do so against the person's will, without using unreasonable force. Additionally, the officer has the option of taking an individual to a jail or detention facility for his or her own protection. Such detention cannot be considered an arrest for any purpose, and no record can be made to indicate that the person has been detained or charged with any crime.³⁶ However, if the individual is a minor, the law enforcement officer must notify the nearest relative of a minor in protective custody without consent.³⁷

The second process, emergency admission, authorizes an individual who appears to meet the criteria for involuntary admission to be admitted to a hospital, an addiction receiving facility, or a detoxification facility for emergency assessment and stabilization, or to a less intensive component of a licensed service provider for assessment only.³⁸ Individuals admitted for involuntary assessment and stabilization under this provision must have a certificate from a specified health professional³⁹ demonstrating the need for this type of placement and recommending the least restrictive type of service that is appropriate to the needs of the individual.⁴⁰

³⁴ Section 397.677, F.S. The individual can be a minor or adult under this process.

³⁵ Section 397.6771, F.S. A person may be held in protective custody for no more than 72 hours, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody, Section 397.6773, F.S.

³⁶ Section 397.6772(1), F.S.

³⁷ Section 397.6772(2), F.S.

³⁸ Section 397.679, F.S.

³⁹ Section 397.6793(1), F.S., provides a list of professionals that include a physician, a clinical psychologist, a physician assistant working under the scope of practice of the supervising physician, a psychiatric nurse, an advanced practice registered nurse, a mental health counselor, a marriage and family therapist, a master's-level-certified addictions professional for substance abuse services, or a clinical social worker.

⁴⁰ Section 397.6793, F.S. The certificate can be from a physician, advanced practice registered nurse, a psychiatric nurse, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, or a physician assistant working under the scope of a practice of the supervising physician, or a master's-level-certified addictions professional for substance abuse services.

Lastly, the alternative involuntary assessment for minors provides a way for a parent, legal guardian, or legal custodian to have a minor admitted to an addiction receiving facility to assess the minor's need for treatment by a qualified professional.⁴¹

Transportation to a Facility

Baker Act

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. A law enforcement officer is required to take a person into custody if the individual appears to meet the criteria for an involuntary examination under the Baker Act.⁴² If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.⁴³ Law enforcement must then relinquish the person, along with corresponding documentation, to a responsible individual at the facility.⁴⁴

Marchman Act

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.⁴⁵

If a person in circumstances that justify protective custody⁴⁶ fails or refuses to consent to assistance and a law enforcement officer has determined that a hospital or a licensed detoxification or addictions receiving facility is the most appropriate place for the person, the officer may, after giving due consideration to the expressed wishes of the person:

- Take the person to a hospital or to a licensed detoxification or addictions receiving facility against the person's will but without using unreasonable force; or
- In the case of an adult, detain the person for his or her own protection in any municipal or county jail or other appropriate detention facility.⁴⁷

The officer must use a standard form developed by the DCF to execute a written report detailing the circumstances under which the person was taken into custody, and the written report must be included in the patient's clinical record.

⁴¹ Section 397.6798, F.S.

⁴² Section 394.463(2)(a)2., F.S.

⁴³ Section 394.462(1)(f)-(g), F.S.

⁴⁴ Section 394.462(3), F.S.

⁴⁵ Section 397.6795, F.S.

⁴⁶ Section 397.677, F.S., states that a law enforcement officer may implement protective custody measures when a minor or an adult who appears to meet the involuntary admission criteria in s. 397.675, F.S., is brought to the attention of law enforcement or in a public space.

⁴⁷ Section 397.6772(1)(a)-(b), F.S.

III. Effect of Proposed Changes:

Voluntariness Hearings for Minors under the Baker Act

The bill amends s. 394.4625, F.S., removing the requirement for Baker Act receiving facilities to hold voluntariness hearings as a condition of admission for patients under 18 years of age. The bill provides that receiving facilities may instead admit minor patients if the following conditions are met:

- The patient is found to show evidence of mental illness;
- The patient is suitable for treatment; and
- The patient's guardian provides express and informed consent to admission.

Under the bill, before a minor patient is admitted for a voluntary examination under the Baker Act, providers at a receiving facility must determine that a minor patient has shown evidence of mental illness and suitability for treatment, and the express and informed consent of a parent or guardian must be obtained. As a result, both medical providers and parents or guardians will have to agree on the decision to admit a minor patient.

Transportation

Baker Act

The bill amends s. 394.463, F.S., authorizing, rather than requiring as in current law, law enforcement officers to transport those who appear to meet Baker Act criteria to receiving facilities.

Further, the bill requires law enforcement officers transporting Baker Act patients to consider a person's mental and behavioral state when deciding to restrain an individual for transport to a receiving facility, and to restrain the individual in the least restrictive manner possible, especially if the patient is a minor.

Marchman Act

The bill creates s. 397.341, F.S., making identical changes in the Marchman Act to those made by the bill under the Baker Act related to requiring a law enforcement officer to use the least restrictive means when transferring an individual under the Marchman Act, especially if the patient is a minor.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the Florida Constitution.

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:

Admissions of minor Baker Act patients already require consent of the patient's guardian, and as such this provision of CS/SB 1844 is unlikely to have an impact on receiving facilities or hospitals. Facilities may also see fewer patients brought in for involuntary examinations, which may have an indeterminate negative impact.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 394.4625 and 394.463 of the Florida Statutes.

This bill creates section 397.341 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.)

CS by Children, Families, and Elder Affairs on January 25, 2022:

The committee substitute:

- Provides law enforcement officers with discretion in deciding whether or not to detain someone and transfer them to a receiving facility under both the Baker and Marchman Acts;
- Requires law enforcement officers transporting an individual to a receiving facility for an involuntary examination under the Baker and Marchman Acts to:
 - Consider the person’s mental and behavioral state; and
 - Restrain the individual in the least restrictive manner possible, especially if the person is a minor.
- Removes the requirement for Baker Act receiving facilities to hold voluntariness hearings for patients under 18 years of age seeking voluntary admission and provides that receiving facilities may admit minors on a voluntary basis if the following conditions are met:
 - The patient is found to show evidence of mental illness;
 - The patient is suitable for treatment; and
 - The patient’s guardian provides express and informed consent to admission.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Bean

586-02593-22

20221844c1

1 A bill to be entitled
2 An act relating to mental health and substance abuse;
3 amending s. 394.4625, F.S.; requiring the express and
4 informed consent of a minor's guardian for voluntary
5 admission of the minor to a receiving facility;
6 removing a requirement that a hearing be held to
7 verify the voluntariness of a minor's consent before
8 his or her admission to a facility; amending s.
9 394.463, F.S.; requiring law enforcement officers
10 transporting individuals for involuntary treatment to
11 take certain actions; creating s. 397.341, F.S.;
12 requiring law enforcement officers transporting
13 individuals for treatment to take certain actions;
14 providing an effective date.
15
16 Be It Enacted by the Legislature of the State of Florida:
17
18 Section 1. Paragraph (a) of subsection (1) of section
19 394.4625, Florida Statutes, is amended to read:
20 394.4625 Voluntary admissions.—
21 (1) AUTHORITY TO RECEIVE PATIENTS.—
22 (a) A facility may receive for observation, diagnosis, or
23 treatment any person 18 years of age or older making application
24 to the facility by express and informed consent for admission or
25 any person ~~age 17 years of age or younger under~~ for whom such
26 application is made by his or her guardian. If found to show
27 evidence of mental illness;~~7~~ to be competent to provide express
28 and informed consent or, for a minor, the express and informed
29 consent of the minor's guardian;~~7~~ and to be suitable for

Page 1 of 4

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

586-02593-22

20221844c1

30 treatment, such person ~~18 years of age or older~~ may be admitted
31 to the facility. ~~A person age 17 or under may be admitted only~~
32 ~~after a hearing to verify the voluntariness of the consent.~~
33 Section 2. Paragraph (a) of subsection (2) of section
34 394.463, Florida Statutes, is amended to read:
35 394.463 Involuntary examination.—
36 (2) INVOLUNTARY EXAMINATION.—
37 (a) An involuntary examination may be initiated by any one
38 of the following means:
39 1. A circuit or county court may enter an ex parte order
40 stating that a person appears to meet the criteria for
41 involuntary examination and specifying the findings on which
42 that conclusion is based. The ex parte order for involuntary
43 examination must be based on written or oral sworn testimony
44 that includes specific facts that support the findings. If other
45 less restrictive means are not available, such as voluntary
46 appearance for outpatient evaluation, a law enforcement officer,
47 or other designated agent of the court, shall take the person
48 into custody and deliver him or her to an appropriate, or the
49 nearest, facility within the designated receiving system
50 pursuant to s. 394.462 for involuntary examination. The order of
51 the court shall be made a part of the patient's clinical record.
52 A fee may not be charged for the filing of an order under this
53 subsection. A facility accepting the patient based on this order
54 must send a copy of the order to the department within 5 working
55 days. The order may be submitted electronically through existing
56 data systems, if available. The order shall be valid only until
57 the person is delivered to the facility or for the period
58 specified in the order itself, whichever comes first. If a time

Page 2 of 4

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

586-02593-22

20221844c1

59 limit is not specified in the order, the order is valid for 7
60 days after the date that the order was signed.

61 2. A law enforcement officer ~~may shall~~ take a person who
62 appears to meet the criteria for involuntary examination into
63 custody and deliver the person or have him or her delivered to
64 an appropriate, or the nearest, facility within the designated
65 receiving system pursuant to s. 394.462 for examination. A law
66 enforcement officer transporting a person pursuant to this
67 subparagraph shall consider the person's mental and behavioral
68 state and restrain him or her in the least restrictive manner
69 necessary under the circumstances, especially if the person is a
70 minor. The officer shall execute a written report detailing the
71 circumstances under which the person was taken into custody,
72 which must be made a part of the patient's clinical record. Any
73 facility accepting the patient based on this report must send a
74 copy of the report to the department within 5 working days.

75 3. A physician, a physician assistant, a clinical
76 psychologist, a psychiatric nurse, an advanced practice
77 registered nurse registered under s. 464.0123, a mental health
78 counselor, a marriage and family therapist, or a clinical social
79 worker may execute a certificate stating that he or she has
80 examined a person within the preceding 48 hours and finds that
81 the person appears to meet the criteria for involuntary
82 examination and stating the observations upon which that
83 conclusion is based. If other less restrictive means, such as
84 voluntary appearance for outpatient evaluation, are not
85 available, a law enforcement officer shall take into custody the
86 person named in the certificate and deliver him or her to the
87 appropriate, or nearest, facility within the designated

Page 3 of 4

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

586-02593-22

20221844c1

88 receiving system pursuant to s. 394.462 for involuntary
89 examination. The law enforcement officer shall execute a written
90 report detailing the circumstances under which the person was
91 taken into custody. The report and certificate shall be made a
92 part of the patient's clinical record. Any facility accepting
93 the patient based on this certificate must send a copy of the
94 certificate to the department within 5 working days. The
95 document may be submitted electronically through existing data
96 systems, if applicable.

97
98 When sending the order, report, or certificate to the
99 department, a facility shall, at a minimum, provide information
100 about which action was taken regarding the patient under
101 paragraph (g), which information shall also be made a part of
102 the patient's clinical record.

103 Section 3. Section 397.341, Florida Statutes, is created to
104 read:

105 397.341 Transportation of individuals by law enforcement
106 officers.—A law enforcement officer transporting an individual
107 pursuant to this chapter shall consider the person's mental and
108 behavioral state and restrain him or her in the least
109 restrictive manner necessary under the circumstances, especially
110 if the individual is a minor.

111 Section 4. This act shall take effect July 1, 2022.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 31, 2022

I respectfully request that **Senate Bill #1844**, relating to Mental Health and Substance Abuse, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda, if received.

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate

APPEARANCE RECORD

2-7-22

Meeting Date

SB 1844

Bill Number or Topic

JUDICIARY

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name DANE BENNETT

Phone 941-468-8479

Address 800 PRUDENTIAL DRIVE

Email DANE.BENNETT@BMCJTA.COM

Street

JACKSONVILLE

FL

32207

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

BAPTIST BAPTIST HEALTH

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to Senate professional staff conducting the meeting

2/7/2022

Meeting Date

1844

Bill Number or Topic

Judiciary

Committee

Amendment Barcode (if applicable)

Name Donn Scott, Jr

Phone 850-521-3042

Address P.O. Box 10788

Email donn.scottjr@splcenter.org

Street

Tallahassee FL 32302

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing: Southern Poverty Law Action Center

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

February 7, 2022

Meeting Date

Senate Judiciary

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1844

Bill Number or Topic

Amendment Barcode (if applicable)

Name Shane Messer

Phone 8502246048

Address 316 East Park Avenue

Email shane@floridabha.org

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Council for Behavioral Healthcare

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 1846

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Bean

SUBJECT: Public Records/Respondent's Name

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	Fav/CS
2.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1846 makes the following information, filed with or by the court in proceedings under the Baker Act or Marchman Act, confidential and exempt from public records requirements:

- The respondent's name (at trial and on appeal);
- Petitions for voluntary and involuntary admission for mental health examination;
- Applications for voluntary and involuntary admission for mental health examinations or treatment; and
- All petitions or applications for voluntary and involuntary substance abuse treatment or assessment and stabilization.

The bill, however, clarifies that the clerk of the court may use a respondent's name for the purpose of scheduling and adjudicating cases.

The bill provides a public necessity statement, and extends the scheduled repeal dates of the public record exemptions under the Baker Act by 3 years, and under the Marchman Act by 5 years, to October 2, 2027.

The bill is likely to have an insignificant, negative fiscal impact on courts throughout the state. See Section V. Fiscal Impact Statement.

This bill provides that it takes effect on the same date that SB 1844 or similar legislation takes effect. CS/SB 1844, which is tied to this bill, has an effective date of July 1, 2022.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.⁹ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id.* See, e.g., *Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹¹ See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹² See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁶

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ Section 119.15(6)(a), F.S. The specified questions are:

What specific records or meetings are affected by the exemption?

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

²⁵ See *generally* s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

Confidentiality of Records under the Baker and Marchman Acts

Baker Act

Section 394.4615, F.S., in part, provides that clinical records related to procedures under the Baker Act are confidential and exempt²⁷ and may not be disclosed without written consent of the individual, with certain exceptions. Such exceptions include specified disclosure by the individual, a guardian, or a guardian advocate.²⁸

Court records, including all petitions for voluntary and involuntary admission for mental health treatment, court orders, and related records that are filed with or by a court under the Baker Act are also confidential and exempt from disclosure.²⁹ The clerk of the court is authorized to disclose court records to specified entities, including, for example, parties to the proceedings and certain governmental entities.³⁰

Current law does not make confidential and exempt:

- A respondent's name, at trial and on appeal, for Baker Act cases; or
- Information contained in an application, rather than a petition, for voluntary and involuntary admission for mental health examinations under the Baker Act.

Marchman Act

All service provider records related to procedures under the Marchman Act are confidential and exempt and may not be disclosed without written consent of the individual, with certain exceptions.³¹ Additionally, petitions for involuntary assessment and stabilization, court orders, and related records that are filed with the court under the Marchman Act are confidential and exempt from disclosure.³² However, the clerk of the court may disclose such records to specified entities, including, for example, parties to the proceedings and certain governmental entities.³³

Current law does not make confidential and exempt:

- A respondent's name, at trial and on appeal, for Marchman Act cases;
- Information contained in an application, rather than a petition, for involuntary assessment and stabilization under the Marchman Act; or
- Petitions for voluntary assessment and stabilization under the Marchman Act.

III. Effect of Proposed Changes:

The bill amends ss. 394.464 and 397.6760, F.S., expanding existing public records exemptions to include:

- A respondent's name, at trial and on appeal, under both the Baker Act and Marchman Act;

²⁷ Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature. See *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

²⁸ Section 394.4615(1)-(2), F.S.

²⁹ Section 394.464(1), F.S.

³⁰ Section 394.464(1)-(2), F.S.

³¹ Section 397.501(7), F.S.

³² Section 397.6760(1), F.S.

³³ Section 397.6960(1)-(2), F.S.

- Petitions for voluntary Baker Act examinations;
- Applications for voluntary or involuntary examinations or treatment under the Baker Act;
- Petitions for voluntary and involuntary substance use disorder treatment under the Marchman Act; and
- Applications for voluntary and involuntary assessment and stabilization under the Marchman Act.

The bill applies the exemption to appeals pending or filed under either the Baker Act or Marchman Act on or after July 1, 2022. The bill also adds service providers to the list of individuals to whom the clerk of court may disclose confidential and exempt pleadings and other documents under either the Baker Act or Marchman Act.

The bill continues to prohibit the clerk of court from publishing personal identifying information on a court docket or in a publicly accessible file, as under current law, but creates a narrow exception that allows courts to use a respondent's name to schedule and adjudicate cases. The bill also applies the existing exemption to all court filings for voluntary Marchman Act cases.

The bill extends the current scheduled repeal dates of the public record exemptions provided under the Baker Act by 3 years, and under the Marchman Act by 5 years, to October 2, 2027. The bill maintains the public record exemptions for the disclosure of pleadings and other documents filed with a court involving admission proceedings.

The bill provides a public necessity statement, specifying that the exemption protects sensitive personal information, the release of which could cause unwarranted damage to the reputation of an individual. The statement provides:

Legislature finds that it is a public necessity that applications for voluntary and involuntary mental health examinations and substance abuse treatment which are filed with or by a court and a respondent's name, which is published on a court docket and maintained by the clerk of the court, under part I of chapter 394 and parts IV and V of chapter 397, Florida Statutes, be made confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The mental health and substance abuse impairments of a person are medical conditions that should be protected from dissemination to the public. A person's health and sensitive personal information regarding his or her mental health or substance abuse impairment are intensely private matters. Making such applications, petitions, orders, records, and identifying information confidential and exempt from disclosure will protect such persons from the release of sensitive, personal information that could damage their and their families' reputations. The publication of personal identifying information on a physical or virtual docket, regardless of whether any other record is published, defeats the purpose of protections otherwise provided. Further, the knowledge that such sensitive, personal information is subject to disclosure could have a chilling effect on a person's willingness to seek out and comply with mental health or substance abuse treatment services.

This bill provides that the act shall take effect on the same date that an unspecified bill or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law. CS/SB 1844 has an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by article VII, section 18 of the State Constitution.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill expands existing exemptions under the Baker and Marchman Acts to include a respondent's name, at trial and on appeal, on applications for voluntary mental health examinations or treatment and substance abuse treatment, and appeals pending or filed on or after July 1, 2022. Thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, section 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 3 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, section 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information of individuals who have been the subject of an involuntary examination under the Baker Act, or who have applied for voluntary substance use disorder treatment under the Marchman Act, at trial and on appeal. This bill exempts only such personal identifying information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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 Office of the State Courts Administrator anticipates that CS/SB 1846 will have a minimal, but indeterminate, impact on expenditures of the State Courts System, if any.³⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.464 and 397.6760.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Children and Families on February 1, 2022:

The committee substitute specifies that the bill takes effect on the same date that CS/SB 1844 or similar legislation takes effect.

³⁴ The Office of the State Courts Administrator, *House Bill 1157 Agency Analysis* (January 21, 2022) p. 2. (on file with the Senate Committee on Children, Families, and Elder Affairs).

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 the Committee on Children, Families, and Elder Affairs; and
Senator Bean

586-02599-22

20221846c1

1 A bill to be entitled
2 An act relating to public records; amending ss.
3 394.464 and 397.6760, F.S.; exempting from public
4 records requirements a respondent's name in certain
5 documents at trial and on appeal; expanding exemptions
6 from public records requirements for certain
7 petitions, court orders, and related records to
8 include applications for voluntary and involuntary
9 mental health examinations and substance abuse
10 treatment, respectively; expanding exceptions
11 authorizing the disclosure of such personal
12 identifying information and records to include certain
13 service providers; authorizing a court to use a
14 respondent's name for certain purposes; revising
15 applicability to include appeals pending or filed on
16 or after a specified date; revising the date for
17 future legislative review and repeal of the
18 exemptions; providing a statement of public necessity;
19 providing a contingent effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Section 394.464, Florida Statutes, is amended to
24 read:

25 394.464 Court records; confidentiality.-

26 (1) A respondent's name, at trial and on appeal, and all
27 petitions or applications for voluntary and involuntary
28 admission for mental health examinations or treatment, court
29 orders, and related records that are filed with or by a court

Page 1 of 6

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

586-02599-22

20221846c1

30 under this part are confidential and exempt from s. 119.07(1)
31 and s. 24(a), Art. I of the State Constitution. Pleadings and
32 other documents made confidential and exempt by this section may
33 be disclosed by the clerk of the court, upon request, to any of
34 the following:
35 (a) The petitioner.
36 (b) The petitioner's attorney.
37 (c) The respondent.
38 (d) The respondent's attorney.
39 (e) The respondent's guardian or guardian advocate, if
40 applicable.
41 (f) In the case of a minor respondent, the respondent's
42 parent, guardian, legal custodian, or guardian advocate.
43 (g) The respondent's treating health care practitioner and
44 service provider.
45 (h) The respondent's health care surrogate or proxy.
46 (i) The Department of Children and Families, without
47 charge.
48 (j) The Department of Corrections, without charge, if the
49 respondent is committed or is to be returned to the custody of
50 the Department of Corrections from the Department of Children
51 and Families.
52 (k) A person or entity authorized to view records upon a
53 court order for good cause. In determining if there is good
54 cause for the disclosure of records, the court must weigh the
55 person or entity's need for the information against potential
56 harm to the respondent from the disclosure.
57 (2) This section does not preclude the clerk of the court
58 from submitting the information required by s. 790.065 to the

Page 2 of 6

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

586-02599-22

20221846c1

59 Department of Law Enforcement.

60 (3) The clerk of the court may not publish personal
61 identifying information on a court docket or in a publicly
62 accessible file, but the court may use a respondent's name to
63 schedule and adjudicate cases, which includes transmitting a
64 copy of any court order to the parties.

65 (4) A person or entity receiving information pursuant to
66 this section shall maintain that information as confidential and
67 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
68 Constitution.

69 (5) The exemption under this section applies to all
70 documents filed with a court before, on, or after July 1, 2019,
71 and appeals pending or filed on or after July 1, 2022.

72 (6) This section is subject to the Open Government Sunset
73 Review Act in accordance with s. 119.15 and shall stand repealed
74 on October 2, 2027 ~~2024~~, unless reviewed and saved from repeal
75 through reenactment by the Legislature.

76 Section 2. Section 397.6760, Florida Statutes, is amended
77 to read:

78 397.6760 Court records; confidentiality.—

79 (1) A respondent's name, at trial and on appeal, and all
80 petitions or applications for voluntary and involuntary
81 substance abuse treatment or assessment and stabilization, court
82 orders, and related records that are filed with or by a court
83 under this part or part IV are confidential and exempt from s.
84 119.07(1) and s. 24(a), Art. I of the State Constitution.
85 Pleadings and other documents made confidential and exempt by
86 this section may be disclosed by the clerk of the court, upon
87 request, to any of the following:

Page 3 of 6

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

586-02599-22

20221846c1

88 (a) The petitioner.

89 (b) The petitioner's attorney.

90 (c) The respondent.

91 (d) The respondent's attorney.

92 (e) The respondent's guardian or guardian advocate, if
93 applicable.

94 (f) In the case of a minor respondent, the respondent's
95 parent, guardian, legal custodian, or guardian advocate.

96 (g) The respondent's treating health care practitioner and
97 service provider.

98 (h) The respondent's health care surrogate or proxy.

99 (i) The Department of Children and Families, without
100 charge.

101 (j) The Department of Corrections, without charge, if the
102 respondent is committed or is to be returned to the custody of
103 the Department of Corrections from the Department of Children
104 and Families.

105 (k) A person or entity authorized to view records upon a
106 court order for good cause. In determining if there is good
107 cause for the disclosure of records, the court must weigh the
108 person or entity's need for the information against potential
109 harm to the respondent from the disclosure.

110 (2) This section does not preclude the clerk of the court
111 from submitting the information required by s. 790.065 to the
112 Department of Law Enforcement.

113 (3) The clerk of the court may not publish personal
114 identifying information on a court docket or in a publicly
115 accessible file, but the court may use a respondent's name to
116 schedule and adjudicate cases, which includes transmitting a

Page 4 of 6

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

586-02599-22

20221846c1

117 copy of any court order to the parties.

118 (4) A person or entity receiving information pursuant to
119 this section shall maintain that information as confidential and
120 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
121 Constitution.

122 (5) The exemption under this section applies to all
123 documents filed with a court before, on, or after July 1, 2017,
124 and appeals pending or filed on or after July 1, 2022.

125 (6) This section is subject to the Open Government Sunset
126 Review Act in accordance with s. 119.15 and shall stand repealed
127 on October 2, 2027 ~~2022~~, unless reviewed and saved from repeal
128 through reenactment by the Legislature.

129 Section 3. The Legislature finds that it is a public
130 necessity that applications for voluntary and involuntary mental
131 health examinations and substance abuse treatment which are
132 filed with or by a court and a respondent's name, which is
133 published on a court docket and maintained by the clerk of the
134 court, under part I of chapter 394 and parts IV and V of chapter
135 397, Florida Statutes, be made confidential and exempt from
136 disclosure under s. 119.07(1), Florida Statutes, and s. 24(a),
137 Article I of the State Constitution. The mental health and
138 substance abuse impairments of a person are medical conditions
139 that should be protected from dissemination to the public. A
140 person's health and sensitive personal information regarding his
141 or her mental health or substance abuse impairment are intensely
142 private matters. Making such applications, petitions, orders,
143 records, and identifying information confidential and exempt
144 from disclosure will protect such persons from the release of
145 sensitive, personal information that could damage their and

Page 5 of 6

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

586-02599-22

20221846c1

146 their families' reputations. The publication of personal
147 identifying information on a physical or virtual docket,
148 regardless of whether any other record is published, defeats the
149 purpose of protections otherwise provided. Further, the
150 knowledge that such sensitive, personal information is subject
151 to disclosure could have a chilling effect on a person's
152 willingness to seek out and comply with mental health or
153 substance abuse treatment services.

154 Section 4. This act shall take effect on the same date that
155 SB 1844 or similar legislation takes effect, if such legislation
156 is adopted in the same legislative session or an extension
157 thereof and becomes a law.

Page 6 of 6

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 31, 2022

I respectfully request that **Senate Bill #1846**, relating to Public Records/Respondent's Name, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda, if received.

A handwritten signature in cursive script that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

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 1502

INTRODUCER: Banking and Insurance Committee and Senator Powell

SUBJECT: Estates and Trusts

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1502 amends probate and trust law to:

- Make an independent action against a decedent's estate unnecessary by expressly allowing the personal representative of the decedent's estate to be substituted as the defendant to a lawsuit or other proceeding that was initiated against the decedent before his or her death.
- Provide that assets contributed to certain irrevocable trusts for the benefit of a beneficiary spouse for his or her lifetime are not subject to creditor claims by the settlor-spouse's creditors.
- Allow a trust instrument to specify terms for resignation of a trustee provided that specified notice is given.

The effective date of the bill is July 1, 2022.

II. Present Situation:

Probate: In General

Probate is a court supervised process for identifying and gathering the assets of a deceased person (also called a decedent), paying the decedent's debts, and distributing the decedent's

assets to beneficiaries.¹ A personal representative (this is Florida’s term for an executor) is appointed to execute this process, and the representative may retain an attorney using funds from the estate.² The personal representative may be appointed by a will, or if no such person has been appointed (or if the person does not meet the legal requirements to serve as the personal representative), the court will assign a personal representative. A personal representative may be a real person or a bank or trust company, subject to certain restrictions.³

The Florida Probate Code provides the statutory mechanism for the transfer of property from a decedent to persons or entities named in a decedent’s will (often called beneficiaries) or to the decedent’s legal heirs, if there is no will (called dying intestate). The property transferred via the probate process is called the “estate.”⁴ Assets subject to probate are those that were solely owned by the decedent at his or her time of death or that were owned by the decedent and one or more co-owners, but such asset lacked a provision for automatic succession of ownership at death.⁵ Some assets owned by a decedent may not be probate assets, these potentially include:⁶

- Bank accounts that are pay-on-death, or transferable on death, to another person, or an account jointly held with rights of survivorship;
- Life insurance, annuities, and retirement accounts payable to a beneficiary;
- Homestead property;
- Real property held as joint tenants with another person with a right of survivorship; and
- Property owned by spouses as tenants in common, so long as the other spouse survives.

If the decedent had a will, the property is transferred as directed by the will. If a person dies intestate, the person’s property is transferred to heirs according to the laws of intestate succession under chapter 732, F.S.⁷

Personal Representative

In order for the decedent’s estate to be transferred to heirs or to the beneficiaries of the will, a petition for administration must be filed with the circuit court. Any interested person may file for administration.⁸ The personal representative must provide a notice of administration to various persons, including creditors, family members, beneficiaries, trustees, and persons who may be entitled to exempt property.⁹ Those persons must act to contest the will or take other actions within statutory time limits.¹⁰ The personal representative must search for and provide notice, by publication in a newspaper, to creditors of the decedent.¹¹ This notice must include the name of the decedent, the file number of the estate, the designation and address of the court in which the proceedings are pending, the name and address of the personal representative, the name and

¹ The Florida Bar, *Consumer Pamphlet: Probate in Florida*, What is Probate? available at <https://www.floridabar.org/public/consumer/pamphlet026/#whatisprobate> (last visited Jan 21, 2022).

² *Id.* and Section 733.106(2) & (3), F.S.

³ The Florida Bar, *supra* note 1.

⁴ Section 731.201(14), F.S.

⁵ The Florida Bar, *supra* note 1.

⁶ *Id.*

⁷ Section 732.101(1), F.S.

⁸ *See* s. 733.202, F.S.

⁹ *See* s. 733.212, F.S.

¹⁰ *See* s. 733.212(3), F.S.

¹¹ *See* s. 733.2121, F.S.

address of the personal representative's attorney, and the date of first publication.¹² Creditors must generally make claims against the estate within three months after the first published notice.¹³ As to any creditor required to be served with a copy of the notice to creditors, the deadline is 30 days after the date of service on the creditor.¹⁴

Creditor Pending Actions

A creditor believing that he or she is entitled to a compensation from the decedent's estate to satisfy a debt of the decedent must file a statement of claim in the probate proceeding with the appropriate clerk of the circuit court.¹⁵ The personal representative, or any other interested person, may file an objection to a creditor's statement of claim.¹⁶ If an objection is filed against a creditor's statement of claim, the creditor must file a separate independent lawsuit against the decedent's estate to pursue the claim within 30 days from the date the objection was served.¹⁷ While this procedure is specified in statute for claims that have yet to be filed upon the decedent's death, there exists some conjecture on how to handle a claim that had been already filed. That is to say, does the already pending lawsuit satisfy the requirement under s. 733.705(5), F.S., that the claimant bring an independent lawsuit? Currently, Florida does not have an established procedure in statute, or in the Florida Probate Rules, for what occurs when a creditor has a pending action against a decedent that was filed prior to the decedent's death. An appellate court ruled on the apparent statutory gap:

[I]n applying this statute [current s. 733.705(5), F.S.]¹⁸ and its similarly worded predecessor statutes, the courts have held that an action pending against a defendant at the time of the defendant's death will suffice to satisfy the "independent action" provision of the statute when there has been a substitution of the personal representative of the decedent's estate, either by timely filed motion for substitution, or by the personal representative's voluntary substitution.¹⁹

Trusts

Chapter 736, F.S., is the Florida Trust Code (Code). The Code applies to express trusts, charitable or noncharitable, and to trusts created pursuant to a law, judgment, or decree that requires the trust to be administered in the manner of an express trust.²⁰ Trusts commonly have a testamentary feature, and thus the laws on probate and trusts often intersect.

¹² Section 733.2121(1), F.S.

¹³ See s. 733.702(1), F.S.

¹⁴ *Id.*

¹⁵ *Id.* and s. 733.702(1), F.S.

¹⁶ The Florida Bar, *supra* note 1 and s. 733.705, F.S.

¹⁷ The Florida Bar, *supra* note 1 and s. 733.705, F.S.

¹⁸ The case cites to s. 733.705(4), F.S., the pertinent language of which is now codified in s. 733.705(5), F.S.

¹⁹ *Lewsadder v. Estate of Lewsadder*, 757 So. 2d 1221, 1224 (Fla. 4th DCA 2000)(internal citations omitted).

²⁰ Section 736.0102(1), F.S.

Under the Code, a settlor is the person who creates or contributes property to a trust.²¹ A beneficiary of a trust is a person who has a present or future beneficial interest in the trust.²² In general, a trustee is the person who holds the legal title to the property of the trust for the benefit of the trust's beneficiaries. The trustee is granted certain powers over the trust and is subject to certain duties relating to the trust, which are imposed by the terms of the trust, equity jurisprudence, or by statute.²³ Under the Code, "trustee" means the original trustee, and also includes any additional trustee, any successor trustee, and any cotrustee.²⁴

Trustees: In General

A trustee derives his or her rules of conduct, extent and limit of authority, and measure of obligation from the trust instrument. Except as otherwise provided in the terms of the trust, the Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of beneficiaries.²⁵ The terms of a trust prevail over any provision of the Code, except as provided in s. 736.0105(2), F.S., which provides 23 terms that are solely governed by the Code and cannot be changed, waived, or otherwise altered by the terms of the trust.²⁶ The right of a trustee to resign as trustee for a trust is one of those mandatory provisions.²⁷

Resignation of a Trustee

Section 736.0705, F.S., provides that a trustee may resign:

- Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or
- With the approval of the court.

In approving a trustee's resignation, a court may issue orders and impose conditions reasonably necessary for the protection of the trust property. Further, s. 736.0705(3), F.S., provides that any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation. If a resigning trustee is the last remaining trustee for the trust, that trustee still retains the fiduciary duties of trustee, and the powers necessary to protect trust property, until a successor trustee is in place.²⁸

Creditor Claims against Trust Settlers

Section 736.0505, F.S., specifies provisions regarding when a creditor may bring a claim against the property in a trust. For revocable trusts, creditors may bring claims against the property in the trust during the settlor's lifetime to the extent the property would not otherwise be exempt by law if owned directly by the settlor. For irrevocable trusts, a creditor may reach only the maximum amount that can be distributed from the trust to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not

²¹ Section 736.0103(18), F.S.

²² Section 736.0103(4), F.S.

²³ 55A Fla. Jur 2d Trusts s. 114.

²⁴ Section 736.0103(27), F.S.

²⁵ Section 736.01015(1), F.S.

²⁶ Section 736.0105(2), F.S.

²⁷ Section 736.0105(2)(o), F.S.

²⁸ Section 736.0707(1), F.S.

exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. Essentially, this provision, codified as s. 736.0505(1)(b), F.S., prevents the creation, if one wishes to maintain the trust's creditor protections, of a trust where a settlor is also a beneficiary. An example of this would be where a settlor-spouse sets up a trust for a beneficiary spouse, with the provision that the remainder of the trust assets revert back to the settlor if the beneficiary-spouse pre-deceases the settlor. Florida law currently provides exceptions to this rule for a life estate with power of appointment in the beneficiary-spouse and lifetime irrevocable trusts for which a qualified terminable interest property election has been made.²⁹

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 733.705, F.S., to codify an existing procedure presently used in Florida courts regarding creditor's pending action against a decedent at the time of the decedent's death. Specifically, the bill provides that if an action or proceeding by the claimant is pending against a decedent at the time of the decedent's death, the requirement to bring an independent action under present s. 733.705(5), F.S., is satisfied if, within 30 days after the filing of an objection to the claim, one of the following conditions are met:

- A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party (i.e. the decedent's estate instead of the decedent).
- An order substituting the proper party is entered.

The bill also provides a similar procedure for circumstances where the decedent entered into a binding arbitration agreement relating to the claim during that person's lifetime, or if arbitration is required under s. 731.401, F.S., (regarding arbitration of disputes when arbitration provisions are included in the will or trust instrument). The bill, in this circumstance, requires a motion to compel arbitration against the decedent's estate (instead of the decedent). If voluntary arbitration had already commenced at the time of the decedent's death, the bill requires notice of the substitution consistent with the arbitration agreement. If the arbitration was court ordered, a motion for substitution is required.

Section 2 of the bill amends s. 736.0505, F.S., regarding creditor claims against settlors. Currently, if a settlor-spouse creates a lifetime trust for a beneficiary-spouse and names himself or herself as a subsequent beneficiary if the beneficiary-spouse dies, assets in the trust may be available to the settlor-spouse's creditors pursuant to s. 736.0505(1)(b), F.S., during the lifetime of beneficiary-spouse. The bill provides that creditors of a settlor may not attach assets that the settlor previously transferred to an irrevocable trust where the beneficiary of the trust is the settlor's spouse for that spouse's lifetime and the transfers to the trust are completed gifts pursuant to s. 2511 of the Internal Revenue Code of 1986.³⁰

²⁹ Section 736.0505(3), F.S.

³⁰ Principally, a completed gift is when:

- There is an irrevocable transfer by the settlor;
- Who is competent to make the gift;
- Who unmistakably intends to divest themselves of title, dominion, and control over the subject matter of the gift; and
- A donee (i.e. beneficiary) capable of accepting the gift.

See *Talge v. United States*, 229 F. Supp. 836 (W.D. Mo. 1964), *Finley v. C.I.R.*, 255 F.2d 128 (10th Cir. 1958), and *Jordan v. United States*, 297 F. Supp. 1326 (W.D. Okla. 1969).

Section 3 of the bill amends s. 736.0705, F.S., to add that a trustee may resign pursuant to whatever procedure is set forth in the terms of the trust. In part, this allows a trustee to resign with less than 30 days' notice if the trust instrument allows. A trustee resigning under the terms of a trust must give notice of the resignation to cotrustees. If there are no cotrustees, notice must be given to the successor trustee who has accepted the appointment. If there are no cotrustees or successor trustee, notice must be given to whoever has the authority to appoint a successor trustee. These notice provisions are mandatory.

Section 4 of the bill provides an effective date for the bill of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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 the following sections of the Florida Statutes: 733.705, 736.0705, and 736.0505.

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 Banking and Insurance on January 25, 2022:

Currently, under Florida law, if a settlor-spouse creates a lifetime trust for a beneficiary-spouse and names themselves as a subsequent beneficiary if the beneficiary-spouse dies, assets in the trust may be available to the settlor-spouse's creditors pursuant to s. 736.0505(1)(b), F.S. The CS eliminates this provision for irrevocable trusts (using certain tax exemptions) where the beneficiary is the settlor's spouse for that spouse's lifetime and the transfers to the trust are completed gifts pursuant to s. 2511 of the Internal Revenue Code of 1986.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Powell

597-02317-22

20221502c1

A bill to be entitled

An act relating to estates and trusts; amending s. 733.705, F.S.; providing that the requirement for a claimant to file an independent action is satisfied if specified actions are taken; specifying that claimants, not creditors, are given certain priority of claims; amending s. 736.0505, F.S.; revising the types of trusts deemed to have been contributed by a settlor's spouse and not the settlor; amending s. 736.0705, F.S.; providing that a trustee may resign by specified procedure and with notice to certain parties; providing an effective date.

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

Section 1. Subsection (5) of section 733.705, Florida Statutes, is amended to read:

733.705 Payment of and objection to claims.—

(5) The claimant is limited to a period of 30 days from the date of service of an objection within which to bring an independent action upon the claim, or a declaratory action to establish the validity and amount of an unmatured claim which is not yet due but which is certain to become due in the future, or a declaratory action to establish the validity of a contingent claim upon which no cause of action has accrued on the date of service of an objection and that may or may not become due in the future, unless an extension of this time is agreed to by the personal representative in writing before it expires.

(a) For good cause, the court may extend the time for

Page 1 of 4

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

597-02317-22

20221502c1

filing an action or proceeding after objection is filed. No action or proceeding on the claim may be brought against the personal representative after the time limited above, and the claim is barred without court order.

(b) If an action or proceeding by the claimant is pending against the decedent at the time of the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim:

1. A motion complying with all applicable rules of procedure is filed, or a similar procedure is initiated, to substitute the proper party; or

2. An order substituting the proper party is entered.

(c) If the decedent entered into a binding arbitration agreement relating to the claim during his or her lifetime, or if arbitration is required under s. 731.401, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, a motion to compel arbitration against the proper party is initiated, as provided for in s. 682.03.

(d) If arbitration was commenced before the decedent's death, the requirement to bring an independent action is satisfied if, within 30 days after the filing of an objection to the claim, notice is given to the proper party. If the arbitration was commenced by order of the court, the notice must take the form of a timely filed motion, complying with all applicable rules of procedure, to substitute the proper party.

(e) If an objection is filed to the claim of any claimant ~~creditor~~ and the claimant ~~creditor~~ brings an action to establish the claim, a judgment establishing the claim shall give it no

Page 2 of 4

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

597-02317-22 20221502c1

59 priority over claims of the same class to which it belongs.
 60 Section 2. Subsection (3) of section 736.0505, Florida
 61 Statutes, is amended to read:
 62 736.0505 Creditors' claims against settlor.-
 63 (3) Subject to the provisions of s. 726.105, for purposes
 64 of this section, the assets in:
 65 (a) 1. A trust described in s. 2523(e) of the Internal
 66 Revenue Code of 1986, as amended; ~~or~~
 67 2. A trust for which the election described in s. 2523(f)
 68 of the Internal Revenue Code of 1986, as amended, has been made;
 69 or
 70 3. An irrevocable trust not otherwise described in
 71 subparagraph 1. or subparagraph 2. in which:
 72 a. The settlor's spouse is a beneficiary as described in s.
 73 736.0103(19)(a) for the lifetime of the settlor's spouse;
 74 b. At no time during the lifetime of the settlor's spouse
 75 is the settlor a beneficiary as described in s. 736.0103(19)(a);
 76 and
 77 c. Transfers to the trust by the settlor are completed
 78 gifts under s. 2511 of the Internal Revenue Code of 1986, as
 79 amended; and
 80 (b) Another trust, to the extent that the assets in the
 81 other trust are attributable to a trust described in paragraph
 82 (a),
 83
 84 shall, after the death of the settlor's spouse, be deemed to
 85 have been contributed by the settlor's spouse and not by the
 86 settlor.
 87 Section 3. Subsection (1) of section 736.0705, Florida

Page 3 of 4

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

597-02317-22 20221502c1

88 Statutes, is amended to read:
 89 736.0705 Resignation of trustee.-
 90 (1) A trustee may resign in accordance with the procedure
 91 set forth in the trust instrument and upon notice to the
 92 cotrustees or, if none, to the successor trustee who has
 93 accepted the appointment, or, if none, to the person or persons
 94 who have the authority to appoint a successor trustee.
 95 Notwithstanding any provision of the terms of the trust, a
 96 trustee may also resign:
 97 (a) Upon at least 30 days' notice to the qualified
 98 beneficiaries, the settlor, if living, and all cotrustees; or
 99 (b) With the approval of the court.
 100 Section 4. This act shall take effect July 1, 2022.

Page 4 of 4

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



The Florida Senate

Committee Agenda Request

To: Senator Danny Burgess, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 25, 2022

I respectfully request that **Senate Bill #1502**, relating to Estates and Trusts, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Bobby Powell".

Senator Bobby Powell
Florida Senate, District 30

The Florida Senate

APPEARANCE RECORD

2-7-22

Meeting Date

1502

Bill Number or Topic

Judiciary
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Stephen Shiver

Phone 800-222-8900

Address 204 S Monroe St
Street

Email SS@cardenaspartners.com

Tallahassee FL 32307
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:
Tax Section of the
FL BAR

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

2/7/2022

Meeting Date

The Florida Senate APPEARANCE RECORD

SB 1502

Bill Number or Topic

Deliver both copies of this form to
Senate professional staff conducting the meeting

Judiciary

Committee

Amendment Barcode (if applicable)

Name **French Brown**

Phone **850-459-0992**

Address **106 E. College Avenue, Suite 1200**

Email **fbrown@deanmead.com**

Street

Tallahassee

FL

3230

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

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

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 1526

INTRODUCER: Banking and Insurance Committee and Senator Boyd

SUBJECT: Public Records/Annuity Contract Payees

DATE: February 4, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schrader</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

SB 1526 creates a public records exemption for the personal identifying information and annuity contract numbers of a payee of a structured settlement, and the names of family members, dependents, and beneficiaries of such payee, contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights. Such records are exempt until six months after a final judgment is entered on the transfer application.

The bill has an effective date of July 1, 2022.

II. Present Situation:

Structured Settlements

A structured settlement is an agreement for the periodic payment of damages for personal injuries, the payments of which are established by a settlement or judgment in resolution of a tort claim.¹ This arrangement typically involves one party paying a lump-sum premium to an insurance company to purchase an annuity in the name of the injured victim (the payee). Once the annuity is purchased, the insurance company begins to make periodic payments to the payee for a negotiated period of time.

¹ See s. 626.99296(2)(m), F.S.

Instead of making the payments itself, the insurance company may instead decide to assign its payment obligations to a structured settlement company. In exchange for accepting its new payment obligations, the structured settlement company typically receives from the insurance company a lump-sum payment equivalent to the present value of the future payments that are owed to the payee.² In order to obtain the necessary liquidity to make its newly-obligated periodic payments, the structured settlement company may use this lump-sum to purchase an annuity from a life insurance company.³

After the establishment of a structured settlement, the payee's financial circumstances may change. For example, the payee's periodic payments may be insufficient to pay for an immediate, large financial need, or the payee may see the benefit of a one-time cash infusion to alleviate an incurred obligation. As such, instead of receiving payments under a structured settlement plan, the payee may wish to transfer his or her rights to payments to another organization—known as a transferee—in exchange for a lump sum payout of all or part of the structured settlement. In 2001, the Legislature created s. 626.99296, F.S., to protect recipients of structured settlements during the transfer process.⁴ Fundamentally, the statute requires such transfers to receive prior court approval.⁵ This approval must be conditioned upon statutorily-enumerated factors, including the payee establishing that the transfer is in their own best interests—taking into account the welfare and support of the payee's dependents.⁶

The transferee contracting to receive structured settlement rights must, at least 20 days before the scheduled hearing on an application for such a transfer, file with the court (and provide to all interested parties) a notice of the proposed transfer and the application for its authorization.⁷ Interested parties in this circumstance includes:

- The payee;
- The current party obligated to make continuing periodic payments to the payee;
- An insurer that has issued an annuity contract to be used to fund these periodic payments;
- Any beneficiary irrevocably designated under said annuity contract to receive payments following the payee's death (or, if such designated beneficiary is a minor, the designated beneficiary's parent or guardian); and
- Any other party to the structured settlement who has continuing rights or obligations to receive or make payments pursuant to said settlement.

The notice must include:

- A copy of the transferee's application to the court;
- A copy of the transfer agreement;
- A copy of the required disclosure statement that was provided to the payee;

² Gregg D. Polsky and Brant J. Hellwig, *Taxing Structured Settlements*, 51 B.C. L. REV. 39, 41-2 (January 2010).

³ *Id.*

⁴ Section 626.99296, F.S.

⁵ *Id.* at subsection (3); and *Rapid Settlements, Ltd. v. Dickerson*, 941 So. 2d 1275, 1276-77 (Fla. 4th DCA 2006) (affirming lower court decision to deny petition, noting that “[t]ransfers of structured settlement rights are regulated by statute and court approval is required before a transfer may go forward.”)

⁶ Section 626.99296(3), F.S.

⁷ *Id.* at (4).

- A statement that interested parties may support, oppose, or otherwise respond to the transferee's application, in person or by counsel, by submitting written comments to the court or by participating in the upcoming hearing; and
- The time and place of the hearing and the manner in which, and the time by which, a written response to the application must be filed in order to be considered by the court.

2016 Revisions to Structured Settlement Law

In 2016, the Legislature revised s. 626.99296, F.S., for the purpose of improving the protection of recipients of structured settlements. As part of these revisions, s. 626.99296, F.S., expanded the information that must be provided to the court about the payee in a transfer application. This information includes:⁸

- The payee's name, age, and county of domicile and the number and ages of the payee's dependents;
- A copy of the transfer agreement;
- A copy of the required disclosure statement that was provided to the payee;
- An explanation of reasons as to why the payee is seeking approval of the proposed transfer; and
- A summary of each of the following:
 - Any transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, within the 4 years preceding the date of the transfer agreement.
 - Any transfers within the 3 years preceding the date of the transfer agreement made by the payee to any person or entity other than the transferee or an affiliate, or an assignee of a transferee or an affiliate, to the extent such transfers were disclosed to the transferee by the payee in writing or are otherwise actually known by the transferee.
 - Any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, for which an application was denied within the 2 years preceding the date of the transfer agreement.
 - Any proposed transfers by the payee to any person or entity other than the transferee, or an assignee of a transferee or an affiliate, to the extent such proposed transfers were disclosed to the transferee by the payee in writing or are otherwise actually known by the transferee, for which applications were denied within the year preceding the date of the transfer agreement.

Structured Settlement Transfer Fraud

The large amount of personal and financial information about the payee, and, potentially, information about the payee's dependents, that must be submitted to a court to approve a structured settlement transfer may increase the risk of such persons being targeted by fraud relating to the transfer. The potential for such fraud, and the incentives for fraud, is increased by the revelation that:

- The payee potentially has a substantial sum of money due to him or her, with the specified amount due to them contained within the transfer agreement submitted to the court;

⁸ *Id.* at (4)(d).

- The payee may be experiencing a financial hardship and have an immediate need for funds (s. 626.99296(4)(d), F.S., requires the submission of an explanation of reasons as to why the payee is seeking approval of the proposed transfer);⁹
- The payee may have recently experienced a serious negative life event, such as a serious injury or the death or serious injury of a loved one, (which could be the reason for the tort claim that gave rise to the structured settlement to begin with);¹⁰ and
- A transfer of funds is imminent.

Fraudulent actors, and other companies engaging in misleading marketing tactics, are able to search court records looking for orders and other information relating to the transfer of a structured settlement. Using the substantial publicly available information, such a person can approach a payee with a customized solicitation via mail, email, text message, or other medium, that appears to be from a legitimate source (such as a court official or representative of the transferee). The person can then engage with the payee and obtain all, or a portion of, that payees structured settlement through fraud or deceit.

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹¹ The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.¹²

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.¹³ Florida Rule of General Practice and Judicial Administration 2.420 governs public access to judicial branch records.¹⁴ Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

⁹ Persons having significant debt concerns, experiencing job loss, or having had a negative change in financial status are more likely to be victims of fraud. See: Federal Trade Commission, *Consumer Fraud in the United States* (March 2013), available at: https://www.ftc.gov/sites/default/files/documents/reports/consumer-fraud-united-states-2011-third-ftc-survey/130419fraudsurvey_0.pdf, and D Shadel, K Pak & J Sauer 2014, *Caught in the scammer's net: Risk factors that may lead to becoming an internet fraud victim*, AARP RESEARCH (2014), available at: https://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2014/Caught-Scammer-Net-Indiana.doi.10.26419%252Fres.00076.007.pdf.

¹⁰ Persons having experienced recent serious negative life events, such as a serious injury or the death or serious injury of a loved one, are more likely to be victims of fraud. *Id.*

¹¹ FLA. CONST. art. I, s. 24(a).

¹² *Id.*

¹³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

¹⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁵ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹⁶

General exemptions from the public records requirements are contained in the Public Records Act.¹⁷ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹⁸

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹⁹ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.²⁰ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.²¹

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act²² (the Act), prescribe a legislative review process for newly created or substantially amended²³ public records or open meetings exemptions, with specified exceptions.²⁴ The Act does not apply to an exemption that applies solely to the State Court System.²⁵

Public Records and the Judicial Branch

In *Locke v. Hawkes*, 595 So. 2d 32, at 36-37 (Fla. 1992), the Florida Supreme Court found that the Legislature, and its members, are not an “agency” as specified in the Public Records Act. Thus, the Public Records Act would not apply to records of the Legislature. Further, looking at the history of the legislation, the court found that if the Legislature intended to include itself

¹⁵ FLA. CONST. art. I, s. 24(c).

¹⁶ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹⁷ *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹⁸ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁹ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

²⁰ *Id.*

²¹ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

²² Section 119.15, F.S.

²³ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

²⁴ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

²⁵ Section 119.15(2)(b), F.S.

within the definition of ch. 119, F.S., it would have done so (but it did not).²⁶ Instead, the court found that the Public Records Act only applied to “executive branch agencies and their officers and to local governmental entities and their officers;” entities over which the Legislature has some means of control. As a coequal branch of government, the judicial branch “is not an ‘agency’ subject to the supervision or control by another coequal branch of government.”²⁷ Similarly, as with similar reasoning used regarding the Legislature in *Locke*, the Public Records Act would not also apply to judicial records.²⁸

However, the judicial branch is required to maintain access to public records pursuant to article 1, section 24(a) of the Florida Constitution.²⁹ To meet its constitutional obligation, the judicial branch adopted Florida Rule of General Practice and Judicial Administration 2.420 entitled “Public Access to and Protection of Judicial Branch Records” which states that the public is to have access to all records of the judicial branch of government, except as provided in that rule. These exceptions include:

- All records made confidential under the Florida and United States Constitutions and Florida and federal law; and

²⁶ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.

²⁷ *Times Pub. Co. v. Ake*, 645 So. 2d 1003, 1004 (Fla. 2d DCA 1994), *approved*, 660 So. 2d 255 (Fla. 1995). *See also* FLA. CONST., art. II, s. 3 (providing for the separation of powers between the executive, judicial, and legislative branches; stating “[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”). *See also* Florida Attorney General, GOVERNMENT-IN-THE-SUNSHINE MANUAL, A REFERENCE FOR COMPLIANCE WITH FLORIDA’S PUBLIC RECORDS AND OPEN MEETINGS LAWS, *Judiciary* at 11, (Vol. 43, 2021 Ed.), *available at* [http://myfloridalegal.com/webfiles.nsf/wf/mnos-b9qq79/\\$file/sunshinemanual.pdf](http://myfloridalegal.com/webfiles.nsf/wf/mnos-b9qq79/$file/sunshinemanual.pdf).

²⁸ *See Times*, *supra* note 27, which states that “chapter 119 does not apply to judicial records nor to the clerk of the circuit court in his capacity as the court’s record keeper.”

²⁹ *See* GOVERNMENT-IN-THE-SUNSHINE MANUAL, *supra* note 27. Even before Article I, section 24 was passed to require access to public records and meetings by all branches of government, the Florida Supreme Court had recognized that access to court proceedings must be safeguarded as open, “public events.” *See Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116–19 (Fla. 1988) (“[B]oth civil and criminal court proceedings in Florida are public events and adhere to the well-established common law right of access to court proceedings and records. . . . The reason for openness is basic to our form of government. Public trials are essential to the judicial system’s credibility in a free society.”) (citing *Craig v. Harney*, 331 U.S. 367, 374 (1947); *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980)). *See also* William A. Buzzett and Deborah K. Kearney, *Commentary to 1992 Addition [of FLA. CONST., art. I, s. 24]*, Fla. Stat. Ann. (Westlaw 1992), noting the following history leading to the passage of article I, section 24:

Florida’s public records and open meetings laws have been a matter of statute since 1967. (Earlier requirements for public records had existed for some time.) Those statutes were not designed to apply to the legislative or judicial branches of state government, but were expressly intended to apply throughout the executive branch and to local governments, including counties, municipalities, and districts. The Supreme Court, the Senate and the House of Representatives each provided some form of access to records and proceedings by rule. In 1978, the Constitution Revision Commission proposed elevating these laws to constitutional status and applying them to records and meetings of the Legislature. That proposal was not adopted.

In *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992), the Florida Supreme Court determined that, based on separation of powers requirements, the public records law did not apply to the legislative branch, nor to constitutional officers of the other branches. The decision meant that records of legislators, as well as those of the governor and cabinet officers, at least with respect to the exercise of their constitutional powers, were not subject to the law. The decision caused a stir among the public and particularly the press. Efforts were quickly begun for constitutional change, which concluded with the successful passage of this amendment.

- All records presently deemed to be confidential by court rule, including the Rules for Admission to the Bar, by Florida Statutes, by prior case law of the State of Florida, and by the rules of the Judicial Qualifications Commission.

The judiciary may adopt, and has adopted, “legislative statements of policy as part of the rules governing matters within the jurisdiction of the judiciary,” including the disclosure or public inspection of court records.³⁰

Public Record Exemptions for Certain Court Records and Files

In s. 119.0714(1), F.S., the Legislature has provided that certain information, such as social security numbers³¹ and bank account numbers,³² contained in court records and files should be either exempt or confidential and exempt from the disclosure requirements of the public records laws. Rule of General Practice and Judicial Administration 2.420 has not expressly adopted all of the statutory public records exemptions contained in s. 119.0714, F.S. However, the rule cross-references s. 119.0714, F.S., in several places including:

- Fla. R. Jud. Admin. 2.420(d)(1)(B)(iii), regarding Social Security, bank account, charge, debit, and credit card numbers;
- Fla. R. Jud. Admin. 2.420(d)(1)(B)(xiii), regarding protected information regarding victims of child abuse or sexual offenses; and
- Fla. R. Jud. Admin. 2.420(d)(1)(B)(xxiii), in formation that can be used to identify a petitioner or respondent in a petition for an injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 119.0714(1), F.S., to make exempt from public records disclosure requirements, if not already closed by order of a court, the following information in a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights:

- Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2), F.S.; and
- The names of family members, dependents, and beneficiaries of such a payee.

The bill limits this exemption to the pendency of the transfer proceeding and for six months after the final order approving, or not approving, the transfer is entered. The section also provides that this new exemption is subject to the Open Government Sunset Review Act, s. 119.15, F.S., and will be repealed, unless saved from repeal by the Legislature, on October 2, 2027.

Section 2 of the bill provides the public necessity statement, required pursuant to article I, section 24(c) of the State Constitution, for the public records exemption. It states, in part, that recipients of structured settlements have been targets of criminal and fraudulent acts based upon

³⁰ See *Florida Pub. Co. v. State*, 706 So. 2d 54, 56 (Fla. 1st DCA 1998) (citing *Timmons v. Combs*, 608 So.2d 1, 3 (Fla.1992)). The court in *Florida Pub. Co.*, did, however, decline to rule on whether the courts *must* adopting legislative statements or expressions of policy as part of rules governing matters within the jurisdiction of the judiciary. Rather, the court, only ruled that it is not precluded from doing so.

³¹ Section 119.0714(1)(i), F.S.

³² Section 119.0714(1)(j), F.S.

publicly available identifying information. Further, it states that protecting the personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee outweighs any public benefit that may be derived from the disclosure of such information.

Section 3 of the bill specifies an effective date of the bill of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for the protection of personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee, thus, the bill requires a two-thirds vote to be enacted.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee. This bill exempts only this information from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

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 119.0714 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 Banking and Insurance on January 25, 2022:

The CS narrows the proposed public records exemption to include only court files relating to a proceeding for the approval of the transfer of structured settlement payment rights. It also limits the duration of the exemption to be during the pendency of the transfer proceeding and for six months after a final judgment on the transfer. Finally, the CS revises the public necessity statement for the exemption.

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 the Committee on Banking and Insurance; and Senator Boyd

597-02318-22

20221526c1

A bill to be entitled

An act relating to public records; amending s. 119.0714, F.S.; providing an exemption from public records requirements for personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee contained in the court records for a proceeding for the approval of the transfer of structured settlement payment rights; limiting such exemption to a specified period; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (1) is added to subsection (1) of section 119.0714, Florida Statutes, to read:

119.0714 Court files; court records; official records.—

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

(1) Personal identifying information and annuity contract numbers of a payee of a structured settlement as defined in s. 626.99296(2) and the names of family members, dependents, and beneficiaries of such payee contained within a court file relating to a proceeding for the approval of the transfer of structured settlement payment rights under s. 626.99296. Such

Page 1 of 2

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

597-02318-22

20221526c1

information shall remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution during the pendency of the transfer proceeding and for 6 months after the final court order approving, or not approving, the transferee's application. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Recipients of structured settlements have been targets of criminal and fraudulent acts based upon publicly available identifying information and are especially vulnerable during transfer proceedings to fraudulent actors purporting to be from legitimate entities. These fraudulent actors may use such information to intercept transfer payments or obtain other sensitive information, such as bank account and social security numbers. The Legislature finds that the harm that may result from the release of personal identifying information and annuity contract numbers of a payee of a structured settlement and the names of family members, dependents, and beneficiaries of such payee outweighs any public benefit that may be derived from the disclosure of such information during the specified period.

Section 3. This act shall take effect July 1, 2022.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Chair*
Agriculture
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Judiciary
Rules

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR JIM BOYD
21st District

January 26, 2022

Senator Danny Burgess
404 South Monroe Street
515 Knott Building
Tallahassee, FL 32399

Dear Chairman Burgess:

I respectfully request Senate **Bill 1526: Public Records/Annuity Contract Payees**, be scheduled for a hearing in the Committee on Judiciary at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me.

Thank you for your consideration of this matter.

Best regards,

A handwritten signature in blue ink that reads "Jim Boyd".

Jim Boyd

cc: Tom Cibula
Celia Georgiades

REPLY TO:

- 717 Manatee Avenue West, Bradenton, Florida 34205 (941) 742-6445
- 312 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

2/17/22

Meeting Date

Judiciary
Committee

1526

Bill Number or Topic

Amendment Barcode (if applicable)

Name TIM STANFIELD

Phone 222 6891

Address 107 College Ave
Street

Email stanfieldt@gflhawaii.com

Tallahassee
City

FL
State

32312
Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

National Association of Settlement Purchasers

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

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 528

INTRODUCER: Judiciary Committee and Senator Polsky

SUBJECT: Value of Motor Vehicles Exempt from Legal Process

DATE: February 8, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Fav/CS
2.			TR	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 528 creates an exemption that will protect an individual debtor's interest in a single motor vehicle, up to \$5,000 in value, in actions arising under the federal Bankruptcy Code. This provision applies to any bankruptcy action that is filed on or after July 1, 2022.

II. Present Situation:

The Florida Constitution protects a homestead, used as a residence, and personal property which does not exceed \$1,000, from the forced sale by creditors.¹ The purpose of the homestead exemption is a matter of public policy - to maintain the home as a shelter for a family and prevent the family from becoming dependent on public assistance.²

In a similar manner, the Florida Statutes protect certain assets from the claims of creditors. Chapter 222 exempts, or protects, the following items:

- A life insurance policy.³
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract.⁴
- Disability income benefits.⁵

¹ FLA. CONST. art. X, s. 14.

² 28A Fla. Jur 2d Homesteads s. 3. (2021).

³ Section 222.13(1), F.S.

⁴ Section 222.14, F.S.

⁵ Section 222.18, F.S.

- Pension money and funds placed in certain tax-exempt accounts.⁶
- Assets held in qualified tuition programs, health savings and medical savings accounts, Coverdell education savings accounts which are also known as an educational IRA, and hurricane savings accounts.⁷
- Certain wages, unless the person has agreed in writing to waive the exemption.⁸
- Personal property when properly inventoried and filed with a court.⁹
- Professionally prescribed health aids for the debtor or his or her dependent.¹⁰
- Items exempted under the federal Bankruptcy Reform Act of 1978 including a social security benefit, unemployment compensation, or a local public assistance benefit; a veterans' benefit; a disability, illness, or unemployment benefit; alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and his or her dependent; and payments under a stock bonus, pension, profitsharing, annuity, or similar plan under specified circumstances.¹¹
- A debtor's interest in a single motor vehicle which does not exceed \$1,000 in value.¹²

III. Effect of Proposed Changes:

The bill amends s. 222.25, F.S. by creating a new exemption from claims of creditors in bankruptcy proceedings. Under the exemption, a debtor may exempt from creditors' claims his or her interest in a single motor vehicle, the value of which may not exceed \$5,000. The exemption applies to bankruptcy proceedings initiated on or after July 1, 2022.

The bill takes effect on July 1, 2022.

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.

⁶ Section 221.21, F.S.

⁷ Section 222.22, F.S.

⁸ Section 222.11, F.S.

⁹ Section 222.061, F.S.

¹⁰ Section 222.25, F.S.

¹¹ Section 222.201, F.S. and 11 U.S. Code s. 522(d)(10).

¹² Section 222.25(1), F.S.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By increasing the value of a debtor's motor vehicle that is protected in a federal bankruptcy proceeding, a debtor would be able to maintain an asset of greater value and possibly greater dependability to him or her.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 222.25 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 7, 2022:

The committee substitute limits the maximum exemption amount for a single motor vehicle to \$5,000 in bankruptcy proceedings that are filed on or after July 1, 2022. For cases involving attachment, garnishment, or other legal process, the amount a debtor may protect in a single motor vehicle remains at a maximum value of \$1,000.

B. Amendments:

None.



832334

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2022	.	
	.	
	.	
	.	

The Committee on Judiciary (Polsky) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 222.25, Florida Statutes, is amended to
read:

222.25 Other individual property of natural persons exempt
from legal process.—

(1) The following property is exempt from attachment,
garnishment, or other legal process:

(a)~~(1)~~ A debtor's interest, not to exceed \$1,000 in value,



832334

12 in a single motor vehicle as defined in s. 320.01(1) ~~s. 320.01~~.

13 ~~(b)(2)~~ A debtor's interest in any professionally prescribed
14 health aids for the debtor or a dependent of the debtor.

15 ~~(c)(3)~~ A debtor's interest in a refund or a credit received
16 or to be received, or the traceable deposits in a financial
17 institution of a debtor's interest in a refund or credit,
18 pursuant to s. 32 of the Internal Revenue Code of 1986, as
19 amended. This exemption does not apply to a debt owed for child
20 support or spousal support.

21 ~~(d)(4)~~ A debtor's interest in personal property, not to
22 exceed \$4,000, if the debtor does not claim or receive the
23 benefits of a homestead exemption under s. 4, Art. X of the
24 State Constitution. This exemption does not apply to a debt owed
25 for child support or spousal support.

26 (2) Notwithstanding paragraph (1)(a), an individual debtor
27 under the federal Bankruptcy Code may exempt a debtor's
28 interest, not to exceed \$5,000 in value, in a single motor
29 vehicle as defined in s. 320.01(1). This subsection applies to
30 any bankruptcy action filed on or after July 1, 2022.

31 Section 2. This act shall take effect July 1, 2022.

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete everything before the enacting clause
36 and insert:

37 A bill to be entitled
38 An act relating to the value of motor vehicles exempt
39 from legal process; amending s. 222.25, F.S.;

40 authorizing certain natural persons to exempt a



832334

41 specified amount of interest in a single motor vehicle
42 from certain legal processes; providing applicability;
43 providing an effective date.

By Senator Polsky

29-00815-22

2022528__

1 A bill to be entitled
2 An act relating to value of motor vehicles exempt from
3 legal process; amending s. 222.25, F.S.; revising
4 upward the value of a motor vehicle owned by a natural
5 person that is exempt from legal process; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsection (1) of section 222.25, Florida
11 Statutes, is amended to read:

12 222.25 Other individual property of natural persons exempt
13 from legal process.—The following property is exempt from
14 attachment, garnishment, or other legal process:

15 (1) A debtor's interest, not to exceed \$5,000 ~~\$1,000~~ in
16 value, in a single motor vehicle as defined in s. 320.01.

17 Section 2. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture
Appropriations Subcommittee on Education
Community Affairs
Education
Ethics and Elections
Judiciary

SENATOR TINA SCOTT POLSKY
29th District

November 3, 2021

Chairman Danny Burgess
Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Burgess,

I respectfully request that you place **SB 528**, relating to Value of Motor Vehicles Exempt from Legal Process, 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.

Kindest Regards,

A handwritten signature in black ink, appearing to read "Tina S. Polsky".

Senator Tina S. Polsky
Florida Senate, District 29

cc: Tom Cibula, Staff Director
Celia Georgiades, Administrative Assistant

REPLY TO:

- 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412 Case No.: -
Caption: Senate Judiciary Committee

Type:
Judge:

Started: 2/7/2022 2:33:56 PM
Ends: 2/7/2022 3:47:20 PM Length: 01:13:25

2:33:55 PM Meeting called to order by Chair Burgess
2:33:58 PM Roll call by CAA Celia Georgiades
2:34:08 PM Quorum present
2:34:20 PM Comments from Chair Burgess
2:34:37 PM Introduction of Tab 9, CS/SB 1502 by Chair Burgess
2:34:57 PM Explanation of CS/SB 1502, Estates and Trusts by Senator Powell
2:35:25 PM Comments from Chair Burgess
2:35:36 PM French Brown, The Real Property, Probate, and Trust Law Section of the Florida Bar waives in support
2:35:41 PM Stephen Shiver, Tax Section of the Florida Bar waives in support
2:35:46 PM Comments from Chair Burgess
2:35:53 PM Closure waived
2:35:55 PM CS/SB 1502 reported favorably
2:36:17 PM Introduction of Tab 1, SB 58 by Chair Burgess
2:36:46 PM Explanation of SB 58, Relief of Yeilyn Quiroz Otero by Miami-Dade County by Senator Rodriguez
2:37:22 PM Comments from Chair Burgess
2:37:29 PM Randy Weber waives in support
2:37:33 PM Comments from Chair Burgess
2:37:38 PM Closure waived
2:37:50 PM Introduction of Amendment Barcode No. 964178 by Chair Burgess
2:38:07 PM Explanation of Amendment by Senator Rodriguez
2:38:17 PM Comments from Chair Burgess
2:38:28 PM Closure waived on Amendment
2:38:31 PM Amendment adopted
2:38:35 PM Comments from Chair Burgess
2:38:46 PM Closure by Senator Rodriguez
2:38:54 PM Roll call by CAA
2:39:01 PM CS/SB 58 reported favorably
2:39:11 PM Introduction of Tab 2, SB 74 by Chair Burgess
2:39:22 PM Explanation of SB 74, Relief of Harry Augustin Shumow/Public Health Trust by Senator Rodriguez
2:39:44 PM Introduction of Amendment Barcode No. 379230 by Chair Burgess
2:39:50 PM Explanation of Amendment by Senator Rodriguez
2:40:00 PM Comments from Chair Burgess
2:40:06 PM Closure waived
2:40:08 PM Amendment adopted
2:40:14 PM Comments from Chair Burgess
2:40:20 PM Randy Weber waives in support
2:40:27 PM Comments from Chair Burgess
2:40:30 PM Closure waived
2:40:33 PM Roll call by CAA

2:40:42 PM CS/SB 74 reported favorably
2:40:51 PM Introduction of Tab 6, CS/SB 1222 by Chair Burgess
2:41:27 PM Explanation of CS/SB 1222, Acute Care At-home Patients in Nonemergent Community Settings by Senator Bean
2:42:45 PM Introduction of Amendment Barcode No. 773004 by Chair Burgess
2:42:51 PM Explanation of Amendment by Senator Bean
2:44:00 PM Comments from Chair Burgess
2:44:21 PM Layne Smith, Mayo Clinic waives in support
2:44:34 PM Question from Senator Gibson
2:45:10 PM Comments from Chair Burgess
2:45:21 PM Amendment adopted
2:45:28 PM Comments from Chair Burgess
2:45:42 PM Layne Smith, Mayo Clinic waives in support
2:45:47 PM Senator Gibson in debate
2:45:58 PM Closure waived
2:46:01 PM Roll call by CAA
2:46:08 PM CS/CS/SB 1222 reported favorably
2:46:22 PM Introduction of Tab 7, CS/SB 1844 by Chair Burgess
2:46:33 PM Explanation of CS/SB 1844, Mental Health and Substance Abuse by Senator Bean
2:48:12 PM Comments from Chair Burgess
2:48:19 PM Donn Scott, Jr. Southern Poverty Law Action Center waives in opposition
2:48:24 PM Shane Messer, Florida Council for Behavioral Healthcare waives in support
2:48:26 PM Natalie Kelly, Florida Association of Managing Entities waives in support
2:48:33 PM David Mica, Jr., Florida Hospital Association waives in support
2:48:44 PM Closure waived
2:48:52 PM Roll call by CAA
2:48:57 PM CS/SB 1844 reported favorably
2:49:12 PM Introduction of Tab 8, CS/SB 1846 by Chair Burgess
2:49:27 PM Explanation of CS/SB 1846, Public Records/Respondent's Name by Senator Bean
2:49:53 PM Comments from Chair Burgess
2:50:02 PM Closure by Senator Bean
2:50:11 PM Roll call by CAA
2:50:23 PM CS/SB 1846 reported favorably
2:50:36 PM Introduction of Tab 4, CS/SB 1184 by Chair Burgess
2:51:10 PM Explanation of CS/SB 1184, Free Speech of Health Care Practitioners by Senator Broxson
2:51:37 PM Comments from Chair Burgess
2:51:43 PM Question from Senator Polsky
2:51:48 PM Response from Senator Broxson
2:52:34 PM Follow-up question from Senator Polsky
2:52:43 PM Response from Senator Broxson
2:52:55 PM Follow-up question from Senator Polsky
2:53:07 PM Response from Senator Broxson
2:53:34 PM Follow-up question from Senator Polsky
2:53:47 PM Response from Senator Broxson
2:54:19 PM Follow-up question from Senator Polsky
2:54:34 PM Response from Senator Broxson
2:54:50 PM Follow-up question from Senator Polsky
2:55:36 PM Response from Senator Broxson
2:56:29 PM Follow-up question from Senator Polsky
2:56:53 PM Response from Senator Broxson
2:57:29 PM Question from Senator Gibson

2:58:30 PM Response from Senator Broxson
3:00:19 PM Follow-up question from Senator Gibson
3:00:27 PM Response from Senator Broxson
3:00:50 PM Follow-up question from Senator Gibson
3:00:59 PM Response from Senator Broxson
3:01:15 PM Follow-up question from Senator Gibson
3:01:24 PM Response from Senator Broxson
3:02:03 PM Question from Senator Rouson
3:02:32 PM Response from Senator Broxson
3:02:47 PM Follow-up question from Senator Rouson
3:03:20 PM Response from Senator Broxson
3:03:36 PM Follow-up question from Senator Rouson
3:04:00 PM Response from Senator Broxson
3:04:21 PM Follow-up question from Senator Rouson
3:04:33 PM Response from Senator Broxson
3:04:49 PM Comments from Chair Burgess
3:05:02 PM Speaker Jon Harris Maurer, Equality Florida in opposition
3:06:33 PM Speaker Avery Brinkley, MD in support
3:10:28 PM Bill Bunkley, Florida Ethics & Religious Liberty Commission waives in support
3:10:31 PM Speaker Aaron DiPietro, Florida Family Policy Council in support
3:12:40 PM Question from Senator Gibson
3:12:45 PM Response from Mr. DiPietro
3:12:51 PM Follow-up question from Senator Gibson
3:12:59 PM Response from Mr. DiPietro
3:13:13 PM Follow-up question from Senator Gibson
3:13:20 PM Response from Mr. DiPietro
3:13:27 PM Sophie Rudman waives in support
3:13:31 PM Speaker Joel Rudman in support
3:17:39 PM Aurelie Colon, Latina Institute for Reproductive Justice FL in opposition
3:17:43 PM Kara Gross, ACLU of Florida waives in opposition
3:18:00 PM Senator Polsky in debate
3:21:13 PM Senator Baxley in debate
3:23:50 PM Senator Rouson in debate
3:24:53 PM Senator Rodrigues in debate
3:27:07 PM Senator Gibson in debate
3:28:32 PM Chair Burgess in debate
3:31:23 PM Senator Broxson in closure
3:33:19 PM Roll call by CAA
3:34:20 PM CS/SB 1184 reported favorably
3:34:39 PM Introduction of Tab 5, SB 1204 by Chair Burgess
3:34:55 PM Explanation of SB 1204, Public Records/Information or Records/Executions by Senator Broxson
3:35:27 PM Comments from Chair Burgess
3:35:33 PM Question from Senator Rodrigues
3:35:40 PM Response from Senator Broxson
3:36:22 PM Comments from Chair Burgess
3:36:28 PM Closure waived
3:36:31 PM Roll call by CAA
3:36:38 PM SB 1204 reported favorably
3:36:49 PM Introduction of Tab 3, CS/SB 796 by Chair Burgess
3:37:02 PM Explanation of CS/SB 796, Tampering with or Fabricating Physical Evidence by Senator Bradley

3:37:45 PM Comments from Chair Burgess
3:37:50 PM Buddy Jacobs, General Counsel, State Attorneys/Fla. Prosecuting Attorneys Association waives in support
3:37:56 PM Comments from Chair Burgess
3:38:08 PM Closure waived
3:38:13 PM Roll call by CAA
3:38:27 PM CS/SB 796 reported favorably
3:38:39 PM Introduction of Tab 11, SB 528 by Chair Burgess
3:38:52 PM Explanation of SB 528, Value of Motor Vehicles Exempt from Legal Process by Senator Polsky
3:39:26 PM Introduction of Amendment Barcode No. 832334 by Chair Burgess
3:39:31 PM Explanation of Amendment by Senator Polsky
3:39:48 PM Comments from Chair Burgess
3:39:53 PM Closure waived
3:40:00 PM Amendment adopted
3:40:02 PM Comments from Chair Burgess
3:40:14 PM Closure waived
3:40:17 PM Roll call by CAA
3:40:22 PM CS/SB 528 reported favorably
3:40:34 PM Introduction of Tab 10, CS/SB 1526 by Chair Burgess
3:41:01 PM Explanation of CS/SB 1526, Public Records/Annuity Contract Payees by Senator Boyd
3:41:47 PM Comments from Chair Burgess
3:42:02 PM Question from Senator Rodrigues
3:42:09 PM Response from Senator Boyd
3:43:32 PM Tim Stanfield, National Association of Settlement Purchasers waives in support
3:43:38 PM Comments from Chair Burgess
3:43:41 PM Closure waived
3:43:44 PM Roll call by CAA
3:43:50 PM CS/SB 1526 reported favorably
3:44:02 PM Comments from Chair Burgess
3:45:49 PM Comments from Senator Gibson
3:46:44 PM Comments from Senator Baxley
3:46:49 PM Senator Baxley would like to be shown voting in the affirmative on CS/SB 1502, CS/SB 58 and CS/SB 74
3:47:00 PM Senator Baxley moves to adjourn
3:47:08 PM Meeting adjourned