Tab 1	**SB 106** by **Martin;** Similar to CS/H 00097 Exploitation of Vulnerable Adults

Tab 2	**CS/SB 280** by **EE, Arrington (CO-INTRODUCERS) Collins;** Similar to H 00201 Candidate Qualification

Tab 3	**SB 498** by **Grall;** Similar to H 00173 Interest Rates Applicable to the Interest on Trust Accounts Program

263874	D	S		JU, Grall	Delete everything after	03/11 08:02 AM
651292	SD	S		JU, Grall	Delete everything after	03/11 11:58 AM

Tab 4	**SB 576** by **Leek;** Similar to CS/H 00157 Service of Process

866752	A	S	L	JU, Leek	Delete L.180 - 222:	03/11 01:43 PM

Tab 5	**SB 752** by **Simon;** Similar to H 00667 Defamation, False Light, and Unauthorized Publication of Name or Likenesses

Tab 6	**SB 774** by **Wright;** Identical to H 00513 Electronic Transmittal of Court Orders

Tab 7	**SB 806** by **Yarborough;** Identical to H 01173 Florida Trust Code

568678	A	S		JU, Yarborough	Delete L.26 - 33:	03/11 08:01 AM

Tab 8	**SB 832** by **Burgess;** Similar to CS/H 00585 Former Phosphate Mining Lands

593370	A	S		JU, Burgess	Delete L.27 - 43:	03/11 08:30 AM

Tab 9	**SB 948** by **Bradley;** Similar to H 01015 Real Property and Condominium Flood Disclosures

426640	D	S		JU, Bradley	Delete everything after	03/11 08:23 AM

Tab 10	**SB 1164** by **Leek;** Similar to H 00615 Delivery of Notices from Landlords to Tenants

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Yarborough, Chair
Senator Burton, Vice Chair

MEETING DATE: Wednesday, March 12, 2025
TIME: 8:30—10:30 a.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Building

MEMBERS: Senator Yarborough, Chair; Senator Burton, Vice Chair; Senators Berman, DiCeglie, Gaetz, Hooper, Leek, Osgood, Passidomo, Polsky, and Trumbull

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 106** Martin (Similar CS/H 97)	Exploitation of Vulnerable Adults; Authorizing the use of substitute service on unascertainable respondents; requiring the court to enter an order providing for specified service when a petitioner files the sworn affidavit; requiring that any proposed transfer of funds or property in dispute be held for a specified time period, etc. CF 03/04/2025 Favorable JU 03/12/2025 RC	
2	**CS/SB 280** Ethics and Elections / Arrington (Similar H 201, Compare H 1381, S 1414)	Candidate Qualification; Providing eligibility requirements for persons seeking to qualify for nomination as candidates of a political party or as candidates with no party affiliation; providing that certain entities may bring an action for declaratory and injunctive relief based on a certain claim; prohibiting a person from qualifying as a candidate for election and prohibiting his or her name from appearing on the ballot under certain circumstances, etc. EE 03/03/2025 Fav/CS JU 03/12/2025 RC	
3	**SB 498** Grall (Similar H 173)	Interest Rates Applicable to the Interest on Trust Accounts Program; Requiring the Chief Financial Officer to establish quarterly two interest rate alternatives applicable to the Interest on Trust Accounts (IOTA) Program to determine interest paid to Funding Florida Legal Aid (FFLA) by participating financial institutions; requiring the Chief Financial Officer to inform FFLA of the rate alternatives established for each upcoming quarter, etc. JU 03/12/2025 BI RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 576** Leek (Similar CS/H 157)	Service of Process; Expanding the hours during which registered agents are required to keep the designated registered office open for the purpose of process service; authorizing service of process by personally serving the receiver for specified domestic entities in receivership during pendency of the receivership; requiring that a certain substituted service of process be issued in the name of the party to be served in care of the Secretary of State; specifying that registered agents must have been designated under a specified provision for a specified purpose, etc. JU 03/12/2025 GO RC	
5	**SB 752** Simon (Similar H 667)	Defamation, False Light, and Unauthorized Publication of Name or Likenesses; Requiring that certain articles or broadcasts be removed from the Internet within a specified period to limit damages for defamation; providing persons in certain positions relating to newspapers with immunity for defamation if such persons exercise due care to prevent publication or utterance of such a statement; declaring that the continued presence on the Internet of a published statement determined to be false is deemed to be a new publication of the false statement for certain purposes and that the owner, licensee, or operator is not entitled to a certain privilege, etc. JU 03/12/2025 CM RC	
6	**SB 774** Wright (Identical H 513)	Electronic Transmittal of Court Orders; Requiring the clerk of the court, within 6 hours after a court issues an ex parte order for involuntary commitment, to submit the order electronically to the sheriff or law enforcement agency in the county where the order is to be served; requiring the clerk of the court, within 6 hours after a certain summons is issued, to submit the summons electronically and, if applicable, a copy of the petition for involuntary services and a notice of the hearing to a law enforcement agency to effect service on certain persons, etc. JU 03/12/2025 ACJ FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 806** Yarborough (Identical H 1173)	Florida Trust Code; Providing that the Attorney General has exclusive standing to assert certain rights of beneficiaries of charitable trusts in any judicial proceeding within this state or elsewhere; prohibiting certain public officers of another state from asserting such rights, etc. JU 03/12/2025 ACJ RC	
8	**SB 832** Burgess (Similar CS/H 585)	Former Phosphate Mining Lands; Providing conditions for a cause of action against certain former phosphate mine sites; requiring the Department of Health to conduct surveys of former phosphate land parcels upon petition; requiring that specified documentation of radiation levels be submitted in certain civil actions related to phosphate mining, etc. JU 03/12/2025 EN RC	
9	**SB 948** Bradley (Similar H 1015)	Real Property and Condominium Flood Disclosures; Requiring a landlord of residential real property to provide specified information to a prospective tenant at or before the time the rental agreement is executed; defining the term “flooding”; providing that if a landlord fails to disclose flood information truthfully and a tenant suffers substantial loss or damage, the tenant may terminate the rental agreement by giving a written notice of termination to the landlord within a specified timeframe; revising the flood information that must be disclosed to prospective purchasers of residential real property, etc. JU 03/12/2025 RI RC	
10	**SB 1164** Leek (Similar H 615)	Delivery of Notices from Landlords to Tenants; Authorizing a landlord to deliver any required notice to a tenant by e-mail if the tenant signs an addendum to his or her rental agreement which specifically agrees to such delivery; requiring a tenant who agrees to such addendum to provide the landlord with his or her valid e-mail address; requiring a landlord to maintain copies of any notice sent by e-mail, with evidence of transmission, etc. JU 03/12/2025 CA RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 106
INTRODUCER:	Senator Martin
SUBJECT:	Exploitation of Vulnerable Adults
DATE:	March 11, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Tuszynski	CF	**Favorable**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 106 creates a simplified process to obtain an injunction to protect a vulnerable adult from exploitation. The process may be used to stop a proposed or initiated transfer of funds or property from a vulnerable adult to an unascertainable person.

Under this process, a petitioner must file a detailed affidavit with a court which, most notably, shows:

- Why the petitioner believes the respondent is an unascertainable respondent and how he or she and the vulnerable adult have been in contact;
- All identifying information that the petitioner or vulnerable adult knows about the unascertainable respondent;
- The facts that lead the petitioner to believe that a proposed or initiated transfer of funds or property from a vulnerable adult to the unascertainable person is in response to a fraudulent request; and
- A petitioner's attempts to identify the unascertainable respondent.

Once the court issues the injunction, it is effective when the petitioner files proof with the court of having attempted to serve it on the unascertainable person using the same means of communication that the unascertainable person used to communicate with the vulnerable adult. These means of communication might include the use of social media or email messages.

The injunction suspends for 30 days the proposed or initiated transfer of funds or property from the vulnerable adult to the unascertainable person. When the period expires, the funds or property will be distributed in accordance with a written court order.

The bill becomes effective July 1, 2025.

II. Present Situation:

Trends Regarding Elder Exploitation

"The National Council on Aging estimates that 1 in 10 Americans over the age of 60 have experienced elder abuse," which can include financial exploitation.[1] According to the most recent report by the Federal Bureau of Investigation (FBI), "[i]n 2023, total losses reported . . . by those over the age of 60 topped $3.4 billion, an almost 11% increase in reported losses from 2022. There was also a 14% increase in complaints . . . by elderly victims. However, these numbers do not fully capture the frauds and scams targeting this vulnerable cross-section of our population, as only about half of the more than 880,000 complaints received by IC3 in 2023 included age data."[2] Average loss per victim was $33,915, an 11% increase from 2022.[3]

According to the FBI's report, Florida ranked second in the nation in the number of fraud victims older than age 60 (8,138) with losses from that fraud reported to be $293,817,911.[4]

The elderly are particularly vulnerable to financial exploitation. The problem of elder financial exploitation is likely to get worse because of "three interrelated sets of factors," which are "health-related effects of aging; financial and retirement trends; and demographic trends."[5]

"Cognitive decline is a key factor . . ., even without the presence of disease," and "[p]hysical decline and dependency are also risk factors for elder financial exploitation." "[T]he wealth of older generations" also "makes them targets for financial exploitation."[6] "Paradoxically, though, the elderly poor are at even greater risk of financial exploitation."[7]

"Financial and pension trends further compound the problem." "The shift from defined benefit to defined contribution plans has placed responsibility onto the elderly themselves to manage their retirement savings—ironically, just at a time in their lives when their ability to do so may

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[1] *Elder Justice*, National Association of Attorneys General, available at https://www.naag.org/issues/elder-justice/ (last visited on March 11, 2025). *See Get the Facts on Elder Abuse* (July 8, 2024), available at https://www.ncoa.org/article/get-the-facts-on-elder-abuse (last visited on March 11, 2025).

[2] *2023 Elder Fraud Report*, Federal Bureau of Investigation, at p. 3, available at https://www.ic3.gov/annualreport/reports/2023_ic3elderfraudreport.pdf (last visited on March 11, 2025). This report is further referenced as "2023 Elder Fraud Report."

[3] *2023 Elder Fraud Report*, *supra* note 2, at p. 5.

[4] *2023 Elder Fraud Report*, *supra* note 2, at pp. 11 and 12. The FBI states: "This information is based on the total number of complaints from each state, American Territory, and the District of Columbia when the complainant provided state information."

[5] Deane, Stephen. *Elder Financial Exploitation* (white paper) (June 2018), at p. i, U.S. Securities and Exchange Commission (SEC), Office of the Investor Advocate, available at https://www.sec.gov/files/elder-financial-exploitation.pdf (last visited on 2/25/25). Views expressed in the white paper are those of the author and do not necessarily reflect the views of the SEC. This white paper is further referenced as "Elder Financial Exploitation."

[6] *Elder Financial Exploitation*, *supra* note 5. According to the American Bankers Association, "people over 50 years old control over 70 percent of the nation's wealth." *Protect the Elderly from Financial Exploitation*, American Bankers Association, available at https://www.aba.com/advocacy/community-programs/consumer-resources/protect-your-money/elderly-financial-abuse (last visited on March 11, 2025).

[7] *Elder Financial Exploitation*, *supra* note 5.

become impaired."[8] Finally, "dramatic increases in the elderly population threaten . . . to spur parallel growth in elderly financial exploitation."[9]

According to the U.S. Census Bureau, persons over 65 years of age represent approximately 21 percent of Florida's population (or approximately 5 million Floridians).[10] Nationally, in 2022, there were 57.8 million people aged 65 and older (up from 43.1 million in 2012). This population is projected to reach 78.3 million by 2040 and 88.8 million by 2060.[11]

Florida Laws Relating to Elder Exploitation

Exploitation of an Elderly Person or Disabled Adult under s. 825.103, F.S.

Section 825.103, F.S., punishes exploitation of an elderly person or disabled adult.

For purposes of ch. 825, F.S., an "elderly person" is a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunction, to the extent that the ability of the person to provide adequately for the person's own care or protection is impaired.[12]

For purposes of ch. 825, F.S., a "disabled adult" is a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.[13]

Under s. 825.103, F.S., exploitation of an elderly person or disabled adult includes:

- Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who:
  - Stands in a position of trust and confidence with the elderly person or disabled adult; or
  - Has a business relationship with the elderly person or disabled adult.
- Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or disabled adult's funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent.

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[8] *Id*.
[9] *Id.*
[10] *QuickFacts Florida*, U.S. Census Bureau, available at https://www.census.gov/quickfacts/fact/table/FL/PST045222#PST045222 (last visited on March 11, 2025).
[11] *2023 Profile of Older Americans*, May 2024, p. 5, U.S. Department of Health and Human Services, Administration for Community Living, available at https://acl.gov/sites/default/files/Profile%20of%20OA/ACL_ProfileOlderAmericans2023_508.pdf (last visited on 3/1/25).
[12] Section 825.101(4), F.S.
[13] Section 825.101(3), F.S.

- Misappropriating, misusing, or transferring without authorization money belonging to an elderly person or disabled adult from an account in which the elderly person or disabled adult placed the funds, owned the funds, and was the sole contributor or payee of the funds before the misappropriation, misuse, or unauthorized transfer.
- Knowingly obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person's or a disabled adult's funds, assets, property, or estate through intentional modification, alteration, or fraudulent creation of a plan of distribution or disbursement expressed in a will, trust agreement, or other testamentary devise of the elderly person or disabled adult without:
  - A court order, from a court having jurisdiction over the elderly person or disabled adult, which authorizes the modification or alteration;
  - A written instrument executed by the elderly person or disabled adult, sworn to and witnessed by two persons who would be competent as witnesses to a will, which authorizes the modification or alteration; or
  - Action of an agent under a valid power of attorney executed by the elderly person or disabled adult which authorizes the modification or alteration.[14]

Punishment for exploitation of a vulnerable adult is based on the value of the funds, assets, or property involved:

- Level 8[15] first degree felony[16] (value is $50,000 or more);
- Level 7 second degree felony[17] (value is 10,000 or more, but less than $50,000); and
- Level 6 third degree felony[18] (value is less than $10,000).[19]

Injunction for Protection Against Exploitation of a Vulnerable Adult

Section 825.1035, F.S., creates a cause of action for an injunction for protection against exploitation[20] of a vulnerable adult.[21] This injunction may be sought by a vulnerable adult in imminent danger of being exploited; the guardian of a vulnerable adult in imminent danger of being exploited; a person or organization acting on behalf of the vulnerable adult with the

[14] *See* s. 825.103(1), F.S.

[15] The Criminal Punishment Code (Code) (ss. 921.002-921.0027, F.S.) is Florida's primary sentencing policy. Noncapital felonies sentenced under the Code receive an offense severity level ranking (Levels 1-10). Section 921.0022(2), F.S. Points are assigned and accrue based upon the offense severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Section 921.0024, F.S. Sentence points escalate as the severity level escalates. These points are relevant to determining whether the offender scores a prison sentence as the minimum sentence, and if so scored, the length of that sentence. The offense severity ranking is either assigned by specifically ranking the offense in the Code offense severity level ranking chart (s. 921.0022(3), F.S) or ranking the offense by "default" based on its felony degree (s. 921.0023, F.S.).

[16] A first degree felony is generally punishable by not more than 30 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.

[17] A second degree felony is punishable by not more than 15 years in state prison and a fine not exceeding $10,000. Sections 775.082 and 775.083, F.S.

[18] A third degree felony is generally punishable by not more than 5 years in state prison and a fine not exceeding $5,000. Sections 775.082 and 775.083, F.S. *But see* ss. 775.082(10) and 921.00241, F.S. (prison diversion).

[19] Sections 825.103(3)(a)-(c) and 921.0022(3)(f)-(h), F.S. Chapter 825, F.S., is not intended to impose criminal liability on a person who makes a good faith effort to assist an elderly person or disabled adult in the management of the funds, assets, or property of the elderly person or disabled adult, which effort fails through no fault of the person. Section 825.105, F.S.

[20] Exploitation means exploitation of an elderly person or disabled adult under s. 825.103(1), F.S. Section 825.101(6), F.S.

[21] "Vulnerable Adult" is defined in s. 415.102(28), F.S., to mean a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

consent of the vulnerable adult or his or her guardian; an agent under a valid durable power of attorney with the authority specifically granted in the power of attorney; or a person who simultaneously files a petition for determination of incapacity and appointment of an emergency temporary guardian with respect to the vulnerable adult.[22]

Legal Standard for a Protective Injunction

The procedures for the issuance of a protective injunction issued under ss. 741.30, 784.046, 784.0485 and s. 825.1035, F.S., are similar. As to domestic violence, a person who is the victim of domestic violence or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence has standing to file a sworn petition for an injunction.[23] Based on this initial petition, a court may issue a *temporary* injunction ex-parte.[24] During an ex-parte proceeding, a court is generally not required to review a response from the accused and may base a temporary injunction on hearsay evidence.[25] Additional evidence may be considered, however, if an accused appears at the ex-parte proceeding or has received reasonable notice of the hearing.[26] This ex-parte proceeding is often necessary because "the existence of a true emergency . . . may sometimes require immediate action that will not permit the movant to verify each allegation made."[27]

Parties to an injunction are entitled to a full hearing. A temporary injunction is effective for a maximum of 15 days.[28] A full hearing is required prior to the expiration of the temporary injunction. At the full hearing, the accused must have a reasonable opportunity to prove or disprove the allegations made in the complaint and is entitled to introduce evidence and cross-examine witnesses.[29] Based upon the full hearing, a court "must consider the current allegations, the parties' behavior within the relationship, and the history of the relationship as a whole" to determine if a permanent injunction is warranted based on the petitioner's belief that he or she is in imminent danger of becoming a victim of domestic violence.[30]

Enforcement of a Protective Injunction

Just as filing and issuance of protective injunctions are similar, so is enforcement. A person who willfully violates an injunction for protection commits a misdemeanor of the first degree.[31] A

[22] Section 825.1035(2), F.S.
[23] Section 741.30(1)(a), F.S.
[24] Section 741.30(5)(c), F.S.
[25] *Parrish v. Price*, 71 So. 3d 132, 134 (Fla. 2d DCA 2011) (holding that a temporary injunction may be based solely on the petition filed, even if it is almost entirely based on hearsay statements); Additionally, when a "parent files a sworn petition and has reasonable cause to believe the minor child is a victim of sexual violence by a nonparent, the sworn petition is *a presumptively sufficient* basis for an injunction." (emphasis added) *Berthiaume v. B.S. ex rel. A.K.*, 85 So. 3d 1117, 1119 (Fla. 1st DCA 2012).
[26] Section 741.30(5)(b), F.S.
[27] *Smith v. Crider*, 932 So. 2d 393, 399 n. 4 (Fla. 2d DCA 2006).
[28] A court may, however, grant a continuance for good cause as requested by either party. The temporary injunction may be extended to include the continuance. Section 741.30(5)(c), F.S.
[29] *Furry v. Rickles*, 68 So. 3d 389, 390 (Fla. 1st DCA 2011) (citing *Ohrn v. Wright*, 963 So. 2d 298 (Fla. 5th DCA 2007)).
[30] *Giallanza v. Giallanza*, 787 So.2d 162, 164 (Fla. 2d DCA 2001) (citing *Gustafson v. Mauck*, 743 So. 2d 614, 616 (Fla. 1st DCA 1999)).
[31] Section 741.31(4)(a), F.S. (domestic violence); s. 784.047(1), F.S. (repeat violence, sexual violence, or dating violence); and s. 825.1036(4)(a), F.S. (exploitation of vulnerable adult).

third offense related to the same protected person is a third degree felony.[32] Similarly, a warrantless arrest can be made for violation of an injunction if a law enforcement officer has probable cause to believe that the person has violated an injunction.[33] The general rule requiring a law enforcement officer to witness the offense before making a misdemeanor arrest does not apply to arrests for violation of an injunction.

Service of Process

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against them. Delivery of that notice is referred to as "service of process." Adequate service of process is also required to summon a witness for testimony or for production of evidence. Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly appraised of a lawsuit or a requirement to produce evidence.

The traditional and best form of service of process is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by being too young to enter into contracts or make major decisions. A large body of law has been devoted to the allowable methods for service of process.[34]

Service of Process Generally

Generally, service of process is made by:

- Delivering a copy of the process to the person to be served; or
- By leaving the process at his or her usual place of abode[35] with any person residing there who is 15 years of age or older and informing the person of the contents of the process.[36]

Additional requirements exist for service on minors,[37] incompetent persons,[38] and state prisoners,[39] and may exist for service of other specified persons and entities located within the state.[40]

Substituted Service

Substituted service[41] can replace personal service in situations where personal service is not required by law. For example, substituted service may be made on the spouse of a person to be served at any place in the county if:

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[32] Sections 741.31(4)(c), 784.047(2), and 825.1036(4)(b), F.S.
[33] Section 901.15(6)-(7), F.S.
[34] *See generally* ch. 48, F.S.
[35] "Usual place of abode" means the place where the party actually lives at the time of service of process. *Shurman v. Atlantic Mortg. & Inv. Corp.*, 795 So. 2d 952 (Fla. 2001).
[36] Section 48.031(1)(a), F.S.
[37] Section 48.041, F.S.
[38] Section 48.042, F.S.
[39] Section 48.051, F.S.
[40] Chapter 48, F.S.
[41] Substituted service is service of process upon a party in any manner authorized by statute or rule other than personal service, such as service by mail. BLACK'S LAW DICTIONARY (12th ed. 2024).

- The cause of action is not an adversarial proceeding[42] between the spouses;
- The spouse of the person to be served requests such service; and
- The spouses reside together in the same dwelling within the county where the service occurs.[43]

Substituted service may also be done on a person by leaving a copy of the process with a person in charge of a private mailbox, virtual office,[44] or an executive office or mini suite[45] if:

- These are the only discoverable addresses for the person to be served; and
- The process server determines that the person to be served maintains a mailbox, a virtual office, or an executive office or mini suite at that location.[46]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 825.1035, F.S., to create a process for substituted service on an unascertainable respondent when a petitioner is seeking an injunction for protection against exploitation of a vulnerable adult.

The bill defines "unascertainable respondent" as a person whose identity cannot be ascertained or whose identity is unknown, and who has communicated with the vulnerable adult through any means that make tracing the person's identity impractical.

The bill details a process to effectuate substitute service:

- The petitioner must file a sworn affidavit with the court based on the petitioner's information and belief that includes:
  - The facts leading the petitioner to believe the respondent is unascertainable;
  - Information detailing how the petitioner and unascertainable respondent have been in contact;
  - All identifying information of the unascertainable respondent known to the petitioner, to include pseudonyms, tax identification numbers, e-mail addresses, telephone numbers, software application programs used, usernames and handles, or other similar information;
  - The facts leading the petitioner to believe that a proposed or initiated transfer of funds or property of the vulnerable adult is a response to a fraudulent request by the unascertainable respondent; and
  - A description of the petitioner's attempts to identify the unascertainable respondent, to include using the same method of communication that the unascertainable respondent used to communicate with the vulnerable adult.
- Upon filing of the affidavit, the court must order the substitute service through the same means of communication that the unascertainable respondent used to communicate with the vulnerable adult within two business days after the court issues the temporary injunction order.

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[42] An adversarial proceeding involves opposing parties. Examples include divorce and a civil lawsuit
[43] Section 48.031(2)(a), F.S.
[44] "Virtual office" means an office that provides communications services, such as telephone service, and address services without providing dedicated office space, where all communicates route through a common receptionist. s. 48.031(6)(b), F.S.
[45] "Executive office or mini suite" means an office that provides communications services without providing dedicated office space, and where all communications are routed through a common receptionist. s. 48.031(6)(b), F.S.
[46] Section 48.031(6)(a), F.S.

- After substitute service is made, the petitioner must file proof with the court, including, but not limited to, a sworn affidavit with screen shots, that the petitioner has attempted to serve the unascertainable respondent. The bill deems this court filing as the substitute service on the unascertainable respondent.

Once substitute service is made, the bill requires that any proposed transfer of funds or property in dispute be held for 30 days before those funds or property may be distributed.

Finally, the bill requires that the substitute service language be construed for the benefit and protection of a vulnerable adult.

Section 2 of the bill provides an effective date of July 1, 2025.

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, s. 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may preserve the assets of vulnerable individuals from scammers, but involve compliance costs by financial institutions holding funds subject to the injunctions described by the bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 825.1035 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 Martin

33-00201-25 2025106__

A bill to be entitled

An act relating to exploitation of vulnerable adults; amending s. 825.1035, F.S.; authorizing the use of substitute service on unascertainable respondents; defining the term "unascertainable respondent"; requiring a petitioner to file with the court a sworn affidavit to effectuate substitute service; providing requirements for the affidavit; requiring the court to enter an order providing for specified service when a petitioner files the sworn affidavit; requiring the petitioner to file with the court proof that the petitioner attempted to serve the unascertainable respondent; requiring that any proposed transfer of funds or property in dispute be held for a specified time period; providing construction; providing an effective date.

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

Section 1. Present subsections (8) through (14) of section 825.1035, Florida Statutes, are redesignated as subsections (9) through (15), respectively, a new subsection (8) is added to that section, and subsection (7) of that section is amended, to read:

825.1035 Injunction for protection against exploitation of a vulnerable adult.—

(7) NOTICE OF PETITION AND INJUNCTION.—

(a) Except as provided in subsection (8), the respondent must ~~shall~~ be personally served, pursuant to chapter 48, with a

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copy of the petition, notice of hearing, and temporary injunction, if any, before the final hearing.

(b) If the petitioner is acting in a representative capacity, the vulnerable adult must ~~shall~~ also be served with a copy of the petition, notice of hearing, and temporary injunction, if any, before the final hearing.

(c) If any assets or lines of credit are ordered to be frozen, the depository or financial institution must be served as provided in s. 655.0201.

(8) SUBSTITUTE SERVICE ON UNASCERTAINABLE RESPONDENT.—

(a) In lieu of service pursuant to chapter 48 as required pursuant to subsection (7), substitute service in accordance with this subsection may be made on an unascertainable respondent. As used in this subsection, the term "unascertainable respondent" means a person whose identity cannot be ascertained or whose identity is unknown, and who has communicated with the vulnerable adult through any means that make tracing the person's identity impractical.

(b) To effectuate substitute service pursuant to this subsection, a petitioner must file with the court a sworn affidavit based on the petitioner's information and belief. The affidavit must include:

1. The facts leading the petitioner to believe that the respondent is an unascertainable respondent;

2. Information regarding how the unascertainable respondent and the vulnerable adult have been in contact;

3. All identifying information for the unascertainable respondent which is known to the petitioner or the vulnerable adult, including, but not limited to, pseudonyms, tax

identification numbers, e-mail addresses, telephone or cellular numbers, software application programs used, social media usernames and handles, or other similar information;

4. The facts leading the petitioner to believe that a proposed or initiated transfer of funds or property by the vulnerable adult is a response to a fraudulent request by the unascertainable respondent; and

5. A description of the petitioner's attempts to identify the unascertainable respondent, including, but not limited to, using the same method of communication that the unascertainable respondent used to communicate with the vulnerable adult.

(c) When a petitioner files the sworn affidavit required under paragraph (b), the court must enter an order requiring the petitioner to serve the unascertainable respondent, through the same means of communication that the unascertainable respondent used to communicate with the vulnerable adult, within 2 business days after the date the court issues the temporary injunction order.

(d) The petitioner must file with the court proof, including, but not limited to, a sworn affidavit with screenshots, that the petitioner has attempted to serve the unascertainable respondent in accordance with paragraph (c). This constitutes substitute service on the unascertainable respondent.

(e) When substitute service is made upon an unascertainable respondent in accordance with this subsection, any proposed transfer of funds or property in dispute must be held for 30 days before such funds or property may be distributed in accordance with a written court order.

(f) This subsection shall be construed for the benefit and protection of a vulnerable adult.

Section 2. This act shall take effect July 1, 2025.

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 280
INTRODUCER:	Ethics and Elections Committee and Senator Arrington
SUBJECT:	Candidate Qualification
DATE:	March 11, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Biehl	Roberts	EE	**Fav/CS**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 280 creates a substantive requirement that:

- A person seeking to qualify for nomination as a candidate of a political party must have been a registered member of the political party for which the person is seeking nomination as a candidate for at least 365 consecutive days before the beginning of the qualifying period preceding the general election for which the person seeks to qualify.
- A person seeking to qualify for nomination as a candidate with no party affiliation must be registered without any party affiliation and may not have been a registered member of any political party for at least 365 consecutive days before the beginning of the qualifying period preceding the general election for which the person seeks to qualify.

This substantive requirement is in addition to an existing requirement that a person seeking qualification as a candidate make such a sworn party affiliation statement in writing.

The bill also creates a private right of action by which a political party or other candidate for the office sought may bring an action for declaratory and injunctive relief based on a claim that a person seeking to qualify as a candidate did not comply with the party affiliation requirement. If a circuit court determines that the person did not comply, he or she is disqualified from placement on the ballot.

The bill takes effect July 1, 2025.

II. Present Situation:

Each candidate for an elected office in Florida must take and subscribe to in writing an oath or affirmation.[1] Current law specifies oath formats for a candidate for federal office,[2] a candidate for a non-federal office other than a judicial office,[3] and a candidate for a state judicial office.[4] Generally, the oath or affirmation must, in substance:

- Provide the name of the office for which the candidate is running;
- Affirm that the candidate is a qualified elector of the county or court jurisdiction, as applicable;
- Affirm that the candidate is qualified under the State Constitution and laws of Florida to hold the office for which he or she is running;
- Affirm that the candidate has not qualified for any other public office in the state for which the term runs concurrently and that he or she has resigned from any office from which he or she is required to resign;[5] and
- Affirm that the candidate will support the constitutions of the United States and the State of Florida.[6]

In addition, any person seeking to qualify for nomination as a candidate of any political party must, at the time of subscribing to the oath or affirmation, also state in writing certain information about his or her party affiliation, specifically:

- The party of which the person is a member;
- That the person has been a registered member of the political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify; and
- That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.[7]

Similarly, a person seeking to qualify for office as a candidate with *no* party affiliation must state in writing that he or she:

- Is registered without a party affiliation; and
- Has not been a registered member of any political party for 365 days before the beginning of qualifying preceding the general election for which the person seeks to qualify.[8]

Although current law requires candidates to state this information, courts have found no mechanism by which the provision can be enforced if the person seeking to qualify did not

[1] Sections 99.021(1)(a) and 105.031(4), F.S.
[2] Section 99.021(1)(a)2., F.S.
[3] Section 99.021(1)(a)1., F.S.
[4] Section 105.031(4)(b), F.S.
[5] Section 99.012(3)(a), F.S., states, "No officer may qualify as a candidate for another state, district, county, or municipal public office if the terms or any part thereof run concurrently with each other without resigning from the office he or she presently holds."
[6] Sections 99.021(1)(a)1. and 105.031(4), F.S.
[7] Section 99.021(1)(b), F.S.
[8] Section 99.021(c), F.S.

actually comply with the requirement.[9] Therefore, a person who complies with the facial requirement of the written statement cannot be disqualified from placement on the ballot, even if his or her statement is untrue.

III. Effect of Proposed Changes:

The bill creates a substantive requirement that:

- A person seeking to qualify for nomination as a candidate of a political party must have been a registered member of the political party for which the person is seeking nomination as a candidate for at least 365 consecutive days before the beginning of the qualifying period preceding the general election for which the person seeks to qualify.
- A person seeking to qualify for nomination as a candidate with no party affiliation must be registered without any party affiliation and may not have been a registered member of any political party for at least 365 consecutive days before the beginning of the qualifying period preceding the general election for which the person seeks to qualify.

The bill authorizes a political party or other candidate for the office sought to bring an action for declaratory and injunctive relief based on a claim that a person seeking to qualify for nomination as a candidate of such political party or as a candidate with no party affiliation did not comply with the requirement. An action for declaratory relief is an action in which a court pronounces the legal status or ownership of an item.[10] To obtain injunctive relief, someone must demonstrate that there is no adequate and complete remedy at law available and that an injury will be irreparable unless the relief sought is granted.[11]

The bill specifies that if a final judgment of a circuit court determines that a person did not comply with the requirement, the person may not be qualified as a candidate and his or her name may not appear on the ballot.

The bill makes a conforming change to the existing written statement requirement, which is contained in s. 99.021, F.S.

The bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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[9] *See Torres v. Shaw*, 345 So.3d 970 (Fla. 1st DCA 2022), holding that voters and political party had no private right of action to challenge qualifications of a congressional candidate under the candidate oath requirement; and *Jones v. Schiller*, 345 So.3d 406 (Fla. 1st DCA 2020), holding that a candidate cannot challenge the veracity of the opposing candidate's sworn party affiliation statement.

[10] BLACK'S LAW DICTIONARY (12th ed. 2024).

[11] *Id*.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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 amends section 99.021, Florida Statutes.

This bill creates section 99.013, 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 Ethics and Elections on March 3, 2025:
The committee substitute:

- Makes clear that the 365-day required period of party affiliation or no party affiliation is the 365 consecutive days immediately preceding the qualifying period.

- Makes a conforming change to the language to the written statement a candidate must make.
- Revises the entities who may bring a claim.

B. Amendments:

None.

By the Committee on Ethics and Elections; and Senator Arrington

582-02088-25 2025280c1

A bill to be entitled

An act relating to candidate qualification; creating s. 99.013, F.S.; providing eligibility requirements for persons seeking to qualify for nomination as candidates of a political party or as candidates with no party affiliation; providing that certain entities may bring an action for declaratory and injunctive relief based on a certain claim; prohibiting a person from qualifying as a candidate for election and prohibiting his or her name from appearing on the ballot under certain circumstances; amending s. 99.021, F.S.; specifying that a person seeking to qualify for office as a candidate must be a registered member of a political party, or registered without any party affiliation, for 365 consecutive days preceding the beginning of qualifying for an election; providing an effective date.

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

Section 1. Section 99.013, Florida Statutes, is created to read:

99.013 Eligibility to qualify for nomination as a candidate of a political party or candidate with no party affiliation.—

(1)(a) A person seeking to qualify for nomination as a candidate of a political party must have been a registered member of the political party for which the person is seeking nomination as a candidate for at least 365 consecutive days preceding the beginning of the qualifying period before the general election for which the person seeks to qualify.

(b) A person seeking to qualify for nomination as a candidate with no party affiliation must be registered without any party affiliation and may not have been a registered member of any political party for at least 365 consecutive days preceding the beginning of the qualifying period before the general election for which the person seeks to qualify.

(2) A political party or other candidate for the office sought may bring an action for declaratory and injunctive relief based on a claim that a person seeking to qualify for nomination as a candidate of such political party or as a candidate with no party affiliation did not comply with this section.

(3) If a final judgment of a circuit court determines that a person did not comply with this section, the person may not be qualified as a candidate for election and his or her name may not appear on the ballot.

Section 2. Paragraphs (b) and (c) of subsection (1) of section 99.021, Florida Statutes, are amended to read:

99.021 Form of candidate oath.—

(1)

(b) In addition, any person seeking to qualify for nomination as a candidate of any political party shall, at the time of subscribing to the oath or affirmation, state in writing:

1. The party of which the person is a member.

2. That the person has been a registered member of the political party for which he or she is seeking nomination as a candidate for at least 365 consecutive days preceding ~~before~~ the beginning of qualifying before ~~preceding~~ the general election

for which the person seeks to qualify.

3. That the person has paid the assessment levied against him or her, if any, as a candidate for said office by the executive committee of the party of which he or she is a member.

(c) In addition, any person seeking to qualify for office as a candidate with no party affiliation shall, at the time of subscribing to the oath or affirmation, state in writing that he or she is registered without any party affiliation and that he or she has not been a registered member of any political party for at least 365 consecutive days preceding ~~before~~ the beginning of qualifying before ~~preceding~~ the general election for which the person seeks to qualify.

Section 3. This act shall take effect July 1, 2025.

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 498
INTRODUCER:	Senator Grall
SUBJECT:	Interest Rates Applicable to the Interest on Trust Accounts Program
DATE:	March 11, 2025
REVISED:	

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

I. Summary:

SB 498 establishes two interest rate alternatives that financial institutions must pay on accounts used for the Interest on Trust Accounts (IOTA) Program. These accounts use the interest generated on certain funds held in trust by an attorney to provide funding for Funding Florida Legal Aid (FFLA).

The interest rates under the bill are:

- The highest interest rate or dividend available from the institution to comparable non-IOTA accounts; or
- 25 percent of the federal funds target rate or 0.25 percent, whichever is higher, net of fees.

The Florida Bar Rules, however, have set criteria to determine whether a financial institution is eligible to participate in the IOTA program. One of the eligibility criteria is the minimum interest rate that must be paid by participating financial institutions. According to the rules, when the Wall Street Journal Prime Rate is between 325 and 499 basis points, the minimum yield or interest rate paid net of all fees and service charges must be no less than 300 basis points below the prime rate. When the rate is 500 basis points or above, the yield must be no less than 40 percent of the prime rate in effect on the first business day of each month.

Accordingly, the interest rates on IOTA accounts established by the bill are inconsistent with those that are part of the eligibility criteria established by rules of The Florida Bar to participate in the IOTA Program. If the rates established by the bill are found by the courts to be a regulation of banking, not the practice of law, the bill will likely require The Florida Bar to revise its eligibility criteria for financial institutions to participate in the IOTA Program.

These provisions do not apply to interest rates that are established by written contract or obligations that are unrelated to IOTA accounts.

The bill takes effect upon becoming law.

II. Present Situation:

The central issue in this legislation involves weighing the competing needs of The Florida Bar foundation to fund its legal aid programs against the ability of banking institutions to pay sufficient and sustainable interest rates that fund the foundation's legal aid programs. Both organizations estimate that between $9 and $10 billion is deposited annually into IOTA accounts at banking institutions.

The Jurisdiction of the Florida Supreme Court, The Florida Bar, and the IOTA Program

The State Constitution grants exclusive jurisdiction to the Florida Supreme Court to regulate the admission of people to practice law in the state. The Court also has exclusive jurisdiction to discipline those people once they are admitted to practice law.[1] Florida is a mandatory bar state and all members who are admitted to practice in Florida must be members of The Florida Bar.[2]

The Florida Supreme Court has established the "authority and responsibilities of The Florida Bar" in the *Rules Regulating the Florida Bar*.[3] Chapter 5 contains the "Rules Regulating Trust Accounts" which all attorneys who maintain trust accounts must abide by. Funds that are placed in an attorney's trust account produce interest income exclusively for the IOTA program. The interest-producing program generates millions of dollars in interest each year. Once generated, the interest funds are swept by The Florida Bar directly into the Bar's foundation, Funding Florida Legal Aid.

The Florida Bar created the foundation in 1956 and changed its name to Funding Florida Legal Aid in 2023. The foundation functions to increase legal access for people with limited means by funding legal services, developing programs, and supporting legal aid providers selected by the foundation for grant awards. The foundation's primary financial support comes from the IOTA program but donations are also received from attorneys, law firms, corporations, foundations, and individuals.[4]

It is important to note that, while the IOTA program is *mandatory* for attorneys, it is technically *voluntary* for banks to participate in the program.

Interest on Trust Accounts (IOTA) Program and Funding Florida Legal Aid (FFLA)

Background on Attorney Trust Accounts

A trust account is a short-term account set up by an attorney in which he or she deposits funds on behalf of a client. The account generally contains funds that are combined such as a retainer

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[1] FLA. CONST. art. V, s. 15. The Court conducts these official functions through two separate entities: the Florida Board of Bar Examiners and The Florida Bar.
[2] The Florida Bar, *Frequently Asked Questions*, https://www.floridabar.org/about/faq/ (last visited March 7, 2025).
[3] The Florida Bar, *Rules Regulating the Florida Bar*, https://www-media.floridabar.org/uploads/2025/02/2025_06-DEC-RRTFB-12-30-2024.pdf. The Rules are divided into 21 chapters consisting of 807 pages.
[4] FFLA, Funding Florida Legal Aid, *Leadership and Funding for Justice in Florida*, *https://fundingfla.org/about-ffla/ffla-overview/* (last visited March 7, 2025).

payment, discovery or litigation costs paid in advance, filing fees, or a settlement award. The amount of money in the account changes often because deposits and withdrawals are made frequently. These fees may not be commingled with an attorney's operating account but must be kept separately.

A trust account has been described as an "unusual" creation that is significantly different from other accounts. Although an attorney opens the account and is responsible for managing the funds in the account, he or she is not technically the owner of the funds.[5] While an attorney is not the owner of the account, and therefore not entitled to interest generated by the account, neither is the client entitled to interest generated by the funds. The U.S. Court of Appeals for the Eleventh Circuit issued a decision in 1987 determining that a client was not entitled to the interest generated in a trust account.[6]

How the accounts may be regulated or restricted has presented a quandary for almost 200 years. The earliest attempt to regulate trust accounts can be traced to the Legislative Council of the Territory of Florida in 1828. In 1936, the Florida Supreme Court incorporated the regulation of trust accounts into the Court's rules. Additional measures were adopted over the years to ensure that attorneys, acting as "trustees" would not misuse their clients' funds or neglect to return them when requested to do so by the client.[7]

The Evolution of Interest Earned on Trust Accounts

Trust accounts have evolved from simple accounts that earned no interest and benefitted no one in particular to today's accounts in which The Florida Bar, with Florida Supreme Court approval, mandates participation by attorneys, establishes the interest rates, and requires that the interest be remitted to The Florida Bar's foundation, Funding Florida Legal Aid.

For many years, attorneys deposited their clients' funds in non-interest-bearing checking accounts because trying to apportion multiple clients' interest earnings on short-term deposits was too complex. However, in 1978 and in response to a petition by The Florida Bar,[8] the Florida Supreme Court amended the Bar rules and authorized attorneys to invest trust funds held for their clients to generate investment income that would, among other things, provide legal aid to the poor and help provide student loans.[9] Participation in the program would be voluntary. The interest payments would be transmitted directly from the financial institutions to The Florida Bar Foundation. In implementing these changes, Florida became the first state in the nation to adopt an Interest on Trust Accounts Program, commonly called IOTA.[10] After several adjustments

[5] *In re* Amendments to the Rules Regulating the Florida Bar-Miscellaneous: The Florida Bar's Response to the Florida Bankers Association's Motion for Rehearing, Case No. SC22-1292 (April 14, 2023), https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/a8e413ea-a6d4-417f-a1b0-2536bb7c9292.
[6] *Cone v. State Bar of Florida*, 819 F.2d 1002 (11th Cir. 1987).
[7] *A Petition of Florida Bar*, 356 So. 2d 799 (Mem), 800-801 (Fla. 1978). (The lengthier case style *is In re Interest on Trust Accounts, A Petition of The Florida Bar to Amend the Code of Professional Responsibility and the Rules Governing the Practice of Law*.)
[8] More specifically, the petition to amend the rules was brought by the Board of Governors of The Florida Bar with the concurrence of the Board of Directors of The Florida Bar Foundation.
[9] *In re* Interest on Trust Accounts, A Petition of The Florida Bar, 356 So. 2d 799 (Mem) (Fla. 1978).
[10] *Id.* at 800-801.

were made, the program became operational in 1981 and permitted *voluntary* participation by attorneys and their firms.[11] In 1989, the Rules were amended and participation in the program became *mandatory* for all attorneys.[12]

The next significant development occurred in 2001 when the trust account rules were amended to define institutions that are eligible to hold IOTA accounts. These eligible institutions were limited to the institutions that pay IOTA account depositors "the highest interest rate or dividend generally available from the institution to its non-IOTA account customers when IOTA accounts meet or exceed the same minimum balance" or other eligibility requirements. In essence, The Florida Bar Foundation was asking that IOTA accounts be placed on an equal par with non-IOTA accounts in an institution.[13]

For purposes of clarity, it is worth noting that these rules are not found in the Florida Statutes, but are rules adopted by The Florida Bar Association and approved by the Florida Supreme Court.

2023 Amendments to Interest on Trust Accounts

The Florida Bar's Position

The Florida Bar petitioned the Court on October 3, 2022, to once again amend the IOTA rules. The stated goal of the proposed amendments was to "include all possible accounts that can be used as trust accounts" and "ensure the highest possible interest is available for IOTA accounts."[14] The net effect of these amendments would be to increase funding to the Bar's legal aid funding organization, Funding Florida Legal Aid.

On March 16, 2023, the Florida Supreme Court adopted amendments to *Rules Regulating The Florida Bar*, including provisions regulating trust fund accounts. The amendments:

- Expand the definition of an interest or dividend-bearing account to include a business or consumer deposit account so that the definition is expanded to include all possible accounts that can be used as trust accounts.[15]
- Revise eligibility criteria for financial institutions to hold trust accounts and participate in the IOTA program. The revised criteria require eligible institutions to tie minimum interest rates for IOTA accounts to the Wall Street Journal Prime Rate.[16]

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[11] It should be noted that the establishment of IOTA or IOLTA (Interest on Lawyers' Trust Accounts as they are called in other states) was possible only after Congress made changes to federal banking laws in 1980 that allowed certain checking accounts to pay interest. American Bar Association, *Interest on Lawyers' Trust Accounts*, https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/. See also *Matter of Interest on Trust Accounts*, 402 So. 2d 389 (Mem) (Fla. 1981).

[12] *Matter of Interest on Trust Accounts: Petition to Amend the Rules Regulating the Florida Bar*, 538 So. 2d 448, 449-450, (Fla. 1989).

[13] *Amendment to Rules Regulating the Florida Bar—Rule 5-1.1(e)--IOTA*, 797 So. 2d 551 (Fla. 2001).

[14] *In re* Amendments to the Rules Regulating the Florida Bar – Miscellaneous*:* Petition to Amend the Rules Regulating the Florida Bar, Case No. SC2022-1292 (10/03/2022), https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/60ddf5a7-6ae4-425a-a90b-2cebcc635bd0.

[15] R. Regulating Fla. Bar Rule 5-1.1(g)(1)(E).

[16] R. Regulating Fla. Bar Rule 5-1.1(g)(5)(B).

The formula to determine interest rates and dividends based on the Wall Street Journal Prime Rate is described by the amendments as follows:

> When the Wall Street Journal Prime Rate ("indexed rate") is between 325 and 499 basis points (3.25% and 4.99%), the minimum interest rate paid net of all fees and service charges ("yield") must be no less than 300 basis points (3.00%) below the indexed rate in effect on the first business day of each month. When the indexed rate is 500 basis points (5.00%) or above, the yield must be no less than 40% of the indexed rate in effect on the first business day of each month.[17]

The Wall Street Journal Prime Rate is a lending rate. It is the "base rate posted by at least 70% of the nation's largest banks." To establish this rate, the Wall Street Journal regularly surveys the largest banks in the country to determine what interest rate they are charging their customers with the highest-rated credit for short-term loans.[18] As of March 5, 2025, the Wall Street Journal Prime Rate is 7.5 percent.[19]

In a January 16, 2024, article published in the *Florida Bar News*, the amended rule was explained this way:

> For instance, under the amended rule, when prime rate is between 3.25% and 5%, then the trust account rate banks pay out is between .25% and 2%, a 3% gain. After that the gains get even better for banks. At a 7% interest rate, for example, banks will pay out 2.8%, a 4.2% gain.[20]

Another article explained the rule change in these terms:

> As a result of this change, for a financial institution to be eligible to participate in the program, it must pay a minimum interest rate of 3.00% when the Wall Street Journal Prime Rate (index rate) is between 3.25% and 4.99%. When the index rate is above 5.00%, to stay eligible, financial institutions are required to pay a minimum interest rate equal to 40% of the index rate.[21]

Opposition to the 2023 Rule Amendments

One criticism of the amended rule is that the Wall Street Journal Prime Rate is a benchmark for *lending purposes* and is not used to set *deposit* account interest rates. As a result, the interest rate is significantly higher than interest rates paid for other deposits.

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[17] *Id*.
[18] Fulton Bank, *What Is Wall Street Journal Prime Rate and Why It Matters* https://www.fultonbank.com/Education-Center/Managing-Credit-and-Debt/Prime-rate-and-why-it-matters (last visited March 7, 2025).
[19] The Wall Street Journal, *WSJ-Markets*, https://www.wsj.com/market-data/bonds (last visited March 5, 2025).
[20] Florida Bar News, *Measure Would Have Florida's CFO Set the Rate Paid on Iota Accounts* (Jan. 16, 2024) https://www.floridabar.org/the-florida-bar-news/measure-would-have-floridas-cfo-set-the-rate-paid-on-iota-accounts/.
[21] The Bank of Tampa, *Invested in You*, https://www.bankoftampa.com/iota/ (last visited March 7, 2025).

The Florida Bankers Association (FBA) filed a motion for rehearing on March 31, 2023, stating that it did not receive adequate or meaningful notice of the proposed IOTA amendments.[22] The FBA contended that the amended rules, while admirable, would "have a significant and negative impact on participating banks" and go far beyond its intended purpose. The FBA argued that basing the interest rate for IOTA accounts on the Wall Street Journal's Prime Rate would mean that the minimum interest paid on IOTA accounts would be significantly higher than any other interest rate offered by a bank on consumer or business accounts. The FBA also argued that the judicial branch had violated the separation of powers doctrine and encroached impermissibly on the executive branch's power to regulate banks through the Office of Financial Regulation, The Department of Financial Services, and the Financial Services Commission.

The new rule became effective on May 15, 2023, and remains in effect. The Court allowed comments from interested parties until November 1, 2023, and directed The Florida Bar to file a report on the status of the implementation of the rules.

Mediation Attempts

According to documents filed in the Florida Supreme Court, the Florida Bankers Association and The Florida Bar have attempted for longer than a year to reach a compromise rate that is agreeable to both parties. This has resulted in an impasse and no compromise has been reached.[23] On August 7, 2024, the Court denied the Florida Bankers' Association for rehearing.

IOTA Data for Funding Florida Legal Aid

Amounts Received by FFLA From the IOTA Program

Funding Florida Legal Aid supplied the information below on remittances from the IOTA accounts. The fiscal year begins July 1 and ends June 30 of the following year.

FY 2018-19	$12,711,423
FY 2019-20	$16,233,686
FY 2020-21	$7,749,737
FY 2021-22	$9,498,692
FY 2022-23	$45,547,390
FY 2023-24	$279,656,155

Information for FY 2024-25 is only partially complete. However, for remittances received from July 2024 through January 2025, FFLA reports receiving $155,378,419.[24]

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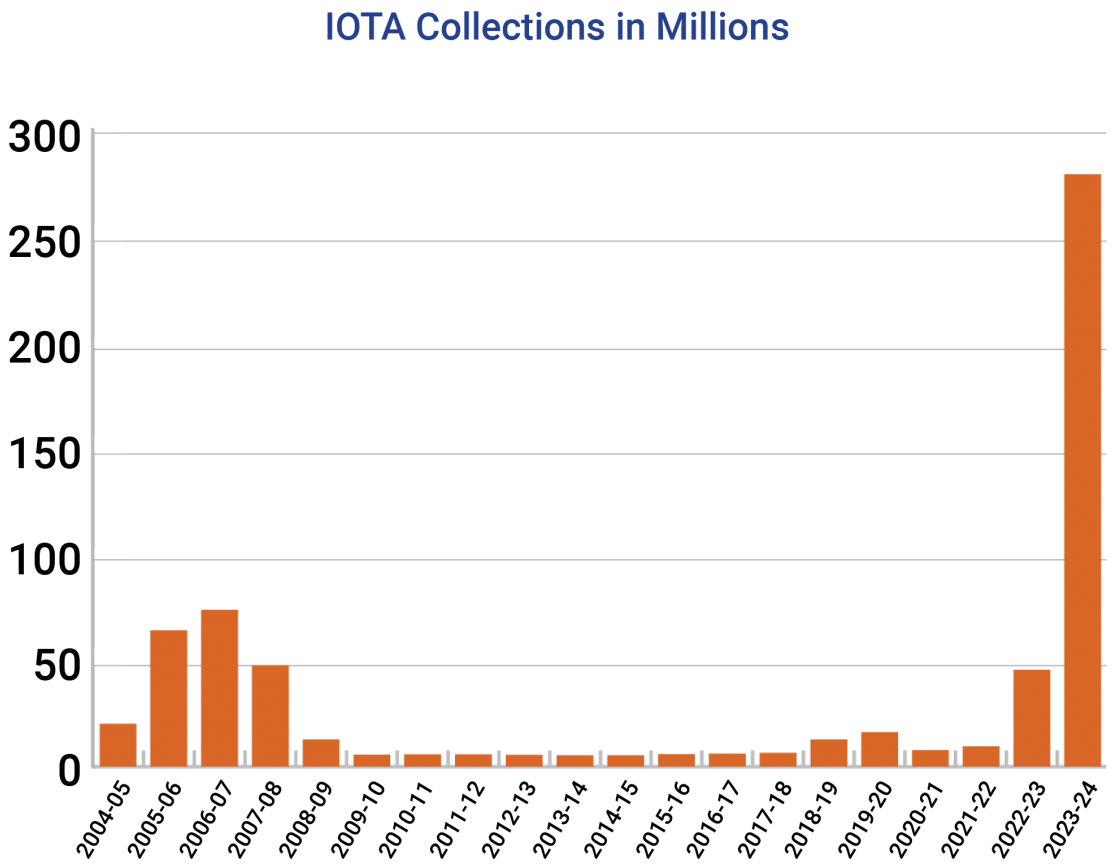
[22] *In re*: Amendments to Rules Regulating the Florida Bar 5-1.1; Florida Bankers Association's Motion), Case No. SC22- 1292 (Mar. 31, 2023), 70f6bc15-9b6e-41b5-8c56-65db9b750a31 (flcourts.gov).

[23] *In re* Amendments to the Rules Regulating the Florida Bar, The Florida Bankers Association's Comment to the Florida Bar's Report on Implementation Status, Case No: SC2022-1292, https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/f5381851-24da-4ff6-932d-487a9ca0b99c.

[24] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid (March 5, 2025) (on file with the Senate Committee on Judiciary).

It is significant to note that the IOTA collections increased by $234,108,765 between fiscal year 2022-23 and fiscal year 2023-24. This is attributable to the newly implemented funding formula authorized by the Supreme Court in May 2023 for the benefit of the Bar foundation.[25]

The FFLA shows with the chart below how the annual revenue collections through the IOTA program have changed over the years.[26] The effect of the 2023 amendments is clear:



Participating Banking Institutions and IOTA Program Accounts

The number of state banking institutions that participate in the IOTA program has not changed significantly since the interest formula was amended in May 2023.[27]

March 2023	154
December 2023	162
December 2024	170

[25] *In re* Amendments to the Rules Regulating the Florida Bar – Miscellaneous*:* The Florida Bar's Report on Implementation Status (April 2, 2024) Case No: SC2022-1292, https://acis-api.flcourts.gov/courts/68f021c4-6a44-4735-9a76-5360b2e8af13/cms/case/baa8ed04-2926-4922-b099-9d51fd7ab2ae/docketentrydocuments/e5b1ae2c-d317-4a98-8c2e-79231698b18d.

[26] Florida Funding Legal Aid, Financial Stewardship, https://fundingfla.org/about-ffla/ffla-finances/ (last visited March 10, 2025).

[27] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid, *SB 498 Fiscal Analysis from FFLA* (March 5, 2025) (on file with the Senate Committee on Judiciary).

The number of trust accounts in the FFLA system as of January 2025 is 33,823.[28]

Receipts and Disbursements by Funding Florida Legal Aid

Funding Florida Legal Aid received $279,656,155 in IOTA collections for the fiscal year that ended June 30, 2024. The Court granted FFLA's request to distribute $94,832,278 to qualified organizations and place the remaining $142,875,455 in reserve for the benefit of present and future organizations. According to the Court's administrative order, this represents a 145 percent increase over the previous year's distribution.[29]

Trust Account Programs in Other States

According to the American Bar Association (ABA), interest paid on trust account programs, sometimes called IOLTA, or Interest on Lawyers' Trust Accounts, are found in all 50 states, Washington, D.C., Puerto Rico, and the U.S. Virgin Islands. The ABA estimates that, since 1981, these programs have generated over $4 billion to fund legal services for people living in poverty, often through legal aid and pro bono programs.[30]

Chief Financial Officer

The State Constitution provides that the Chief Financial Officer (CFO) serves as the chief fiscal officer of the state. He or she is a member of the cabinet and is responsible for settling and approving accounts against the state and keeping all state funds and securities.[31]

Additionally, the CFO is required by statute to set the rate of interest that will be payable on judgments or decrees for the calendar quarter beginning January 1 each year. He or she must adjust the rate quarterly on April 1, July 1, and October 1, by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate.[32] As of January 1, 2025, the annual interest rate is 9.38 percent.[33]

III. Effect of Proposed Changes:

The Chief Financial Officer's Role

The bill provides that on the first days of December, March, June, and September of each year, the Chief Financial Officer (CFO) will establish two interest rate alternatives for financial

[28] Email from Amanda Fraser, Governmental Consultant on behalf of Funding Florida Legal Aid (March 5, 2025) (on file with the Senate Committee on Judiciary).
[29] *In Re: FFLA-FY 2023-24 IOTA Collections, Request for Approval of Additional Reserve Amount*, No. AOSC24-70, (Oct. 4, 2024) https://supremecourt.flcourts.gov/content/download/2441648/file/AOSC24-70.pdf.
[30] American Bar Association, *Interest on Lawyers' Trust Accounts, Overview, The Impact of IOLTA*, https://www.americanbar.org/groups/interest_lawyers_trust_accounts/overview/.
[31] FLA. CONST. art. IV, s. 4(c).
[32] Section 55.03(1), F.S.
[33] My Florida CFO, *Current Judgment Interest Rates*, https://myfloridacfo.com/division/aa/audits-reports/judgment-interest-rates (last visited March 4, 2025).

institutions that participate in the IOTA program. Those rate alternatives will take effect on the following first days of January, April, July, and October, respectively. Each financial institution that participates in the IOTA program must annually choose which of the two rate alternatives it will use. Within 3 days after the CFO establishes the interest rates, he or she must inform Funding Florida's Legal Aid of the rate alternatives for the upcoming quarter.

Option 1 – Measured with Deposit Rate Interest

The first interest rate alternative is the highest interest rate or dividend that is generally available from the financial institution for its comparable non-IOTA business or consumer accounts or nonmaturing deposit accounts, if the IOTA accounts meet or exceed the same minimum balance or other requirements. If a financial institution selects this rate alternative, it must submit a rate validation sheet to the CFO to ensure that it has paid the same interest on IOTA accounts that it has paid on other comparable accounts.

Option 2 – Measured with Lending Rate Interest

The second rate alternative requires a financial institution to establish an interest rate that is 25 percent of the "federal funds target rate" or 0.25 percent, whichever is higher, net of fees.

The "federal funds target rate" is the interest rate that commercial banks charge one another for short-term loans or the interest rate that banks use to borrow or lend their excess reserves to one another overnight to meet the reserve balance requirements.[34] As of January 29, 2025, the Federal Open Market Committee did not change the federal funds target rate and it remains at 4.25 percent to 4.50 percent.[35] If an institution selects this rate alternative, it is not required to submit a rate validation sheet to the CFO.

The provisions of the bill do not apply to interest rates that are established by written contract or obligations that are unrelated to IOTA accounts.

The interest rates on IOTA accounts specified by the bill are inconsistent with those set by rules of The Florida Bar. If the bill constitutes a regulation of banking, The Florida Bar will likely be required to change its eligibility criteria for financial institutions to participate in the IOTA Program. On the other hand, if the provisions of the bill are found to be a regulation of the practice of law, its provisions will likely be invalidated.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[34] Investopedia, *Federal Funds Rate: What It Is, How It's Determined, and Why It's Important* (Jan. 27, 2025) https://www.investopedia.com/terms/f/federalfundsrate.asp.
[35] Board of Governors of the Federal Reserve System, *Federal Reserve Issues FOMC Statement* (Jan. 29, 2025) https://www.federalreserve.gov/newsevents/pressreleases/monetary20250129a.htm.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Separation of Powers

The State Constitution divides the powers of state government into three branches: the legislative, executive, and judicial branches. The Constitution prohibits a person in one branch from exercising any powers that belong to the other two branches of government unless it is expressly provided.[36]

The Florida Supreme Court under s. 15 of Article V of the State Constitution, has the "exclusive jurisdiction to regulate the admission of persons to the practice of law and the discipline of persons admitted." The Supreme Court exercises this responsibility through The Florida Bar and its rules. If the bill is determined to be a regulation of attorneys or the practice of law, it may be declared unconstitutional.

The Legislature, however, has the authority to regulate financial institutions. If the bill is determined to be a regulation of financial institutions, The Florida Bar will likely be required to revise its rules governing the obligations of attorneys to establish IOTA accounts or the eligibility of financial institutions to participate in the IOTA program.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The new interest rates established in this bill will most likely be lower than the interest rates currently mandated by the Bar rules. As such, banking institutions may see greater profits under this bill, or be able to pay higher interest rates to other customers, or charge lower fees for services. Moreover, additional financial institutions may be able to afford to participate in the IOTA program giving lawyers more choices for financial institutions. In contrast, the Bar foundation will likely see a reduction in the interest revenue it receives to fund its legal aid programs.

[36] FLA. CONST. art. II, s. 3.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

As currently drafted, the bill states that the Chief Financial Officer establishes two interest rates, but it appears that the CFO only establishes one rate, which is the rate based on the federal funds rate.

Additionally, the bill does not state when a financial institution must submit a rate validation sheet to the Chief Financial Officer. It may be beneficial if a time-frame is specified for submission of the rate validation sheet and if the CFO is authorized to establish rules governing the form and information that must be included on a validation sheet.

Also, line 76 states that financial institutions must submit a rate validation sheet to "ensure" that it has paid the proper interest rates on IOTA accounts. Perhaps the term "verify" would be a better description. Alternatively, the Legislature may wish to require a financial institution to submit an affidavit affirming that it has paid a qualifying interest rate.

Finally, the bill directs the CFO to inform FFLA of the rate alternatives for the upcoming quarter, but the CFO may technically only establish one of the two alternative rates for the upcoming quarter.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 655.97 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.

263874

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Grall) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 655.97, Florida Statutes, is created to read:

655.97 Lawyer or law firm trust account interest rates.—

(1) A financial institution may hold funds in an interest-bearing trust account of a lawyer or law firm in which the institution remits interest or dividends on the balance of the deposited funds to an entity established by the Supreme Court

263874

for the purpose of providing or facilitating the provision of free legal services to low-income individuals or other purposes authorized by the Supreme Court. If the institution holds such an account, it must quarterly select one of the two interest rate alternatives to determine the interest it will pay to the entity established by the Supreme Court:

(a) The first interest rate alternative must be set at the highest interest rate or dividend generally available from the institution to its comparable business or consumer accounts or nonmaturing deposit accounts, provided that the trust account meets or exceeds the same minimum balance or other account requirements.

1. If a financial institution chooses to pay the rate alternative provided in this paragraph, it must submit a rate validation sheet and affidavit to the Chief Financial Officer by the tenth day of each quarter attesting that it will pay at least the same interest on the lawyer or law firm trust accounts that it is paying on its comparable business or consumer accounts or nonmaturing deposit accounts.

2. The affidavit must attest that the rate information submitted on the rate validation sheet is true and factual.

3. The Chief Financial Officer shall verify that the rate validation sheet and affidavit have been received by the Department of Financial Services.

(b) The second interest rate alternative must be set at 25 percent of the federal funds target rate determined by the Federal Open Market Committee of the Federal Reserve System or 0.25 percent, whichever is higher, net of fees.

1. Each December 1, March 1, June 1, and September 1, the

263874

Chief Financial Officer shall determine the interest rate of the second interest rate alternative. The rate alternative determined by the Chief Financial Officer is effective on the following January 1, April 1, July 1, and October 1, respectively.

2. Within 3 days after determining the interest rate under this paragraph, the Chief Financial Officer shall inform the entity established by the Supreme Court of the determined interest rate for the upcoming quarter.

(2) This section does not apply to interest rates established by written contract or obligations unrelated to IOTA accounts.

Section 2. This act shall take effect upon becoming a law.

========== 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 trust fund interest for purposes approved the Supreme Court; creating s. 655.97, F.S.; establishing two quarterly interest rate alternatives for financial institutions to pay to an entity established by the Supreme Court for the purpose of providing free legal services to low-income individuals and other purposes approved by the Supreme Court; requiring financial institutions to attest that it will pay a certain interest rate; requiring the Chief Financial Officer to set an interest rate;

263874

providing applicablity; providing an effective date.

WHEREAS, in September 1981, the Florida Supreme Court implemented the nation’s first Interest on Trust Accounts (IOTA) Program, establishing a vital funding source for civil legal aid, justice system improvements, and public service programs for law students, and

WHEREAS, Funding Florida Legal Aid (FFLA), formerly known as The Florida Bar Foundation, and the Florida Bankers Association cooperated for decades to sustain the program and encourage participation, and

WHEREAS, in March 2023, the Florida Supreme Court adopted new rules requiring lawyers to secure interest rates based on the Wall Street Journal Prime Rate, compelling banks to pay higher rates for IOTA accounts than for similar accounts, and

WHEREAS, 44 states, the District of Columbia, and Puerto Rico have mandatory IOTA programs modeled after Florida’s pre-2023 system, while 5 states and the U.S. Virgin Islands operate voluntary or opt-out programs, and

WHEREAS, the 2023 rule change made Florida an outlier compared to other jurisdictions where IOTA rates are typically benchmarked against interest-bearing checking account rates, and

WHEREAS, the Wall Street Journal Prime Rate serves as a benchmark for lending and is not used to set deposit account rates, and

WHEREAS, the 2023 rule change resulted in banks paying higher rates on funds in IOTA accounts, resulting in record revenues, exceeding $279 million, paid to FFLA during the 2023-2024 fiscal year, nearly four times the prior peak rate, and far

263874

exceeding average annual interest revenues, and

WHEREAS, in October 2024, the Florida Supreme Court authorized FFLA to hold nearly $143 million in reserve, and

WHEREAS, it is in the best interests of this state for the Legislature to establish statutory benchmarks for IOTA rates to ensure regulatory safety, fairness, and sustainability, similar to the quarterly interest rate determinations made by the Chief Financial Officer for interest paid on court judgments, NOW, THEREFORE,

651292

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Grall) recommended the following:

Senate Substitute for Amendment (263874) (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 655.97, Florida Statutes, is created to read:

655.97 Lawyer or law firm trust account interest rates.—

(1) A financial institution may hold funds in an interest-bearing trust account of a lawyer or law firm in which the institution remits interest or dividends on the balance of the

651292

deposited funds to an entity established by the Supreme Court for the purpose of providing or facilitating the provision of free legal services to low-income individuals or other purposes authorized by the Supreme Court. If the institution holds such an account, it must quarterly select one of the two interest rate alternatives to determine the interest it will pay to the entity established by the Supreme Court:

(a) The first interest rate alternative must be set at the highest interest rate or dividend generally available from the institution to its comparable business or consumer accounts or nonmaturing deposit accounts, provided that the trust account meets or exceeds the same minimum balance or other account requirements.

1. If a financial institution chooses to pay the rate alternative provided in this paragraph, it must submit a rate validation sheet and affidavit to the Chief Financial Officer by the tenth day of each quarter attesting that it will pay at least the same interest on the lawyer or law firm trust accounts that it is paying on its comparable business or consumer accounts or nonmaturing deposit accounts.

2. The affidavit must attest that the rate information submitted on the rate validation sheet is true and factual.

3. The Chief Financial Officer shall verify that the rate validation sheet and affidavit have been received by the Department of Financial Services.

(b) The second interest rate alternative must be set at 25 percent of the federal funds target rate determined by the Federal Open Market Committee of the Federal Reserve System or 0.25 percent, whichever is higher, net of fees.

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1. Each December 1, March 1, June 1, and September 1, the Chief Financial Officer shall determine the interest rate of the second interest rate alternative. The rate alternative determined by the Chief Financial Officer is effective on the following January 1, April 1, July 1, and October 1, respectively.

2. Within 3 days after determining the interest rate under this paragraph, the Chief Financial Officer shall inform the entity established by the Supreme Court of the determined interest rate for the upcoming quarter.

(2) This section does not apply to interest rates established by written contract or obligations unrelated to the trust accounts described by this section.

Section 2. This act shall take effect upon becoming a law.

========== 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 trust fund interest for purposes approved by the Supreme Court; creating s. 655.97, F.S.; establishing two quarterly interest rate alternatives for financial institutions to pay to an entity established by the Supreme Court for the purpose of providing free legal services to low-income individuals and other purposes approved by the Supreme Court; requiring financial institutions to attest that it will pay a certain interest rate; requiring the

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Chief Financial Officer to set an interest rate; providing applicability; providing an effective date.

WHEREAS, in September 1981, the Florida Supreme Court implemented the nation’s first Interest on Trust Accounts (IOTA) Program, establishing a vital funding source for civil legal aid, justice system improvements, and public service programs for law students, and

WHEREAS, Funding Florida Legal Aid (FFLA), formerly known as The Florida Bar Foundation, and the Florida Bankers Association cooperated for decades to sustain the program and encourage participation, and

WHEREAS, in March 2023, the Florida Supreme Court adopted new rules requiring lawyers to secure interest rates based on the Wall Street Journal Prime Rate, compelling banks to pay higher rates for IOTA accounts than for similar accounts, and

WHEREAS, 44 states, the District of Columbia, and Puerto Rico have mandatory IOTA programs modeled after Florida’s pre-2023 system, while 5 states and the U.S. Virgin Islands operate voluntary or opt-out programs, and

WHEREAS, the 2023 rule change made Florida an outlier compared to other jurisdictions where IOTA rates are typically benchmarked against interest-bearing checking account rates, and

WHEREAS, the Wall Street Journal Prime Rate serves as a benchmark for lending and is not used to set deposit account rates, and

WHEREAS, the 2023 rule change resulted in banks paying higher rates on funds in IOTA accounts, resulting in record revenues, exceeding $279 million, paid to FFLA during the 2023-

651292

2024 fiscal year, nearly four times the prior peak rate, and far exceeding average annual interest revenues, and

WHEREAS, in October 2024, the Florida Supreme Court authorized FFLA to hold nearly $143 million in reserve, and

WHEREAS, it is in the best interests of this state for the Legislature to establish statutory benchmarks for IOTA rates to ensure regulatory safety, fairness, and sustainability, similar to the quarterly interest rate determinations made by the Chief Financial Officer for interest paid on court judgments, NOW, THEREFORE,

By Senator Grall

29-00504C-25 2025498__

A bill to be entitled

An act relating to the interest rates applicable to the Interest on Trust Accounts Program; creating s. 655.97, F.S.; requiring the Chief Financial Officer to establish quarterly two interest rate alternatives applicable to the Interest on Trust Accounts (IOTA) Program to determine interest paid to Funding Florida Legal Aid (FFLA) by participating financial institutions; requiring such institutions to select one of the two rate alternatives annually; requiring that each rate alternative be set at a specified rate; requiring the Chief Financial Officer to inform FFLA of the rate alternatives established for each upcoming quarter; providing applicability; providing an effective date.

WHEREAS, in September 1981, the Florida Supreme Court implemented the nation's first Interest on Trust Accounts (IOTA) Program, establishing a vital funding source for civil legal aid, justice system improvements, and public service programs for law students, and

WHEREAS, Funding Florida Legal Aid (FFLA), formerly known as The Florida Bar Foundation, and the Florida Bankers Association cooperated for decades to sustain the program and encourage participation, and

WHEREAS, in March 2023, the Florida Supreme Court adopted new rules requiring lawyers to secure interest rates based on the Wall Street Journal Prime Rate, compelling banks to pay higher rates for IOTA accounts than for similar accounts, and

29-00504C-25 2025498__

WHEREAS, 44 states, the District of Columbia, and Puerto Rico have mandatory IOTA programs modeled after Florida's pre-2023 system, while 5 states and the U.S. Virgin Islands operate voluntary or opt-out programs, and

WHEREAS, the 2023 rule change made Florida an outlier compared to other jurisdictions where IOTA rates are typically benchmarked against interest-bearing checking account rates, and

WHEREAS, the Wall Street Journal Prime Rate serves as a benchmark for lending and is not used to set deposit account rates, and

WHEREAS, the 2023 rule change resulted in banks paying higher rates on funds in IOTA accounts, resulting in record revenues, exceeding $279 million, paid to FFLA during the 2023-2024 fiscal year, nearly four times the prior peak rate, and far exceeding average annual interest revenues, and

WHEREAS, in October 2024, the Florida Supreme Court authorized FFLA to hold nearly $143 million in reserve, and

WHEREAS, it is in the best interests of this state for the Legislature to establish statutory benchmarks for IOTA rates to ensure regulatory safety, fairness, and sustainability, similar to the quarterly interest rate determinations made by the Chief Financial Officer for interest paid on court judgments, NOW, THEREFORE,

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

Section 1. Section 655.97, Florida Statutes, is created to read:

655.97 Interest on Trust Accounts Program interest rates.—

(1)(a) Each December 1, March 1, June 1, and September 1, the Chief Financial Officer shall establish two interest rate alternatives applicable to the Interest on Trust Accounts (IOTA) Program to determine interest paid to Funding Florida Legal Aid (FFLA) by participating financial institutions. The rate alternatives established by the Chief Financial Officer are effective on the following January 1, April 1, July 1, and October 1, respectively. Each participating financial institution must annually select one of the two rate alternatives.

(b) The first rate alternative must be set at the highest interest rate or dividend generally available from the institution to its comparable non-IOTA business or consumer accounts or nonmaturing deposit accounts, provided that the IOTA accounts meet or exceed the same minimum balance or other account requirements. If a financial institution chooses to pay the rate alternative provided by this paragraph, it must submit a rate validation sheet to the Chief Financial Officer to ensure that it has paid at least the same interest on IOTA accounts that it paid on such other accounts.

(c) The second rate alternative must be set at 25 percent of the federal funds target rate or 0.25 percent, whichever is higher, net of fees. If a financial institution chooses to pay the rate alternative provided by this paragraph, it is exempt from the rate validation requirement established by paragraph (b).

(2) Within 3 days after establishing interest rates under subsection (1), the Chief Financial Officer shall inform FFLA of the rate alternatives for the upcoming quarter.

(3) This section does not apply to interest rates established by written contract or obligations unrelated to IOTA accounts.

Section 2. This act shall take effect upon becoming a law.

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 576
INTRODUCER:	Senator Leek
SUBJECT:	Service of Process
DATE:	March 11, 2025
REVISED:	

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

I. Summary:

SB 576 amends state laws governing service of process, which is the procedure by which a party to a lawsuit gives appropriate notice to other parties that the lawsuit has begun.

In 2022, the Legislature enacted a law that substantially revised the state's service of process statute. Although the 2022 law has since been applied by practitioners and the courts without significant problems, a task force of the Business Law Section of The Florida Bar (the "Task Force") has identified certain ways that the law can be improved. The Task Force's proposed improvements are reflected in the bill.

In summary, the bill:

- Allows a process server to serve process on registered agents during additional time periods, and locations and on additional individuals.
- Provides how one may serve process on business organizations in receivership.
- Clarifies how to execute substitute service of process on the Secretary of State.
- Clarifies how to execute substitute service of process on nonresidents or on individuals or business entities that are concealing their whereabouts.
- Deems former residents of this state to have appointed the Secretary of State as their agent for purposes of service of process.
- Validates service of process made in conformity with either the 2022 law, or prior law, ensuring the validity of default judgments based on service under either statutory regime.

The bill takes effect upon becoming a law, except as otherwise provided in the bill. The changes to Sections 1, 2, 3, and 4 of the bill are effective October 1, 2025.

II. Present Situation:

Service of Process

Generally

A fundamental concept of due process is that a person must be given fair notice of the initiation of an action against him or her.[1] Delivery of that notice is referred to as "service of process."[2] Adequate service of process is also required to summon a witness for testimony or for production of evidence.[3] Centuries ago, service of process was only trusted to the county sheriff.[4] Modern concepts of due process required for adequate service of process recognize that there are numerous means by which a person or entity may be fairly appraised of a lawsuit or a requirement to produce evidence.[5]

The traditional and best form of service of process on a competent adult is by personal delivery to that individual, but that is not always possible. Individuals may be difficult to find, whether intentionally or not. Individuals may be incompetent, whether medically or by youth. Procedures need to be established for determining how to serve process on an entity in a manner likely to have it noticed by management for a timely response. A large body of law has been devoted to the allowable methods for service of process.[6]

The Secretary of State is involved in many aspects of service of process. The Secretary is head of the Department of State,[7] which handles the administrative duties of the Secretary.[8] The Division of Corporations, under the Department of State, accepts business entity registrations and renewals, and maintains a publicly-accessible record of every entity, listing a registered agent and the names of the related top-level individuals of the entity. Every current entity must appoint a registered agent, a person within the state who is authorized by the entity to accept service of process directed to the entity.[9] In some instances, substituted service of process may be made on the Secretary of State.[10]

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[1] *See, e.g., Citizens of State v. Florida Public Service Commission*, 146 So. 3d 1143, 1154 (Fla. 2014) (noting that the fundamental requirements of due process are satisfied by reasonable notice and a reasonable opportunity to be heard).
[2] *See* U.S. District Court, Middle District of Florida, *Service of Process*, https://www.flmd.uscourts.gov/service-process (last visited Feb. 24, 2025) (providing that "[s]ervice of process is the procedure used to notify a defendant of the lawsuit").
[3] Eleventh Judicial Circuit of Florida, *Certified Civil Process Server Program Information Manual*, 1 (Jan. 2017), available at https://www.jud11.flcourts.org/docs/Process%20Server%20Manual%202017.pdf [hereinafter "Process Server Manual"].
[4] *See* Sheriff Roger Scott, *Office of Sheriff, ROOTS: A Historical Perspective of the Office of Sheriff*, National Sheriffs' Association, https://www.sheriffs.org/about-nsa/history/roots (last visited Feb. 24, 2025) (noting, with emphasis added, that "[t]he duties of the sheriff included keeping the peace, collecting taxes, maintaining jails, arresting fugitives, maintaining a list of wanted criminals, *and serving orders and writs for the Kings Court*").
[5] Process Server Manual, *supra* note 3, at 7-11 (describing personal service, substituted and constructive service, and extraterritorial service).
[6] *See generally* ch. 48, F.S. (process and service of process).
[7] Fla. Dep't of State, *About the Secretary*, https://dos.fl.gov/about-the-department/about-the-secretary/ (last visited Feb. 25, 2025).
[8] Fla. Dep't of State, *Office History*, https://dos.fl.gov/about-the-department/office-history/ (last visited Feb. 25, 2025).
[9] *See generally* Fla. Div. of Corps., *Division FAQs*, https://dos.fl.gov/sunbiz/about-us/faqs/ (last visited Feb. 25, 2025) (explaining how to form corporations and limited liability companies and identify registered agents and the names of top-level individuals of registered entities; maintaining a searchable database with publicly-accessible records of every entity).
[10] *See generally* ss. 48.161 and 48.181, F.S. (permitting substituted service of process on the Secretary of State under certain conditions).

2022 Legislation

In 2022, resulting largely from an initiative of the Business Law Section of The Florida Bar,[11] the Legislature enacted ch. 2022-190, Laws of Florida, which amended several laws governing service of process including ch. 48, F.S. (the "2022 Legislation"). A principal goal of the 2022 Legislation was to simplify, clarify, and modernize the manner of service of original process on business entities by eliminating duplicative and sometimes conflicting provisions regarding service of original process in the statutes regulating their formation, governance, and operation.[12]

Since January 2, 2023, the date that the 2022 Legislation became effective, a ch. 48, F.S., task force organized by the Business Law Section (the "Task Force") has monitored reported judicial decisions addressing or interpreting the 2022 Legislation. The Task Force has also consulted with legal practitioners and the Florida Association of Professional Process Servers, who have had experience in applying the 2022 Legislation's provisions.[13]

The purpose of the bill is to address certain issues that have arisen in connection with implementing the 2022 Legislation, as described more fully in Section III.

III. Effect of Proposed Changes:

Service of Process on Registered Agents and Registered Offices

Section 48.091, F.S., regulates how partnerships, corporations, and limited liability companies may designate a registered agent and registered agent office for service of process purposes. Among other things, the statute specifies a minimum amount of time (2 hours, between 10 a.m. to 12 noon each day except weekends and legal holidays) that designated registered offices must be open to ensure that the registered agent is present and available to accept service.[14]

Following the enactment of the 2022 Legislation, the Florida Association of Professional Process Servers approached the Task Force and requested that the minimum hours be extended to make it easier to serve process on registered agents. The Task Force investigated the issue and concluded that requiring designated registered offices to be open an additional 2 hours would not cause an undue hardship for practitioners who often serve as registered agents.[15]

Additionally, the Task Force has expressed concern with a recent court opinion holding that service of process on a registered agent of a limited liability company was not permitted at an address other than at the individual's designated registered office, even though prior law permitted such individuals to be served at his or her principal place of abode.[16] The Task Force's

[11] Business Law Section of The Florida Bar, *Analysis of Proposed "Glitch" Legislation to Amend Statutory Provisions regarding Service of Process in Florida*, 1 (Aug. 2024) (on file with the Senate Committee on Judiciary) [hereinafter referred to as "Analysis"]; *see also* Giacomo Bossa and James B. Murphy, Jr., *Recent Legislative Changes to Service of Process: A New Ball Game?*, 97 FLA. BAR J. 3, 39 (2023), https://www.floridabar.org/the-florida-bar-journal/recent-legislative-changes-to-service-of-process-a-new-ball-game/ (providing a more complete summary of the background and scope of the 2022 Legislation).
[12] Analysis, *supra* note 11, at 2.
[13] *Id.* at 4-5.
[14] Section 48.091(3), F.S.
[15] Analysis, *supra* note 11, at 9.
[16] *Id.* at 9-10 (citing *Campbell v. ADW Consulting, LLC*, 2024 WL 245802 (M.D. Fla. 2024)).

position is that limiting service of process on individual registered agents to the designated registered office is too restrictive and would unduly impede the ability to serve process on business entities. Accordingly, the Task Force believes that a party should be able to serve a registered agent who is an individual in the same manner as one is allowed to serve an individual who is a defendant in the litigation.[17]

Accordingly, **Section 1** of the bill amends s. 48.091, F.S., to:

- Expand by two additional hours (2 p.m. to 4 p.m.) the minimum number of hours that designated registered agent offices must be open.
- Authorize a process server to serve a registered agent who is a natural person in accordance with the general service of process statute.[18]
- Authorize a process server to serve process at a registered office on a registered agent who is a natural person by serving any employee of the agent if the agent is not present.
- Authorize a process server to serve process at a registered office on a registered agent that is not a natural person by serving the entity in accordance with applicable laws governing service of process on such entities or by serving any employee of the registered agent who is present at the designated registered office at the time of service.

Service of Process on Entities in Receivership

Section 48.101, F.S., regulates service of process on dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.

Not addressed in this statute or elsewhere, however, is how one would go about serving a business organization that has not been dissolved but is in receivership.[19] Given the volume of litigation involving business organizations in receivership in recent years, the Task Force concluded that the issue should be addressed.[20]

Accordingly, **Section 2** of the bill amends s. 48.101, F.S., to:

- Clarify that it addresses service on *domestic* dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, and dissolved limited liability partnerships.
- Expand the applicability of the statute to include business organizations in receivership.

The bill also amends the statute to provide that notwithstanding its provisions, and during the pendency of the receivership, a party attempting to serve process on a domestic business entity,

[17] *Id.* at 10.
[18] Section 48.031, F.S.
[19] A receiver is "a person appointed by the court to take control, custody, or management of property involved in litigation and to preserve the property, and receive rents, issues and profits." Kendall Coffey and David Freedman, *Florida's New Commercial Real Estate Receivership Act: A Roadmap for Judges and Practitioners,* 96 FLA. BAR J. 1, 18 (2022), https://www.floridabar.org/the-florida-bar-journal/floridas-new-commercial-real-estate-receivership-act-a-roadmap-for-judges-and-practitioners/#u6da1. "The right to the appointment of a receiver is a long-recognized equitable remedy, tracing its lineage to the English chancery courts, protecting real property and rents and profits arising therefrom." *Id.* A "receivership" means a proceeding in which a receiver is appointed. Section 714.02(15), F.S.
[20] Analysis, *supra* note 11, at 14.

business trust, or sole proprietorship in receivership may effectuate service by personal service on the receiver.

Method of Substituted Service on Nonresidents

Section 48.161, F.S., provides the method for substituted service on the Secretary of State with respect to nonresidents in litigation arising from business activities they conducted in the state and persons who conceal themselves to evade service of process.

The 2022 Legislation made several revisions to this statute to clarify its provisions and facilitate its application by practitioners and the courts. However, the Task Force and the Secretary of State have since identified several problems. Many of the summons received by the Secretary of State, particularly through its electronic portal, have incorrectly designated the Secretary of State as the party being served. Additionally, the Secretary of State's office has been inundated with copies of electronic filings of papers in many lawsuits after the substituted service of process has been effectuated, as if the Secretary of State were a party to those proceedings.[21]

In order to resolve these issues, **Section 3** of the bill amends s. 48.161, F.S., to:

- Clarify that the statute applies to substituted service on certain parties in care of the Secretary of State.
- Require that substituted service on parties in care of the Secretary of State be issued in the name of the party to be served, in the care of the Secretary of State.
- Eliminate the requirement that the Secretary of State keep a record of all process served on the Secretary of State.
- Authorize a process server, after exercising due diligence to locate and effectuate personal service, to use the substituted service method provided in statute in connection with any action in which the court has jurisdiction over the individual or business entity, if the individual or a business entity is a nonresident or conceals his, her, or its whereabouts.
- Require execution of an affidavit of compliance justifying the use of substituted service before using substituted service under the statute. The affidavit must demonstrate that the process server exercised due diligence in attempting to locate and effectuate personal service on the party and include any information regarding the party's nonresidence or concealment. If the party is a business entity for which substituted service is otherwise authorized by law, the affidavit must also contain supporting information.
- Clarify that the Secretary of State and the Department of State are not parties to the lawsuit by reason of substituted service under the statute and prohibit the service or sending of additional court filings regarding the lawsuit to the Secretary of State or the Department of State.

Substituted Service on Nonresidents and Foreign Business Entities Engaging in Business in State or Concealing their Whereabouts

Section 48.181, F.S., addresses the jurisdictional basis for substituted service on the Secretary of State when nonresidents have engaged in business in this state and are being sued with respect to

[21] *Id.* at 11-12.

a transaction or operation connected to such business. The statute also applies to persons concealing their whereabouts to avoid service of process.

According to the Task Force, the 2022 Legislation inadvertently omitted language that clearly brought one particular class of nonresidents – specifically, nonresidents who were formerly residents of the state – within the scope of the statute. The Task Force concluded that there is no reason to treat such nonresidents differently than other types of nonresidents; indeed, nonresidents who have engaged in business in this state in the past should more readily expect to answer a lawsuit in connection with it than nonresidents who have never engaged in business in this state.[22]

Section 4 amends s. 48.181, F.S., to restore language deleted from it by the 2022 Legislation. The bill provides that any individual who was a resident of this state, and who subsequently became a nonresident, is deemed to have appointed the Secretary of State as his or her agent on whom all process may be serviced in any action or proceeding against him or her. The proceeding must arise out of any transaction or operation connected with, or incidental to, any business or business venture carried out in this state by the individual.

Divergent Judicial Interpretations Regarding Applicability of the 2022 Legislation in Existing Cases

The Task Force is concerned that trial courts may not be consistently applying the 2022 Legislation's amendments. Most courts have applied the amendments to service of process which took place after January 2, 2023 (the effective date of the legislation). However, some federal courts have held that the amendments do not apply to service of process which took place after January 2, 2023, if the cause or causes of action alleged in the lawsuit accrued prior to January 2, 2023.[23] It is possible that there are state courts that have declined to apply the amendments in the 2022 Legislation for the same reason. Judges in both federal and state courts could follow this precedent. Given applicable statutes of limitation, some cases could be filed five years or more after the cause or causes of action accrued, creating uncertainty among practitioners and courts in determining how precisely service of process should be effectuated.[24]

To address this situation, the Task Force has developed statutory language creating a 'safe harbor' for any service of process made between January 2, 2023, and the effective date of the bill. So long as the service was properly made under *either* the amendments in the 2022 Legislation *or* under the prior law that would have otherwise applied when the cause of action accrued, the service of process will be considered valid.[25]

Accordingly, **Section 5** of the bill provides that:

- Amendments made to ch. 48, F.S., by ch. 2022-190, Laws of Florida, apply to causes of action that accrued on or after January 2, 2023, and to all causes of action that accrued before January 2, 2023, for which service of process was effectuated on or after January 2, 2023.

[22] *Id.* at 13-14.
[23] *Id.* at 5.
[24] *Id.* at 6.
[25] *Id.* at 7.

- Notwithstanding the prior paragraph, any service of process that occurred between January 2, 2023, and October 1, 2025, which has not been invalidated by a court, is valid if such service complied with either ch. 48, F.S., as amended by ch. 2022-190, Laws of Florida, or the laws governing service of process in effect before January 2, 2023, which would have applied in the absence of ch. 2022-190, Laws of Florida.
- Amendments made by the bill apply to all service of process made or effectuated on or after October 1, 2025, regardless of whether the cause of action accrued before, on, or after October 1, 2025.
- The bill does not extend or modify the time for challenging the validity of any service of process and does not revive any ability to challenge the validity of service of process which has been previously waived.

Effective Date

The bill takes effect upon becoming a law, except as otherwise provided in the bill. The changes to Sections 1, 2, 3, and 4 are effective October 1, 2025.

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, s. 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.

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: 48.091, 48.101, 48.161, and 48.181.

IX. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Leek) recommended the following:

Senate Amendment (with title amendment)

Delete lines 180 - 222

and insert:

additional time as the court allows. The affidavit of compliance must set forth the facts that justify such substituted service ~~under this section~~ and must contain sufficient facts showing:

(a) That ~~show~~ due diligence was exercised in attempting to locate and effectuate personal service on the party; and

(b) To the extent applicable, the party's nonresidence or concealment, or that the party is a business entity for which

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substituted service is otherwise authorized by law ~~before using substituted service under this section~~. The party effectuating service does not need to allege in its original or amended complaint the facts required to be set forth in the affidavit of compliance.

(4)~~(3)~~ When an individual or a business entity conceals its whereabouts, the party seeking to effectuate service may, after exercising due diligence to locate and effectuate personal service, ~~may~~ use substituted service pursuant to subsection (1) in connection with any action in which the court has jurisdiction over such individual or business entity. The party seeking to effectuate service must also comply with subsection (3) ~~(2)~~; however, a return receipt or other proof showing acceptance of receipt of the notice of service and a copy of the process by the concealed party need not be filed.

(5)~~(4)~~ The party effectuating service is considered to have used due diligence if that party:

(a) Made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;

(b) In seeking to effectuate personal service, reasonably employed the knowledge at the party's command, including knowledge obtained pursuant to paragraph (a); and

(c) Made an appropriate number of attempts to serve the party, taking into account the particular circumstances, during such times when and where such party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

(6)~~(5)~~ If any individual on whom service of process is

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authorized under subsection (1) dies, service may be made in the same manner on his or her administrator, executor, curator, or personal representative.

(7) ~~(6)~~ The Secretary of State may designate an individual in his or her office to accept service.

(8) ~~(7)~~ Service of process is effectuated under this section on the date the affidavit of compliance is filed, or the date when the notice of service requirements under subsection (3) are completed, whichever is later ~~service is received by the Department of State~~.

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

And the title is amended as follows:

Delete line 27

and insert:

certain affidavit of compliance; providing that a certain service of process is effectuated under specified circumstances; providing that the

By Senator Leek

7-00274C-25 2025576__

A bill to be entitled

An act relating to service of process; amending s. 48.091, F.S.; expanding the hours during which registered agents are required to keep the designated registered office open for the purpose of process service; specifying that certain registered agents may be served process in a specified manner; providing that process may be served on an employee of the registered agent in accordance with applicable law; authorizing a person attempting to serve process to serve an employee of the registered agent present at the registered office; amending s. 48.101, F.S.; authorizing service of process by personally serving the receiver for specified domestic entities in receivership during pendency of the receivership; amending s. 48.161, F.S.; requiring that a certain substituted service of process be issued in the name of the party to be served in care of the Secretary of State; deleting a provision requiring the Secretary of State to keep certain records; authorizing the use of a specified substituted service method under certain circumstances; requiring parties using such method to send the notice of service and a copy of the process to the last known physical and, if applicable, electronic addresses of the party being served; revising the information that must be contained in a certain affidavit of compliance; providing that the Secretary of State and the Department of State are not parties to lawsuits and may not be served additional

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court filings by reason of specified substituted service; amending s. 48.181, F.S.; specifying that registered agents must have been designated under a specified provision for a specified purpose; authorizing substituted service on the Secretary of State in specified circumstances; providing that certain individuals are deemed to have appointed the Secretary of State as their agents on whom all process may be served in certain actions and proceedings; providing retroactive application; providing applicability and construction; providing effective dates.

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

Section 1. Effective October 1, 2025, subsections (3) and (4) of section 48.091, Florida Statutes, are amended to read:

48.091 Partnerships, corporations, and limited liability companies; designation of registered agent and registered office.—

(3) Every domestic limited liability partnership; domestic limited partnership, including limited liability limited partnerships; domestic corporation; domestic limited liability company; registered foreign limited liability partnership; registered foreign limited partnership, including limited liability limited partnerships; registered foreign corporation; registered foreign limited liability company; and domestic or foreign general partnership that elects to designate a registered agent, shall cause the designated registered agent to

keep the designated registered office open from at least 10 a.m. to 12 noon and 2 p.m. to 4 p.m. each day except Saturdays, Sundays, and legal holidays, and shall cause the designated registered agent to keep one or more individuals who are, or are representatives of, the designated registered agent on whom process may be served at the office during these hours.

(4)(a) A registered agent who is a natural person may be served with process in accordance with s. 48.031.

(b) A person attempting to serve process at the registered office designated pursuant to subsection (2) on a registered agent who is a natural person, if such natural person is not present at the designated registered office at the time of service, may serve the process, including during the first attempt at service, on any employee of such natural person who is present at the designated registered office at the time of service.

(c) A person attempting to serve process at the registered office designated pursuant to subsection (2) ~~this section~~ on a registered agent that is other than a natural person may serve the process in accordance with the provisions of applicable law relating to service of process on that type of entity or on any employee of the registered agent who is present at the designated registered office at the time of service. ~~A person attempting to serve process pursuant to this section on a natural person, if the natural person is temporarily absent from his or her office, may serve the process during the first attempt at service on any employee of such natural person.~~

Section 2. Effective October 1, 2025, section 48.101, Florida Statutes, is amended to read:

48.101 Service on domestic dissolved corporations, dissolved limited liability companies, dissolved limited partnerships, ~~and~~ dissolved limited liability partnerships, and business organizations in receivership.—

(1) Process against the directors of any corporation that was dissolved before July 1, 1990, as trustees of the dissolved corporation must be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof.

(2)(a) Process against any other dissolved domestic corporation must be served in accordance with s. 48.081.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.081(2), but was not successful, service may then be attempted as required under s. 48.081(3). In addition to the persons listed in s. 48.081(3), service may then be attempted on the person appointed by the circuit court as the trustee, custodian, or receiver under s. 607.1405(6).

(c) A party attempting to serve a dissolved domestic for-profit corporation under this section may petition the court to appoint one of the persons specified in s. 607.1405(6) to receive service of process on behalf of the corporation.

(3)(a) Process against any dissolved domestic limited liability company must be served in accordance with s. 48.062.

(b) In addition, provided that service was first properly attempted on the registered agent pursuant to s. 48.062(2), but was not successful, service may then be attempted as required under s. 48.062(3). In addition to the persons listed in s. 48.062(3), service on a dissolved domestic limited liability

company may be made on the person appointed as the liquidator, trustee, or receiver under s. 605.0709.

(c) A party attempting to serve a dissolved domestic limited liability company under this section may petition the court to appoint one of the persons specified in s. 605.0709(5) to receive service of process on behalf of the limited liability company.

(4) Process against any dissolved domestic limited partnership must be served in accordance with s. 48.061.

(5) Notwithstanding this section and during the pendency of the receivership, a party attempting to serve process on a domestic business entity, business trust, or sole proprietorship in receivership may effectuate service by personal service on the receiver.

Section 3. Effective October 1, 2025, section 48.161, Florida Statutes, is amended to read:

48.161 Method of substituted service on certain parties in care of the Secretary of State ~~nonresident~~.—

(1) When authorized by law, substituted service of process on a nonresident individual or a corporation or other business entity incorporated or formed under the laws of any other state, territory, or commonwealth, or the laws of any foreign country, may be made by sending a copy of the process to the office of the Secretary of State. Such process must be issued in the name of the party to be served, in the care of the Secretary of State, and must be made by personal delivery; by registered mail; by certified mail, return receipt requested; by use of a commercial firm regularly engaged in the business of document or package delivery; or by electronic transmission. Such ~~The~~

service is sufficient service on a party that has appointed or is deemed to have appointed the Secretary of State as such party's agent for service of process. ~~The Secretary of State shall keep a record of all process served on the Secretary of State showing the day and hour of service.~~

(2) When an individual or a business entity is a nonresident or conceals his, her, or its whereabouts, the party seeking to effectuate service may, after exercising due diligence to locate and effectuate personal service, use the substituted service method specified in subsection (1) in connection with any action in which the court has jurisdiction over the individual or business entity.

(3) Whenever a party is using substituted service specified in subsection (1), notice of service and a copy of the process must also be sent forthwith to the party being served by the party effectuating service or by such party's attorney by registered mail; by certified mail, return receipt requested; or by use of a commercial firm regularly engaged in the business of document or package delivery. In addition, if the parties have recently and regularly used e-mail or other electronic means to communicate between themselves, the notice of service and a copy of the process must also be sent by such electronic means. ~~or, if the party is being served by substituted service,~~ The notice of service and a copy of the process must be sent to the ~~served at such party's~~ last known physical address and, if applicable, last known electronic address of the party being served. The party effectuating service shall file proof of service or return receipts showing delivery to the other party by mail or courier and by electronic means, if electronic means were used, unless

the party is actively refusing or rejecting the delivery of the notice or the party is concealing himself, herself, or itself. An affidavit of compliance of the party effectuating service or such party's attorney must be filed within 40 days after the date of service on the Secretary of State or within such additional time as the court allows. Before using substituted service under this section, the affidavit of compliance must set forth the facts that justify such substituted service ~~under this section~~ and must contain sufficient facts demonstrating that ~~show~~ due diligence was exercised in attempting to locate and effectuate personal service on the party, including any information regarding the party's nonresidence or concealment, or that the party is a business entity for which substituted service is otherwise authorized by law ~~before using substituted service under this section~~. The party effectuating service does not need to allege in its original or amended complaint the facts required to be set forth in the affidavit of compliance.

(4)~~(3)~~ When an individual or a business entity conceals its whereabouts, the party seeking to effectuate service may, after exercising due diligence to locate and effectuate personal service, ~~may~~ use substituted service pursuant to subsection (1) in connection with any action in which the court has jurisdiction over such individual or business entity. The party seeking to effectuate service must also comply with subsection (3) ~~(2)~~; however, a return receipt or other proof showing acceptance of receipt of the notice of service and a copy of the process by the concealed party need not be filed.

(5)~~(4)~~ The party effectuating service is considered to have used due diligence if that party:

(a) Made diligent inquiry and exerted an honest and conscientious effort appropriate to the circumstances to acquire the information necessary to effectuate personal service;

(b) In seeking to effectuate personal service, reasonably employed the knowledge at the party's command, including knowledge obtained pursuant to paragraph (a); and

(c) Made an appropriate number of attempts to serve the party, taking into account the particular circumstances, during such times when and where such party is reasonably likely to be found, as determined through resources reasonably available to the party seeking to secure service of process.

(6)~~(5)~~ If any individual on whom service of process is authorized under subsection (1) dies, service may be made in the same manner on his or her administrator, executor, curator, or personal representative.

(7)~~(6)~~ The Secretary of State may designate an individual in his or her office to accept service.

(8)~~(7)~~ Service of process is effectuated under this section on the date the service is received by the Department of State.

(9)~~(8)~~ The Department of State shall maintain a record of each process served pursuant to this section and record the time of and the action taken regarding the service. The Secretary of State and the Department of State are not parties to the lawsuit by reason of substituted service under this section, and additional court filings regarding such lawsuit may not be served upon or sent to the Secretary of State or the Department of State after the substituted service is effectuated.

(10)~~(9)~~ This section does not apply to persons on whom service is authorized under s. 48.151.

Section 4. Effective October 1, 2025, present subsections (5) and (6) of section 48.181, Florida Statutes, are redesignated as subsections (6) and (7), respectively, a new subsection (5) is added to that section, and subsections (3) and (4) of that section are amended, to read:

48.181 Substituted service on nonresidents and foreign business entities engaging in business in state or concealing their whereabouts.—

(3) If a foreign business entity has registered to do business in this state and has maintained its registration in an active status or otherwise continued to have a registered agent designated in accordance with s. 48.091, personal service of process must first be attempted on the foreign business entity in the manner and order of priority described in this chapter as applicable to the foreign business entity. If, after due diligence, the party seeking to effectuate service of process is unable to effectuate service of process on the foreign business entity in the manner and order of priority ~~registered agent or other official as~~ provided in this chapter, the party may use substituted service of process on the Secretary of State.

(4) Any individual or foreign business entity that conceals its whereabouts is deemed to have appointed the Secretary of State as its agent on whom all process may be served, in any action or proceeding against such individual or foreign business entity ~~it, or any combination thereof~~, arising out of any transaction or operation connected with or incidental to any business or business venture carried on in this state by such individual or foreign business entity.

(5) Any individual who was a resident of this state and who

subsequently became a nonresident is deemed to have appointed the Secretary of State as his or her agent on whom all process may be served in any action or proceeding against such individual arising out of any transaction or operation connected with or incidental to any business or business venture carried on in this state by such individual.

Section 5. (1) The amendments made to chapter 48, Florida Statutes, by chapter 2022-190, Laws of Florida, apply to causes of action that accrued on or after January 2, 2023, and to all causes of action that accrued before January 2, 2023, for which service of process was effectuated on or after January 2, 2023.

(2) Notwithstanding subsection (1), any service of process that occurred between January 2, 2023, and October 1, 2025, which has not been invalidated by a court, is valid if such service complied with either chapter 48, Florida Statutes, as amended by chapter 2022-190, Laws of Florida, or the laws governing service of process in effect before January 2, 2023, which would have applied in the absence of chapter 2022-190, Laws of Florida.

(3) The amendments made by this act apply to all service of process made or effectuated on or after October 1, 2025, regardless of whether the cause of action accrued before, on, or after October 1, 2025.

(4) This section does not extend or modify the time for challenging the validity of any service of process and does not revive any ability to challenge the validity of service of process which has previously been waived.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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 752
INTRODUCER:	Senator Simon
SUBJECT:	Defamation, False Light, and Unauthorized Publication of Name or Likenesses
DATE:	March 11, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			CM	
3.			RC	

I. Summary:

SB 752 amends two statutes relating to defamation, which is the unprivileged publication of false statements that naturally and proximately result in an injury to another. Generally, the bill imposes requirements on newspapers and broadcast stations to remove false and defamatory articles and broadcasts from the Internet after receiving notice of their falsity.

Under existing law, newspapers and broadcast stations have a duty to issue a full and fair correction, apology, or retraction of a false and defamatory news article or broadcast after receiving notice of its falsity. A newspaper or broadcast that fails to timely fulfill this duty is not entitled to limit its damages for defamation to the plaintiff's actual damages. Under the bill, if the article or broadcast is published on the Internet, the newspaper or broadcast station must also permanently remove the article or broadcast from the Internet within 10 days after receiving notice of the falsity of the article or broadcast to be entitled to the limitation on liability.

The bill also subjects newspapers to the same statutory liability standards that currently apply to radio and television stations, by requiring them to exercise due care to prevent the publication of defamatory statements. Under the bill, failing to permanently remove statements from the Internet that a reasonable person would conclude to be defamatory will extend the statute of limitations, giving plaintiffs more time to bring suit.

The bill takes effect July 1, 2025.

II. Present Situation:

Defamation at Common Law

Defamation is the unprivileged publication of false statements that naturally and proximately result in an injury to another.[1] It has also been described as a statement that tends to harm the reputation of another by lowering him or her in the estimation of the community; or, more broadly stated, one that exposes a plaintiff to hatred, ridicule, or contempt, or injures his business, reputation, or occupation.[2]

The Florida Constitution provides that every person may speak, write, and publish sentiments on all subjects, but will be responsible for the abuse of that right.[3] The law of defamation embodies the public policy that individuals should be free to enjoy their reputations unimpaired by false and defamatory attacks. An action for defamation is based upon a violation of this right.[4]

Different states vary in their anti-defamation statutes; as such, courts in different states will interpret defamation laws differently, and defamation statutes will vary somewhat from state to state.[5] But generally, defamation may take one of three forms:

- Spoken words, commonly known as "slander."[6]
- A written statement, commonly known as "libel."[7]
- An implication, commonly known as "false light" invasion of privacy.[8]

Before 2008, Florida courts recognized separate causes of action for slander and libel premised upon spoken or written defamatory statements, but did not recognize a separate cause of action for defamation itself.[9] However, in 2008, the Florida Supreme Court recognized a standalone tort of defamation,[10] and in doing so, it effectively subsumed all claims for slander and libel into that tort. Therefore, defamation now encompasses both libel and slander.[11] False light is not

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[1] *Hoch v. Loren*, 273 So. 3d 56, 57 (Fla. 4th DCA 2019) (internal citation omitted).
[2] *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1108-09 (Fla. 2008) (internal citation omitted).
[3] FLA. CONST. art. I, s. 4.
[4] 19 FLA. JUR. 2D s. 1 *Defamation and Privacy*.
[5] Cornell Law School Legal Information Institute, *Defamation*, https://www.law.cornell.edu/wex/defamation (last visited Feb. 28, 2025).
[6] *See Spears v. Albertson's, Inc.,* 848 So. 2d 1176, 1179 (Fla. 1st DCA 2003) (providing that "[s]lander may be defined as the speaking of base and defamatory words").
[7] *See Dunn v. Air Line Pilots Association*, 193 F.3d 1185, 1191 (11th Cir. 1999) (noting that under Florida law, libel is defined as the unprivileged written publication of false statements).
[8] *See* RESTATEMENT (SECOND) OF TORTS s. 652E.
[9] *See Delacruz v. Peninsula State Bank*, 221 So. 2d 772, 775 (Fla. 2d DCA 1969) (explaining that there is no such legal cause of action as 'defamation' and "[l]ibel and slander may be Founded [sic] on defamation, but the right of action itself is libel or slander, depending upon whether it is written or oral").
[10] *See Jews for Jesus, Inc.*, 997 So. 2d at 1105-08 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida).
[11] *Norkin v. The Florida Bar*, 311 F. Supp. 3d 1299, 1303-04 (S.D. Fla. 2018) (internal citations omitted); *Klayman v. Judicial Watch, Inc.*, 22 F. Supp. 3d 1240, 1247 fn. 2 (S.D. Fla. 2014).

recognized as a separate cause of action in Florida, but like slander and libel, it is nearly identical to a form of defamation known as "defamation by implication."[12]

Although libel is generally perpetrated by written communication, it also includes defamation through the publication of pictures or photographs.[13] Alteration of a photograph may support a defamation action.[14]

In Florida, the five required elements of a claim for defamation are:
- Publication.
- Falsity.
- Knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.
- Actual damages.
- A defamatory statement.[15]

"Publication" is a required element because a defamatory statement does not become actionable until it is published or communicated to a third person.[16] Publication requires proof that the statement is exposed to the public so it may be read or heard by a third person, but not necessarily that it has in fact been read or heard by a third person.[17]

The element of "falsity" requires that the defamation be "of and concerning" the plaintiff,[18] and that the allegation or representation about the plaintiff be false.[19] The falsity may be premised upon untruthfulness, such as in the case of slander or libel, or from truthful statements that imply falsely, such as in the case of defamation by implication.[20]

An actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person.[21] With respect to this element, case law has developed which purports to balance the interests of the First Amendment while also protecting people from being unjustly defamed.[22] Accordingly, courts apply an actual malice standard to public figures, and a simple negligence standard to private individuals.[23] A private individual may recover actual damages from a media defendant that

[12] *See Jews for Jesus, Inc.*, 997 So. 2d at 1108 (comparing the false light cause of action to the defamation by implication cause of action, and recognizing the existence of only the latter in Florida); *but see* RESTATEMENT (SECOND) OF TORTS s. 652E (recognizing a separate tort of false light).
[13] 19 FLA. JUR. 2D *Defamation and Privacy* s. 15 (citing 50 AM. JUR. 2D *Libel and Slander* s. 153).
[14] 50 AM. JUR. 2D *Libel and Slander* s. 153 (internal citations omitted).
[15] *Jews for Jesus, Inc.*, 997 So. 2d at 1106.
[16] *American Airlines, Inc. v. Geddes*, 960 So. 2d 830, 833 (Fla. 3d DCA 2007).
[17] *Axiom Worldwide, Inc. v. Becerra*, 2009 WL 1347398, *7 (M.D. Fla. 2009) (citing *Rives v. Atlanta Newspapers, Inc.*, 220 Ga. 485, 139 S.E.2d 395, 398 (1964) (noting, in applying single publication rule to newspaper, that "whether or not it is read is immaterial once it is shown that it was exposed to public view")).
[18] *Thomas v. Jacksonville Television, Inc.*, 699 So. 2d 800, 805 (Fla. 1st DCA 1997).
[19] *See generally Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 23 (1990) (Brennan, J., dissenting) (noting that "only defamatory statements that are capable of being proved false are subject to liability under state libel law").
[20] *Jews for Jesus, Inc.*, 997 So. 2d at 1106-08.
[21] *Id.* at 1106.
[22] Gleisy Sopena, *Attorney-Fee Shifting is the Solution to Slapping Meritless Claims Out of Federal Courts*, 16 FIU L. REV. 833, 842 (Spring 2022).
[23] *Jews for Jesus, Inc.*, 997 So. 2d at 1111.

publishes false and defamatory statements and that fails to use reasonable care to determine their falsity.[24]

With respect to the element of actual damages, the recovery of actual damages depends upon whether the defamation was "per se" or "per quod." Defamation per se generally relieves plaintiffs of having to prove damages, because such statements are so inherently damaging that damages are typically presumed.[25] On the other hand, defamation per quod generally requires plaintiffs to provide supporting and extrinsic evidence to prove that the statement or publication was actually defamatory.[26]

Finally, the statements must actually be defamatory. To make this determination, courts consider allegedly defamatory statements in their totality. For example, they consider all the words, pictures, and illustrations as used and presented together, not just a particular phrase or sentence in isolation.[27] An allegedly defamatory statement should be considered in its natural sense without a forced or strained construction.[28] Courts also make threshold determinations regarding whether a claim should even be considered by a jury[29] and whether a privilege applies.[30]

Defenses

In addition to general procedural and other defenses that may be available (*e.g.* a failure to allege and prove any of the elements of defamation), the following specific defenses are available in response to a claim of libel, slander, or defamation by implication:

- Statutory protections:
  - For radio and television broadcasters.[31]
  - For good faith reports of potential child abuse, abandonment, or neglect.[32]
- Privilege:
  - Absolute immunity, for any act occurring during the course of a legislative, judicial, or quasi-judicial proceeding, so long as the act has some relation to the proceeding.[33]

[24] *Thomas*, 699 So. 2d at 804.
[25] *Wolfson v. Kirk*, 273 So. 2d 774, 776 (Fla. 4th DCA 1973); *Bass v. Rivera*, 826 So. 2d 534, 535 (Fla. 2d DCA 2002); *Delacruz*, 221 So. 2d at 775.
[26] *Boyles v. Mid-Florida Television Corp.*, 431 So. 2d 627, 633 (Fla. 5th DCA 1983) (quoting *Piplack v. Mueller*, 97 Fla. 440, 121 So. 459 (Fla. 1929)).
[27] *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983).
[28] *Id.*
[29] *Id.; Wolfson*, 273 So. 2d at 778.
[30] *See Jews for Jesus, Inc.*, 997 So. 2d at 1111-12 (providing a list of cases that applied various privileges to defamatory statements)*; see also* s. 770.04, F.S. (regarding liability of radio or television broadcasters); *see also Wright v. Yurko*, 446 So. 2d 1162, 1164 (Fla. 5th DCA 1984) (holding privilege extends to communications made within lawsuits).
[31] *See generally* s. 770.04, F.S.
[32] *See generally* s. 39.203, F.S.
[33] *See Kidwell v. General Motors Corp.*, 975 So. 2d 503, 505 (Fla. 2d DCA 2007) (regarding judicial and quasi-judicial immunity); *see also Tucker v. Resha*, 634 So. 2d 756, 758 (Fla. 1st DCA 1994), *apprv'd,* 670 So. 2d 56 (Fla. 1996) (noting, with emphasis added, that "[t]he public interest requires that *statements made by officials of all branches of government in connection with their official duties* be absolutely privileged") (internal citations omitted).

  - Absolute immunity, for state executive officers[34] and public officials,[35] as long as their statements are made in connection with their duties and responsibilities.
  - Qualified immunity, when made in good faith and certain other conditions are met.[36]
- Immunity as an expression of pure opinion, which occurs when one makes a comment or opinion based on facts in an article or that are otherwise known or available to the reader or listener as a member of the public.[37]

Actions for libel and slander must be brought within 2 years after the cause of action accrues.[38]

Florida's Defamation Statute

Florida's defamation statute[39] consists of the following 8 sections.

Notice Condition Precedent to Action or Prosecution for Libel or Slander

Before any civil action may be brought for the publication or broadcast of a libel or slander in a newspaper, periodical, or other medium, the plaintiff must, at least 5 days before bringing suit, serve notice in writing on the defendant, specifying the article, broadcast, and statements which he or she alleges to be false and defamatory.[40]

Correction, Apology, or Retraction by Newspaper or Broadcast Station

A plaintiff in a civil action for libel or slander may only recover actual damages if it appears at trial that the article or broadcast:
- Was published in good faith.
- That its falsity was due to an honest mistake of the facts.
- That there were reasonable grounds for believing that the statements in the article or broadcast were true.
- That, within certain time periods (provided below), a full and fair correction, apology, or retraction was, in the case of a newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which the article appeared, and in as conspicuous a place and type as the original article; or in the case of a broadcast, the correction, apology, or retraction was broadcast at a comparable time.[41]

In order to limit damages to actual damages only, the full and fair correction, apology, or retraction must be made:

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[34] *Tucker*, 634 So. 2d at 758.
[35] *Hope v. National Alliance of Postal and Federal Employees, Jacksonville Local No. 320,* 649 So. 2d 897, 901 fn. 5 (Fla. 1st DCA 1995).
[36] *See Lundquist v. Alewine,* 397 So. 2d 1148, 1149 (Fla. 5th DCA 1981) (providing that the elements essential to the finding of a conditionally privileged publication are good faith; an interest to be upheld; a statement limited in its scope to this purpose; a proper occasion; and publication in a proper manner) (internal citations omitted).
[37] *Sepmeier v. Tallahassee Democrat, Inc.*, 461 So. 2d 193, 195 (Fla. 1st DCA 1984) (internal citation omitted); *Smith v. Taylor County Pub. Co., Inc.*, 443 So. 2d 1042, 1046-47 (Fla. 1st DCA 1983).
[38] *See* s. 95.11(4)(g), F.S. (providing a 2-year statute of limitations for libel or slander); *see also* s. 95.031(1), F.S. (providing that unless otherwise specified, the statute of limitations runs from the time the cause of action accrues).
[39] Chapter 770, F.S.
[40] Section 770.01, F.S.
[41] Section 770.02(1), F.S.

- In the case of a broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice.
- In the case of a newspaper or periodical published semimonthly, within 20 days after service of notice.
- In the case of a newspaper or periodical published monthly, within 45 days after service of notice.
- In the case of a newspaper or periodical published less frequently than monthly, in the next issue, provided notice is served no later than 45 days prior to such publication.[42]

Civil Liability of Broadcasting Stations

The owner, lessee, licensee, or operator of a broadcasting station has the right (except when prohibited by federal law or regulation), but may not be compelled, to require the submission of a written copy of any statement intended to be broadcast over the station 24 hours before the time of the intended broadcast of the statement.[43]

When the owner, lessee, licensee, or operator elects to require the submission of a written copy, it may not be held responsible for any damages caused by any libelous or slanderous statement which is not contained in the written copy, made by or for the person or party submitting the copy of the proposed broadcast. The statute may not be construed to relieve the person or party, or the agents or servants of the person or party, making any libelous or slanderous statement from liability.[44]

Civil Liability of Radio or Television Broadcasting Stations; Care to Prevent Publication or Statement Required

The owner, licensee, or operator of a radio or television broadcasting station, and their agents or employees, may not be held liable for any damages for any defamatory statement published or stated by a third party in or as a part of a radio or television broadcast, unless it is alleged and proven by the plaintiff that he or she failed to exercise due care to prevent the publication or statement in the broadcasts. However, the exercise of due care is construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.[45]

Limitation of Choice of Venue

A person may not have more than one choice of venue for damages for libel or slander, invasion of privacy, or any other tort founded upon any single publication, exhibition, or statement, such as:

- Any one edition of a newspaper, book, or magazine.
- Any one presentation to an audience.
- Any one broadcast over radio or television.
- Any one exhibition of a motion picture.

[42] Section 770.02(2), F.S.
[43] Section 770.03, F.S.
[44] *Id.*
[45] Section 770.04, F.S.

Recovery in any action must include all damages for any such tort suffered by the plaintiff in all jurisdictions.[46]

Adverse Judgement in Any Jurisdiction a Bar to Additional Action

A judgment in any jurisdiction for or against a plaintiff upon the substantive merits of any action for damages, founded upon a single publication, exhibition, or statement, bars any other action for damages by the same plaintiff against the same defendant founded upon the same publication, exhibition, or statement.[47]

Cause of Action, Time of Accrual

A cause of action for damages founded upon a single publication, exhibition, or statement, is deemed to have accrued at the time of its first publication, exhibition, or statement in this state.[48]

Limitation on Recovery of Damages

A person may not sue in more than one jurisdiction for damages for libel founded upon a single publication, exhibition, or statement. Once an appropriate jurisdiction is chosen, the person will recover in that jurisdiction all damages allowed to him or her for libel in all jurisdictions.[49]

III. Effect of Proposed Changes:

The bill amends two statutes relating to defamation. Generally, the bill imposes requirements on newspapers and broadcast stations which, if not observed, prevent them from being entitled to limit their liability for damages to the plaintiff's actual damages.

Section 1 of the bill amends s. 770.02, F.S., regarding the correction, apology, or retraction by a newspaper or broadcast station. As amended, the section requires a newspaper or broadcast station that publishes a false and defamatory article on the Internet to permanently remove it within 10 days after receiving notice of its falsity. A newspaper or broadcast station fails to timely remove the article is not entitled to limit its liability for defamation to the plaintiff's actual damages. This requirement is in addition to the existing requirements for the newspaper or broadcast station to timely issue a correction, apology, or retraction.

Section 2 of the bill amends s. 770.04, F.S., regarding civil liability of radio or television broadcasting stations, to expand the statute's scope to also include newspapers, and to require them to exercise due care to prevent the publication of defamatory statements. The due care standard is synonymous with ordinary care or reasonable care, which are standards in a tort action to determine whether a person acted negligently. Accordingly, newspapers under the statute as amended are expressly liable for damages for defamation if they act negligently in the publication of defamatory material.

Additionally, the bill provides that when an owner, a licensee, or an operator:

[46] Section 770.05, F.S.
[47] Section 770.06, F.S.
[48] Section 770.07, F.S.
[49] Section 770.08, F.S.

- Publishes a defamatory statement on the Internet with no knowledge of falsity of the statement;
- Receives notice that such statement has been found in a judicial proceeding to be false, or receives notice of facts that would cause a reasonable person to conclude that the statement was false; and
- Fails to take reasonable steps to permanently remove the statement and any related report from the Internet;

Then the continued appearance of the statement or report on the Internet after the notice is a new publication for purpose of the statute of limitations, and the owner, licensee, or operator is not entitled to a fair reporting privilege for the new publication.

Section 3 provides that the act takes effect July 1, 2025.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill may make it easier for private plaintiffs to sue newspapers and broadcast stations for defamation in several ways, including for their publications on the Internet, it is anticipated that defendants in such cases may have to pay more in awards (to satisfy meritorious defamation claims), claim settlements, and additional legal fees and costs. On the other hand, persons held to higher standards to avoid making defamatory statements

may incur additional costs for conducting investigations before making potentially defamatory statements.

The duties imposed by the bill on newspapers and broadcast stations to remove defamatory publications from the Internet may also limit the damages and harm caused to persons who are defamed.

C. Government Sector Impact:

Because the bill may make it easier for private plaintiffs to sue for defamation, it is anticipated that such suits will increase court caseloads to some degree and the costs associated with maintaining same.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill requires newspapers and broadcast stations to permanently remove defamatory articles and statements from the Internet to avoid certain legal consequences (specifically, to limit plaintiff recoveries to actual damages, or to avoid a new publication of the defamatory statement for statute of limitations purposes). However, it is unclear how newspapers and broadcast stations can permanently remove defamatory articles and statements published by them but no longer within their control. For example, newspapers and broadcast stations may no longer have control over defamatory articles and statements re-published over multiple sites or websites that archive past versions of other websites. Thus, it may be practically impossible for newspapers and broadcast stations to permanently remove defamatory articles and statements originally published by them from the entire Internet. Accordingly, the Legislature may wish to revise the bill to require newspapers and broadcast stations to remove the articles from the Internet websites that they control.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 770.02, 770.04.

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 Simon

3-01591-25 2025752__

A bill to be entitled

An act relating to defamation, false light, and unauthorized publication of name or likenesses; amending s. 770.02, F.S.; requiring that certain articles or broadcasts be removed from the Internet within a specified period to limit damages for defamation; amending s. 770.04, F.S.; providing persons in certain positions relating to newspapers with immunity for defamation if such persons exercise due care to prevent publication or utterance of such a statement; declaring that the continued presence on the Internet of a published statement determined to be false is deemed to be a new publication of the false statement for certain purposes and that the owner, licensee, or operator is not entitled to a certain privilege; providing an effective date.

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

Section 1. Section 770.02, Florida Statutes, is amended to read:

770.02 Correction, apology, or retraction by newspaper or broadcast station.—

(1) If it appears upon the trial that an ~~said~~ article or a broadcast was published in good faith; that its falsity was due to an honest mistake of the facts; that there were reasonable grounds for believing that the statements in the ~~said~~ article or broadcast were true; and that, within the period of time specified in subsection (2), a full and fair correction,

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apology, or retraction was, in the case of a newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which the ~~said~~ article appeared and in as conspicuous place and type as the ~~said~~ original article or, in the case of a broadcast, the correction, apology, or retraction was broadcast at a comparable time, then the plaintiff in such case shall recover only actual damages. For purposes of this section, if such an article or a broadcast has been published on the Internet, the article or broadcast must be permanently removed from the Internet within the time period provided in paragraph (2)(a) in order to limit recovery to actual damages as provided in this section.

(2) Full and fair correction, apology, or retraction shall be made:

(a) In the case of a broadcast or a daily or weekly newspaper or periodical, within 10 days after service of notice.~~;~~

(b) In the case of a newspaper or periodical published semimonthly, within 20 days after service of notice.~~;~~

(c) In the case of a newspaper or periodical published monthly, within 45 days after service of notice.~~; and~~

(d) In the case of a newspaper or periodical published less frequently than monthly, in the next issue, provided notice is served no later than 45 days before ~~prior to~~ such publication.

Section 2. Section 770.04, Florida Statutes, is amended to read:

770.04 Civil liability of certain media outlets ~~radio or television broadcasting stations~~; care to prevent publication or utterance required.—

(1) The owner, licensee, or operator of a radio or television broadcasting station or a newspaper, and the agents or employees of any such owner, licensee, or operator, are ~~shall~~ not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio or television broadcast or newspaper article, by one other than such owner, licensee, or operator, or general agent or employees thereof, unless it is ~~shall be~~ alleged and proved by the complaining party~~,~~ that such owner, licensee, operator, general agent, or employee~~,~~ has failed to exercise due care to prevent the publication or utterance of such statement in such broadcasts or newspaper articles, provided, however, the exercise of due care shall be construed to include the bona fide compliance with any federal law or the regulation of any federal regulatory agency.

(2) When an owner, a licensee, or an operator described in subsection (1) publishes a defamatory statement on the Internet with no knowledge of falsity of the statement and thereafter receives notice that such statement has been found in a judicial proceeding to be false, or receives notice of facts that would cause a reasonable person to conclude that such statement was false, and the owner, licensee, or operator fails to take reasonable steps to permanently remove the statement and any related report from the Internet, the continued appearance of such statement or report on the Internet after the notice is deemed a new publication for purpose of the statute of limitations, and the owner, licensee, or operator is not entitled to a fair reporting privilege for such new publication.

Section 3. This act shall take effect July 1, 2025.

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 774
INTRODUCER:	Senator Wright
SUBJECT:	Electronic Transmittal of Court Orders
DATE:	March 11, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			ACJ	
3.			FP	

I. Summary:

SB 774 requires the clerk of court to electronically deliver to the sheriff, within 6 hours of entry of an order by a judge, certain court orders requiring prompt attention by the sheriff for the sake of public safety. The orders requiring prompt delivery are an order to detain an individual for involuntary mental health examination, an order to detain an individual for involuntary substance abuse evaluation, or an order to take possession of firearms and ammunition from an individual pursuant to a risk protection order. The 6-hour limit applies at all times, including nights, weekends, holidays, and during natural disasters.

The bill is effective July 1, 2025.

II. Present Situation:

Involuntary Mental Health Examination

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[1] The Baker Act includes 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 protects the rights of all individuals examined or treated for mental illness in Florida.[3]

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

[1] Ch. 71-131, Laws of Fla. The Baker Act is contained in ch. 394, F.S. The "Baker Act" is named in honor of the legendary state representative Maxine Baker of Miami who served from 1963 to 1972. She was strongly interested in mental health issues, served as chair of the House Committee on Mental Health, and sponsored the bill.
[2] Sections 394.451-394.47891, F.S.
[3] Section 394.459, F.S.

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 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]
- 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]

A law enforcement officer who delivers an individual to a receiving facility 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.[9] Any facility accepting the patient based on this certificate must send a copy of the certificate to the DCF within 5 working days.[10] The same reporting requirements apply in instances where a law enforcement officer delivers a person to a receiving facility pursuant to a certificate executed by a health care professional.[11]

Involuntary Substance Abuse Examination

In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[12] The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider. An individual who wishes to enter treatment may apply to

[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. In addition, the order of the court must be made a part of the patient's clinical record.
[7] Section 394.463(2)(a)2., F.S.
[8] Section 394.463(2)(a)3., F.S.
[9] Section 394.463(2)(a)2., F.S.
[10] *Id*.
[11] Section 394.463(2)(a)3., F.S.
[12] Ch. 93-39, s. 2, L.O.F. (creating ch. 397, F.S., effective October 1, 1993).

a service provider for voluntary admission.[13] Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when 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.[14] However, denial of addiction is a prevalent symptom of substance use disorder (SUD), creating a barrier to timely intervention and effective treatment.[15] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[16]

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.[17] 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.[18]

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:

- Needs substance abuse services and, because 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;[19] or
- Without care or treatment:
  - The person is likely to suffer from neglect or refuse to care for himself or herself;
  - The 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.[20]

[13] Section 397.601(1), F.S
[14] Section 397.601(2), F.S.
[15] Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited March 8, 2025) (hereinafter cited as "Fundamentals of the Marchman Act").
[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] 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.
[20] Section 397.675(2)(b), F.S.

Involuntary Seizure of Firearms from Certain Individuals

In 2018, the Florida Legislature passed the Marjory Stoneman Douglas High School Public Safety Act (Act) in response to a tragic school shooting.[21] In addition to other provisions in the Act, the law addresses public safety by restricting firearm and ammunition possession by a person who poses a danger to himself or herself or others.

Section 790.401, F.S., contains a process for a law enforcement officer or a law enforcement agency to petition a circuit court for a temporary ex parte risk protection order and a final risk protection order.[22] The intent of the process and court intervention is to temporarily prevent a person from accessing firearms when there is demonstrated evidence that the person poses a significant danger to himself or herself or others, including significant danger as a result of a mental health crisis or violent behavior. The process strikes a balance between the rights of the person (respondent) including due process of law, and reducing death or injury as a result of his or her use of firearms during a mental health crisis.[23]

To issue a risk protection order the court must find by clear and convincing evidence that the respondent poses a significant danger of causing personal injury to himself or herself or others by having in his or her custody or control, or by purchasing, possessing, or receiving, a firearm.[24]

A court, in determining whether grounds for a risk protection order exist may consider any relevant evidence including, but not limited to:

- A recent act or threat of violence by the respondent against himself or herself or others, regardless of whether the violence or threat of violence involves a firearm;
- An act or threat of violence by the respondent within the past 12 months, including, but not limited to, acts or threats of violence by the respondent against himself or herself or others;
- Evidence of the respondent being seriously mentally ill or having recurring mental health issues;
- A violation by the respondent of a protection order or a no contact order issued under ss. 741.30, 784.046, or 784.0485, F.S.;
- A previous or existing risk protection order issued against the respondent;
- A violation of a previous or existing risk protection order issued against the respondent;
- Whether the respondent, in this state or any other state, has been convicted of, had adjudication withheld on, or pled nolo contendere to a crime that constitutes domestic violence as defined in s. 741.28, F.S.;
- Whether the respondent has used, or has threatened to use, against himself or herself or others any weapons;
- The unlawful or reckless use, display, or brandishing of a firearm by the respondent;

[21] Chapter 2018-3, s. 16, L.O.F.
[22] The law enforcement officer or law enforcement agency petitioning the court for a risk protection order (petitioner) must make a good faith effort to provide notice to a family or household member of the respondent and to any known third party who may be at risk of violence. The notice must state that the petitioner intends to petition the court for a risk protection order or has already done so and must include referrals to appropriate resources, including mental health, domestic violence, and counseling resources. The petitioner must attest in the petition to having provided such notice or must attest to the steps that will be taken to provide such notice. Section 790.401(2)(f), F.S.
[23] Chapter 2018, s. 14, L.O.F.
[24] Section 790.401(3)(b), F.S.

- The recurring use of, or threat to use, physical force by the respondent against another person, or the respondent stalking another person;
- Whether the respondent, in this state or any other state, has been arrested, convicted of, had adjudication withheld on, or pled nolo contendere to a crime involving violence or a threat of violence;
- Corroborated evidence of the abuse of controlled substances or alcohol by the respondent;
- Evidence of recent acquisition of firearms by the respondent;
- Any relevant information from family and household members concerning the respondent; and
- Witness testimony, taken while the witness is under oath, relating to the matter before the court.[25]

If the court issues a risk protection order, it may do so for a period that it deems appropriate, up to and including but not exceeding 12 months.[26]

Florida law allows the petitioner to request that a court issue a temporary ex parte risk protection order, without notice to the respondent, before the hearing for a final risk protection order has occurred. To issue the ex parte order, the court must find that the respondent poses a significant danger of causing personal injury to himself or herself or to others in the near future by having in his or her custody or control or by purchasing, possessing, or receiving a firearm or ammunition.[27] The court must consider all relevant evidence, including the evidence described above, in determining whether to issue an ex parte risk protection order.[28]

Upon issuance of a risk protection order, including a temporary ex parte risk protection order, the court must order the respondent to surrender to the local law enforcement agency all firearms and ammunition in the respondent's custody, control, or possession, and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S.[29]

The law enforcement officer serving a risk protection order, including a temporary ex parte risk protection order, must request that the respondent immediately surrender all firearms and ammunition in his or her custody, control, or possession and any license to carry a concealed weapon or firearm issued under s. 790.06, F.S. The law enforcement officer must take possession of all firearms and ammunition belonging to the respondent that are surrendered.[30]

Time for Transmittal of Court Orders

The risk protection order law requires the clerk to furnish the court order, petition, and notice of hearing to the sheriff on or before the next business day.[31] The Baker Act and the Marchman Act do not address the issue of when the clerk must transmit the operative paperwork to the sheriff for the sheriff to take custody of the individual. These orders can and are often sought on an

[25] Section 790.401(3)(c)1.-15., F.S.
[26] Section 790.401(3)(b), F.S.
[27] Section 790.401(4)(a), F.S.
[28] Section 790.401(4)(b), F.S.
[29] Sections 790.401(3)(g), (4)(e), and (7)(a), F.S.
[30] Section 790.401(7)(b), F.S.
[31] Section 790.401(3)(a)1., F.S.

expedited or emergency basis requiring prompt action by the sheriff. Judicial circuits are required to have one or more judges available to serve nights, weekends, holidays, and during natural disasters.[32]

III. Effect of Proposed Changes:

The bill amends the laws on involuntary mental health examinations, involuntary substance abuse examinations, and the issuance of risk protection orders to require that the clerk of the circuit court transmit the operative paperwork to the county sheriff by electronic means and no later than 6 hours after the court entered the order. No exception is made for nights, weekends, holidays, or natural disasters.

The bill is effective July 1, 2025.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[32] Section 28.20, F.S.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on clerks of court in counties that do not currently keep a staff member "on call" for emergencies that might occur on nights, weekends, holidays, and natural disasters.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.463, 397.68151, and 790.401.

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 Wright

8-00924-25 2025774__

A bill to be entitled

An act relating to electronic transmittal of court orders; amending s. 394.463, F.S.; requiring the clerk of the court, within 6 hours after a court issues an ex parte order for involuntary commitment, to submit the order electronically to the sheriff or law enforcement agency in the county where the order is to be served; amending s. 397.68151, F.S.; requiring the clerk of the court, within 6 hours after a certain summons is issued, to submit the summons electronically and, if applicable, a copy of the petition for involuntary services and a notice of the hearing to a law enforcement agency to effect service on certain persons; amending s. 790.401, F.S.; requiring the clerk of the court to transmit electronically, within a certain timeframe after the court issues a risk protection order and notice of hearing, a copy of the order, notice of hearing, petition to the appropriate law enforcement agency for service upon the respondent; requiring the clerk of the court to transmit electronically, within a certain timeframe after the court issues a temporary ex parte risk protection order or risk protection order, a copy of the notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, to the sheriff; requiring that an electronic copy of a temporary ex parte risk protection order or a risk protection order be certified by the clerk of the court and that the

8-00924-25 2025774__

electronic copy be served in the same manner as the certified copy; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, must ~~shall~~ take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court must ~~shall~~ be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department within 5 working days. Within 6 hours after the court issues an order, the clerk of the court shall electronically submit the

order to the sheriff or a law enforcement agency in the county where the order is to be served ~~may be submitted electronically through existing data systems, if available~~. The order is ~~shall be~~ valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If a time limit is not specified in the order, the order is valid for 7 days after the date that the order was signed.

2. A law enforcement officer may take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. A law enforcement officer transporting a person pursuant to this section shall restrain the person in the least restrictive manner available and appropriate under the circumstances. If transporting a minor and the parent or legal guardian of the minor is present, before departing, the law enforcement officer must ~~shall~~ provide the parent or legal guardian of the minor with the name, address, and contact information for the facility within the designated receiving system to which the law enforcement officer is transporting the minor, subject to any safety and welfare concerns for the minor. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. The report must include all emergency contact information for the person that is readily accessible to the law enforcement officer, including information available through electronic databases maintained by the Department of Law Enforcement or by the Department of Highway

Safety and Motor Vehicles. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). Any facility accepting the patient based on this report must send a copy of the report to the department within 5 working days.

3. A physician, a physician assistant, a clinical psychologist, a psychiatric nurse, an advanced practice registered nurse registered under s. 464.0123, a mental health counselor, a marriage and family therapist, or a clinical social worker may execute 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 and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer must ~~shall~~ take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody and include all emergency contact information required under subparagraph 2. Such emergency contact information may be used by a receiving facility only for the purpose of informing listed emergency contacts of a patient's whereabouts pursuant to s. 119.0712(2)(d). The report and certificate must ~~shall~~ be made a part of the patient's clinical record. Any facility accepting

the patient based on this certificate must send a copy of the certificate to the department within 5 working days. The document may be submitted electronically through existing data systems, if applicable.

When sending the order, report, or certificate to the department, a facility shall, at a minimum, provide information about which action was taken regarding the patient under paragraph (g), which information must ~~shall~~ also be made a part of the patient's clinical record.

Section 2. Subsection (3) of section 397.68151, Florida Statutes, is amended to read:

397.68151 Duties of court upon filing of petition for involuntary services.—

(3) A copy of the petition and notice of the hearing must be provided to the respondent; the respondent's parent, guardian, or legal custodian, in the case of a minor; the respondent's attorney, if known; the petitioner; the respondent's spouse or guardian, if applicable; and such other persons as the court may direct. If the respondent is a minor, a copy of the petition and notice of the hearing must be personally delivered to the respondent. The clerk shall also issue a summons to the person whose admission is sought, and, unless a circuit court's chief judge authorizes disinterested private process servers to serve parties under this chapter, within 6 hours after the summons being issued, the clerk of the court shall electronically submit the summons and, if applicable, a copy of the petition and notice of hearing to a law enforcement agency to ~~must~~ effect such service on the person

whose admission is sought for the initial treatment hearing.

Section 3. Paragraph (a) of subsection (3) and subsection (5) of section 790.401, Florida Statutes, are amended to read:

790.401 Risk protection orders.—

(3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

(a) Upon receipt of a petition, the court must order a hearing to be held no later than 14 days after the date of the order and must issue a notice of hearing to the respondent for the same.

1. The clerk of the court shall electronically transmit within 6 hours after the court issues an order and notice of hearing ~~cause~~ a copy of the order, notice of hearing, and petition ~~to be forwarded on or before the next business day~~ to the appropriate law enforcement agency for service upon the respondent as provided in subsection (5).

2. The court may, as provided in subsection (4), issue a temporary ex parte risk protection order pending the hearing ordered under this subsection. Such temporary ex parte order must be served concurrently with the notice of hearing and petition as provided in subsection (5).

3. The court may conduct a hearing by telephone pursuant to a local court rule to reasonably accommodate a disability or exceptional circumstances. The court must receive assurances of the petitioner's identity before conducting a telephonic hearing.

(5) SERVICE.—

(a) Within 6 hours after the court issues a temporary ex parte risk protection order or risk protection order, the clerk of the court shall electronically transmit ~~furnish~~ a copy of the

notice of hearing, petition, and temporary ex parte risk protection order or risk protection order, as applicable, to the sheriff of the county where the respondent resides or can be found, who shall serve it upon the respondent as soon thereafter as possible on any day of the week and at any time of the day or night. An electronic ~~When requested by the sheriff, the clerk of the court may transmit a facsimile~~ copy of a temporary ex parte risk protection order or a risk protection order must be ~~that has been~~ certified by the clerk of the court, and the electronic ~~this facsimile~~ copy must ~~may~~ be served in the same manner as a certified copy. Upon receiving an electronic ~~a facsimile~~ copy, the sheriff must verify receipt with the sender before attempting to serve it upon the respondent. The clerk of the court is ~~shall be~~ responsible for furnishing to the sheriff information on the respondent's physical description and location. Notwithstanding any other ~~provision of~~ law to the contrary, the chief judge of each circuit, in consultation with the appropriate sheriff, may authorize a law enforcement agency within the jurisdiction to effect service. A law enforcement agency effecting service pursuant to this section shall use service and verification procedures consistent with those of the sheriff. Service under this section takes precedence over the service of other documents, unless the other documents are of a similar emergency nature.

(b) All orders issued, changed, continued, extended, or vacated after the original service of documents specified in paragraph (a) must be certified by the clerk of the court and delivered to the parties at the time of the entry of the order. The parties may acknowledge receipt of such order in writing on

the face of the original order. If a party fails or refuses to acknowledge the receipt of a certified copy of an order, the clerk must ~~shall~~ note on the original order that service was effected. If delivery at the hearing is not possible, the clerk must ~~shall~~ mail certified copies of the order to the parties at the last known address of each party. Service by mail is complete upon mailing. When an order is served pursuant to this subsection, the clerk shall prepare a written certification to be placed in the court file specifying the time, date, and method of service and shall notify the sheriff.

Section 4. This act shall take effect July 1, 2025.

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 806
INTRODUCER:	Senator Yarborough
SUBJECT:	Florida Trust Code
DATE:	March 11, 2025
REVISED:	

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

I. Summary:

SB 806 provides that only the Attorney General has standing to enforce the terms of a charitable trust having its principal place of administration in this state. The term "standing" means the legal right to pursue a particular civil action. This would have the effect of setting aside the common law special interest rule that gives a person having a "special interest" in a charitable trust standing to file an action to enforce the terms of the charitable trust. This will also have the effect of setting aside the historical standing afforded to the settlor of a charitable trust and that of a specific named charitable beneficiary.

The bill is effective upon becoming law.

II. Present Situation:

Trust Law – In General

A trust is an entity established by a settlor to hold, invest, and distribute moneys on behalf of one or more beneficiaries, in compliance with the terms of the trust as established by the settlor. Where the beneficiary of the trust is for a general charitable purpose, the trust is known as a "charitable trust." An individual or entity managing the trust is known as a trustee.

In a private trust arrangement, only the settlor, or any of the individual named beneficiaries, has legal standing (i.e., the right to) file an action in the probate court to enforce the terms of the trust. As to a charitable trust, the settlor, a named charitable organization beneficiary, and the Attorney General may enforce a charitable trust.[1] The reason that general beneficiaries may not sue to enforce a charitable trust is that, "unlike a private trust, where there are identifiable

[1] Sections 736.0110 and 736.0405, F.S.; *State of Del. ex rel. Gebelein v. Fla. First Nat. Bank of Jacksonville*, 381 So. 2d 1075, 1077 (Fla. 1st DCA 1979).

beneficiaries who are the equitable owners of the trust property, the beneficiaries of a charitable trust are the public at large."[2]

Florida courts recognize an exception to rule of standing whereby a person alleging a special interest, an interest beyond the general interest possessed by the public at large, may have standing to enforce the terms of a charitable trust.[3] The reason for requiring a special interest is: "If it were otherwise there would be no end to potential litigation against a given [trust], whether he be a public official or otherwise, brought by individuals or residents, all possessed by the same general interest . . . ."[4] "Trustees have been permitted to bring suit against co-trustees, and persons or organizations having a special interest in a trust or a special status under a trust instrument are considered to have standing to enforce the trust."[5]

The common law "special interest" exception to the general rule of standing to file an action to enforce a trust provision in a charitable trust has not been codified in the Trust Code, although it is alluded to in s. 736.0405(3), F.S. In a 2024 case, a district court of appeal noted that the special interest rule had not been changed by statute, and stated that the Legislature could change or eliminate that common law rule by amending the Trust Code.[6]

The Attorney General

The Attorney General is a statewide elected official whose office is created by the state constitution.[7] The Attorney General is the chief state's legal officer.

III. Effect of Proposed Changes:

The bill amends s. 736.0110, F.S., to effectively set aside the common law special interest rule regarding standing to enforce the terms of a charitable trust. The bill provides that the Attorney General has the exclusive standing to assert the rights of a qualified beneficiary related to a charitable trust. Only the Attorney General may pursue an action for contract and trust law claims relating to a charitable distribution or the exercise of the powers of a trustee. The bill specifies that neither the Attorney General of another state, nor any other state official of another state, may assert the rights of a qualified beneficiary as to a Florida trust.

The bill amends s. 736.0106, F.S., to conform. The bill also amends s. 736.0405, F.S., to reiterate that the Attorney General of any other state, or any other public official of another state, may not seek enforcement of the terms of a charitable trust as to a Florida trust.

The bill is effective upon becoming law.

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[2] *Id*.
[3] See *United States Steel Corp. v. Save Sand Key*, 303 So.2d 9 (Fla. 1974).
[4] *Askew v. Hold the Bulkhead-Save our Bays*, 269 So.2d 696 (Fla. 2d DCA 1972).
[5] *Milton v. Milligan*, No. 4:12CV384-RH/CAS, 2013 WL 828607, at *4 (N.D. Fla. Mar. 5, 2013).
[6] *Jennings v. Durden*, No. 5D2023-0064, 2024 WL 2788198, at *6 (Fla. 5th DCA May 31, 2024), review denied sub nom. *Uthmeier v. Jennings*, No. SC2024-1372, 2025 WL 561329 (Fla. Feb. 20, 2025). In this case, the State of Delaware claims a special interest in enforcing the terms of a trust that includes the condition "first consideration, in each instance, being given to beneficiaries who are residents of Delaware."
[7] Article IV, s. 4(b), STATE CONST.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill appears to end the claims being asserted by the State of Delaware regarding the trust created by the will of Alfred I. duPont which created the Nemours Foundation. The Nemours Foundation operates children's hospitals and health care facilities in multiple states.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The change to s. 736.0110(3), F.S., by the bill gives that Attorney General *exclusive* standing to assert the rights of a qualified beneficiary of a charitable trust. However, that change appears inconsistent with existing s. 736.0110(1), F.S., which recognizes that charitable organizations may also have the rights of a qualified beneficiary. Accordingly, the Legislature may wish to amend the bill reconcile the conflicting provisions.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 736.0110, 736.0106, and 736.0405.
This bill reenacts part of section 738.303 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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Yarborough) recommended the following:

Senate Amendment (with title amendment)

Delete lines 26 - 33

and insert:

(b) Where the Attorney General asserts the rights of a qualified beneficiary as provided in (3)(a), the Attorney General has the exclusive authority to represent the general public, unnamed charitable beneficiaries, and any person having a special interest in a charitable trust, in any judicial proceedings within this state or elsewhere, with respect to all

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matters relating to the administration of the charitable trust, including and without limitation, contract and trust law claims relating to charitable distributions and the exercise of trustee powers. The Attorney General of another state or any other public officer of another state does not have standing to assert such rights or interests.

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

And the title is amended as follows:

Delete lines 3 - 6

and insert:

736.0110, F.S.; specifying circumstances in with the Attorney General has the exclusive authority to represent certain interests relating to a charitable trust having its principal place of administration in this state; prohibiting

By Senator Yarborough

4-00697A-25 2025806__

A bill to be entitled

An act relating to the Florida Trust Code; amending s. 736.0110, F.S.; providing that the Attorney General has exclusive standing to assert certain rights of beneficiaries of charitable trusts in any judicial proceeding within this state or elsewhere; prohibiting certain public officers of another state from asserting such rights; amending s. 736.0106, F.S.; conforming provisions to changes made by the act; amending s. 736.0405, F.S.; providing construction; reenacting s. 738.303(2)(b) and (d), F.S., relating to authority of a fiduciary, to incorporate the amendment made to s. 736.0110, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3)(a) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

(b) The Attorney General has exclusive standing to assert such rights in any judicial proceedings within this state or elsewhere. Such standing extends to all matters relating to the administration of such charitable trust, including and without

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limitation, contract and trust law claims relating to charitable distributions and the exercise of trustee powers. The Attorney General of another state or any other public officer of another state does not have standing to assert such rights.

Section 2. Section 736.0106, Florida Statutes, is amended to read:

736.0106 Common law of trusts; principles of equity.—The common law of trusts and principles of equity supplement this code, except to the extent modified by this code or another law of this state, including, but not limited to, s. 736.0110(3).

Section 3. Subsection (3) of section 736.0405, Florida Statutes, is amended to read:

736.0405 Charitable purposes; enforcement.—

(3) The settlor of a charitable trust, among others, has standing to enforce the trust. This subsection may not be construed to afford standing to the Attorney General of any other state, or another public officer of another state, with respect to any charitable trust having its principal place of administration in this state.

Section 4. For the purpose of incorporating the amendment made by this act to section 736.0110, Florida Statutes, in references thereto, paragraphs (b) and (d) of subsection (2) of section 738.303, Florida Statutes, are reenacted to read:

738.303 Authority of fiduciary.—

(2) A fiduciary may take an action under subsection (1) if all of the following apply:

(b) The fiduciary sends a notice in a record to the qualified beneficiaries determined under ss. 736.0103 and 736.0110 in the manner required by s. 738.304, describing and

proposing to take the action.

(d) At least one member of each class of the qualified beneficiaries determined under ss. 736.0103 and 736.0110, other than the Attorney General, receiving the notice under paragraph (b) is:

1. If an individual, legally competent;

2. If not an individual, in existence; or

3. Represented in the manner provided in s. 738.304(2).

Section 5. This act shall take effect upon becoming a law.

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 832
INTRODUCER:	Senator Burgess
SUBJECT:	Former Phosphate Mining Lands
DATE:	March 11, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			EN	
3.			RC	

I. Summary:

SB 832 establishes a defense from strict liability in lawsuits brought by the Department of Environmental Protection or others for a cause of action based on a natural geology substance on the site of a former phosphate mine.

For a defendant to be exempt from strict liability under the defense created by the bill, the defendant must prove that:

- A notice identifying the property as a former phosphate mine has been recorded within the county where the property is located.
- The Department of Health has conducted a gamma radiation survey of the land parcel at the request of a landowner.

The bill includes findings by the Legislature that phosphate mining is an essential agricultural activity that is necessary for the food security of the nation and this state, that former mined lands are a valuable resource, and that the highest and best use of former mined lands is in the state's interests.

For any lawsuit based on strict liability, negligence, or similar conduct related to an alleged discharge of hazardous substances or condition of pollution related to phosphate mining, the bill requires the plaintiff to include a radiation survey meeting certain requirements with the complaint.

The bill takes effect July 1, 2025.

II. Present Situation:

Phosphate Mining

Phosphate rock contains the mineral phosphorus, an ingredient used in some fertilizers to help plants grow strong roots.[1] Phosphate rock contains small amounts of naturally-occurring radioactive[2] elements called radionuclides. Uranium and radium are two kinds of radionuclides.[3] The natural breakdown of uranium and radium results in radon, which is a radioactive gas that can move through the ground and accumulate in buildings over time.[4]

Prior to mining for phosphate, mining operators must first prepare the site by obtaining certain permits and surveying and clearing the land.[5] The phosphate is mined by excavating the top 15 to 30 feet of earth to remove the phosphate rock.[6]

The phosphate rock is removed with clay and sand that is then dumped into a pit to create a slurry; the slurry is then piped to a beneficiation plant where the phosphate is separated from the sand and clay. After undergoing the beneficiation process, the clay is pumped through pipelines into large impoundment areas, known as clay settling areas, where it is stored indefinitely. The sand, which may include residual concentrations of radionuclides, is pumped through pipelines back to the mined area and used in reclamation.[7]

When processing phosphate rock to make fertilizer, the phosphorous is removed by dissolving the rock in an acidic solution.[8] The solid waste that remains is called phosphogypsum.[9] To limit the public's exposure to radon, which is created as a result of radium decay of phosphogypsum, the phosphogypsum is piled into stacks on private property located away from the public.[10]

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[1] U.S. Environmental Protection Agency (EPA), *Radioactive Material from Fertilizer Production*, https://www.epa.gov/radtown/radioactive-material-fertilizer-production (last visited Mar. 3, 2025) [hereinafter "*Radioactive Material from Fertilizer Production*"].

[2] These elements emit radiation at a specific rate that is measured in terms of a half-life. A half-life is the time required for half of the radioactive atoms present to decay. This process can take seconds or millions of years, depending on the radionuclide. EPA, *Radionuclides*, https://www.epa.gov/radiation/radionuclides (last visited Mar. 3, 2025).

[3] *Id.*

[4] EPA, *Radionuclide Basics: Radon*, https://www.epa.gov/radiation/radionuclide-basics-radon (last visited Mar. 3, 2025).

[5] Department of Environmental Protection (DEP), *Phosphate*, https://floridadep.gov/water/mining-mitigation/content/phosphate (last visited Mar. 3, 2025) [hereinafter "*Phosphate*"].

[6] *Id.*

[7] *Id.;* Department of Health (DOH), *Environmental Radiation Programs*, https://www.floridahealth.gov/environmental-health/radiation-control/envrad/index.html (last visited Mar. 3, 2025) [hereinafter *"Environmental Radiation Programs*"]. According to DOH, Florida's phosphate deposits contain varying concentrations of uranium and radium. "Although generally the radiation dose received from these concentrations is insignificant, the dose can become significant if the concentration increases through mining the ore…. To monitor this situation, the department takes soil, air, and water samples from the land both before and after mining occurs and measures the radiation levels."

[8] *Radioactive Material from Fertilizer Production*, *supra* note 1.

[9] EPA, *Phosphogypsum*, https://www.epa.gov/radiation/phosphogypsum (last visited Mar. 3, 2025) [hereinafter "*Phosphogypsum*"].

[10] *Id.*; *Radioactive Material from Fertilizer Production*, *supra* note 1.

Phosphate Mines in Florida

Phosphate mining is the fifth largest mining industry in the U.S. in terms of the amount of material mined.[11] Florida is the largest known U.S. source of phosphates, accounting for more than 60 percent of U.S. production.[12] Within Florida, phosphate mining primarily occurs in an area known as Bone Valley. This area consists of approximately 1.3 million acres within Hardee, Hillsborough, Manatee, and Polk counties.[13]

There are 28 phosphate mines in Florida, of which 11 mines are currently active and 10 mines are 100 percent reclaimed and released from reclamation obligations.[14] The remaining mines are either not started or are shut down. Phosphate mines typically range in size from approximately 5,000 to 100,000 acres.[15] Approximately 25 to 30 percent of these lands are wetlands or other surface waters.[16]

Reclamation

The Legislature has found that mining phosphate serves as an important economic interest for the state, but also recognizes that it is a temporary land use.[17] As such, all lands mined after July 1, 1975, are required to be reclaimed after mining is completed at a site.[18] The Department of Environmental Protection is responsible for creating and enforcing rules regarding phosphate mining, including phosphate mine reclamation.[19]

The process of reclamation begins with an applicant submitting a conceptual plan[20] application for reclamation at least 6 months prior to beginning site preparation[21] or mining operations,[22] whichever occurs first.[23] To be approved, a conceptual plan has to meet certain safety, water quality, flooding and draining, waste disposal, and other criteria.[24] Reclamation and restoration of mining lands must be completed within 2 years of the actual completion of mining operations.[25] Each year on March 1, after the approval of a conceptual reclamation plan, each operator is required to submit an annual mining and reclamation report describing the mining and

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[11] *Radioactive Material from Fertilizer Production*, *supra* note 1.
[12] U.S. Geological Survey, *LCMAP Assessment: Phosphate Mining in Florida*, https://geonarrative.usgs.gov/lcmap-assessment-phosphate-mining-florida/ (last visited Mar. 3, 2025).
[13] *Phosphate*, *supra* note 5.
[14] *Id*.
[15] *Id*.
[16] *Id*.
[17] Section 378.202(1), F.S.
[18] Section 378.204, F.S. These lands are referred to as mandatory land, whereas lands mined prior to July 1, 1975, were exempt from reclaim regulations and are called nonmandatory land. *See id.*
[19] Section 378.205(2), F.S.
[20] "Conceptual plan" means a graphic and written description of general activities to be undertaken across the whole mine to comply with the reclamation standards. Fla. Admin. Code R. 62C-16.0021(5).
[21] "Site preparation" means those physical activities involving clearing or modification of the land surface conducted before initiating mining or mining operations, excluding prospecting, or agricultural practices or agricultural activities that are not initiated to directly serve future mining operations. Fla. Admin. Code R. 62C-16.0021(20).
[22] "Mining operation" means those physical activities other than prospecting and site preparation which are necessary for extraction, waste disposal, storage, or dam maintenance prior to abandonment. Fla. Admin. Code R. 62C-16.0021(10).
[23] Fla. Admin. Code R. 62C-16.0032(2)(a).
[24] Fla. Admin. Code R. 62C-16.0051.
[25] Section 378.209(1), F.S.; Fla. Admin. Code R. 62C-16.0051(12)(b)4.

reclamation activities for the previous calendar year and the proposed mining and reclamation for the current year.[26]

During the process of reclamation, credentialed representatives of the department are authorized to enter lands for the purpose of inspecting them to ensure compliance with reclamation regulations.[27] Once an operator of a phosphate mine has completed its reclamation and restoration requirements within a reclamation parcel, it may request a release of the reclamation parcel in writing.[28] Within 90 days after receiving a written request for release, the department will do a final inspection of the land. If the department does not find that all the reclamation and restoration requirements have been met, it will notify the operator of the deficiencies that must be corrected.[29] When the department approves of the reclamation and restoration of a parcel, an operator is released from its reclamation and tax obligations for the phosphate mining parcels.[30]

Radiation Surveys

Radon that naturally occurs in soil is generally not a health concern, however, exposure to radon at higher levels and over prolonged periods of time can cause a serious hazard to human health by increasing the risk of developing lung cancer.[31] The Department of Health takes samples from the soil, air, and water from phosphate mining parcels before mining begins and after reclamation has been completed to monitor the radioactivity of phosphate mining sites.[32] These samples include gamma radiation exposure measurements, soil radon emanation determinations, soil radium determinations, air monitoring, and surface and ground water monitoring of areas that are potentially impacted by mining activities.[33] The department requires a mining company to pay fees for such monitoring.[34]

Radiation Measurement Specialists

The Department of Health requires any person who tests or mitigates the presence of radon for a fee to be certified by the department.[35] Additionally, the American Board of Health Physics and the National Registry of Radiation Protection Technologists have certification programs for specialists engaging in radiation measurements.

A health physicist who is certified by the board must do the following to become certified:

- Obtain a bachelor's or graduate degree from an accredited college or university in physical science, engineering, or biological science.
- Complete at least six years of responsible professional experience in health physics, with three years of that being applied health physics. A degree may be substituted for two years of experience.

[26] Fla. Admin. Code R. 62C-16.0091(1).
[27] Fla. Admin. Code R. 62C-16.0067(1).
[28] Fla. Admin. Code R. 62C-16.0068(1).
[29] Fla. Admin. Code R. 62C-16.0068(3).
[30] Fla. Admin. Code R. 62C-16.0068(3)(b).
[31] *Phosphogypsum*, *supra* note 9.
[32] *Environmental Radiation Programs*, *supra* note 7; Fla. Admin. Code R. 64E-5.1002.
[33] Fla. Admin. Code R. 64E-5.1002.
[34] Fla. Admin. Code R. 64E-5.1003. Gamma radiation exposure measurements are made at the rate of one per acre. *Id.*
[35] Fla. Admin. Code R. 64E-5.1203(1).

- Submit a list of professional references.
- Submit a written report demonstrating that the candidate has produced professional level work in health physics.
- Pass a two-part exam.[36]

A radiation protection technologist who is certified by the registry must do the following to become certified:

- Have a high school diploma or equivalent.
- Be at least 21 years old at the time of applying.
- Submit evidence of operational abilities as a Radiation Protection Technologist, showing at least five years of experience. Experience can be substituted for training or formal education.
- Pass an examination.[37]

Legal Liability Standards

Strict Liability

Strict liability is a legal concept in civil and criminal actions that holds a defendant liable for committing an action, regardless of his or her intent or mental state.[38] The plaintiff in a civil action where strict liability applies does not have to prove the defendant was negligent in order to prevail in the action.

Negligence

Tortious conduct, or torts, are typically divided into two categories: intentional torts or unintentional acts known as negligence. Negligence is the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances.[39] To prevail in a negligence lawsuit, the party seeking the remedy must prove four elements: a legal duty was owed by the defendant to the plaintiff; the defendant breached that duty; the plaintiff's injury was caused by the defendant's breach; and damages resulted from that injury.[40]

Water Quality Assurance Act

In 1983, the Legislature passed the Water Quality Assurance Act[41] to address pollution in surface and ground waters across the state.[42] To ensure the preservation of the state's water resources, the Act prohibits discharges, pollutants, or hazardous substances into or upon the surface or ground

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[36] American Board of Health Physics, *Prospectus for the American Board of Health Physics*, 4-6 (Jun. 2024), available at https://www.aahp-abhp.org/wp-content/uploads/2024/10/Prospectus-for-the-ABHP-June-2024.pdf.
[37] National Registry of Radiation Protection Technologists, *Exam Requirements, Fees and Schedules*, https://www.nrrpt.org/index.cfm/m/7/ (last visited Mar. 3, 2025).
[38] Cornell Law School, *Strict Liability*, https://www.law.cornell.edu/wex/strict_liability (last visited Mar. 3, 2025).
[39] Cornell Law School, *Negligence*, https://www.law.cornell.edu/wex/negligence (last visited Mar. 3, 2025).
[40] *Barnett v. Dept. of Fin. Serv.*, 303 So. 3d 508, 513-14 (Fla. 2020).
[41] *See* ch. 83-310, s. 84, L.O.F. (codifying ss. 376.30-376.317, F.S.).
[42] *See generally* s. 376.30, F.S.; *see also* Alexa J. Lamm and Pei-wen Huang, *Water Quality Assurance Act: What is it and how can we talk about it?*, University of Florida Institute for Food and Agricultural Sciences (UF/IFAS), Center for Public Issues Education, available at https://www.piecenter.com/pep/wp-content/uploads/PEP_WQAA_Final.pdf (last visited Mar. 3, 2025).

waters of the state.[43] The Department of Environmental Protection is the agency authorized to establish and enforce programs to rehabilitate any polluted waters or lands.[44] As part of its authority, the department may sue any person[45] to enforce the liabilities imposed by the Act.[46]

Additionally, the Act creates a private cause of action for all damages resulting from a discharge[47] or other condition of pollution covered by the Act if the discharge was not specifically authorized by ch. 403, F.S.[48] The Act defines pollution as the presence on the land or in the waters of the state of pollutants in quantities that are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property, or which may unreasonably interfere with the enjoyment of life or property, including outdoor recreation.[49]

The Act imposes strict liability on a polluter, meaning it is only necessary to show the prohibited discharge or other pollutive condition occurred; it is not necessary to prove the polluter acted negligently.[50] The Act expressly imposes strict liability on an owner or operator of a facility, or on any person who caused a discharge or other polluting condition at a facility.[51]

Because the Act imposes a strict liability standard, if a defendant is sued under the Act, the only defense a defendant may plead and prove to avoid liability is that the occurrence was solely the result of any of the following conditions or a combination of conditions:

- An act of war.
- An act of government.[52]
- An act of God.[53]
- An act or omission of a third party under certain conditions.[54]

Liability under the Act is joint and several.[55] However, if more than one discharge has occurred and the damage is divisible and can be attributed to a particular defendant or defendants, each

[43] Section 376.302(1), F.S.
[44] Section 376.30(3), F.S.
[45] "Person" means any individual, partner, joint venture, or corporation; any group of the foregoing, organized or united for a business purpose; or any governmental entity. Section 376.301(29), F.S.
[46] Section 376.303(1)(j), F.S.
[47] "Discharge" includes, but is not limited to, any spilling, leaking, seeping, pouring, misapplying, emitting, emptying, releasing, or dumping of any pollutant or hazardous substance which occurs and which affects lands and the surface and ground waters of the state not regulated by the Pollutant Discharge Prevention and Control Act (ss. 376.011-376.21, F.S.). Section 376.301(13), F.S.
[48] Section 376.313(3), F.S. Chapter 403, F.S., relates to environmental control, including pollution control, environmental regulation, and water supply and water treatment plants.
[49] Section 376.301(37), F.S.
[50] Section 376.308(1), F.S.
[51] Section 376.308(1)(a), F.S.
[52] Section 376.308(2)(b), F.S. This includes state, federal, or local acts of government, unless the person claiming the defense is a governmental body, in which case the defense is available only by acts of other governmental bodies.
[53] Section 376.308(2)(c), F.S. This includes only unforeseeable acts exclusively occasioned by the violence of nature without the interference of any human agency.
[54] Section 376.308(2), F.S.; *see also* s. 376.308(1)(c), F.S. (providing that defenses also exist for an owner of a petroleum storage facility or a drycleaning or wholesale supply facility where certain circumstances apply).
[55] Sections 376.313(3) and 376.308(4), F.S. Joint and several liability refers to instances when two or more parties are liable for a tortious act, and each party may be found to be independently liable for the full extent of the injury stemming from the tortious act. Cornell Law School, *Joint and Several Liability*, https://www.law.cornell.edu/wex/joint_and_several_liability (last visited Mar. 3, 2025).

defendant is liable only for the costs associated with his or her damages. The burden is on the defendant to demonstrate the divisibility of the damages.[56]

III. Effect of Proposed Changes:

The bill establishes a defense from strict liability in lawsuits brought by the Department of Environmental Protection or others for a cause of action based on a natural geology substance on the site of a former phosphate mine. Former phosphate mine owners and operators must satisfy certain conditions to rely upon the defense.

The Water Quality Assurance Act imposes strict liability on persons or entities that are responsible for environmental pollution. The strict liability defense established by the bill applies to lawsuits brought by both the department and private parties.

Section 1 of the bill amends s. 376.308(2), F.S., to add the defense to the statutory list of defenses a defendant may plead and prove to avoid strict liability under the Act.

Specifically, a defendant may avoid strict liability under the Act if the condition giving rise to the cause of action is a natural geology substance of a former phosphate mine for which:

- A notice identifying the property as a former phosphate mine has been recorded in accordance with s. 378.213(2), F.S.; and
- The Department of Health has conducted a radiation survey of the property at the request of a landowner pursuant to s. 404.0561(1), F.S.

Sections 378.213 and 404.0561, F.S., are both new statutes created by the bill.

Section 2 of the bill creates s. 378.213, F.S., regarding the giving of notice to the public that certain specified lands are former phosphate mine sites, to provide that:

- Phosphate mining is an essential agricultural activity that is necessary for the food security of the nation and this state and that, further, former mined lands are a valuable resource.
- The highest and best use of former mined lands is in the state's interests.
- A landowner may record a notice in the official records of the county which identifies the landowner's property as a former phosphate mine. The recording serves as notice that the land is a former phosphate mine.

Section 3 of the bill creates s. 404.0561, F.S., regarding the monitoring of former phosphate mining lands, to provide that:

- Upon petition by a current landowner, the Department of Health must conduct a gamma radiation survey of a former phosphate land parcel within 120 days to determine the radioactivity levels. The survey must document gamma radiation exposure measurements and the locations of the measurements. Gamma radiation measurements must be taken at the density of one per site or one per acre of land, whichever is greater.
- The department must provide a copy of the preliminary survey results to the petitioner within 30 days after completion of the survey. Within 60 days after receipt of the survey, the petitioner may request an additional survey based upon any reasonable belief that the survey

[56] Section 376.308(4), F.S.

was flawed or not representative of conditions on the site. The department must conduct one additional survey within 90 days after receipt of the petitioner's request. The additional survey must meet the requirements of the bill and is deemed final within 90 days after completion.

Section 4 of the bill creates s. 768.405, F.S., regarding prelitigation documentation of radiation levels.

The bill requires plaintiffs to include a radiation survey of the property with any complaint they file for an alleged discharge of hazardous substances or condition of pollution related to phosphate mining, including the presence of mining overburden, solid waste from the extraction, or beneficiation of phosphate rock from a phosphate mine. The radiation survey requirement applies to any civil action based on strict liability under state law,[57] negligence, or similar conduct. It also applies to any other similar claim related to the mining of phosphatic rock or reclamation of a mined area.

The survey must be prepared by a person certified as either a health physicist by the American Board of Health Physics or as a radiation protection technologist by the National Registry of Radiation Protection Technologists.

The survey must also be representative and document the measured gamma radiation on the property. It must include:

- Background values determined in accordance with the Environmental Protection Agency's Multi-agency Radiation Survey and Site Investigation Manual.
- Measurement locations.
- Testing equipment used.
- Testing methodology used, including the equipment calibration date and protocol.
- Name of the person performing the survey and a description of the person's relevant training, education, and experience.

The survey must be verified under penalty of perjury as provided under state law.[58]

Section 5 provides that the bill takes effect July 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[57] Section 376.313(3), F.S.
[58] *See* s. 92.525, F.S. (providing for the verification of documents and penalties for persons making false declarations).

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate positive fiscal impact on owners or operators of former phosphate mines who may have a defense to strict liability under the Water Quality Assurance Act. The bill may have an indeterminate negative fiscal impact on plaintiffs associated with hiring a health physicist or radiation protection technologist.

The requirement to conduct a presuit radiation survey before commencing litigation regarding the discharge of pollution relating to phosphate mining may reduce the potential for lawsuits where there has been no harm.

C. Government Sector Impact:

The bill may have an indeterminate negative fiscal impact on the Department of Health associated with conducting radiation surveys as required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 376.308 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 378.213, 404.0561, and 768.405.

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.

593370

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Burgess) recommended the following:

Senate Amendment (with title amendment)

Delete lines 27 - 43

and insert:

natural geological substance of a former phosphate mine, as defined in s. 378.213, for which:

1. A notice has been recorded in accordance with s. 378.213(2); and

2. The Department of Health has conducted a survey under s. 404.0561(1).

Section 2. Section 378.213, Florida Statutes, is created to

593370

read:

378.213 Notice of former phosphate mine site.—

(1) The Legislature finds that phosphate mining is an essential agricultural activity that is necessary for the food security of the nation and this state and that, further, formerly mined lands are a valuable resource. The highest and best use of formerly mined lands is in the state's interests.

(2) A landowner may record a notice in the official records of the county in which the land is located which identifies the landowner's property as a former phosphate mine. The recorded notice must be in substantially the following form:

NOTICE

This property is a former phosphate mine as defined in s. 378.213(3), Florida Statutes.

Such recording serves as notice that the land is a former phosphate mine.

(3) As used in this section, the term "former phosphate mine" means an area of land upon which phosphate mining has been conducted and which may have been subject to a radiation survey in accordance with s. 404.0561 and state reclamation requirements of ss. 378.201-378.212, but does not include a phosphogypsum stack as defined in s. 403.4154(1)(d).

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

And the title is amended as follows:

Delete line 7

and insert:

593370

former phosphate mines; authorizing landowners to record certain notice; providing requirements for such notice; defining the term “former phosphate mine”; creating s. 404.0561, F.S.;

By Senator Burgess

23-01541-25 2025832__

A bill to be entitled

An act relating to former phosphate mining lands; amending s. 376.308, F.S.; providing conditions for a cause of action against certain former phosphate mine sites; creating s. 378.213, F.S.; providing legislative findings; providing for certain notice of former phosphate mines; creating s. 404.0561, F.S.; requiring the Department of Health to conduct surveys of former phosphate land parcels upon petition; providing conditions and requirements for such surveys; creating s. 768.405, F.S.; requiring that specified documentation of radiation levels be submitted in certain civil actions related to phosphate mining; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (2) of section 376.308, Florida Statutes, to read:

376.308 Liabilities and defenses of facilities.—

(2) In addition to the defense described in paragraph (1)(c), the only other defenses of a person specified in subsection (1) are to plead and prove that the occurrence was solely the result of any of the following or any combination of the following:

(e) The condition giving rise to the cause of action is a natural geology substance of a former phosphate mine for which:

1. A notice has been recorded in accordance with s. 378.213(2); and

23-01541-25 2025832__

2. The Department of Health has conducted a survey under s. 404.0561(1).

Section 2. Section 378.213, Florida Statutes, is created to read:

378.213 Notice of former phosphate mine site.—

(1) The Legislature finds that phosphate mining is an essential agricultural activity that is necessary for the food security of the nation and this state and that, further, former mined lands are a valuable resource. The highest and best use of former mined lands is in the state's interests.

(2) A landowner may record a notice in the official records of the county which identifies the landowner's property as a former phosphate mine. The recording shall serve as notice that the land is a former phosphate mine.

Section 3. Section 404.0561, Florida Statutes, is created to read:

404.0561 Monitoring of former phosphate mining lands.—

(1) Upon petition by a current landowner, the department shall conduct a gamma radiation survey of a former phosphate land parcel within 120 days to determine the radioactivity levels. The survey must document gamma radiation exposure measurements and the locations of the measurements. Gamma radiation measurements must be taken at the density of one per site or one per acre of land, whichever is greater.

(2) The department shall provide a copy of the preliminary survey results to the petitioner within 30 days after completion of the survey. Within 60 days after receipt of the survey, the petitioner may request an additional survey based upon any reasonable belief that the survey was flawed or not

representative of conditions on the site. The department shall conduct one additional survey within 90 days after receipt of the petitioner's request. The additional survey must meet the requirements of this section and is deemed final within 90 days after completion.

Section 4. Section 768.405, Florida Statutes, is created to read:

768.405 Documentation of radiation levels.—In any civil action based on strict liability under s. 376.313(3), negligence or similar conduct related to an alleged discharge of hazardous substances or condition of pollution related to phosphate mining, including the presence of mining overburden, solid waste from the extraction, or beneficiation of phosphate rock from a phosphate mine; or any other similar claim related to the mining of phosphatic rock or reclamation of a mined area, the plaintiff must include a radiation survey of the property with the complaint. The survey must be prepared by a person certified as either a health physicist by the American Board of Health Physics or as a radiation protection technologist by the National Registry of Radiation Protection Technologists. The survey must be representative and document the measured gamma radiation on the property, including background values determined in accordance with the Environmental Protection Agency's Multi-agency Radiation Survey and Site Investigation Manual; the locations of the measurements; the testing equipment; the testing methodology used, including the equipment calibration date and protocol; and the name of the person performing the survey and describe the person's relevant training, education, and experience. The survey shall be

verified under penalty of perjury as provided in s. 92.525.

Section 5. This act shall take effect July 1, 2025.

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 948
INTRODUCER:	Senator Bradley
SUBJECT:	Real Property and Condominium Flood Disclosures
DATE:	March 10, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	**Pre-meeting**
2.			RI	
3.			RC	

I. Summary:

SB 948 requires a landlord of residential rental property to disclose certain information regarding the property and flood risks to prospective tenants. A tenant who does not receive the disclosures and who incurs substantial losses or damages due to flooding may terminate the lease and is entitled to refund of advance rents paid.

Similarly, the developer of a condominium must disclosure information relating to flood risks in contracts for the sale or long-term rental of a condominium unit.

Lastly, the bill slightly expands the scope of the flood-related disclosures that must be provided to a prospective purchaser of residential real property. As expanded, a seller must disclose whether he or she has received assistance from *any* source for flood damage to the property. Under current law, a seller is only required to disclose whether he or she has received federal assistance for flood damage, not just federal.

The bill is effective October 1, 2025.

II. Present Situation:

Real Property Sales Disclosure

As to sales of real property, Florida historically followed the legal theory of *Caveat Emptor* ("let the buyer beware"). Under this theory, the seller has no duty to disclose defects in the property and the buyer takes the property "as-is." One court stated that "there is no duty to disclose [a latent defect] when parties are dealing at arms length."[1]

[1] *Banks v. Salina*, 413 So. 2d 851, 852 (Fla. 4th DCA 1982).

The law changed in 1985 when the Florida Supreme Court ruled that "where the seller of a home knows of facts materially affecting the value of the property which are not readily observable and are not known to the buyer, the seller is under a duty to disclose them to the buyer."[2] This duty applies even if the buyer has agreed to purchase residential property "as-is."[3]

Notably, the disclosure required by case law only applies to facts that are not "readily observable" to the buyer. In the context of flood disclosures, the appellate courts are split as to whether a tendency to flood is readily observable. In one case, the buyers bought a home in the East Everglades area of Miami-Dade County.[4] When they viewed the home during the dry season, the home was acceptable. The sellers did not disclose that the land on which the home sat, but not the home itself, flooded annually during the rainy season, a fact the seller knew from previous experience. The flooding, according to the court, was so severe that "snakes and even alligators (two at least), have gathered at [the] property (presumably on an elevated portion) to escape the waters."[5] The court found that seasonal flooding of the neighborhood was common knowledge and was information that was readily available to the buyers had they exercised "diligent attention."[6] The lawsuit against the seller was dismissed.

In another case, the buyers sued because the seller failed to disclose that the property was in the Coastal Barrier Resource Area (CBRA), and thus ineligible for flood insurance. The trial court found the information regarding the CBRA was publicly available and dismissed the case. The appellate court, however, ruled for the buyers.[7]

The duty to disclose latent defects will generally not apply to an as-is contract for the sale of non-residential property. An appellate court stated Florida courts will continue to apply the doctrine of caveat emptor to an "as-is" contract for non-residential property unless one of the following exceptions apply:

- Where some artifice or trick has been employed to prevent the purchaser from making an independent inquiry;
- Where the purchaser does not have equal opportunity to become apprised of the fact; or
- Where a party undertakes to disclose facts and fails to disclose the whole truth.[8]

Statutory Real Property Sales Disclosure Requirements

Numerous statutes have created specific legal disclosure requirements for a seller of residential real property that clarify the scope of a required disclosure or require additional disclosures. These statutory disclosure requirements relate to the following:

- Associations -- A seller of property in a condominium, cooperative, or homeowners' association must make extensive specific disclosures of information related to the association.[9]

[2] *Johnson v. Davis*, 480 So. 2d 625, 629 (Fla. 1985).
[3] *Rayner v. Wise Realty Co. of Tallahassee*, 504 So. 2d 1361 (Fla. 1st DCA 1987).
[4] *Nelson v. Wiggs*, 699 So. 2d 258 (Fla. 3rd DCA 1997).
[5] *Id.* at 259.
[6] *Id.* at 260.
[7] *Newbern v. Mansbach*, 777 So.2d 1044 (Fla. 1st DCA 2001).
[8] *Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC*, 317 So.3d 121, 124 (Fla. 4th DCA 2021).
[9] See, ss. 718.503 (condominiums), 719.503 (cooperatives), and 720.401 (homeowners association), F.S.

- Coastal -- A sale of a property located partially or totally seaward of the coastal construction control line requires a written disclosure statement at time of contract. The seller also must furnish the buyer with a survey or affidavit showing the control line, although the buyer may waive this requirement.[10]
- Code enforcement -- If a code enforcement proceeding is pending at the time of sale, the seller must disclose it to the buyer.[11]
- Flood -- A seller of real property must disclose whether the seller has filed a flood insurance claim and whether the seller has received federal flood aid.[12]
- Lead paint -- Federal law requires all sellers or landlords of residential real property built before 1978 to give the buyer or tenant a federally produced form disclosure. The contract or lease must allow for a 10-day inspection period.[13]
- Property tax -- A seller must disclose that a transfer of ownership may lead to an increased property tax assessment related to the Save Our Homes Amendment.[14]
- Radon gas -- A specific disclosure relating to the risks of radon gas must be made in writing in connection with the sale of any building.[15]
- Sewer lines -- A seller must disclose known defects in the property's sanitary sewer lateral line.[16]
- Sinkhole damage -- The seller of real property upon which a sinkhole claim has been made by the seller and paid by the insurer must disclose to the buyer of such property, before the closing, that a claim has been paid and whether the full amount of the proceeds was used to repair the sinkhole damage.[17]
- Subsurface rights -- A seller must provide a prospective purchaser of residential property with a disclosure summary if the seller or an affiliated or related entity has previously severed or retained or will sever or retain any of the subsurface rights or right of entry.[18]

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[10] Section 161.57, F.S. The written disclosure is this statement: "The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased."

[11] Section 162.06(5), F.S.

[12] Section 689.302, F.S.

[13] 24 CFR Part 35 and 40 CFR Part 745. See also United States Environmental Protection Agency, Lead-Based Paint Disclosure Rule (updated Aug. 7, 2023), https://www.epa.gov/lead/lead-based-paint-disclosure-rule-section-1018-title-x.

[14] Section 689.261, F.S. The written disclosure is this statement: "BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION."

[15] Section 404.056(5), F.S. The disclosure is this statement: "RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

[16] Section 689.301, F.S.

[17] Section 627.7073(2)(c), F.S.

[18] Section 689.29, F.S. The written disclosure is: "SUBSURFACE RIGHTS HAVE BEEN OR WILL BE SEVERED FROM THE TITLE TO REAL PROPERTY BY CONVEYANCE (DEED) OF THE SUBSURFACE RIGHTS FROM THE SELLER OR AN AFFILIATED OR RELATED ENTITY OR BY RESERVATION OF THE SUBSURFACE RIGHTS BY THE SELLER OR AN AFFILIATED OR RELATED ENTITY. WHEN SUBSURFACE RIGHTS ARE SEVERED FROM THE PROPERTY, THE OWNER OF THOSE RIGHTS MAY HAVE THE PERPETUAL RIGHT TO DRILL, MINE,

Correspondingly, statutes provide that certain disclosures are not required, including:
- That an occupant is or has been infected with HIV or AIDS.[19]
- That the property was or may have been the site of a homicide, suicide, or other death.[20]

Disclosures Related to Residential Leases

The Florida Residential Landlord and Tenant Act requires that a landlord disclose information regarding the deposit and the landlord's address.[21] The federal lead-based paint disclosure applicable to residential sales also applies to residential leases. The duty to disclose latent defects applicable to sales of real property does not apply to a lease transaction.[22]

III. Effect of Proposed Changes:

Residential Landlord-Tenant Flood Disclosure

The bill requires a landlord leasing a residential property to provide a prospective tenant with a separate "Flood Disclosure" form. The form is provided in statute, and it:
- Informs the tenant that renter's insurance policies do not include coverage for flood damage;
- Requires the landlord to state whether the landlord knows of any flood damage that has occurred on any portion of the property or in any related structure during the landlord's ownership;
- Requires the landlord to state whether the landlord has filed an insurance claim for flood damage related to the property; and
- Requires the landlord to state whether the landlord has received assistance for flood damage to the property.

Note that the disclosure form, like the current disclosure form applicable to residential sales, does not require detailed answers. The questions are all in the form of a simple "yes/no" reply.

The disclosure form required by the bill also defines "flooding" to mean "a general or temporary condition of partial or complete inundation of the property caused by . . . the overflow of inland or tidal waters; the unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch; or sustained periods of standing water resulting from rainfall." This definition is the same as in the disclosure form required by current law for residential real estate sales.[23]

EXPLORE, OR REMOVE ANY OF THE SUBSURFACE RESOURCES ON OR FROM THE PROPERTY EITHER DIRECTLY FROM THE SURFACE OF THE PROPERTY OR FROM A NEARBY LOCATION. SUBSURFACE RIGHTS MAY HAVE A MONETARY VALUE."

[19] Section 689.25(1)(a), F.S.
[20] Section 689.25(1)(b), F.S.
[21] Sections 83.49 and 83.50, F.S.
[22] *Rost Invs., LLC v. Cameron*, 302 So. 3d 445, 451 (Fla. 2nd DCA 2020); *rev. denied*, 2021 WL 1402224.
[23] Section 689.302, F.S.

Condominium Flood Disclosure

The bill requires a developer of a condominium to include flood disclosures in sales contracts and in long-term rental agreements. Specifically, the contracts must contain:

- A statement that informs the buyer or renter that homeowners' insurance policies do not include coverage for flood damage;
- Disclose whether the developer has filed an insurance claim for flood damage related to the property or the common elements; and
- Disclose whether the developer has received assistance for flood damage to the property or the common elements.

Consistent with the similar flood disclosure form in current law for residential real estate sales and with the other forms created by this bill for residential rental properties, the required contract language also defines "flooding" to mean "a general or temporary condition of partial or complete inundation of the property caused by . . . the overflow of inland or tidal waters; the unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch; or sustained periods of standing water resulting from rainfall."

Flood Disclosure Form in Current Law

The bill amends the flood disclosure form in current law, applicable to all sales of residential real property, to expand its scope. Currently, the form asks whether the seller has received any federal flood-related assistance. The bill deletes the limiting word "federal," which has the effect of expanding the scope of the disclosure to include whether the seller has received state, local, or private flood-related assistance. It remains as a simple "yes/no" question.

The bill is effective October 1, 2025.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Disclosure requirements add administrative costs to a real estate lease or sale transaction.

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: 689.302 and 718.503.
This bill creates section 83.512 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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 83.512, Florida Statutes, is created to read:

83.512 Disclosure of flood risks to prospective tenant of residential real property.—

(1) A landlord must complete and provide a flood disclosure to a prospective tenant of residential real property at or before the execution of a rental agreement for a term of 1 year

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or longer. The flood disclosure must be in a separate document. The flood disclosure must be made in substantially the following form:

FLOOD DISCLOSURE

Flood Insurance: Renters' insurance policies do not include coverage for damage resulting from floods. Tenant is encouraged to discuss the need to purchase separate flood insurance coverage with Tenant's insurance agent.

1. Landlord has .... has no .... knowledge of any flooding that has damaged any portion of the property or any structure on the property during Landlord's ownership of the property.

2. Landlord has .... has not .... filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

3. Landlord has .... has not .... received assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

4. For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation of runoff or surface waters from any established water source,

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such as a river, stream, or drainage ditch.

c. Sustained periods of standing water resulting from rainfall.

(2) If a landlord violates this section and a tenant suffers a substantial loss or damage to the tenant's personal property as a result of flooding, the tenant may terminate the rental agreement by giving a written notice of termination to the landlord no later than 30 days after the date of the damage or loss. Termination of a rental agreement under this section is effective upon the tenant surrendering possession of the property. For the purpose of this section, the term "substantial loss or damage" means the total cost of repairs to or replacement of the personal property is 50 percent or more of the personal property's market value on the date the flooding occurred.

(3) A landlord shall refund the tenant all rent or other amounts paid in advance under the rental agreement for any period after the effective date of the termination of the rental agreement.

(4) This section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the date the rental agreement was terminated by the tenant under this section.

Section 2. Section 689.302, Florida Statutes, is amended to read:

689.302 Disclosure of flood risks to prospective purchaser.—A seller must complete and provide a flood disclosure to a purchaser of residential real property at or before the

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time the sales contract is executed. The flood disclosure must be made in the following form:

FLOOD DISCLOSURE

Flood Insurance: Homeowners' insurance policies do not include coverage for damage resulting from floods. Buyer is encouraged to discuss the need to purchase separate flood insurance coverage with Buyer's insurance agent.

(1) Seller has ☐ has no ☐ knowledge of any flooding that has damaged any portion of the property or any structure on the property during Seller's ownership of the property

(2) Seller has ☐ has not ☐ filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

(3) ~~(2)~~ Seller has ☐ has not ☐ received ~~federal~~ assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

(4) ~~(3)~~ For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.

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(c) Sustained periods of standing water resulting from rainfall.

Section 3. Paragraph (a) of subsection (1) of section 718.503, Florida Statutes, is amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(a) *Contents of contracts.*—Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type:

THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET


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DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. Contain the following caveat in conspicuous type on the first page of the contract:

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that

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is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type:

THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: "UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES." The contract for the sale of a fee interest in a timeshare estate shall also contain, in conspicuous type, the following:

FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

9. Contain within the text the following statement in


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conspicuous type:

HOMEOWNERS' INSURANCE POLICIES DO NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOODING. BUYER IS ENCOURAGED TO DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH BUYER'S INSURANCE AGENT.

DEVELOPER HAS .... HAS NO .... KNOWLEDGE OF ANY FLOODING THAT HAS DAMAGED ANY PORTION OF THE PROPERTY OR ANY STRUCTURE ON THE PROPERTY DURING DEVELOPER'S OWNERSHIP OF THE PROPERTY.

DEVELOPER HAS .... HAS NOT .... FILED A CLAIM WITH AN INSURANCE PROVIDER RELATING TO FLOOD DAMAGE ON THE PROPERTY OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, A CLAIM WITH THE NATIONAL FLOOD INSURANCE PROGRAM.

DEVELOPER HAS .... HAS NOT .... RECEIVED ASSISTANCE FOR FLOOD DAMAGE TO THE PROPERTY OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, ASSISTANCE FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

FOR THE PURPOSES OF THIS DISCLOSURE, THE TERM "FLOODING" MEANS A GENERAL OR TEMPORARY CONDITION OF PARTIAL OR COMPLETE INUNDATION OF THE PROPERTY OR COMMON ELEMENTS CAUSED BY THE OVERFLOW OF INLAND OR TIDAL WATERS; THE UNUSUAL AND RAPID ACCUMULATION OF RUNOFF OR SURFACE WATERS FROM ANY ESTABLISHED WATER

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SOURCE, SUCH AS A RIVER, STREAM, OR DRAINAGE DITCH; OR SUSTAINED PERIODS OF STANDING WATER RESULTING FROM RAINFALL.

Section 4. Paragraph (a) of subsection (1) of section 719.503, Florida Statutes, is amended to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(a) *Contents of contracts.*—Any contracts for the sale of a unit or a lease thereof for an unexpired term of more than 5 years shall contain:

1. The following legend in conspicuous type: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 719.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE COOPERATIVE ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND

CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. The following caveat in conspicuous type shall be placed upon the first page of the contract: ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 719.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, the contract shall include as an exhibit a copy of the executed lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, the contract shall include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other common areas, the contract shall contain within the text the following statement in conspicuous type: THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMON AREAS. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. The contract shall state the name and address of the

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escrow agent required by s. 719.202 and shall state that the purchaser may obtain a receipt for his or her deposit from the escrow agent, upon request.

8. If the contract is for the sale or transfer of a unit in a cooperative in which timeshare estates have been or may be created, the following text in conspicuous type: UNITS IN THIS COOPERATIVE ARE SUBJECT TO TIMESHARE ESTATES. The contract for the sale of a timeshare estate must also contain, in conspicuous type, the following: FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW. YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

9. Contain within the text the following statement in conspicuous type:

HOMEOWNERS' INSURANCE POLICIES DO NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOODING. BUYER IS ENCOURAGED TO DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH BUYER'S INSURANCE AGENT.

DEVELOPER HAS .... HAS NO .... KNOWLEDGE OF ANY FLOODING THAT HAS DAMAGED ANY PORTION OF THE PROPERTY OR ANY STRUCTURE ON THE PROPERTY DURING DEVELOPER'S OWNERSHIP OF THE PROPERTY.

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DEVELOPER HAS .... HAS NOT .... FILED A CLAIM WITH AN INSURANCE PROVIDER RELATING TO FLOOD DAMAGE ON THE PROPERTY OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, A CLAIM WITH THE NATIONAL FLOOD INSURANCE PROGRAM.

DEVELOPER HAS .... HAS NOT .... RECEIVED ASSISTANCE FOR FLOOD DAMAGE TO THE PROPERTY OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, ASSISTANCE FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

FOR THE PURPOSES OF THIS DISCLOSURE, THE TERM "FLOODING" MEANS A GENERAL OR TEMPORARY CONDITION OF PARTIAL OR COMPLETE INUNDATION OF THE PROPERTY OR COMMON ELEMENTS CAUSED BY THE OVERFLOW OF INLAND OR TIDAL WATERS; THE UNUSUAL AND RAPID ACCUMULATION OF RUNOFF OR SURFACE WATERS FROM ANY ESTABLISHED WATER SOURCE, SUCH AS A RIVER, STREAM, OR DRAINAGE DITCH; OR SUSTAINED PERIODS OF STANDING WATER RESULTING FROM RAINFALL.

Section 5. Subsection (6) is added to section 723.011, Florida Statutes, to read:

723.011 Disclosure prior to rental of a mobile home lot; prospectus, filing, approval.—

(6)(a) A mobile home park owner must complete and provide a flood disclosure to a prospective lessee of residential real property. Delivery must be made prior to execution of the lot rental agreement or at the time of occupancy, whichever occurs

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first. The flood disclosure must be in a separate document. The flood disclosure must be made in substantially the following form:

FLOOD DISCLOSURE

Flood Insurance: Homeowners' and renters' insurance policies do not include coverage for damage resulting from floods. You are encouraged to discuss the need to purchase separate flood insurance coverage your insurance agent.

1. The park owner has .... has no .... knowledge of any flooding that has damaged any portion of the property or any structure on the property during park owner's ownership of the property.

2. The park owner has .... has not .... filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

3. The park owner has .... has not .... received assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

4. For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation of runoff or surface waters from any established water source,

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such as a river, stream, or drainage ditch.

c. Sustained periods of standing water resulting from rainfall.

(b) If a park owner violates this section and a lessee suffers a substantial loss or damage to the lessee's mobile home or personal property as a result of flooding, the lessee may terminate the rental agreement by giving a written notice of termination to the park owner no later than 30 days after the date of the damage or loss. Termination of a rental agreement under this section is effective upon the lessee surrendering possession of the property. For the purpose of this paragraph, the term "substantial loss or damage" means the total cost of repairs to or replacement of the mobile home and personal property is 50 percent or more of the mobile home and personal property's market value on the date the flooding occurred.

(c) A park owner shall refund the lessee all rent or other amounts paid in advance under the rental agreement for any period after the effective date of the termination of the rental agreement.

(d) This subsection does not affect a lessee's liability for delinquent, unpaid rent or other sums owed to the park owner before the date the rental agreement was terminated by the lessee under this subsection.

Section 6. This act shall take effect October 1, 2025.

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

And the title is amended as follows:

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Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to flood disclosures; creating s. 83.512, F.S.; requiring a landlord of residential real property to provide specified information to a prospective tenant at or before the time the rental agreement is executed; specifying how such information must be disclosed; defining the term "flooding"; providing that if a landlord fails to disclose flood information truthfully and a tenant suffers substantial loss or damage, the tenant may terminate the rental agreement by giving a written notice of termination to the landlord within a specified timeframe; defining the term "substantial loss"; requiring a landlord to refund the tenant all amounts paid in advance for any period after the effective date of the termination of the rental agreement; providing that a tenant is still liable for any sum owed to the landlord before the termination of the rental agreement; amending s. 689.302, F.S.; revising the flood information that must be disclosed to prospective purchasers of residential real property; amending s. 718.503, F.S.; requiring a developer of a residential condominium unit to provide specified information to a prospective purchaser at or before the time the sales contract is executed; specifying how such information must be disclosed; defining the term "flooding"; amending s. 719.503, F.S.; requiring

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a developer of a residential condominium unit to provide specified information to a prospective purchaser at or before the time the sales contract is executed; specifying how such information must be disclosed; defining the term "flooding"; amending s. 723.011, F.S.; requiring a park owner of a mobile home park to provide specified information to a prospective lessee at or before the time the rental agreement is executed; specifying how such information must be disclosed; defining the term "flooding"; providing that if a park owner fails to disclose flood information truthfully and a lessee suffers substantial loss or damage, the lessee may terminate the rental agreement by giving a written notice of termination to the park owner within a specified timeframe; defining the term "substantial loss"; requiring a park owner to refund the lessee all amounts paid in advance for any period after the effective date of the termination of the rental agreement; providing that a lessee is still liable for any sum owed to the park owner before the termination of the rental agreement; providing an effective date.

By Senator Bradley

6-00502C-25 2025948__

A bill to be entitled

An act relating to real property and condominium flood disclosures; creating s. 83.512, F.S.; requiring a landlord of residential real property to provide specified information to a prospective tenant at or before the time the rental agreement is executed; specifying how such information must be disclosed; defining the term "flooding"; providing that if a landlord fails to disclose flood information truthfully and a tenant suffers substantial loss or damage, the tenant may terminate the rental agreement by giving a written notice of termination to the landlord within a specified timeframe; defining the term "substantial loss"; requiring a landlord to refund the tenant all amounts paid in advance for any period after the effective date of the termination of the rental agreement; providing that a tenant is still liable for any sum owed to the landlord before the termination of the rental agreement; amending s. 689.302, F.S.; revising the flood information that must be disclosed to prospective purchasers of residential real property; amending s. 718.503, F.S.; requiring a developer of a residential condominium unit to provide specified information to a prospective purchaser at or before the time the sales contract is executed; specifying how such information must be disclosed; defining the term "flooding"; providing an effective date.

6-00502C-25 2025948__

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

Section 1. Section 83.512, Florida Statutes, is created to read:

83.512 Disclosure of flood risks to prospective tenant of residential real property.—

(1) A landlord must complete and provide a flood disclosure to a prospective tenant of residential real property at or before the execution of a rental agreement for a term of 1 year or longer. The flood disclosure must be in a separate document. The flood disclosure must be made in substantially the following form:

FLOOD DISCLOSURE

Flood Insurance: Renters' insurance policies do not include coverage for damage resulting from floods. Tenant is encouraged to discuss the need to purchase separate flood insurance coverage with Tenant's insurance agent.

1. Landlord has .... has no .... knowledge of any flooding that has damaged any portion of the property or any structure on the property during Landlord's ownership of the property.

2. Landlord has .... has not .... filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

3. Landlord has .... has not .... received assistance for flood damage to the property,

including, but not limited to, assistance from the Federal Emergency Management Agency.

4. For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused by any of the following:

a. The overflow of inland or tidal waters.

b. The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.

c. Sustained periods of standing water resulting from rainfall.

(2) If a landlord violates this section and a tenant suffers a substantial loss or damage to the tenant's personal property as a result of flooding, the tenant may terminate the rental agreement by giving a written notice of termination to the landlord no later than 30 days after the date of the damage or loss. Termination of a rental agreement under this section is effective upon the tenant surrendering possession of the property. For the purpose of this section, the term "substantial loss or damage" means the total cost of repairs to or replacement of the personal property is 50 percent or more of the personal property's market value on the date the flooding occurred.

(3) A landlord shall refund the tenant all rent or other amounts paid in advance under the rental agreement for any period after the effective date of the termination of the rental agreement.

(4) This section does not affect a tenant's liability for delinquent, unpaid rent or other sums owed to the landlord before the date the rental agreement was terminated by the tenant under this section.

Section 2. Section 689.302, Florida Statutes, is amended to read:

689.302 Disclosure of flood risks to prospective purchaser.—A seller must complete and provide a flood disclosure to a purchaser of residential real property at or before the time the sales contract is executed. The flood disclosure must be made in the following form:

FLOOD DISCLOSURE

Flood Insurance: Homeowners' insurance policies do not include coverage for damage resulting from floods. Buyer is encouraged to discuss the need to purchase separate flood insurance coverage with Buyer's insurance agent.

(1) Seller has ☐ has not ☐ filed a claim with an insurance provider relating to flood damage on the property, including, but not limited to, a claim with the National Flood Insurance Program.

(2) Seller has ☐ has not ☐ received ~~federal~~ assistance for flood damage to the property, including, but not limited to, assistance from the Federal Emergency Management Agency.

(3) For the purposes of this disclosure, the term "flooding" means a general or temporary condition of partial or complete inundation of the property caused

by any of the following:

(a) The overflow of inland or tidal waters.

(b) The unusual and rapid accumulation of runoff or surface waters from any established water source, such as a river, stream, or drainage ditch.

(c) Sustained periods of standing water resulting from rainfall.

Section 3. Paragraph (a) of subsection (1) of section 718.503, Florida Statutes, is amended to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(a) *Contents of contracts.*—Any contract for the sale of a residential unit or a lease thereof for an unexpired term of more than 5 years shall:

1. Contain the following legend in conspicuous type:

THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM OR HER BY THE DEVELOPER UNDER SECTION 718.503, FLORIDA STATUTES. THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO

THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING. FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM ACT ARE ESTIMATES ONLY AND REPRESENT AN APPROXIMATION OF FUTURE EXPENSES BASED ON FACTS AND CIRCUMSTANCES EXISTING AT THE TIME OF THE PREPARATION OF THE BUDGET BY THE DEVELOPER. ACTUAL COSTS OF SUCH ITEMS MAY EXCEED THE ESTIMATED COSTS. SUCH CHANGES IN COST DO NOT CONSTITUTE MATERIAL ADVERSE CHANGES IN THE OFFERING.

2. Contain the following caveat in conspicuous type on the first page of the contract:

ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. FOR CORRECT REPRESENTATIONS, REFERENCE SHOULD BE MADE TO THIS CONTRACT AND THE DOCUMENTS REQUIRED BY SECTION 718.503, FLORIDA STATUTES, TO BE FURNISHED BY A DEVELOPER TO A BUYER OR LESSEE.

3. If the unit has been occupied by someone other than the buyer, contain a statement that the unit has been occupied.

4. If the contract is for the sale or transfer of a unit subject to a lease, include as an exhibit a copy of the executed

lease and shall contain within the text in conspicuous type: THE UNIT IS SUBJECT TO A LEASE (OR SUBLEASE).

5. If the contract is for the lease of a unit for a term of 5 years or more, include as an exhibit a copy of the proposed lease.

6. If the contract is for the sale or lease of a unit that is subject to a lien for rent payable under a lease of a recreational facility or other commonly used facility, contain within the text the following statement in conspicuous type:

THIS CONTRACT IS FOR THE TRANSFER OF A UNIT THAT IS SUBJECT TO A LIEN FOR RENT PAYABLE UNDER A LEASE OF COMMONLY USED FACILITIES. FAILURE TO PAY RENT MAY RESULT IN FORECLOSURE OF THE LIEN.

7. State the name and address of the escrow agent required by s. 718.202 and state that the purchaser may obtain a receipt for his or her deposit from the escrow agent upon request.

8. If the contract is for the sale or transfer of a unit in a condominium in which timeshare estates have been or may be created, contain within the text in conspicuous type: "UNITS IN THIS CONDOMINIUM ARE SUBJECT TO TIMESHARE ESTATES." The contract for the sale of a fee interest in a timeshare estate shall also contain, in conspicuous type, the following:

FOR THE PURPOSE OF AD VALOREM TAXES OR SPECIAL ASSESSMENTS LEVIED BY TAXING AUTHORITIES AGAINST A FEE INTEREST IN A TIMESHARE ESTATE, THE MANAGING ENTITY IS GENERALLY CONSIDERED THE TAXPAYER UNDER FLORIDA LAW.

YOU HAVE THE RIGHT TO CHALLENGE AN ASSESSMENT BY A TAXING AUTHORITY RELATING TO YOUR TIMESHARE ESTATE PURSUANT TO THE PROVISIONS OF CHAPTER 194, FLORIDA STATUTES.

9. Contain within the text the following statement in conspicuous type:

HOMEOWNERS' INSURANCE POLICIES DO NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOODING. BUYER IS ENCOURAGED TO DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH BUYER'S INSURANCE AGENT.

DEVELOPER HAS .... HAS NOT .... FILED A CLAIM WITH AN INSURANCE PROVIDER RELATING TO FLOOD DAMAGE ON THE PROPERTY OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, A CLAIM WITH THE NATIONAL FLOOD INSURANCE PROGRAM.

DEVELOPER HAS .... HAS NOT .... RECEIVED ASSISTANCE FOR FLOOD DAMAGE TO THE PROPERTY OR COMMON ELEMENTS, INCLUDING, BUT NOT LIMITED TO, ASSISTANCE FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

FOR THE PURPOSES OF THIS DISCLOSURE, THE TERM "FLOODING" MEANS A GENERAL OR TEMPORARY CONDITION OF PARTIAL OR COMPLETE INUNDATION OF THE PROPERTY OR COMMON ELEMENTS CAUSED BY THE OVERFLOW OF INLAND OR TIDAL WATERS; THE UNUSUAL AND RAPID ACCUMULATION OF

RUNOFF OR SURFACE WATERS FROM ANY ESTABLISHED WATER SOURCE, SUCH AS A RIVER, STREAM, OR DRAINAGE DITCH; OR SUSTAINED PERIODS OF STANDING WATER RESULTING FROM RAINFALL.

Section 4. This act shall take effect October 1, 2025.

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 1164
INTRODUCER:	Senator Leek
SUBJECT:	Delivery of Notices from Landlords to Tenants
DATE:	March 11, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Collazo	Cibula	JU	**Pre-meeting**
2.			CA	
3.			RC	

I. Summary:

SB 1164 allows a landlord to deliver any notice required by the Florida Residential Landlord and Tenant Act to a tenant by e-mail if:

- The tenant signs an addendum to his or her rental agreement agreeing to the delivery of notices by email; and
- The tenant provides a valid e-mail address for this purpose.

Under the bill, notices delivered by e-mail in accordance with the bill are deemed delivered when sent, unless the e-mail is returned to the landlord as undeliverable. The bill does not preclude the service of notices by any other means authorized by law.

Likewise, the bill allows a landlord to deliver notice to a nonresidential tenant via e-mail before removing the tenant from the premises for nonpayment of rent or for holding over without permission after failing to cure a material breach of the lease or oral agreement.

The bill takes effect July 1, 2025.

II. Present Situation:

Landlord and Tenant Relationship

Chapter 83, F.S., which governs landlord and tenant relations, is divided into three parts:

- Part I, which governs nonresidential tenancies not governed by Part II.[1]
- Part II, the Florida Residential Landlord and Tenant Act, which governs residential tenancies.[2]

[1] Chapter 83, Part I, F.S. (encompassing ss. 83.001-83.251, F.S.); *see also* s. 83.001, F.S. (providing same).
[2] Chapter 83, Part II, F.S. (encompassing ss. 83.40-83.683, F.S.).

- Part III, the Self-Storage Facility Act, which governs self-service storage spaces.[3]

Florida Residential Landlord and Tenant Act

The Florida Residential Landlord and Tenant Act governs the rights and responsibilities of both landlords and tenants in connection with the rental of dwelling units (i.e. residential tenancies).[4] For purposes of the Act, "dwelling unit" means:

- A structure or part of a structure that is rented for use as a home, residence, or sleeping place by one person or by two or more persons who maintain a common household;
- A mobile home rented by a tenant; or
- A structure or part of a structure that is furnished, with or without rent, as an incident of employment for use as a home, residence, or sleeping place by one or more persons.[5]

Notably, the Act does not apply to:

- Residency or detention in a facility, whether public or private, when residence or detention is incidental to the provision of medical, geriatric, educational, counseling, religious, or similar services.
- Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, in which the buyer has paid at least 12 months' rent or a contract in which the buyer has paid at least one month's rent and a deposit of at least 5 percent of the purchase price of the property.
- Transient occupancy in a hotel, condominium, motel, rooming house, or similar public lodging, or in a mobile home park.
- Occupancy by a holder of a proprietary lease in a cooperative apartment.
- Occupancy by an owner of a condominium unit.[6]

Significant provisions of the Act include provisions relating to:

- Unconscionable rental agreements or provisions.[7]
- Rent and duration of tenancies.[8]
- Prohibited provisions in rental agreements.[9]
- The landlord's obligation to maintain the premises.[10]
- The tenant's obligation to maintain the dwelling unit.[11]
- The landlord's access to a dwelling unit.[12]
- Termination of the tenancy.[13]

[3] Chapter 83, Part III, F.S. (encompassing ss. 83.801-83.809, F.S.).
[4] Section 83.41, F.S.; *but see* s. 83.42, F.S. (excluding from the Act's scope certain kinds of residencies).
[5] Section 83.43(5), F.S.; *but see* s. 83.42, F.S. (excluding certain facilities and occupancies).
[6] Section 83.42, F.S.
[7] Section 83.45, F.S.
[8] Section 83.46, F.S.
[9] Section 83.47, F.S.
[10] Section 83.51, F.S.
[11] Section 83.52, F.S.
[12] Section 83.53, F.S.
[13] Section 83.46(2) or (3), F.S., (providing for the durations of rental agreements); s, 83.57, F.S., (providing for the termination of tenancies without specific terms); s. 83.56(4) (providing additional notice requirements); and s. 83.575(1), F.S. (providing for the termination of tenancies with specific terms).

- Enforcement, damages, and attorney fees.[14]

Delivery of Notices

State law requires landlords to deliver written notice to tenants in several different situations.

For example, with respect to residential tenancies, written notice to the tenant is required:

- Whenever a landlord confirms landlord's receipt of advance rent or a security deposit, or a change in the manner or location in which the landlord is holding the advance rent or security deposit. The notice must be given in person or by mail to the tenant.[15] The landlord must also give written notice by certified mail to the tenant's last known mailing address if the landlord intends to impose a claim on tenant's security deposit.[16]
- Whenever a landlord discloses or changes name and address. The notice must be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.[17]
- Whenever a landlord terminates a rental agreement with the tenant. Service of the written notice must be made by mailing or delivering a true copy of the notice to the tenant, or if the tenant is absent from the premises, by leaving a copy at the premises.[18]

With respect to nonresidential tenancies, written notice to the tenant is required:

- Before a landlord may remove the tenant from the premises for nonpayment of rent. Service of the written notice must be by delivery of a true copy to the tenant, or if the tenant is absent from the rented premises, by leaving a copy at the premises.[19]
- Before a landlord may remove the tenant from the premises for holding over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent. In the absence of a lease provision prescribing the method for serving written notices, service must be by mail, hand delivery, or if the tenant is absent from the rental premises or the address designated by the lease, by posting.[20]

III. Effect of Proposed Changes:

The bill creates s. 83.505, F.S., which authorizes a landlord to deliver any notice required by the Florida Residential Landlord and Tenant Act to a tenant by e-mail if the tenant:

- Signs an addendum to his or her rental agreement specifically agreeing to the delivery of notices by e-mail; and
- Provides a valid e-mail address for such purpose.

Under the bill, a notice delivered by e-mail in accordance with the new statute is deemed delivered when sent, unless the e-mail is returned to the landlord as undeliverable. The landlord

[14] Section 83.54 (providing for the enforcement of rights and duties); s. 83.48, F.S., (providing for attorney fees); s. 83.55, F.S. (providing a right of recovery for damages).
[15] Section 83.49(2), F.S. The requirement does not apply to any landlord who rents fewer than 5 individual dwelling units. *Id.* Additionally, the lease must include a disclosure advising the tenant regarding the written notice. *Id.*
[16] Section 83.49(3), F.S.
[17] Section 83.50, F.S.
[18] Section 83.56(4), F.S.
[19] Section 83.20(2), F.S.
[20] Section 83.20(3), F.S.

must maintain a copy of any notice sent by e-mail, along with evidence of transmission. The bill does not preclude the service of notices by any other means authorized by law.

In addition to making certain conforming changes to the Act,[21] the bill also revises s. 83.20, F.S., regarding causes for the removal of tenants. As revised by the bill, that section allows a landlord to deliver notice to a nonresidential tenant via e-mail consistent with the new statute, before removing the tenant for nonpayment of rent or for holding over without permission after failing to cure a material breach of the lease or oral agreement.

The bill takes effect July 1, 2025.

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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will have an indeterminate positive fiscal impact on landlords. If their tenants agree to receive service of notices by e-mail, landlords will save the costs associated with delivering written notices in person or by mail.

[21] Specifically, the bill amends ss. 83.49 (requiring landlord to give tenant written notice confirming receipt of tenant's advance payment or security deposit, or a change in how the landlord is holding the advance rent or security deposit), 83.50 (requiring the landlord to give tenant written notice disclosing or changing landlord's name and address), 83.56 (requiring the landlord notice to give tenant written notice prior to terminating the rental agreement), F.S.

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: 83.20, 83.49, 83.50, and 83.56.

This bill creates section 83.505 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 Leek

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A bill to be entitled

An act relating to the delivery of notices from landlords to tenants; creating s. 83.505, F.S.; authorizing a landlord to deliver any required notice to a tenant by e-mail if the tenant signs an addendum to his or her rental agreement which specifically agrees to such delivery; requiring a tenant who agrees to such addendum to provide the landlord with his or her valid e-mail address; providing that such delivery is deemed delivered when sent; providing an exception; requiring a landlord to maintain copies of any notice sent by e-mail, with evidence of transmission; providing that this section does not preclude delivery in any other way authorized by law; amending ss. 83.20, 83.49, 83.50, and 83.56, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 83.505, Florida Statutes, is created to read:

83.505 E-mail delivery of notice by landlord.—

(1) A landlord may deliver any notice required by this part to a tenant by e-mail if the tenant signs an addendum to his or her rental agreement specifically agreeing to the delivery of notices by e-mail and has provided a valid e-mail address for such purpose.

(2) A notice delivered by e-mail in accordance with this

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section is deemed delivered when sent, unless the e-mail is returned to the landlord as undeliverable.

(3) The landlord shall maintain a copy of any notice sent by e-mail, along with evidence of transmission.

(4) This section does not preclude the service of notices by any other means authorized by law.

Section 2. Subsections (2) and (3) of section 83.20, Florida Statutes, are amended to read:

83.20 Causes for removal of tenants.—Any tenant or lessee at will or sufferance, or for part of the year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from the premises in the manner hereinafter provided in the following cases:

(2) Where such person holds over without permission as aforesaid, after any default in the payment of rent pursuant to the agreement under which the premises are held, and 3 days' notice in writing requiring the payment of the rent or the possession of the premises has been served by the person entitled to the rent on the person owing the same. The service of the notice shall be by delivery of a true copy thereof, by e-mail pursuant to s. 83.505, or, if the tenant is absent from the rented premises, by leaving a copy thereof at such place.

(3) Where such person holds over without permission after failing to cure a material breach of the lease or oral agreement, other than nonpayment of rent, and when 15 days' written notice requiring the cure of such breach or the possession of the premises has been served on the tenant. This subsection applies only when the lease is silent on the matter

or when the tenancy is an oral one at will. The notice may give a longer time period for cure of the breach or surrender of the premises. In the absence of a lease provision prescribing the method for serving notices, service must be by mail, e-mail pursuant to s. 83.505, hand delivery, or, if the tenant is absent from the rental premises or the address designated by the lease, by posting.

Section 3. Paragraphs (a) and (d) of subsection (2) and paragraph (a) of subsection (3) of section 83.49, Florida Statutes, are amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(2) The landlord shall, in the lease agreement or within 30 days after receipt of advance rent or a security deposit, give written notice to the tenant which includes disclosure of the advance rent or security deposit. Subsequent to providing such written notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she must notify the tenant within 30 days after the change as provided in paragraphs (a)-(d). The landlord is not required to give new or additional notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to give this notice is not a defense to the payment of rent when due. The written notice must:

(a) Be given in person, by e-mail pursuant to s. 83.505, or by mail to the tenant.

(d) Contain the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL OR, IF AGREED TO BY ADDENDUM PURSUANT TO S. 83.505, FLORIDA STATUTES, E-MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY.

IF THE LANDLORD FAILS TO TIMELY MAIL OR E-MAIL YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT, BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE PARTY IN WHOSE FAVOR A JUDGMENT IS RENDERED WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord or the landlord's agent may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address or by e-mail pursuant to s. 83.505 of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of .... upon your security deposit, due to ..... It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing or by e-mail to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to ...(landlord's address)....

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek a setoff against the deposit but may file an action for damages after return of the deposit.

Section 4. Section 83.50, Florida Statutes, is amended to read:

83.50 Disclosure of landlord's address.—In addition to any other disclosure required by law, the landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing or by e-mail pursuant to s. 83.505 to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence, by e-mail if agreed to pursuant to s. 83.505, or, if specified in writing by the tenant, to any other address.

Section 5. Subsection (4) of section 83.56, Florida Statutes, is amended to read:

83.56 Termination of rental agreement.—

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof, by e-mail if applicable pursuant to s. 83.505, or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

Section 6. This act shall take effect July 1, 2025.

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