

CS/CS/SB 252 by JU, BI, Smith ; (Compare to CS/H 0233) Insurance						
798780	A	S	RCS	RC, Montford	Before L.22:	04/09 04:32 PM
672452	A	S	WD	RC, Montford	btw L.91 - 92:	04/08 02:53 PM
SB 404 by Simpson ; (Similar to H 0973) Improvements to Real Property Damaged by Sinkhole Activity						
CS/CS/SB 674 by GO, MS, Evers ; (Similar to CS/CS/CS/H 0185) Public Records/Servicemember Identification and Location Information						
CS/CS/SB 716 by GO, RI, Hays (CO-INTRODUCERS) Soto, Diaz de la Portilla ; (Similar to CS/CS/H 1287) Public Records/Animal Medical Records						
CS/CS/SB 872 by BI, JU, Hukill ; (Similar to CS/CS/CS/H 0343) Estates						
SB 982 by Thompson (CO-INTRODUCERS) Smith ; (Identical to H 0625) Florida Civil Rights Act						
CS/CS/SB 998 by CM, RI, Margolis ; (Similar to H 0823) Alcoholic Beverages						
CS/SB 1314 by BI, Bradley ; (Similar to CS/H 0961) Electronic Noticing of Trust Accounts						
SM 1422 by Abruzzo ; (Similar to H 1285) Iran/Economic Sanctions						
CS/SB 538 by CJ, Simmons ; (Compare to CS/H 0151) Disclosure of Sexually Explicit Images						
194958	A	S	RCS	RC, Simmons	Delete L.58 - 77:	04/09 04:52 PM
CS/SB 542 by CJ, Benacquisto, Simpson ; (Compare to 1ST ENG/H 7001) Interception of Wire, Oral, or Electronic Communication						
CS/CS/SB 656 by RI, JU, Latvala ; (Similar to CS/CS/H 0305) Unlawful Detention by a Transient Occupant						
CS/SB 806 by BI, Richter ; (Identical to CS/H 0703) Regulation of Financial Institutions						
795412	A	S	L RCS	RC, Diaz de la Portilla	btw L.153 - 154:	04/09 04:45 PM
CS/SB 916 by BI, Montford ; (Identical to CS/H 0639) Commercial Insurer Rate Filing Procedures						
SB 944 by Soto ; (Identical to H 1047) Secondhand Dealers						
CS/SB 7066 by HP, RI ; Low-THC Cannabis						
906436	A	S	00	RC, Joyner	Delete L.473 - 476:	04/09 04:48 PM
429168	D	S	L UNFAV	RC, Soto	Delete everything after	04/09 04:48 PM
599394	AA	S	L UNFAV	RC, Joyner	Delete L.355 - 358:	04/09 04:48 PM
430162	A	S	L WD	RC, Soto	Delete L.164:	04/09 04:48 PM
159158	A	S	L 00	RC, Soto	Delete L.140 - 154:	04/09 04:48 PM
481462	A	S	L RCS	RC, Richter	Delete L.139 - 771:	04/09 04:48 PM
341214	A	S	L 00	RC, Soto	Delete L.515 - 524:	04/09 04:48 PM
895340	A	S	L 00	RC, Soto	Delete L.141 - 142:	04/09 04:48 PM
479744	A	S	L WD	RC, Soto	Delete L.164 - 165:	04/09 04:48 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Simmons, Chair
Senator Soto, Vice Chair

MEETING DATE: Thursday, April 9, 2015
TIME: 9:00 —11:00 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/CS/SB 252 Judiciary / Banking and Insurance / Smith (Compare CS/H 233)	Insurance; Providing that the absence of a countersignature does not affect the validity of a policy or contract of insurance; revising the required conditions for the export of insurance coverage to delete a provision specifying how reasonableness shall be assessed under certain circumstances; deleting provisions that require surplus lines agents to file a quarterly affidavit with the Florida Surplus Lines Office; providing that the term "financial guaranty insurance" does not include guarantees of higher education loans unless written by a financial guaranty insurance corporation, etc. BI 03/04/2015 Fav/CS JU 03/31/2015 Fav/CS RC 04/09/2015 Fav/CS	Fav/CS Yeas 12 Nays 0
2	SB 404 Simpson (Similar H 973, Compare CS/CS/H 933)	Improvements to Real Property Damaged by Sinkhole Activity; Declaring that there is a compelling state interest in enabling property owners to voluntarily finance certain improvements to property damaged by sinkhole activity with local government assistance; expanding the definition of the term "qualifying improvement" to include stabilization or other repairs to property damaged by sinkhole activity; expanding the definition of "blighted area" to include a substantial number or percentage of properties damaged by sinkhole activity which are not adequately repaired or stabilized, etc. CA 02/17/2015 Favorable BI 03/10/2015 Temporarily Postponed BI 03/17/2015 Favorable FT 03/30/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 13 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 9, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	CS/CS/SB 674 Governmental Oversight and Accountability / Military and Veterans Affairs, Space, and Domestic Security / Evers (Similar CS/CS/CS/H 185)	Public Records/Servicemember Identification and Location Information; Defining the terms "identification and location information" and "servicemember"; providing an exemption from public records requirements for certain identification and location information of servicemembers and the spouses and dependents of servicemembers; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. MS 03/04/2015 Fav/CS GO 03/17/2015 Not Considered GO 03/31/2015 Fav/CS RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
4	CS/CS/SB 716 Governmental Oversight and Accountability / Regulated Industries / Hays (Similar CS/CS/H 1287)	Public Records/Animal Medical Records; Providing an exemption from public records requirements for certain animal medical records held by a state college of veterinary medicine that is accredited by the American Veterinary Medical Association Council on Education; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RI 03/18/2015 Fav/CS GO 03/31/2015 Fav/CS RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
5	CS/CS/SB 872 Banking and Insurance / Judiciary / Hukill (Compare CS/CS/H 343)	Estates; Authorizing the court, if costs and attorney fees are to be paid from the estate under specified sections of law, to direct payment from a certain part of the estate or, under specified circumstances, to direct payment from a trust; prohibiting an attorney or person related to the attorney from receiving compensation for serving as a personal representative if the attorney prepared or supervised execution of the will unless the attorney or person is related to the testator or the testator acknowledges in writing the receipt of certain disclosures, etc. JU 03/10/2015 Fav/CS BI 03/31/2015 Fav/CS RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 9, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 982 Thompson (Identical H 625)	Florida Civil Rights Act; Prohibiting discrimination on the basis of pregnancy in public lodging and food service establishments and in places of public accommodation; prohibiting employment discrimination on the basis of pregnancy; prohibiting discrimination on the basis of pregnancy by labor organizations, joint labor-management committees, employment agencies, and in occupational licensing, certification, and membership organizations, etc. CM 03/23/2015 Favorable JU 03/31/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
7	CS/CS/SB 998 Commerce and Tourism / Regulated Industries / Margolis (Similar H 823, CS/H 1247, Compare S 536)	Alcoholic Beverages; Defining the term “powdered alcohol”; prohibiting the sale, offer for sale, purchase, use, offer for use, or possession of powdered alcohol; providing penalties; providing an exemption for the use of powdered alcohol by specified entities for research purposes; providing an exemption for the possession of powdered alcohol solely for the purpose of transportation through this state by specified entities, etc. RI 03/18/2015 Fav/CS CM 03/30/2015 Fav/CS RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
8	CS/SB 1314 Banking and Insurance / Bradley (Similar CS/H 961)	Electronic Noticing of Trust Accounts; Authorizing a sender to post a document to a secure electronic account or website upon the authorization of a recipient; requiring a sender to provide notice of the beginning of a limitations period and authority of a recipient to amend or revoke authorization for electronic posting; establishing burdens of proof for purposes of determining whether proper notifications were provided, etc. BI 03/23/2015 Fav/CS JU 03/31/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
9	SM 1422 Abruzzo (Similar HM 1285)	Iran/Economic Sanctions; Urging Congress and the President of the United States to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the Joint Plan of Action, etc. MS 03/23/2015 Favorable GO 03/31/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 13 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 9, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 538 Criminal Justice / Simmons (Compare CS/H 151)	Disclosure of Sexually Explicit Images; Prohibiting an individual from electronically disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known that such person did not consent to the disclosure; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim, etc. CJ 03/30/2015 Fav/CS RC 04/09/2015 Fav/CS	Fav/CS Yeas 12 Nays 0
11	CS/SB 542 Criminal Justice / Benacquisto / Simpson (Compare H 7001, S 218)	Interception of Wire, Oral, or Electronic Communication; Authorizing a child younger than 18 years of age to intercept and record an oral communication if the child is a party to the communication and certain conditions are met, etc. CJ 03/02/2015 Fav/CS JU 03/31/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
12	CS/CS/SB 656 Regulated Industries / Judiciary / Latvala (Similar CS/CS/H 305)	Unlawful Detention by a Transient Occupant; Defining the term "transient occupant"; providing factors that establish a transient occupancy; providing for removal of a transient occupant by a law enforcement officer; providing a cause of action for wrongful removal; limiting actions for wrongful removal; providing a civil action for removal of a transient occupant, etc. JU 03/10/2015 Fav/CS RI 03/31/2015 Fav/CS RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
13	CS/SB 806 Banking and Insurance / Richter (Identical CS/H 703)	Regulation of Financial Institutions; Requiring mailed semiannual assessments to be received by the Office of Financial Regulation by a specified date; deleting the requirement that the office select a licensed or certified appraiser to conduct certain appraisals; revising the individuals for whom certain information must be provided to the office on an application for authority to organize a banking corporation or trust company, etc. BI 03/17/2015 Fav/CS CM 03/30/2015 Favorable RC 04/09/2015 Fav/CS	Fav/CS Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Thursday, April 9, 2015, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
14	CS/SB 916 Banking and Insurance / Montford (Identical CS/H 639)	Commercial Insurer Rate Filing Procedures; Restricting to certain property rate filings a requirement that the chief executive officer or chief financial officer and chief actuary of a property insurer certify the information contained in a rate filing; exempting commercial nonresidential multiperil insurance from annual base rate filing, etc. BI 03/10/2015 Fav/CS CM 03/30/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
15	SB 944 Soto (Identical H 1047)	Secondhand Dealers; Requiring a law enforcement officer with jurisdiction to place a specified written hold order on specified goods, etc. CM 03/23/2015 Favorable CJ 03/30/2015 Favorable RC 04/09/2015 Favorable	Favorable Yeas 12 Nays 0
16	CS/SB 7066 Health Policy / Regulated Industries	Low-THC Cannabis; Revising the illnesses and symptoms for which a physician may order a patient the medical use of low-THC cannabis in certain circumstances; providing that a physician who improperly orders low-THC cannabis is subject to specified disciplinary action; revising the duties of the Department of Health; requiring the department to allow specified persons engaged in research to access the compassionate use registry, etc. HP 03/31/2015 Fav/CS RC 04/09/2015 Fav/CS	Fav/CS Yeas 11 Nays 1

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 Rules

BILL: CS/CS/CS/SB 252

INTRODUCER: Rules Committee; Judiciary Committee; Banking and Insurance Committee; and Senator Smith

SUBJECT: Insurance

DATE: April 10, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 252 provides that the absence of a countersignature does not affect the validity of a property, casualty, or surety insurance policy or contract. This could reduce the risk that an insured loses coverage due to events the insured cannot control. Current law provides that no property, casualty, or surety insurer shall assume direct liability unless the policy or contract of insurance is countersigned by a licensed agent.

The bill amends the definition of financial guaranty insurance to provide that financial guaranty insurance does not include guarantees of higher education loans unless they are written by a financial guaranty insurance corporation.

This bill eliminates the requirement that each surplus lines agent, on or before the 45th day following each calendar quarter, file with the Florida Surplus Lines Service Office (FSLSO) an affidavit stating that all surplus lines insurance he or she transacted during that calendar year has been submitted to the FSLSO. The requirement is no longer needed because the FSLSO has implemented auditing procedures to confirm the information.

The bill allows a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination that is up to 5 years old as of the date of the insurer's application.

The bill changes the due date for certain reports to the President of the Senate and Speaker of the House of Representatives from January 1 to January 15.

II. Present Situation:

Section 624.425(1), F.S., requires all property, casualty, and surety insurance policies or contracts to be issued and countersigned by an agent. The agent must be regularly commissioned, currently licensed, and appointed as an agent for the insurer.¹ The purpose of the countersignature requirement is “to protect the public ... by requiring such policies to be issued by resident, licensed agents over whom the state can exercise control and thus prevent abuses.”² The absence of a countersignature does not necessarily invalidate the insurance policy. The insurer may waive the countersignature requirement.³ If the countersignature requirement is not waived, a policy is not enforceable against the insurer, as a court will not consider the policy properly executed.⁴ In the absence of a countersignature, whether a policy is waived is a factual matter determined on a case-by-case basis.⁵ In at least one recent case, a defendant argued that the lack of a countersignature constituted a defense in a breach of contract action.⁶

Section 624.426, F.S., excludes some policies from the countersignature requirement. These are:

- Contracts of reinsurance;
- Policies of insurance on the rolling stock of railroad companies doing a general freight and passenger business;
- United States Custom surety bonds issued by a corporate surety approved by the United States Department of Treasury;
- Policies of insurance issued by insurers whose agents represent one company or a group of companies under common ownership if a company within one group is transferring policies to another company within the same group and the agent of record remains the same; and
- Policies of property, casualty, and surety insurance issued by insurers whose agents represent one company or a group of companies under common ownership and for which the application is lawfully submitted to the insurer.⁷

Surplus Lines Agent Affidavit

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). Surplus lines insurance is sold by surplus lines insurance agents.⁸

¹ An earlier version of s. 624.425, F.S., required a countersignature by a licensed agent who was a Florida resident. The residency requirement was held invalid in *Council of Insurance Agents and Brokers v. Gallagher*, 287 F.Supp.2d 1302 (N.D. Fla. 2003).

² *Wolfe v. Aetna Insurance Company*, 436 So.2d 997, 999 (Fla. 5th DCA 1983)

³ *See Meltsner v. Aetna Casualty and Surety Company of Hartford, Conn.*, 233 So.2d 849, 850 (Fla. 3rd DCA 1969) (holding under the facts of that case that the countersignature requirement was waived).

⁴ 43 AM.JUR.2D *Insurance* s. 225.

⁵ *See Meltsner*, 233 So. 2d at 850 (finding a waiver of the countersignature requirement); *Wolfe*, 436 So.2d at 999 (finding a waiver of the countersignature requirement); *CNA Intern. Reinsurance Co. Ltd. v. Phoenix*, 678 So.2d 378 (Fla. 1st DCA 1996) (noting that the countersignature requirement may be waived).

⁶ *See FCCI Insurance Company v. Gulfwind Companies, LLC*, 2013 CC 003056 NC (Fla. Sarasota County Court).

⁷ *See* s. 624.426, F.S.

⁸ *See* s. 626.915(3), F.S.

Section 626.916, F.S., requires the insurance agent to make a diligent effort⁹ to procure the desired coverage from admitted insurers before the agent can place insurance in the surplus lines market. Surplus lines insurance agents must report surplus lines insurance transactions to the Florida Surplus Lines Service Office (FSLSO or Office) within 30 days after the effective date of the transaction.¹⁰ They must also transmit service fees to the Office each month and must transmit assessment and tax payments to the Office quarterly.¹¹ Current law also requires a surplus lines agent to file a quarterly affidavit with the FSLSO to document all surplus lines insurance transacted in the quarter it was submitted to the FSLSO.¹² The affidavit also documents the efforts the agent made to place coverage with authorized insurers and the results of the efforts.¹³ The FSLSO audits agents on a tri-annual basis to verify accuracy of submitted data with original source documents.¹⁴

Reports and Recommendations to the Legislature

Section 408.909(9), F.S., requires the Office of Insurance Regulation and the Agency for Health Care Administration to submit a report on health flex plans to the Governor, President of the Senate, and Speaker of the House of Representatives by January 1 of each year. A health flex plan is a plan that covers basic and preventative health care services for low-income uninsured state residents.¹⁵ There are currently three health flex plans covering approximately 10,931 enrollees.¹⁶

Section 440.13(12), F.S., creates a three-member panel to determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, pain programs, and durable medical equipment for injuries covered by workers' compensation. The three-member panel is required to submit recommendations every 2 years on methods to improve the workers' compensation health care delivery system. The recommendations are submitted to the President of the Senate and the Speaker of the House of Representatives on or before January of odd-numbered years.

Section 627.211, F.S., requires the Office of Insurance Regulation to submit an annual report to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year. The report must evaluate competition in the workers' compensation insurance market. It must contain an analysis of the availability and affordability of workers' compensation coverage

⁹ Section 626.914, F.S., defines a diligent effort as seeking and being denied coverage from at least three authorized insurers in the admitted market unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.

¹⁰ See s. 626.921, F.S. (requiring reports of transactions as required by the FSLSO Plan of Operation); Florida Surplus Lines Office, *Agent's Procedures Manual*, (Jan. 2015) <http://www.fslso.com/publications/manuals/Agents.Procedures.Manual.pdf> (requiring reports within 30 days).

¹¹ See ss. 626.932, 626.9325, F.S.

¹² See s. 626.931(1), F.S.

¹³ See s. 626.932(2), F.S.

¹⁴ E-mail from the FSLSO (on file with the Committee on Banking and Insurance).

¹⁵ See s. 408.909(1), F.S.

¹⁶ See *Health Flex Plan Program Annual Report January 2015* prepared by the Agency for Health Care Administration and the Office of Insurance Regulation at <http://www.flsenate.gov/Session/Bill/2013/1128/Analyses/2013s1128.ca.PDF> (last accessed April 10, 2015).

and whether the current market structure, conduct, and performance are conducive to competition.

Foreign or Alien Insurer Application for Certificate

A foreign insurer is defined as being formed under the laws of any state, district, territory, or commonwealth of the United States other than Florida.¹⁷ A domestic insurer is defined as being formed under the laws of Florida.¹⁸ An alien insurer is defined as an insurer other than a foreign or domestic insurer.¹⁹ When a foreign or alien insurer applies for a certificate of authority in Florida, it must submit a report of its most recent examination certified by the insurance official in its state of domicile or of entry into the United States. The end of the most recent year covered by the examination must be within the 3-year period preceding the date of application.²⁰ In lieu of the certified examination report, the OIR can accept an audited certified public accountant's report prepared on a basis consistent with the insurance laws of the insurer's state of domicile, certified by the insurance official in its state of domicile or of entry into the United States.²¹

III. Effect of Proposed Changes:

Countersignatures

This bill provides that the absence of a countersignature does not affect the validity of a policy or contract of insurance. This bill does not repeal the countersignature requirement; it provides that the failure to obtain a countersignature does not invalidate the policy or contract.

Surplus Lines

This bill repeals s. 626.931(1) and s. 626.931(2), F.S., requiring a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the FLSO and requiring that such reports include an affidavit of diligent effort. The FLSO reports that the provisions are no longer necessary. The FLSO receives the information relating to the surplus lines transactions from the agents and the insurers and has implemented audit procedures to verify the information. The diligent effort affidavit is required under s. 626.916(1), F.S.

Existing law requires that before issuing surplus lines coverage, a surplus lines agent must verify that a diligent effort has been made by the producing agent to obtain coverage. As part of the verification process, the surplus lines agent must obtain a properly documented statement of diligent effort from the producing agent. Before the surplus lines agent may rely on the statement of diligent effort, the surplus lines agent must find the producing agent's efforts to be reasonable. Under existing s. 926.916(1)(a), F.S., reasonableness will "be assessed by taking into account factors which include, but are not limited to, a regularly conducted program of verification of the information provided by the retail or producing agent." This bill removes the statutory definition of reasonableness. Reasonableness will now be determined on a case by case basis.

¹⁷ See s. 624.06(2), F.S.

¹⁸ See s. 624.06(1), F.S.

¹⁹ See s. 624.06(3), F.S.

²⁰ See s. 624.413(1)(f), F.S.

²¹ *Id.*

Financial Guaranty Insurance

Existing s. 627.971(1)(a), F.S., defines financial guaranty insurance. It means a surety bond, insurance policy, an indemnity contract that is issued by an insurer, or any similar guaranty, under which a loss is payable upon proof of the occurrence of financial loss to an insured, obligee, or indemnitee as a result of certain enumerated events. Existing s. 627.971(1)(b), F.S., however, lists 13 categories of what financial guaranty insurance does *not* include. The bill amends that section to provide that financial guaranty insurance does not include guarantees of higher education loans, unless written by a financial guaranty insurance corporation. This language conforms the current definition to the model Financial Guaranty Insurance Guideline of the National Association of Insurance Commissioners.

This bill makes conforming changes to ss. 626.932, 626.935, and 626.936, F.S.

Reports to the Legislature

This bill changes the due date of the report by the Agency for Health Care Administration and the Office of Insurance Regulation on health flex plans from January 1 of each year to January 15 of each year. It changes the due date for recommendations by the workers' compensation three-member panel from January 1 to January 15. The bill changes the due date for the report by the Office of Insurance Regulation on competition in the workers' compensation insurance market from January 1 to January 15.

Foreign or Alien Insurer Application for Certificate

The bill amends s. 624.413, F.S., to allow a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination certified by the public official having supervision of insurance in its state of domicile or of entry into the United States that is up to 5 years old as of the date of the insurer's application. Under current law, the examination may be no greater than 3 years old.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The bill may reduce costs to surplus lines agents by eliminating the requirement to file a quarterly report.

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: 408.909, 440.13, 624.413, 624.425, 626.916, 626.931, 626.932, 626.935, 626.936, 626.971, and 627.211.

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

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

CS/CS/CS by Rules Committee on April 9, 2015:

The committee substitute:

- Changes the due date for certain reports to the President of the Senate and Speaker of the House of Representatives from January 1 to January 15, and;
- Allows a foreign or alien insurer applying for a certificate of authority to submit a copy of the report of the most recent examination that is up to 5 years old as of the date of the insurer's application.

CS/CS by Judiciary Committee on March 31, 2015:

The committee substitute:

- Deletes the statutory definition of what constitutes “reasonableness” in a surplus lines agent's reliance on a producing agent's efforts to find coverage before seeking surplus lines coverage;
- Deletes language from the bill about the specifications for a statement of diligent effort form that was to be prescribed by rule by the Department of Financial Services. Accordingly, DFS is not required to develop a form or engage in rulemaking.

- Provides that “financial guaranty insurance” does not include guarantees of higher education loans unless they are written by a financial guaranty insurance corporation.

CS by Banking and Insurance on March 4, 2015:

The committee substitute removes a provision of the bill providing that the bill was retroactive until 1959. It also repeals s. 626.931(1) and s. 626.931(2), F.S., requiring a surplus lines agent to file quarterly reports stating that all surplus lines transactions have been submitted to the FLSO and requiring that such reports include an affidavit of diligent effort.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2015	.	
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The Committee on Rules (Montford) recommended the following:

Senate Amendment (with title amendment)

Before line 22
insert:

Section 1. Subsection (9) of section 408.909, Florida
Statutes, is amended to read:

408.909 Health flex plans.—

(9) PROGRAM EVALUATION.—The agency and the office shall
evaluate the pilot program and its effect on the entities that
seek approval as health flex plans, on the number of enrollees,
and on the scope of the health care coverage offered under a



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12 health flex plan; shall provide an assessment of the health flex
13 plans and their potential applicability in other settings; shall
14 use health flex plans to gather more information to evaluate
15 low-income consumer driven benefit packages; and shall, by
16 January 15, 2016 ~~January 1, 2005~~, and annually thereafter,
17 jointly submit a report to the Governor, the President of the
18 Senate, and the Speaker of the House of Representatives.

19 Section 2. Paragraph (e) of subsection (12) of section
20 440.13, Florida Statutes, is amended to read:

21 440.13 Medical services and supplies; penalty for
22 violations; limitations.—

23 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
24 REIMBURSEMENT ALLOWANCES.—

25 (e) In addition to establishing the uniform schedule of
26 maximum reimbursement allowances, the panel shall:

27 1. Take testimony, receive records, and collect data to
28 evaluate the adequacy of the workers' compensation fee schedule,
29 nationally recognized fee schedules and alternative methods of
30 reimbursement to health care providers and health care
31 facilities for inpatient and outpatient treatment and care.

32 2. Survey health care providers and health care facilities
33 to determine the availability and accessibility of workers'
34 compensation health care delivery systems for injured workers.

35 3. Survey carriers to determine the estimated impact on
36 carrier costs and workers' compensation premium rates by
37 implementing changes to the carrier reimbursement schedule or
38 implementing alternative reimbursement methods.

39 4. Submit recommendations on or before January 15, 2017
40 ~~January 1, 2003~~, and biennially thereafter, to the President of



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41 the Senate and the Speaker of the House of Representatives on
42 methods to improve the workers' compensation health care
43 delivery system.

44
45 The department, as requested, shall provide data to the panel,
46 including, but not limited to, utilization trends in the
47 workers' compensation health care delivery system. The
48 department shall provide the panel with an annual report
49 regarding the resolution of medical reimbursement disputes and
50 any actions pursuant to subsection (8). The department shall
51 provide administrative support and service to the panel to the
52 extent requested by the panel. For prescription medication
53 purchased under the requirements of this subsection, a
54 dispensing practitioner shall not possess such medication unless
55 payment has been made by the practitioner, the practitioner's
56 professional practice, or the practitioner's practice management
57 company or employer to the supplying manufacturer, wholesaler,
58 distributor, or drug repackager within 60 days of the dispensing
59 practitioner taking possession of that medication.

60 Section 3. Paragraph (f) of subsection (1) of section
61 624.413, Florida Statutes, is amended to read:

62 624.413 Application for certificate of authority.—

63 (1) To apply for a certificate of authority, an insurer
64 shall file its application therefor with the office, upon a form
65 adopted by the commission and furnished by the office, showing
66 its name; location of its home office and, if an alien insurer,
67 its principal office in the United States; kinds of insurance to
68 be transacted; state or country of domicile; and such additional
69 information as the commission reasonably requires, together with



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70 the following documents:

71 (f) If a foreign or alien insurer, a copy of the report of
72 the most recent examination of the insurer certified by the
73 public official having supervision of insurance in its state of
74 domicile or of entry into the United States. The end of the most
75 recent year covered by the examination must be within the 5-year
76 ~~3-year~~ period preceding the date of application. In lieu of the
77 certified examination report, the office may accept an audited
78 certified public accountant's report prepared on a basis
79 consistent with the insurance laws of the insurer's state of
80 domicile, certified by the public official having supervision of
81 insurance in its state of domicile or of entry into the United
82 States.

83 Section 4. Subsection (6) of section 627.211, Florida
84 Statutes, is amended to read

85 627.211 Deviations; workers' compensation and employer's
86 liability insurances.-

87 (6) The office shall submit an annual report to the
88 President of the Senate and the Speaker of the House of
89 Representatives by January 15 ~~1~~ of each year which evaluates
90 competition in the workers' compensation insurance market in
91 this state. The report must contain an analysis of the
92 availability and affordability of workers' compensation coverage
93 and whether the current market structure, conduct, and
94 performance are conducive to competition, based upon economic
95 analysis and tests. The purpose of this report is to aid the
96 Legislature in determining whether changes to the workers'
97 compensation rating laws are warranted. The report must also
98 document that the office has complied with the provisions of s.



99 627.096 which require the office to investigate and study all
100 workers' compensation insurers in the state and to study the
101 data, statistics, schedules, or other information as it finds
102 necessary to assist in its review of workers' compensation rate
103 filings.

104
105 ===== T I T L E A M E N D M E N T =====

106 And the title is amended as follows:

107 Delete line 2

108 and insert:

109 An act relating to insurance; amending s. 408.909,
110 F.S.; revising the due date for an annual report
111 relating to health flex plans, which must be submitted
112 by the Office of Insurance Regulation and the Agency
113 for Health Care Administration; amending s. 440.13,
114 F.S.; revising the due date for a biennial report
115 relating to methods to improve the workers'
116 compensation health care delivery system, which must
117 be submitted by a certain three-member panel; amending
118 s. 624.413, F.S.; increasing the number of years that
119 a specified examination report remains valid and may
120 be considered for the purpose of applying for a
121 certificate of authority; amending s.627.711, F.S.;
122 revising the due date for an annual report relating to
123 certain workers' compensation issues which must be
124 submitted by the office; amending s. 624.425,



672452

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/08/2015	.	
	.	
	.	
	.	

The Committee on Rules (Montford) recommended the following:

Senate Amendment (with title amendment)

Between lines 91 and 92

insert:

Section 4. Section 627.7288, Florida Statutes, is amended to read:

627.7288 Comprehensive coverage; deductible; ~~not to apply~~
~~to~~ motor vehicle glass.—The deductible provisions of a ~~any~~
policy of motor vehicle insurance, delivered or issued in this
state by an authorized insurer, providing comprehensive coverage
or combined additional coverage:



672452

12 (1) Do ~~shall~~ not ~~apply~~ be ~~applicable~~ to damage to the
13 windshield of a ~~any~~ motor vehicle covered under a personal motor
14 vehicle insurance ~~such~~ policy.

15 (2) Apply to damage to the windshield of a motor vehicle
16 covered under a commercial motor vehicle insurance policy,
17 unless the windshield is repaired by a motor vehicle glass
18 replacement company approved by the insurer. Each insurer shall
19 maintain a list of approved motor vehicle glass replacement
20 companies and shall make the list available to insureds
21 electronically on the insurer's website or in a hard copy
22 format.

23
24 ===== T I T L E A M E N D M E N T =====

25 And the title is amended as follows:

26 Delete line 12

27 and insert:

28 Office; amending s. 627.7288, F.S.; providing that the
29 deductible provisions of a commercial motor vehicle
30 insurance policy are applicable to damage to a
31 windshield unless the windshield is repaired by a
32 motor vehicle glass replacement company approved by
33 the insurer; requiring insurers to maintain a list of
34 approved companies and to make the list available to
35 insureds in a specified manner; amending s. 627.971,
36 F.S.; providing that the

By the Committees on Judiciary; and Banking and Insurance; and
Senator Smith

590-03270-15

2015252c2

1 A bill to be entitled
2 An act relating to insurance; amending s. 624.425,
3 F.S.; providing that the absence of a countersignature
4 does not affect the validity of a policy or contract
5 of insurance; amending s. 626.916, F.S.; revising the
6 required conditions for the export of insurance
7 coverage to delete a provision specifying how
8 reasonableness shall be assessed under certain
9 circumstances; amending s. 626.931, F.S.; deleting
10 provisions that require surplus lines agents to file a
11 quarterly affidavit with the Florida Surplus Lines
12 Office; amending s. 627.971, F.S.; providing that the
13 term "financial guaranty insurance" does not include
14 guarantees of higher education loans unless written by
15 a financial guaranty insurance corporation; amending
16 ss. 626.932, 626.935, and 626.936, F.S.; conforming
17 provisions to changes made by the act; providing an
18 effective date.
19
20 Be It Enacted by the Legislature of the State of Florida:
21
22 Section 1. Subsection (6) is added to section 624.425,
23 Florida Statutes, to read:
24 624.425 Agent countersignature required, property,
25 casualty, surety insurance.—
26 (6) The absence of a countersignature required under this
27 section does not affect the validity of a policy or contract of
28 insurance.
29 Section 2. Paragraph (a) of subsection (1) of section

Page 1 of 7

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

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30 626.916, Florida Statutes, is amended to read:
31 626.916 Eligibility for export.—
32 (1) No insurance coverage shall be eligible for export
33 unless it meets all of the following conditions:
34 (a) The full amount of insurance required must not be
35 procurable, after a diligent effort has been made by the
36 producing agent to do so, from among the insurers authorized to
37 transact and actually writing that kind and class of insurance
38 in this state, and the amount of insurance exported shall be
39 only the excess over the amount so procurable from authorized
40 insurers. Surplus lines agents must verify that a diligent
41 effort has been made by requiring a properly documented
42 statement of diligent effort from the retail or producing agent.
43 However, to be in compliance with the diligent effort
44 requirement, the surplus lines agent's reliance must be
45 reasonable under the particular circumstances surrounding the
46 export of that particular risk. ~~Reasonableness shall be assessed~~
47 ~~by taking into account factors which include, but are not~~
48 ~~limited to, a regularly conducted program of verification of the~~
49 ~~information provided by the retail or producing agent.~~
50 Declinations must be documented on a risk-by-risk basis. If it
51 is not possible to obtain the full amount of insurance required
52 by layering the risk, it is permissible to export the full
53 amount.
54 Section 3. Section 626.931, Florida Statutes, is amended to
55 read:
56 626.931 ~~Agent affidavit and~~ Insurer reporting
57 requirements.—
58 ~~(1) Each surplus lines agent shall on or before the 45th~~

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59 ~~day following each calendar quarter file with the Florida~~
 60 ~~Surplus Lines Service Office an affidavit, on forms as~~
 61 ~~prescribed and furnished by the Florida Surplus Lines Service~~
 62 ~~Office, stating that all surplus lines insurance transacted by~~
 63 ~~him or her during such calendar quarter has been submitted to~~
 64 ~~the Florida Surplus Lines Service Office as required.~~

65 ~~(2) The affidavit of the surplus lines agent shall include~~
 66 ~~efforts made to place coverages with authorized insurers and the~~
 67 ~~results thereof.~~

68 (1)~~(3)~~ Each foreign insurer accepting premiums shall, on or
 69 before the end of the month following each calendar quarter,
 70 file with the Florida Surplus Lines Service Office a verified
 71 report of all surplus lines insurance transacted by such insurer
 72 for insurance risks located in this state during such calendar
 73 quarter.

74 (2)~~(4)~~ Each alien insurer accepting premiums shall, on or
 75 before June 30 of each year, file with the Florida Surplus Lines
 76 Service Office a verified report of all surplus lines insurance
 77 transacted by such insurer for insurance risks located in this
 78 state during the preceding calendar year.

79 (3)~~(5)~~ The department may waive the filing requirements
 80 described in subsections (1) and (2) ~~(3) and (4)~~.

81 (4)~~(6)~~ Each insurer's report and supporting information
 82 shall be in a computer-readable format as determined by the
 83 Florida Surplus Lines Service Office or shall be submitted on
 84 forms prescribed by the Florida Surplus Lines Service Office and
 85 shall show for each applicable agent:

86 (a) A listing of all policies, certificates, cover notes,
 87 or other forms of confirmation of insurance coverage or any

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88 substitutions thereof or endorsements thereto and the
 89 identifying number; and

90 (b) Any additional information required by the department
 91 or Florida Surplus Lines Service Office.

92 Section 4. Paragraph (b) of subsection (1) of section
 93 627.971, Florida Statutes, is amended to read
 94 627.971 Definitions.—As used in this part:

95 (1)

96 (b) However, "financial guaranty insurance" does not
 97 include:

98 1. Insurance of a loss resulting from an event described in
 99 paragraph (a), if the loss is payable only upon the occurrence
 100 of any of the following, as specified in a surety bond,
 101 insurance policy, or indemnity contract:

102 a. A fortuitous physical event;

103 b. A failure of or deficiency in the operation of
 104 equipment; or

105 c. An inability to extract or recover a natural resource;

106 2. An individual or schedule public official bond;

107 3. A court bond required in connection with judicial,
 108 probate, bankruptcy, or equity proceedings, including a waiver,
 109 probate, open estate, or life tenant bond;

110 4. A bond running to a federal, state, county, municipal
 111 government, or other political subdivision, as a condition
 112 precedent to the granting of a license to engage in a particular
 113 business or of a permit to exercise a particular privilege;

114 5. A loss security bond or utility payment indemnity bond
 115 running to a governmental unit, railroad, or charitable
 116 organization;

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- 117 6. A lease, purchase and sale, or concessionaire surety
118 bond;
- 119 7. Credit unemployment insurance on a debtor in connection
120 with a specific loan or other credit transaction, to provide
121 payments to a creditor in the event of unemployment of the
122 debtor for the installments or other periodic payments becoming
123 due while a debtor is unemployed;
- 124 8. Credit insurance indemnifying a manufacturer, merchant,
125 or educational institution which extends credit against loss or
126 damage resulting from nonpayment of debts owed to her or him for
127 goods or services provided in the normal course of her or his
128 business;
- 129 9. Guaranteed investment contracts that are issued by life
130 insurance companies and that provide that the life insurer will
131 make specified payments in exchange for specific premiums or
132 contributions;
- 133 10. Mortgage guaranty insurance as defined in s. 635.011(1)
134 or s. 635.021;
- 135 11. Indemnity contracts or similar guaranties, to the
136 extent that they are not otherwise limited or proscribed by this
137 part, in which a life insurer guarantees:
- 138 a. Its obligations or indebtedness or the obligations or
139 indebtedness of a subsidiary of which it owns more than 50
140 percent, other than a financial guaranty insurance corporation,
141 if:
- 142 (I) For any such obligations or indebtedness that are
143 backed by specific assets, such assets are at all times owned by
144 the insurer or the subsidiary; and
- 145 (II) For the obligations or indebtedness of the subsidiary

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- 146 that are not backed by specific assets of the life insurer, the
147 guaranty terminates once the subsidiary ceases to be a
148 subsidiary; or
- 149 b. The obligations or indebtedness, including the
150 obligation to substitute assets where appropriate, with respect
151 to specific assets acquired by a life insurer in the course of
152 normal investment activities and not for the purpose of resale
153 with credit enhancement, or guarantees obligations or
154 indebtedness acquired by its subsidiary, provided that the
155 assets so acquired have been:
- 156 (I) Acquired by a special purpose entity where the sole
157 purpose is to acquire specific assets of the life insurer or the
158 subsidiary and issue securities or participation certificates
159 backed by such assets; or
- 160 (II) Sold to an independent third party; or
- 161 c. The obligations or indebtedness of an employee or agent
162 of the life insurer;
- 163 12. Any form of surety insurance as defined in s. 624.606;
164 13. Guarantees of higher education loans, unless written by
165 a financial guaranty insurance corporation; or
166 14.13. Any other form of insurance covering risks which the
167 office determines to be substantially similar to any of the
168 foregoing.
- 169 Section 5. Paragraph (a) of subsection (2) of section
170 626.932, Florida Statutes, is amended to read:
171 626.932 Surplus lines tax.—
172 (2) (a) The surplus lines agent shall make payable to the
173 department the tax related to each calendar quarter's business
174 as reported to the Florida Surplus Lines Service Office, and

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175 remit the tax to the Florida Surplus Lines Service Office on or
176 before the 45th day following each calendar quarter at the same
177 time as provided for the filing of the quarterly affidavit,
178 under s. 626.931. The Florida Surplus Lines Service Office shall
179 forward to the department the taxes and any interest collected
180 pursuant to paragraph (b), within 10 days of receipt.

181 Section 6. Paragraph (d) of subsection (1) of section
182 626.935, Florida Statutes, is amended to read:
183 626.935 Suspension, revocation, or refusal of surplus lines
184 agent's license.—

185 (1) The department shall deny an application for, suspend,
186 revoke, or refuse to renew the appointment of a surplus lines
187 agent and all other licenses and appointments held by the
188 licensee under this code, on any of the following grounds:

189 ~~(d) Failure to make and file his or her affidavit or~~
190 ~~reports when due as required by s. 626.931.~~

191 Section 7. Subsection (1) of section 626.936, Florida
192 Statutes, is amended to read:

193 626.936 Failure to file reports or pay tax or service fee;
194 administrative penalty.—

195 (1) Any licensed surplus lines agent who neglects to file a
196 report ~~or an affidavit~~ in the form and within the time required
197 or provided for in the Surplus Lines Law may be fined up to \$50
198 per day for each day the neglect continues, beginning the day
199 after the report ~~or affidavit~~ was due until the date the report
200 ~~or affidavit~~ is received. All sums collected under this section
201 shall be deposited into the Insurance Regulatory Trust Fund.

202 Section 8. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-9-15

Meeting Date

252

Bill Number (if applicable)

798780

Amendment Barcode (if applicable)

Topic INSURANCE

Name MONTE STEVENS

Job Title DEPUTY CHIEF OF STAFF

Address 200 E. GAINES ST

Street

TALLAHASSEE FL

City

State

Zip

Phone 413-5005
~~Monte.Stevens@FSenate.com~~

Email monte.stevens@FTai.com

Speaking: For Against Information

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

Representing OIR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill #252**, relating to Insurance Countersignature Requirements, be placed on the:

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

CS/CS/ SB 252 seeks to clarify that the absence of a countersignature does not affect the validity of a policy or contract of insurance, clarifies that guarantees of higher education loans which are not written by a financial guaranty insurance corporation are not considered "financial guaranty insurance, Eliminates a duplicative and unnecessary administrative function in the affidavit reporting requirement for Surplus Lines Agents since Florida Statute already requires similar filings in the audit practices portions of the statute (626.931) which governs them. Please feel free to contact me if you or staff may have any questions.

Thank you,

Cc: John Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

A handwritten signature in black ink, appearing to read "Christopher L. Smith", written over a horizontal line.

Senator Christopher L. Smith
Florida Senate, District 31

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 Rules

BILL: SB 404

INTRODUCER: Senator Simpson

SUBJECT: Improvements to Real Property Damaged by Sinkhole Activity

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	Favorable
3.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Favorable
4.	<u>White</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 404 authorizes local governments to enter into financing agreements with property owners to finance qualified improvements to property damaged by sinkhole activity. Additionally, the bill expands the definition of “blighted area,” enabling community redevelopment areas to enter into voluntary contracts to redevelop properties damaged by sinkhole activity.

The bill is effective on July 1, 2015.

II. Present Situation:

The Property Assessed Clean Energy Model

The Property Assessed Clean Energy (PACE) Program enables local governments to encourage property owners to reduce energy consumption and increase energy efficiency. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government provides the upfront funding for the project through proceeds from issuing a revenue bond, which are repaid by assessments on participating property owners’ tax bills.¹

Voluntary Energy and Wind Resistant Real Property Improvements

The 2010 Legislature passed an expanded form of the PACE model.² Section 163.08, F.S., provides supplemental authority to local governments regarding qualified improvements to real property. The law provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency,

¹ For more information, See <http://www.pacenow.org> and <http://floridapace.gov/> (last visited Mar. 24, 2015).

² Chapter 2010-139, Laws of Fla.

renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.³ “Qualifying improvements” include energy conservation and efficiency improvements; renewable energy improvements; and wind resistance improvements.⁴

At least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount.⁵ The law provides that an acceleration clause for “payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable.”⁶ However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

The law authorizes a local government to partner with one or more local governments for the purpose of providing and financing qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt, so if the homeowner defaults or goes into foreclosure, the delinquent payments would be recovered before the mortgage. In 2012, the Legislature clarified that a partnership of local governments may enter into a financing agreement and that the separate legal entity may impose the voluntary special assessments for purposes of the program.⁷

Specific qualifying improvements are determined by the twelve Florida counties where programs exist.⁸ To participate in a program, property owners must have paid property taxes and not been delinquent for the previous three years.⁹ The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.¹⁰ In 2010, the Federal Housing Finance Agency (FHFA), directed mortgage underwriters Fannie Mae and Freddie Mac to not purchase mortgages of homes with a PACE lien due to its senior status above a mortgage.¹¹ Although

³ Section 163.08(4), F.S.

⁴ Section 163.08(2)(b), F.S.

⁵ Section 163.08(13), F.S.

⁶ *Id.*, Section 163.08(15), F.S.

⁷ Chapter 2012-117, Laws of Fla.

⁸ Database of State Incentives for Renewables & Efficiency, *Florida PACE Financing*, available at <http://programs.dsireusa.org/system/program/detail/3869> (last visited Mar. 24, 2015).

⁹ Section 163.08(9), F.S.

¹⁰ Section 163.08(12)(a), F.S.

¹¹ Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), available at <http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx> (last visited Mar. 24, 2015). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)(“FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac’s policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it”) available at <http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx> (last visited March 24, 2015).

residential PACE activity subsided following this directive, some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.¹²

Community Redevelopment Act

The Community Redevelopment Act of 1969,¹³ authorizes a county or municipality to create community redevelopment areas (CRAs) as a means of redeveloping slums and blighted areas. In accordance with a community redevelopment plan,¹⁴ CRAs can:

- Enter into contracts,
- Disseminate information,
- Acquire property within a slum or blighted area by voluntary methods,
- Demolish and remove buildings and improvements,
- Construct improvements, and
- Dispose of property at fair value.¹⁵

CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF).¹⁶ Taxing authorities must annually appropriate an amount representing the calculated increment revenue to the redevelopment trust fund. This revenue is used to repay bonds issued to finance redevelopment projects. School district revenues are not subject to the tax increment mechanism.

Counties and municipalities are prohibited from exercising the community redevelopment authority provided by the Community Redevelopment Act until they adopt an ordinance that declares an area to be a slum or a blighted area.¹⁷

Section 163.340(8), F.S., defines “blighted area” as follows:

An area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:

- (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the five years prior to the finding of such conditions;
- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (d) Unsanitary or unsafe conditions;

¹² Commercial PACE programs were not directly affected by FHFA’s actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages. Database of State Incentives for Renewables & Efficiency, *supra* note 6.

¹³ Chapter 163, F.S., part III.

¹⁴ Section 163.360, F.S.

¹⁵ Section 163.370, F.S.

¹⁶ Through tax increment financing, a baseline tax amount is determined and any taxes generated in future years above that baseline amount are transferred into the trust fund. *See* Section 163.387(1)(a), F.S.

¹⁷ Sections 163.355(1) and 163.360(1), F.S.

- (e) Deterioration of site or other improvements;
- (f) Inadequate and outdated building density patterns;
- (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
- (h) Tax or special assessment delinquency exceeding the fair value of the land;
- (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
- (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
- (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
- (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term “blighted area” also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a), F.S., agree, either by inter-local agreement or agreements with the agency or by resolution, that the area is blighted.

Sinkholes

A sinkhole has been defined as “a landform created by subsidence of soil, sediment, or rock as underlying strata are dissolved by groundwater. A sinkhole forms by collapse into subterranean voids created by dissolution of limestone or dolostone or by subsidence as these strata are dissolved.”¹⁸ Sinkholes are a common feature in Florida’s landscape, due to erosional processes associated with the chemical weathering and dissolution of carbonate rocks.¹⁹ Over geologic periods of time, persistent erosion created extensive underground voids and drainage systems throughout Florida.²⁰ A sinkhole forms when sediments overlying such a void collapse. Because “groundwater that feeds springs is recharged ... through direct conduits such as sinkholes,” the Florida Legislature has expressed a desire to promote good stewardship, effective planning strategies, and best management practices with respect to sinkholes and the springs they recharge, which may be “threatened by actual and potential flow reductions and declining water quality.”²¹

The two most commonly recommended stabilization techniques for sinkholes are grouting and underpinning.²² Under the grouting procedure, a grout mixture (either cement-based or a

¹⁸ Section 627.706(2)(h), F.S.

¹⁹ Such as limestone and dolomite. See, Florida Dep’t of Environmental Protection, *Sinkholes*, available at <http://www.dep.state.fl.us/geology/geologictopics/sinkhole.htm> (last visited Feb. 6, 2015).

²⁰ *Id.*

²¹ Section 369.315, F.S.

²² Citizens Property Insurance Corporation, *Sinkhole Repairs: Underpinning and Grouting*, (Oct. 30, 2012) available at <https://www.citizensfla.com/shared/sinkhole/documents/GroutVersusUnderpinning.pdf> (last visited on Mar. 24, 2015).

chemical resin that expands into foam) is injected into the ground to stabilize the subsurface soils to minimize further subsidence damage by increasing the density of the soils beneath the building as well as sealing the top of the limestone surface to minimize future raveling.²³ Underpinning consists of steel piers drilled or pushed into the ground to stabilize the building's foundation.²⁴ One end of the steel pipe connects to the foundation of the structure with the other end resting on solid limestone. Underpinning repairs, when performed, are usually combined with grouting.

III. Effect of Proposed Changes:

Section 1 amends s. 163.08, F.S., to allow supplemental authority for financing sinkhole-related improvements to real property. The bill establishes a finding of a compelling state interest in providing local government assistance that enables property owners to finance qualified improvements to property damaged by sinkhole activity. The bill expands the definition of "qualifying improvement" to include stabilization or other repairs to property damaged by sinkhole activity. The bill provides that a sinkhole-related qualifying improvement is deemed affixed to a building or facility; and provides that a disclosure statement to that effect be given to a prospective purchaser of the property.

Section 2 amends s 163.340, F.S., to add certain sinkhole activity to the list of factors that define a "blighted area." Specifically, the definition is expanded to account for land that has a "substantial number or percentage of properties" that have been damaged by sinkhole activity and have not been adequately repaired or stabilized. Thus, the bill would enable a CRA focused on redeveloping land with properties damaged by sinkholes to establish a community redevelopment trust fund that is funded through tax increment financing.

Section 3 amends s. 163.524, F.S., to conform a cross-reference.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²³ See *id.*

²⁴ See *id.*

D. Other Constitutional Issues:

Section 163.08, F.S., amended by section 1 of this bill, is the subject of litigation in the Florida Supreme Court. In *Florida Bankers Association v. State*, Case No. SC14-1603, the Court is considering whether the statute impairs contractual obligations in violation of art. 1, s. 10, Fla. Const. In *Reynolds v. State*, Case No. SC14-1618, the Court is considering whether a financing agreement created pursuant to s. 163.08, F.S., impairs contractual obligations. The Court has scheduled oral argument in both cases for May 7, 2015.

Section 163.08(8), F.S., provides that an assessment levied to fund a qualifying improvement is senior to existing mortgage debt, so if the homeowner defaults or goes into foreclosure, the delinquent payments would be recovered before the mortgage. An issue in the pending court cases is whether the provision making the assessment senior to existing mortgages impairs the mortgage contracts in violation of Article I, Section 10 of the Florida Constitution.

Section 1 of this bill contains a finding of a compelling government interest in providing local government assistance to enable property owners to effect improvements on property damaged by sinkhole activity. In *Pomponio v. Claridge of Pompano Condo. Inc.*, 378 So.2d 774, 780 (Fla. 1979), the court explained that whether a statute impermissibly impairs contractual obligations is a “balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state’s objective, or whether it unreasonably intrudes into the parties’ bargain to a degree greater than is necessary to achieve that objective.”

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

None.

B. Private Sector Impact:

Owners of property damaged by sinkhole activity will be able to enter into financing agreements with a local government that passes an ordinance or adopts a resolution to participate in the program established in s. 163.08, F.S.

Community redevelopment agencies will be able to develop a community redevelopment plan utilizing the expanded definition of “blighted area” to include land that has been “damaged by sinkhole activity which have not been adequately repaired or stabilized.” As a result, these areas may receive TIF revenues under the Community Redevelopment Act, and property values in the area may increase as a result of any improvements using TIF.

C. Government Sector Impact:

A municipality or county would be able to develop a community redevelopment plan utilizing the expanded definition of “blighted area” to include land that has a “substantial number or percentage of properties damaged by sinkhole activity which have not been adequately repaired or stabilized.” This could result in a portion of the ad valorem taxes from those lands being used for TIF.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 163.08, 163.340, and 163.524.

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 Simpson

18-00303-15

2015404__

A bill to be entitled

An act relating to improvements to real property damaged by sinkhole activity; amending s. 163.08, F.S.; declaring that there is a compelling state interest in enabling property owners to voluntarily finance certain improvements to property damaged by sinkhole activity with local government assistance; expanding the definition of the term "qualifying improvement" to include stabilization or other repairs to property damaged by sinkhole activity; providing that stabilization or other repairs to property damaged by sinkhole activity are qualifying improvements considered affixed to a building or facility; revising the form of a specified written disclosure statement to include an assessment for a qualifying improvement relating to stabilization or repair of property damaged by sinkhole activity; amending s. 163.340, F.S.; expanding the definition of "blighted area" to include a substantial number or percentage of properties damaged by sinkhole activity which are not adequately repaired or stabilized; conforming a cross-reference; amending s. 163.524, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Present paragraph (c) of subsection (1) of section 163.08, Florida Statutes, is redesignated as paragraph

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

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2015404__

(d), a new paragraph (c) is added to that subsection, and paragraph (b) of subsection (2) and subsections (10) and (14) of that section are amended, to read:

163.08 Supplemental authority for improvements to real property.—

(1)

(c) The Legislature finds that properties damaged by sinkhole activity which are not adequately repaired may negatively affect the market valuation of surrounding properties, resulting in the loss of property tax revenues to local communities. The Legislature finds that there is a compelling state interest in providing local government assistance to enable property owners to voluntarily finance qualified improvements to property damaged by sinkhole activity.

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

(b) "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the

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

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59 following fuels or energy sources: hydrogen, solar energy,
 60 geothermal energy, bioenergy, and wind energy.

61 3. Wind resistance improvement, which includes, but is not
 62 limited to:

63 a. Improving the strength of the roof deck attachment;
 64 b. Creating a secondary water barrier to prevent water
 65 intrusion;

66 c. Installing wind-resistant shingles;
 67 d. Installing gable-end bracing;
 68 e. Reinforcing roof-to-wall connections;
 69 f. Installing storm shutters; or
 70 g. Installing opening protections.

71 4. Stabilization or other repairs to property damaged by
 72 sinkhole activity.

73 (10) A qualifying improvement shall be affixed to a
 74 building or facility that is part of the property and shall
 75 constitute an improvement to the building or facility or a
 76 fixture attached to the building or facility. For the purposes
 77 of stabilization or other repairs to property damaged by
 78 sinkhole activity, a qualifying improvement is deemed affixed to
 79 a building or facility. An agreement between a local government
 80 and a qualifying property owner may not cover wind-resistance
 81 improvements in buildings or facilities under new construction
 82 or construction for which a certificate of occupancy or similar
 83 evidence of substantial completion of new construction or
 84 improvement has not been issued.

85 (14) At or before the time a purchaser executes a contract
 86 for the sale and purchase of any property for which a non-ad
 87 valorem assessment has been levied under this section and has an

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88 unpaid balance due, the seller shall give the prospective
 89 purchaser a written disclosure statement in the following form,
 90 which shall be set forth in the contract or in a separate
 91 writing:

92

93 QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY,
 94 RENEWABLE ENERGY, ~~OR~~ WIND RESISTANCE, OR SINKHOLE
 95 STABILIZATION OR REPAIR.—The property being purchased
 96 is located within the jurisdiction of a local
 97 government that has placed an assessment on the
 98 property pursuant to s. 163.08, Florida Statutes. The
 99 assessment is for a qualifying improvement to the
 100 property relating to energy efficiency, renewable
 101 energy, ~~or~~ wind resistance, or stabilization or repair
 102 of property damaged by sinkhole activity, and is not
 103 based on the value of property. You are encouraged to
 104 contact the county property appraiser's office to
 105 learn more about this and other assessments that may
 106 be provided by law.

107 Section 2. Subsection (8) of section 163.340, Florida
 108 Statutes, is amended to read:

109 163.340 Definitions.—The following terms, wherever used or
 110 referred to in this part, have the following meanings:

111 (8) "Blighted area" means an area in which there are a
 112 substantial number of deteriorated, or deteriorating
 113 structures;7 in which conditions, as indicated by government-
 114 maintained statistics or other studies, endanger life or
 115 property or are leading to economic distress; ~~or endanger life~~
 116 ~~or property,~~ and in which two or more of the following factors

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117 are present:

118 (a) Predominance of defective or inadequate street layout,
119 parking facilities, roadways, bridges, or public transportation
120 facilities.~~+~~

121 (b) Aggregate assessed values of real property in the area
122 for ad valorem tax purposes have failed to show any appreciable
123 increase over the 5 years prior to the finding of such
124 conditions.~~+~~

125 (c) Faulty lot layout in relation to size, adequacy,
126 accessibility, or usefulness.~~+~~

127 (d) Unsanitary or unsafe conditions.~~+~~

128 (e) Deterioration of site or other improvements.~~+~~

129 (f) Inadequate and outdated building density patterns.~~+~~

130 (g) Falling lease rates per square foot of office,
131 commercial, or industrial space compared to the remainder of the
132 county or municipality.~~+~~

133 (h) Tax or special assessment delinquency exceeding the
134 fair value of the land.~~+~~

135 (i) Residential and commercial vacancy rates higher in the
136 area than in the remainder of the county or municipality.~~+~~

137 (j) Incidence of crime in the area higher than in the
138 remainder of the county or municipality.~~+~~

139 (k) Fire and emergency medical service calls to the area
140 proportionately higher than in the remainder of the county or
141 municipality.~~+~~

142 (l) A greater number of violations of the Florida Building
143 Code in the area than the number of violations recorded in the
144 remainder of the county or municipality.~~+~~

145 (m) Diversity of ownership or defective or unusual

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146 conditions of title which prevent the free alienability of land
147 within the deteriorated or hazardous area.~~+~~~~or~~

148 (n) Governmentally owned property with adverse
149 environmental conditions caused by a public or private entity.

150 (o) A substantial number or percentage of properties
151 damaged by sinkhole activity which have not been adequately
152 repaired or stabilized.

153

154 However, the term "blighted area" also means any area in which
155 at least one of the factors identified in paragraphs (a) through
156 (o) is ~~(n)~~ are present and all taxing authorities subject to s.
157 163.387(2)(a) agree, either by interlocal agreement ~~or~~
158 ~~agreements~~ with the agency or by resolution, that the area is
159 blighted. Such agreement or resolution must be limited to a
160 determination shall only determine that the area is blighted.
161 For purposes of qualifying for the tax credits authorized in
162 chapter 220, "blighted area" means an area as defined in this
163 subsection.

164 Section 3. Subsection (3) of section 163.524, Florida
165 Statutes, is amended to read:

166 163.524 Neighborhood Preservation and Enhancement Program;
167 participation; creation of Neighborhood Preservation and
168 Enhancement Districts; creation of Neighborhood Councils and
169 Neighborhood Enhancement Plans.-

170 (3) After the boundaries and size of the Neighborhood
171 Preservation and Enhancement District have been defined, the
172 local government shall pass an ordinance authorizing the
173 creation of the Neighborhood Preservation and Enhancement
174 District. The ordinance shall contain a finding that the

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175 boundaries of the Neighborhood Preservation and Enhancement
176 District comply with ~~meet the provisions of~~ s. 163.340(7) or s.
177 ~~(8)(a)-(o)~~ ~~(8)(a)-(n)~~ or do not contain properties that are
178 protected by deed restrictions. Such ordinance may be amended or
179 repealed in the same manner as other local ordinances.

180 Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 / 9 / 15
Meeting Date

484
Bill Number (if applicable)

Topic Improvements to Real Property Damaged by Sinkholes

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-224-2265

Tallahassee
City

FL
State

32303
Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

419 12015

Meeting Date

Topic _____

Bill Number 404
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Environmental Preservation and Conservation,
Vice Chair
Appropriations Subcommittee on General Government
Finance and Tax
Judiciary
Transportation

JOINT COMMITTEE:
Joint Legislative Auditing Committee

SENATOR WILTON SIMPSON
18th District

March 31, 2015

Honorable David Simmons
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Simmons,

Please place Senate Bill 404 relating to sinkhole activity, on the next Rules Committee agenda.

Please contact my office with any questions. Thank you.

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson
Senator, 18th District

CC: John B. Phelps, Staff Director

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/CS/SB 674

INTRODUCER: Governmental Oversight and Accountability Committee; Military and Veterans Affairs, Space, and Domestic Security Committee; and Senator Evers

SUBJECT: Public Records/Service member Identification and Location Information

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Sanders</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 674 creates a public records exemption for certain identification and location information of current and former service members of U.S. Armed Forces, a reserve component of the Armed Forces and the National Guard who have served since September 11, 2001. The exemption includes the spouses and other dependents of those servicemembers.

The public records exemption established in the bill is subject to the Open Government Sunset Review Act and will repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the State Constitution.

Because this bill creates a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with

the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

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

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

Current Exemptions from Public Records Requirements in s. 119.071, F.S.

Section 119.071(4), F.S., exempts personal identification and location information for specified current or former state or local government personnel, their spouses and children. Information such as home addresses, telephone numbers, a spouse's employer, and children's school or day care facility for current and former agency personnel are exempt from public disclosure. The employee must submit a written request for the exemption to be effective.²⁰

Additionally, s. 119.071(5), F.S., authorizes a public records exemption for certain identification and location information for the following federal personnel, their spouses and children:²¹

- U.S. attorneys and assistant U.S. attorneys;
- U.S. Courts of Appeal judges;
- U.S. district judges; and
- U.S. magistrates.

The identification and location information protected under this exemption includes:²²

- Home address, telephone number, and photograph of such attorney, judge, or magistrate and their spouse and child;
- Places of employment of a spouse and child, and
- Name and location of the school or day care facility attended by a child.

In order for the exemption to apply, a current or former federal attorney, judge, or magistrate must submit to an agency that has custody of the protected information a written request to exempt the information from public disclosure. In addition, the individual must submit a written statement that he or she has made a reasonable effort to protect such information from being accessible through other means available to the public.

Threats to Servicemembers and their Families

The Federal Bureau of Investigation (FBI) and the Department of Homeland Security (DHS) issued a Joint Intelligence Bulletin warning servicemembers that the Islamic State of Iraq and Levant (ISIL) has made "repeated calls for supporters in the United States to pledge an oath of obedience to ISIL and to attack military, law enforcement, security, and intelligence personnel in the Homeland."²³ A group claiming to be sympathizers of the Islamic State of Iraq and Syria (ISIS)²⁴ hacked into the U.S. military's Central Command's Twitter account and stated that they

²⁰ Section 119.071(4)(d)(3), F.S.

²¹ Section 119.071(5)(i), F.S.

²² Section 119.071(5)(i)1., F.S.

²³ Joint Intelligence Bulletin titled *Islamic State of Iraq and the Levant and Its Supporters Encourage Attacks Against Military Personnel* dated November 30, 2014, on file with the Committee on Governmental Oversight and Accountability. See also: *ISIS Threat at Home: FBI Warns US Military About Social Media Vulnerabilities*. (December 1, 2014), <http://abcnews.go.com/International/isis-threat-home-fbi-warns-us-military-social/story?id=27270662> (last viewed March 10, 2015).

²⁴ ISIL and ISIS are the same terrorist group but have been referred to in differently over time by the media and the government. See *ISIS, ISIL Or Islamic State: What's In a Name?* National Public Radio September 12, 2014. <http://www.npr.org/blogs/parallels/2014/09/12/347711170/isis-isil-or-islamic-state-whats-in-a-name> (last viewed March 26, 2015.)

were watching American soldiers, their wives and children.²⁵ Because of those threats, spouses of a Special Forces service members are reducing the information they place on social media.²⁶ On March 21, 2015, the media reported that ISIL posted on the internet the names, photographs, and addresses of approximately 100 servicemembers that it wanted killed.²⁷ The posted information appeared to have come from public records, the internet and Department of Defense reports.²⁸ Federal and military law enforcement agencies are investigating the matter, and the Department of Defense has been contacting the named servicemembers.²⁹

III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create an exemption from the public records requirements in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution for current or former servicemembers of United States Armed Forces, a reserve component of the Armed Forces and the National Guard who have served since September 11, 2001, as well as the for the servicemember's spouses and other dependents.

Specifically, the following identification and location information held by an agency is exempt from public record requirements:

- Home address, telephone number, and date of birth of a servicemember; and the telephone number associated with a servicemember's personal communication device.
- Home address, telephone number, date of birth, and place of employment of the spouse or dependent of a servicemember; and the telephone number associated with such spouse's or dependent's personal communication device.
- Name and location of the school attended by the spouse, or the school or day care facility attended by a dependent, of a servicemember.

The exemption only applies if the current or former servicemember submits a written request for the exemption and provides a written statement that the servicemember has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public. The servicemember must submit these statements to each agency which holds his or her information, and the servicemember must assert the exemption on behalf of his or her spouse or other dependent. The Department of Military Affairs estimates that this exemption will cover approximately 190,000 current servicemembers and 70,000 dependents.³⁰ According to a U.S. Department of Veterans Affairs projection, approximately 260,000 former

²⁵ *U.S. Central Command Twitter Account suspended After Apparent ISIS Hack*. U.S. News and World Report (January 12, 2015) <http://www.usnews.com/news/articles/2015/01/12/us-central-command-twitter-account-suspended-after-apparent-isis-hack> (last viewed March 10, 2015).

²⁶ *After ISIS Twitter threat, military families rethink online lives*. <http://www.cnn.com/2015/01/14/us/social-media-military-isis/> (last viewed March 10, 2015).

²⁷ *ISIS Urges Sympathizers to Kill U.S. Service Members It Identifies on Website*, New York Times (March 21, 2015) http://www.nytimes.com/2015/03/22/world/middleeast/isis-urges-sympathizers-to-kill-us-service-members-it-identifies-on-website.html?_r=0 (last viewed March 24, 2015).

²⁸ *Id.*

²⁹ "Purported ISIS Group Posts Personal Details of 100 U.S. Military Service Members" ABC News (March 21, 2015) <http://abcnews.go.com/Politics/purported-isis-group-posts-personal-details-100-us/story?id=29811503> (last viewed March 24, 2015).

³⁰ Email from Glenn Sutphin, Department of Military Affairs, on file with the Senate Committee on Governmental Oversight and Accountability Dated March 24, 2015.

servicemembers who served in the military after September 11, 2001 reside in Florida.³¹ An estimate of the number of dependents of these Florida veterans is not available.

This bill provides for retroactive application of this exemption.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that allowing the identification and location information of current or former servicemembers and their families can endanger the servicemembers, their spouses, and their dependents.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2020, unless reviewed and reenacted by the Legislature.

This bill will be effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for the identification and location information of current or former servicemembers their spouses, and other dependents; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The public necessity statement provides that servicemembers perform critical and dangerous operations and that public access to identifying and location information endangers servicemembers and their families.

³¹ U.S. Department of Veterans Affairs' Veteran Population Model. *Table 7L: VetPop2014 Living Veterans by State, Period of Service, Gender, 2013-2043* (Select 9/30/2015 table and see columns "r," "u," and "v"). Table available at: http://www.va.gov/vetdata/Veteran_Population.asp (last viewed April 7, 2015).

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the identification and location information named in the bill for current or former servicemembers their spouses, and dependents of such servicemembers. The exemption is no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on state and local agencies, as staff may require training related to this new public record exemption. The costs, however, would likely be absorbed as part of the day-to-day responsibilities of the staff of the agency.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The committee substitute makes the following changes:

- Changes the definition of identification and locations information to include telephone numbers associated with a personal communication device and birthdays and by removing photographs. The schools attended by spouses was also added to the exemption.
- Changes “child” to “dependents.”
- Broadens the exemption to servicemembers who are current or former members of the Armed Forces, the Reserves, or the National Guard after September 11, 2001.
- Provides for retroactive application of the exemption.
- Modifies the public necessity statement to reflect recent news events and to conform to the CS.

CS by Military and Veterans Affairs, Space, and Domestic Security on March 4, 2015:

The committee substitute makes the following changes:

- Moves the exemption from s. 119.071(4), F.S. to s. 119.071(5), F.S.;
- Revises the public necessity statement to clarify that the exemption protects sensitive personal information that would jeopardize an individual’s safety; and
- Requires a person to request the exemption in writing and state in writing that he or she has made reasonable efforts to protect the information for the exemption to apply.

- B. **Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;
and Military and Veterans Affairs, Space, and Domestic Security;
and Senator Evers

585-03185-15

2015674c2

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; defining the terms "identification and
4 location information" and "servicemember"; providing
5 an exemption from public records requirements for
6 certain identification and location information of
7 servicemembers and the spouses and dependents of
8 servicemembers; providing for retroactive application;
9 providing for future legislative review and repeal of
10 the exemption; providing a statement of public
11 necessity; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Paragraph (k) is added to subsection (5) of
16 section 119.071, Florida Statutes, to read:
17 119.071 General exemptions from inspection or copying of
18 public records.—
19 (5) OTHER PERSONAL INFORMATION.—
20 (k)1. For purposes of this paragraph, the term:
21 a. "Identification and location information" means the:
22 (I) Home address, telephone number, and date of birth of a
23 servicemember; and the telephone number associated with a
24 servicemember's personal communication device.
25 (II) Home address, telephone number, date of birth, and
26 place of employment of the spouse or dependent of a
27 servicemember; and the telephone number associated with such
28 spouse's or dependent's personal communication device.
29 (III) Name and location of the school attended by the

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

585-03185-15

2015674c2

30 spouse, or the school or day care facility attended by a
31 dependent, of a servicemember.
32 b. "Servicemember" means a current or former member of the
33 Armed Forces of the United States, a reserve component of the
34 Armed Forces of the United States, or the National Guard who
35 served after September 11, 2001.
36 2. Identification and location information held by an
37 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the
38 State Constitution if a servicemember submits the following to
39 an agency that has custody of the identification and location
40 information:
41 a. A written request to exempt the identification and
42 location information from public disclosure; and
43 b. A written statement that he or she has made reasonable
44 efforts to protect the identification and location information
45 from being accessible through other means available to the
46 public.
47 3. This exemption applies to identification and location
48 information held by an agency before, on, or after the effective
49 date of this exemption.
50 4. This paragraph is subject to the Open Government Sunset
51 Review Act in accordance with s. 119.15 and shall stand repealed
52 on October 2, 2020, unless reviewed and saved from repeal
53 through reenactment by the Legislature.
54 Section 2. The Legislature finds that it is a public
55 necessity that the identification and location information held
56 by an agency of current or former members of the Armed Forces of
57 the United States, a reserve component of the Armed Forces of
58 the United States, or the National Guard who served after

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

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59 September 11, 2001; their spouses; and their dependents be made
60 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
61 Article I of the State Constitution. Servicemembers perform
62 among the most critical, most effective, and most dangerous
63 operations in defense of our nation's freedom. Terrorist groups
64 have threatened servicemembers and their families and have
65 encouraged their sympathizers to harm servicemembers and their
66 families within the United States. One terrorist group has
67 allegedly gathered the photographs and home addresses of
68 servicemembers from public sources to create and publish a list
69 of servicemembers in order to make such persons vulnerable to an
70 act of terrorism. The Legislature finds that allowing continued
71 public access to the identification and location information of
72 current or former servicemembers and their families jeopardizes
73 the safety of servicemembers, their spouses, and their
74 dependents. The Legislature finds that protecting the safety and
75 security of current or former members of the Armed Forces of the
76 United States, a reserve component of the Armed Forces of the
77 United States, or the National Guard who served after September
78 11, 2001; their spouses; and their dependents outweighs any
79 public benefit that may be derived from the public disclosure of
80 their identification and location information.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-2015
Meeting Date

674
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator Simmons
Chair, Rules Committee

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill 674**, relating to Public Records/Military Special Ops Unit Service Members, be placed on the:

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

A handwritten signature in cursive script that reads "Greg Evers".

Senator Greg Evers
Florida Senate, District 2

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 Rules

BILL: CS/CS/SB 716

INTRODUCER: Governmental Oversight and Accountability Committee; Regulated Industries Committee; Senator Hays and others

SUBJECT: Public Records/Animal Medical Records

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Kraemer</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 716 makes animal medical records held by any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education confidential and exempt from public inspection and copying.

In addition, the bill makes medical records that are transferred by a records owner in connection with official business by any accredited state college of veterinary medicine confidential and exempt from disclosure. Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities and as provided by current law governing veterinary medical records. The bill provides a public necessity statement justifying the exemption pursuant to s. 24(c), Art. I, of the State Constitution.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill creates a new public records exemption and therefore requires a two-thirds vote for passage in each house of the Legislature in order to become law.

II. Present Situation:

Veterinary Medical Records

In 1979, the Legislature determined that because the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners, it mandated minimum requirements for licensure of veterinarians in the state.¹ A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida pursuant to ch. 474, F.S. The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.²

Section 474.2165, F.S. governs the ownership and control of veterinary medical records. Anyone who provides veterinary medical services is required to maintain medical records.³ In general, veterinary medical records are confidential and may only be disclosed to other veterinarians involved in the treatment of the animal, with the consent of the owner or when there is a legal action.⁴ Medical records may be furnished without written authorization of the owner to an entity that provided treatment,⁵ upon issuance of a subpoena,⁶ for research purposes,⁷ or when there is a pending legal or disciplinary action.⁸

Pursuant to s. 474.203, F.S., eight categories of persons are exempt from complying with ch. 474, F.S., respecting veterinary medical practice.

- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;¹⁰
- Intern or resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;¹¹

¹ See s. 474.201, F.S.

² See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

³ Section 474.2165(2), F.S.

⁴ Section 474.2165(4) and (5), F.S.

⁵ Section 474.2165(4)(a), F.S.

⁶ Section 474.2165(4)(b), F.S.

⁷ Section 474.2165(4)(c), F.S.

⁸ Section 474.2165(5) and (6), F.S.

⁹ Pursuant to s. 474.203(1) and (2), F.S., accreditation of a school or college must be granted by the American Veterinary Medical Association (AMVA) Council on Education, or the American Veterinary Medical Association Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Mar. 20, 2015). The American Veterinary Medical Association Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program (ECFVG). See <https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfvg-about-us.aspx> (last visited Mar. 20, 2015). In turn, CHEA, a national advocate for regulation of academic quality through accreditation, is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. See <http://chea.org/> (last visited Mar. 20, 2015).

¹⁰ Section 474.203(1), F.S.

¹¹ Section 474.203(2), F.S.

- Students in a school or college of veterinary medicine who perform assigned duties by an instructor or work as preceptors^{12,13};
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties;¹⁴
- Persons or their employees caring for the persons' own animals; as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations. The exemption is not available to those who are licensed as a veterinarian in another state and are temporarily practicing in Florida, or those convicted of violating ch. 828, F.S., respecting animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;¹⁵
- Certain entities or persons¹⁶ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treat of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine.¹⁷
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employee of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹⁸ of a licensed veterinarian;¹⁹ and
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, who are board certified in a specialty recognized by the Florida Board of Veterinary Medicine, who assist upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal, or on the treatment on a specific case of the animals of a single owner.²⁰

Because these categories of practitioners are exempt from chapter 474 in its entirety, they are not able to keep veterinary medical records private in the same manner as a practitioner who is subject to chapter 474, F.S.

Public Records

The Florida Constitution provides that the public has the right to access government records. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their

¹² A preceptor is a skilled practitioner or faculty member who supervises students in a clinical setting to allow practical experience with patients.

¹³ Section 474.203(3), F.S.

¹⁴ Section 474.203(4), F.S.

¹⁵ Section 474.203(5), F.S.

¹⁶ See s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof.”

¹⁷ Section 474.203(6), F.S.

¹⁸ The term “responsible supervision” is defined in s. 474.202(10), F.S. as the “control, direction, and regulation by a licensed veterinarian” of unlicensed personnel to whom the veterinarian has delegated veterinary services duties.

¹⁹ Section 474.203(7), F.S.

²⁰ Section 474.203(8), F.S.

behalf.²¹ In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act²² guarantees every person's right to inspect and copy any state or local government public record.²³

There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances.²⁴ If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption.²⁵

The Legislature may create an exemption to public records requirements.²⁶ An exemption must specifically state the public necessity justifying the exemption²⁷ and must be tailored to accomplish the stated purpose of the law.²⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records exemptions.²⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.³⁰

²¹ FLA. CONST., art. I, s. 24(a).

²² Chapter 119, F.S.

²³ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

²⁴ *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991).

²⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

³⁰ Section 119.15(3), F.S.

The OGSR provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³¹ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;³²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³³ or
- It protects trade or business secrets.³⁴

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's public policy favoring open government and that the purpose of the exemption cannot be accomplished without the exemption.³⁵

The OGSR also requires specific questions to be considered during the review process.³⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁸

III. Effect of Proposed Changes:

CS/CS/SB 716 creates s. 474.2167, F.S., to provide that certain animal medical records held by or transferred to any state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education³⁹ are confidential and exempt from public inspection

³¹ Section 119.15(6)(b), F.S.

³² Section 119.15(6)(b)1., F.S.

³³ Section 119.15(6)(b)2., F.S.

³⁴ Section 119.15(6)(b)3., F.S.

³⁵ Section 119.15(6)(b), F.S.

³⁶ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁷ FLA. CONST., art. I, s. 24(c).

³⁸ Section 119.15(7), F.S.

³⁹ The American Veterinary Medical Association (AVMA) Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the US and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Mar. 20, 2015).

and copying. State colleges of veterinary medicine are government institutions and are subject to public records laws. The intent of the bill is to provide the same level of protection at a public veterinary facility that an animal's owner may receive at a private facility in which the practitioners are governed by ch. 474, F.S.

An animal medical record relates to:

- The diagnosis of the medical condition of an animal;
- Prescribing, dispensing, or administering drugs, medicine, appliances, applications, or treatment of whatever nature for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease of an animal; or
- Performing a manual procedure for the diagnosis of or treatment for pregnancy, fertility, or infertility of an animal.

The bill provides that confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities and may also be released pursuant to the existing laws governing veterinary medical records at a private clinic.

The bill provides for retroactive application of the exemption to records that are currently being held by state college of veterinary medicine accredited by the American Veterinary Medical Association Council on Education, and also provides for the exemption to be reviewed in five years pursuant to the OGSF.

The bill includes a public necessity statement and an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for veterinary medical records; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The public necessity statement provides legislative findings that the release of animal medical records will compromise the confidentiality protections otherwise afforded to owners of the animals being treated at a state college of veterinary medicine. Further, the Legislature finds that the owners of animals have a right to privacy in the medical records

of their animals and that the privacy concerns outweigh the public benefit received from disclosure of the records.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. This exemption appears to be no broader than necessary in that it affords the same protections that an owner of an animal treated at a private facility would receive.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Eligible accredited state colleges of veterinary medicine will be permitted to shield certain animal medical records from public disclosure. Persons seeking public inspection and copying of these confidential, exempted documents will no longer be able to obtain them.

C. Government Sector Impact:

State colleges of veterinary medicine that are eligible to shield certain animal medical records may be subject to legal challenges by those persons previously able to review those records.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 474.2167 of the Florida Statutes.

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

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

CS/CS by Governmental Oversight and Accountability on March 31, 2015:

The CS provides that records may be released in the same manner as if the records were being held by a private veterinarian. The CS removes references to animals having privacy rights or agents. The CS also conforms the public necessity statement to the CS.

CS by Regulated Industries on March 18, 2015:

CS/SB 716 provides a statement of public necessity that animal medical records held by or transferred to any accredited state college of veterinary medicine be confidential and exempt from the inspection and copying requirements set forth in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

Confidential and exempt medical records that are transferred in connection with official business by any accredited state college of veterinary medicine remain confidential and exempt from disclosure.

Confidential and exempt animal medical records may be disclosed to another governmental entity in the performance of its duties and responsibilities.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;
and Regulated Industries; and Senators Hays, Soto, and Diaz de
la Portilla

585-03192A-15

2015716c2

1 A bill to be entitled
2 An act relating to public records; creating s.
3 474.2167, F.S.; providing an exemption from public
4 records requirements for certain animal medical
5 records held by a state college of veterinary medicine
6 that is accredited by the American Veterinary Medical
7 Association Council on Education; authorizing
8 disclosure under certain circumstances; providing
9 applicability; providing for future legislative review
10 and repeal of the exemption; providing a statement of
11 public necessity; providing an effective date.

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

14
15 Section 1. Section 474.2167, Florida Statutes, is created
16 to read:

17 474.2167 Confidentiality of animal medical records.—

18 (1) The following records held by any state college of
19 veterinary medicine that is accredited by the American
20 Veterinary Medical Association Council on Education are
21 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
22 of the State Constitution:

23 (a) A medical record generated which relates to diagnosing
24 the medical condition of an animal; prescribing, dispensing, or
25 administering drugs, medicine, appliances, applications, or
26 treatment of whatever nature for the prevention, cure, or relief
27 of a wound, fracture, bodily injury, or disease of an animal; or
28 performing a manual procedure for the diagnosis of or treatment
29 for pregnancy, fertility, or infertility of an animal; and

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30 (b) A medical record described in paragraph (a) which is
31 transferred by a previous record owner in connection with the
32 transaction of official business by a state college of
33 veterinary medicine that is accredited by the American
34 Veterinary Medical Association Council on Education.
35 (2) A record made confidential and exempt under subsection
36 (1) may be disclosed to another governmental entity in the
37 performance of its duties and responsibilities and may be
38 disclosed pursuant to s. 474.2165.
39 (3) The exemption from public records requirements under
40 subsection (1) applies to animal medical records held before,
41 on, or after the effective date of this exemption.
42 (4) This section is subject to the Open Government Sunset
43 Review Act in accordance with s. 119.15 and shall stand repealed
44 on October 2, 2020, unless reviewed and saved from repeal
45 through reenactment by the Legislature.
46 Section 2. The Legislature finds that it is a public
47 necessity that a medical record that relates to diagnosing the
48 medical condition of an animal; prescribing, dispensing, or
49 administering drugs, medicine, appliances, applications, or
50 treatment of whatever nature for the prevention, cure, or relief
51 of a wound, fracture, bodily injury, or disease of an animal; or
52 performing a manual procedure for the diagnosis of or treatment
53 for pregnancy or fertility or infertility of an animal, which is
54 held by a state college of veterinary medicine that is
55 accredited by the American Veterinary Medical Association
56 Council on Education, be made confidential and exempt from s.
57 119.07(1), Florida Statutes, and s. 24(a), Article I of the
58 State Constitution. The Legislature also finds that it is a

Page 2 of 3

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2015716c2

59 public necessity that any such medical record that is
60 transferred by a previous records owner in connection with the
61 transaction of official business by a state college of
62 veterinary medicine that is accredited by the American
63 Veterinary Medical Association Council on Education and that is
64 held by such state college be made confidential and exempt from
65 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
66 State Constitution. The Legislature also finds that it is a
67 public necessity that this exemption apply to such animal
68 medical records held by such a state college of veterinary
69 medicine before, on, or after the effective date of the
70 exemption. The Legislature finds that the release of such animal
71 medical records compromises the confidentiality protections
72 otherwise afforded the owners of such animals treated by
73 licensed veterinarians in this state pursuant to this chapter.
74 The Legislature finds that the owners of animals have the right
75 to the privacy of the medical records of their animals. The
76 Legislature finds that this exemption permits a state college of
77 veterinary medicine accredited by the American Veterinary
78 Medical Association Council on Education to effectively and
79 efficiently carry out its mission to educate students in
80 veterinary medicine. Without this exemption, this mission would
81 be significantly impaired. The Legislature finds that the
82 privacy concerns that result from the release of animal medical
83 records outweigh any public benefit that may be derived from the
84 disclosure of the information.

85 Section 3. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

April 7, 2015

4/9/15
O.K.
[Signature]

The Honorable David Simmons
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons,

Please allow my legislative aide, Jessica Crawford, to present SB 716 – Public Records/Animal Medical Records, before the Rules Committee on Thursday. I will be in Fiscal Policy with two bills to present.

Thank you for your kind consideration of this matter.

Sincerely,

[Signature: D. Alan Hays]

D. Alan Hays

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 9 12015

Meeting Date

Topic _____

Bill Number 716

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator David Simmons, Chair
Rules Committee
CC: John B. Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 716 – Public Records/Animal Medical Records

Date: March 31, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
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Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/CS/SB 872

INTRODUCER: Banking and Insurance Committee; Judiciary Committee; and Senator Hukill

SUBJECT: Estates

DATE: April 8, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 872 amends the Florida Probate Code and the Florida Trust Code to revise provisions governing the areas of attorney fees and costs, lawyers and certain persons related to lawyers serving as fiduciaries, personal representatives and notices of administration, and the apportionment of estate taxes. The bill:

- Authorizes a court to assess attorney fees and costs against one or more persons' part of an estate or trust in proportions it finds just and proper in estate and trust proceedings and to direct payment for assessments against a portion of an estate from a trust under certain circumstances.
- Provides factors that a court may consider when assessing costs and attorney fees against a person's share of an estate or trust in estate and trust proceedings.
- Prohibits compensation to an attorney or certain persons appointed by a client to service as a fiduciary unless special circumstances exist or a written disclosure is executed by the client before the execution of the document.
- Revises requirements regarding the time to make objections to the validity of a will, qualifications of a personal representative, the venue, or jurisdiction of a court in estate proceedings.
- Requires that personal representatives who are not qualified at the time of appointment resign or be removed by the court and have their letters of administration revoked.
- Extends personal liability for attorney fees and costs in a removal proceeding to personal representatives who do not know but should have known of facts requiring them to

immediately resign or provide notice of ineligibility to serve as personal representative to interested persons.

- Substantially revises current law regarding the allocation and apportionment of estate taxes to update the statute for consistency with changes in federal estate tax laws, codify case law governing estate tax apportionment, and address gaps in the current statutory apportionment framework.

II. Present Situation:

The Florida Probate Code and the Florida Trust Code govern the administration of estates and trusts under Florida law.¹ The codes establish the procedures for collecting and distributing the assets to the beneficiaries of wills and trusts. This bill amends statutes in the codes that involve:

- Attorney fees and costs;
- Lawyers serving as fiduciaries;
- Personal representatives and notices of administration; and
- The apportionment of estates taxes.

Assessing Attorney Fees and Costs for Estates and Trusts

The probate² and trust³ codes provide that an attorney who has rendered services to an estate or trust may be awarded reasonable compensation from the estate or trust for those services. The statutes further provide that the court, in its discretion, may direct from what part of the estate⁴ or trust⁵ those fees, as well as costs,⁶ may be paid.

Case law interpreting the assessment of attorney fees and costs under the Probate Code, however, is in conflict. The Fourth District Court of Appeal has interpreted the statute to mean that the trial court must find bad faith, wrongdoing, or frivolousness to assess attorney fees and costs against a part of the estate.⁷ The Fifth District Court of Appeal, however, does not require a finding of frivolousness to assess attorney fees and costs against a portion of the estate.⁸ In a Florida Supreme Court case involving an unsuccessful will dispute and the assessment of fees and costs against a portion of an estate, the Court noted that the trial court has “discretion to direct that the resulting costs and attorney fees be charged against the contestant’s bequest under the will.”⁹ The Real Property, Probate, and Trust Law Section of The Florida Bar has noted that the lack of detailed statutory factors for courts to consider when exercising discretion to assess attorney fees and costs has created inconsistent results in the application of the law. The section has noted that

¹ The Florida Probate Code is contained in chs. 731 through 735, F.S., and the Florida Trust Code is contained in ch. 736, Florida Statutes.

² Section 733.106(3), F.S.

³ Section 736.1005(1), F.S.

⁴ Section 733.106(4), F.S.

⁵ Section 736.1005(2), F.S.

⁶ Section 733.106(4), F.S. authorizes the court, in probate, to direct from what portion of the probate estate the costs are to be paid. Section 736.1006(2), F.S., authorizes the court, in its discretion, to direct from what part of the trust the costs shall be paid.

⁷ *Levin v. Levin*, 67 So.3d 429 (Fla. 4th DCA 2011).

⁸ *Williams v. King*, 711 So.2d 1285 (Fla. 5th DCA 1998).

⁹ *Carman v. Gilbert*, 641 So.2d 1323, 1326 (Fla. 1994).

a detailed but flexible standard would provide courts direction and would result in a more consistent application of the law.¹⁰

Lawyers Serving as Fiduciaries

The law currently provides that a personal representative who is a member of The Florida Bar and provides legal services administering an estate is allowed a fee for the personal representative services and a fee for his or her legal services.¹¹ While there is no statutory or ethical prohibition against lawyers preparing documents that appoint themselves as fiduciaries, it is important for lawyers to document any disclosure made to a client so as to avoid future allegations that they overreached or were involved in improper conduct.¹²

Personal Representatives and Notice of Administration

Personal Representatives

A personal representative is a person or business entity¹³ appointed by a circuit court to administer a decedent's estate. If an individual serves as a personal representative, he or she must be at least 18 years old, have full capacity,¹⁴ and be a resident of Florida¹⁵ at the time of the death of the person whose estate he or she is administering.¹⁶ A person is not qualified to serve as a personal representative if he or she is under 18 years of age, has been convicted of a felony or is mentally or physically unable to perform the duties of a personal representative.¹⁷

Notice of Administration and Filing of Objections

Section 733.212, F.S., establishes, among other things, a list of people upon whom the personal representative must serve a copy of the notice of administration and specific information that the notice of administration must contain. Section 733.212(2)(c), F.S., specifies a 3 month time frame for filing objections to the validity of the will, the qualifications of the personal representative, the venue, or the jurisdiction of the court.

Apart from detailing what the notice of administration must contain, s. 733.212(3), F.S., is directed to a person on whom the notice is served and who wants to file an objection. It provides that any interested person upon whom a notice of administration is served must object by filing a

¹⁰ The Real Property, Probate, & Trust Law Section of The Florida Bar, *Legislative White Paper: Proposed F.S. 733.106(4), 736.1005(2), and 736.1006(2)* (2015) (on file with the Senate Committee on Judiciary).

¹¹ Section 733.617(6), F.S.

¹² The Real Property, Probate, & Trust Law Section of The Florida Bar, *White paper: Proposed Legislation Regarding Lawyers Serving as Fiduciaries* (2015) (on file with the Senate Committee on Judiciary).

¹³ See s. 733.305, F.S., for a list of business entities authorized to serve. Generally, those entities are certain trust companies and banking and savings institutions.

¹⁴ Section 733.302, F.S., states that the person is "sui juris." Black's Law Dictionary defines "sui juris" as being independent, of full age and capacity, and possessing full social and civil rights.

¹⁵ A non-resident of the state may qualify if he or she is a legally adopted child or adoptive parent of the decedent, related by lineal consanguinity, one of certain enumerated relatives of the decedent, or the spouse of a person otherwise qualified to be the personal representative. Section 733.304, F.S.

¹⁶ Section 733.302, F.S.

¹⁷ Section 733.303, F.S.

petition on or before the date that is 3 months after he or she is served with a copy of the notice of administration or be forever barred from asserting an objection to:

- The validity of the will;
- The qualifications of the personal representative;
- The venue; or
- The jurisdiction of the court.

In the recent case of *Hill v. Davis*,¹⁸ the Florida Supreme Court addressed whether an objection to the qualifications of a personal representative is barred by the 3 month deadline. The Court held that s. 733.212(3), F.S., bars an objection that the personal representative¹⁹ was never qualified to serve in that capacity if the objection was not timely filed. The Court, however, created an exception to the 3 month deadline “except where fraud, misrepresentation, or misconduct with regard to the qualifications is not apparent on the face of the petition or discovered within the statutory time frame.”²⁰ Some attorneys believe that this exception created by the Supreme Court could, as written, be expanded to apply to objections to the validity of a will, jurisdiction, or venue unless clarifying language is added to limit the 3 month exception.²¹

Apportionment of Estate Taxes

Just as Florida’s intestate successions laws function as a default mechanism to distribute property that was not properly devised in a will, s. 733.817, F.S., provides default rules for determining the apportionment of an estate tax among the various interests when the decedent has not otherwise specified. Section 733.817, F.S., governs:

- The apportionment of estate taxes if a decedent has not effectively provided for the apportionment of those taxes; and
- The collection of the tax.

The estate tax apportionment statute has not been substantially revised in many years and has not been updated to address federal estate tax laws enacted after the statute was last amended. Additionally, there are tax issues not currently covered in the existing statute. Under current federal law, the estate tax only applies to an estate valued in excess of \$5,430,000.²² Florida does not have a state level estate tax. However, when estate taxes are due to the federal government or to another state from a Florida decedent, s. 733.817, F.S., determines how much tax is attributable to each interest affected by the tax. The statute also determines who is charged with payment of the tax attributable to various interests affected by the tax, determines whether a decedent has effectively directed against statutory apportionment and resolves conflicting apportionment provisions in governing instruments.

¹⁸ *Hill v. Davis*, 70 So.3d 572 (Fla. 2011).

¹⁹ Section 733.3101, F.S., states that any time a personal representative knows or should have known that he or she is not qualified, the personal representative shall promptly file and serve a notice setting forth the reasons. Whoever fails to comply with that requirement shall be personally liable for costs, including attorney fees incurred in a removal proceeding, if he or she is removed.

²⁰ *Id.*, at 573.

²¹ The Real Property, Probate, & Trust Law Section of The Florida Bar, *Legislative White Paper: Regarding Objections to Probate and Qualifications of Personal Representatives* (2015) (on file with the Senate Committee on Judiciary).

²² This amount applies to the 2015 tax year. The value is adjusted annually for inflation. 26 U.S.C. s. 2010(c)(3) and Rev. Proc. 2014-61, 2014-47 I.R.B. 860.

Estate Tax

According to the Internal Revenue Service, an estate tax is a tax on your right to transfer property at your death. The tax is generally computed by assessing the fair market value of all properties owned or controlled by the decedent at his or her death, which is the “gross estate,” and then subtracting certain allowable deductions, which is the “taxable estate.” The value of lifetime taxable gifts is added to this amount and the tax is computed. The tax is then reduced by the available unified credit.²³

Background Information on the Apportionment of Estate Taxes, s. 733.817, F.S.

The statute generally provides for a modified equitable apportionment system. Property interests generally bear their share of the taxes with the exception that there are special provisions for property passing under a will or trust and for protected homestead. Residuary interests passing under a will or trust are first charged with taxes on non-residuary interests, then with taxes on residuary interests themselves, with the non-residuary interests bearing their pro rata share of any remaining taxes. The decedent’s probate estate and revocable trust are generally charged with the estate tax on protected homestead. Property qualifying for the marital and charitable deduction does not bear any part of the tax unless it is charged with the payment of tax on other property as a part of the residuary under the will or trust. The default apportionment provisions apply only if the decedent does not direct otherwise. The statute provides rules for determining whether a decedent has overridden the default rules.²⁴

III. Effect of Proposed Changes:**Assessing Attorney Fees and Costs for Estates and Trusts (Sections 1, 9, and 10)**

The bill amends the following three statutes relating to the assessment of attorney fees and costs against a person’s part of an estate or trust.

Section 733.106 F.S. – Costs and Attorney Fees in Probate Matters (Section 1)

The bill amends this section to provide that if costs and attorney fees are to be paid from the estate under any of four statutes²⁵ permitting the payment of attorney fees, the court has discretion to direct from which part of the estate the fees shall be paid. If the court directs an assessment against a person’s part of an estate and the part is insufficient to completely pay the assessment, the court may direct that the payment be made from the person’s part of a trust, if any, if a pour-over will²⁶ is involved and the matter is interrelated with the trust.

The court is also authorized to direct that all or any part of the costs and attorney fees to be paid from an estate may be assessed against one or more persons’ part of the estate in the proportions that the court finds to be fair and just.

²³ <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Estate-Tax>. Last visited March 7, 2015.

²⁴ Email from Pamela O. Price, Attorney, Florida Real Property, Probate, & Tax Law Section of The Florida Bar (March 6, 2015) (on file with the Senate Committee on Judiciary).

²⁵ Those sections are ss. 733.106, 733.6171, 736.1005, or 736.1006, F.S.

²⁶ A pour-over will is defined as “a will giving money or property to an existing trust.” BLACK’S LAW DICTIONARY (7th ed. 1999).

In exercising its discretion to assess attorney fees and costs, the court may consider:

- The relative impact an assessment will have on the estimated value of each person's part of the estate;
- The amount of costs and attorney fees to be assessed against someone's part of the estate;
- The extent to which a person whose part of the estate is to be assessed actively participated in the proceeding;
- The potential benefit or harm to a person's part of the estate;
- The relative strength or weakness of the merits of the claims, defenses, or objections, if any, that were asserted by someone whose part of the estate is to be assessed;
- Whether the person to be assessed was a prevailing party with regard to any claims, defenses, or objections;
- Whether the person whose part is to be assessed unjustly caused an increase in the costs and attorney fees that were incurred by the personal representative or another interested person in the proceeding; and
- Any other relevant fact, circumstance, or equity.

In an effort to resolve the varying statutory interpretations between the different district courts of appeal, the statute is amended to provide that a court does not need to find that the person whose part is to be assessed engaged in bad faith, wrongdoing, or frivolousness.

Section 736.1005, F.S. - Attorney Fees for Services to the Trust (Section 9)

The bill amends this section to provide that if attorney fees are to be paid under any of three statutes,²⁷ the court, in its discretion, may direct from what part of the trust the fees shall be paid.

The court is also authorized, to direct that all or any part of the attorney fees to be paid from a trust may be assessed against one or more persons' part of the trust in the proportions that the court finds to be just and fair.

The statute then tracks, in almost identical amendatory language as that set out above for s. 733.106, F.S., the factors the court may consider in its discretion when assessing attorney fees for services to the trust. The court may also assess a person's part of the trust without finding that he or she engaged in bad faith, wrongdoing, or frivolousness.

Section 736.1006, F.S. – Costs in Trust Proceedings (Section 10)

The bill amends this section to provide that, if costs are to be paid from certain trusts, all or part of the costs may be assessed against one or more persons' part of the trust in the proportions the court finds to be just and proper. The statute then provides that the court, in its discretion, may consider the newly enumerated factors in s. 736.1005(2), F.S.

Lawyers Serving as Fiduciaries (Sections 6 and 8)

This bill amends s. 733.617, F.S., relating to the compensation of personal representatives, and s. 736.0708, F.S., relating to the compensation of trustees. The bill provides that an attorney, or

²⁷ Sections 736.1005(1), 726.1007(5)(a), or 733.106(4)(a), F.S.

person related to the attorney, is not entitled to receive compensation for serving as a fiduciary if the attorney prepared or supervised the execution of a will or trust unless the attorney or person appointed is related to the client or the attorney discloses to the client in writing before the will or trust is signed that:

- Subject to certain limited exceptions, most family members, persons who are residents of Florida, including friends, and corporate fiduciaries are eligible to serve as a fiduciary;
- Any person, including an attorney, who serves as a fiduciary is entitled to receive reasonable compensation for his or her personal representative services; and
- Compensation payable to the fiduciary is in addition to any attorney fees payable to the attorney or the attorney's firm for legal services.

The client must execute a written statement acknowledging that the disclosures were made before the execution of the will or trust. The written acknowledgement must be a separate writing from the will or trust but may be annexed to the will or trust. It may be executed before or after the execution of the will or trust.

An attorney is deemed to have prepared or supervised the execution of a will or trust if the preparation or the supervision of the execution of the will or trust was performed by an employee or attorney employed by the same firm as the attorney when the will was executed.

The bill defines the term "related" and copies the language found in s. 732.806, F.S., relating to "Gifts to lawyers and other disqualified persons." An employee or attorney employed by the same firm as the attorney when the will or trust instrument is executed is deemed to be related to the attorney.

This statute applies to all appointments, including nominations as a successor or alternate fiduciary, and to all powers to appoint that the attorney may exercise if they are used to appoint the attorney.

The failure to obtain a written acknowledgement for the testator or settlor does not disqualify a personal representative or trustee from serving or affect the validity of the will or trust document. Accordingly, an attorney may serve without the signed acknowledgment, but he or she will not be compensated by the fiduciary.

The statute provides a written acknowledgement form that is deemed to comply with the disclosure requirements. The changes to the law relating to serving as a fiduciary apply to each nomination or appointment made pursuant to a will or trust which is executed or amended on or after October 1, 2015, by a resident of Florida.

Personal Representatives and Notices of Administration (Sections 2, 3, 4, and 5)

The bill amends ss. 733.212(2)(c), 733.212(3), and 733.2123, F.S., to remove the 3 month limitation period for objections to be raised about the qualifications of a personal representative after service of a notice of administration.²⁸

²⁸ See discussion at footnote 21 above.

The bill amends s. 733.212(3), F.S., to remove objections to the qualifications of a personal representative from the provisions of the notice of administration. The section is also amended to permit an extension of time for filing an objection to the validity of the will, the venue, or the jurisdiction of the court for estoppel based solely on a misstatement by the personal representative regarding the time period within which an objection must be filed. The amendatory language clarifies that the time period may not be extended for any other reason, including affirmative representation, failure to disclose information, or misconduct by the personal representative or any other person. The subsection is also amended to create the outermost boundary by which an objection must be filed. That limit is the earlier of the entry of an order of final discharge of the personal representative or 1 year after service of the notice of administration. . The amendments to s. 733.212, F.S., apply to proceedings commenced after July 1, 2015. Current law applies to proceedings commenced before July 1, 2015.

The bill amends s. 733.2123, F.S., to remove “qualifications of the personal representative” from the list of objections that must be filed within the limitations period of the statute. As such, an interested person is not barred by limitations for failing to object to the qualifications of a personal representative within the time frame of this section. The amendments to s. 733.2123, F.S., apply to proceedings commenced after July 1, 2015. Current law applies to proceedings commenced before July 1, 2015.

Section 733.3101, F.S., is amended to now require a personal representative to resign immediately if the personal representative knows that he or she was not qualified to act at the time of appointment. If a personal representative becomes unqualified to serve during the administration of the estate, then he or she must send a notice to interested persons stating the reasons and that any interested person may petition to remove him or her from serving as the personal representative. An interested person on whom the notice is served may file a petition requesting removal within 30 days after the date that the notice is served.

As under current law, the personal representative who fails to comply with this section is personally liable for costs and attorney fees incurred in a removal proceeding if the personal representative is removed. The bill extends the liability to include a personal representative who does not know, but should have known of facts that would have required him or her to resign or file and serve notice of the disqualification. Language is added to s. 733.3101, F.S., to clarify that the term “qualified” means that the personal representative is qualified under ss. 733.302 and 733.303, F.S., rather than a more general meaning that might involve other grounds for removing the personal representative. The amendments to s. 733.3101, F.S., apply to proceedings commenced after July 1, 2015. Current law applies to proceedings commenced before July 1, 2015.

The bill amends s. 733.504, F.S., to require a court to remove a personal representative if he or she was not qualified to act at the time he or she was appointed. Language is added to clarify that a court may remove a personal representative who was qualified to act when appointed, but is not later entitled to serve. The amendments to s. 733.504, F.S., apply to proceedings commenced after July 1, 2015. Current law applies to proceedings commenced before July 1, 2015.

Estate Taxes (Section 7)

Section 733.817, F.S., provides a framework for determining how the estate tax is apportioned to various interests which pass as a result of a decedent's death and for the orderly collection of the estate tax. This bill is a substantial rewording of s. 733.817, F.S. The changes are made to update, clarify, and improve the section by making it compatible with the Internal Revenue Code, address tax issues not dealt with in the current statute, codify existing case law, and amend the default rules so that they reflect what would have been the intent of most decedents. The changes are made by reorganizing the statute, adding titles for better understanding, and making other clarifying changes.

Allocation of Estate Taxes on Gifts Made Just Prior to Death

Section 733.817(3), F.S., provides that, in determining the amount of tax attributable to an interest in property, only interests included in the measure of the particular tax²⁹ are considered. The tax is determined by the proportion that the value of each interest included in the measure of the tax bears to the total value of all interests included in the measure of the tax. The decedent's gross estate for estate tax purposes includes gift taxes paid on gifts made within 3 years after death³⁰ and, if the decedent dies within 5 years of a gift to a qualified tuition program (commonly known as a "529 Plan") that exceeds the gift tax annual exclusion,³¹ his or her gross estate also includes the portion of such contributions properly allocable to periods after the date of death.³²

Presently, s. 733.817(5)(a)-(c), F.S., do not apportion the estate tax on those gift taxes, and the gift taxes are not otherwise excluded from the measure of the tax. A majority of decedents do not intend that the recipients of their gift bear the burden of the estate tax as such gifts often consist of contributions to 529 Plans for minors or college aged relatives.

The bill amends s. 733.817(1)(e), F.S., the definition of "included in the measure of the tax," to exclude gift taxes paid within 3 years after the decedent's death and gifts to a 529 Plan. Recipients of the gift will not be allocated the estate tax upon such gifts even though the gift taxes remain a part of the amount upon which the estate tax is calculated. The effect is that the allocation of tax on all other interests remaining in the measure of the federal estate tax will be increased. The exclusion of the gift taxes and 529 Plan amounts from the measure of the tax applies only to the estates of decedents dying on or after July 1, 2015.

²⁹ "Included in the measure of the tax" means that for each separate tax that an interest may incur, only interests included in the measure of that particular tax are considered. It does not include any interest, whether passing under the will or not, to the extent the interest is initially deductible from the gross estate, without regard to any subsequent reduction of the deduction by reason of the charge of any part of the applicable tax to the interest or interests or amounts that are not included in the gross estate but are included in the amount upon which the applicable tax is computed, such as adjusted taxable gifts with respect to the federal estate tax. If an election is required for deductibility, an interest is not "initially deductible" unless the election for deductibility is allowed. Section 733.817(1)(d), F.S.

³⁰ 26 U.S.C s. 2035(b).

³¹ Section 529 of the Internal Revenue Code allows a donor to gift an amount in excess of the annual gift tax exclusion to a qualified tuition program on behalf of any designated beneficiary which may then be treated as having been made over a 5 year period.

³² 26 U.S.C. s. 529(c)(4)(C).

Apportionment of Estate Taxes

Statutory Apportionment – Property Passing Under a Will or Trust. In the absence of an effective direction by the decedent in a governing instrument, estate taxes are apportioned pursuant to s. 733.817(5), F.S.

For property passing under a will or trust, the net tax attributable to nonresiduary devisees or interests is charged to and paid from the residuary estate or portion whether or not all interests in the residuary estate or portion are included in the measure of the tax. If the residuary estate or portion is insufficient to pay the net tax attributable to all nonresiduary devisees or interests, the balance of the net tax attributable to nonresiduary devisees or interests is apportioned among the recipients of the nonresiduary devisees or interests in the proportion that the value of each nonresiduary devise or interest included in the measure of the tax bears to the total of all nonresiduary devisees or interests included in the measure of the tax. The net tax attributable to residuary devisees or interests are apportioned among the recipients of the residuary devisees or interests included in the measure of tax in the proportion that the value of each residuary devise or interest included in the measure of the tax bears to the total of all residuary devisees or interests included in the measure of the tax.³³ The provisions are silent, however, with respect to which devisees or interests would be charged with the tax if the residuary is insufficient.

The bill moves the allocation to subsection (3) and provides that if the residuary estate or portion of a will or trust is insufficient to pay the net tax attributable to all residuary devisees or interests, the tax must be apportioned among the recipients of the nonresiduary devisees or interests in the proportion that the value of each nonresiduary devise or interest included in the measure of the tax bears to the total of all nonresiduary devisees or interests included in the measure of the tax.

Statutory Apportionment -- Protected Homestead

Section 733.817(5)(c), F.S., provides that the net tax attributable to an interest in protected homestead³⁴ property is apportioned against the recipients of other interests in the estate or passing under any revocable trust in the following order of priority:³⁵

- Class I: Recipients of interests not disposed of by the decedent's will or revocable trust that are included in the measure of the federal estate tax. This includes recipients of exempt property, the family allowance, elective share, pretermitted shares, and property passing by intestacy.
- Class II: Recipients of residuary devisees and residuary interests that are included in the measure of the federal estate tax.
- Class III: Recipients of nonresiduary devisees and nonresiduary interests that are included in the measure of the federal estate tax.

Property that is not included in the measure of the tax, such as property qualifying for the marital or charitable deduction, does not bear the burden of the payment of tax on protected homestead.

³³ Section 733.817(5)(a) and (b), F.S.

³⁴ "Protected homestead" means the property described in s. 4(a)(1), Article X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Article X of the State Constitution. For purposes of the code, real property owned in tenancy by the entirety or in joint tenancy with rights of survivorship is not protected homestead. Section 731.201(33), F.S.

³⁵ Section 733.817(5)(c), F.S.

Under current law, the purposes of the Probate Code provisions for exempt property, family allowance, and elective share are defeated by charging those interests with the estate tax on the protected homestead. Further, although s. 733.817(2), F.S., provides that protected homestead is exempt from tax, the statute does not specify an additional source of payment if the property designated pursuant to s. 733.817(5)(c), F.S., is insufficient.

For estates of decedents dying on or after July 1, 2015, the bill provides that the tax on exempt property and the family allowance is to be apportioned against other estate and revocable trust property in the same manner as the tax on protected homestead. Elective share property is no longer charged with the payment of estate tax on protected homestead (and now exempt property and family allowance). However, any property passing to the spouse which is in excess of the elective share is not excused from payment of the tax to the extent the excess property is included in Class I, II or III. Under the bill, the classes charged with payment of tax on protected homestead, family allowance and exempt property, in order of priority, are:

- Class I: Recipients of property passing by intestacy.
- Class II: Recipients of residuary devises, residuary interests, and pretermitted shares.
- Class III: Recipients of nonresiduary devises and nonresiduary interests.

If the assets in Classes I, II, and III are exhausted, the remaining tax is apportioned proportionately to the protected homestead, exempt property and family allowance. However, the tax may not be apportioned against the elective share. If the balance of the net tax attributable to protected homestead, exempt property, or the family allowance is not apportioned as provided above, it is to be apportioned according to the proportion that the value of each bears to the total value of taxable interests.

Apportionment at the Direction of a Decedent

Section 733.817(5)(h), F.S., provides that a decedent may direct against statutory apportionment through the terms of a governing instrument such as a will or trust.

Specificity Requirement. Under current law, for a direction in a governing instrument to be effective to direct payment of taxes attributable to property not passing under the governing instrument from property passing under the governing instrument, the governing instrument must expressly refer to s. 733.817, F.S., or expressly indicate that the property passing under the governing instrument is to bear the burden of taxation for property not passing under the governing instrument. A direction in the governing instrument to the effect that all taxes are to be paid from property passing under the governing instrument whether attributable to property passing under the governing instrument or otherwise is effective to direct the payment of taxes attributable to property not passing under the governing instrument from property passing under the governing instrument.

Effective for decedents dying on or after July 1, 2015, the bill deletes the provision for directing against default apportionment by reference to s. 733.817, F.S., and provides that a direction against default apportionment may only be achieved by "express direction." An express direction in the governing instruments to the effect that all taxes are to be paid from property passing under the governing instrument whether attributable to property passing under the governing instrument or otherwise is generally effective.

However, such an express general direction is not effective to waive rights of recovery provided in sections 2207A, 2207B, and 2603 of the Internal Revenue Code, all of which require greater specificity. Those sections provide that the decedent may direct otherwise, but they require the decedent to specifically indicate the intent to waive the right of recovery under those sections. The purpose of the Internal Revenue Code provisions requiring greater specificity in directing against a right of recovery is not to raise revenue but to guard against the decedent's inadvertent waiver of those rights for the benefit of the estate.

The bill describes and codifies what is sufficient to comply with the specificity requirements of sections 2207A, 2207B, and 2603 of the Internal Revenue Code. It also provides that a general statement in a decedent's will or revocable trust waiving all rights of recovery under the Internal Revenue Code is not an express waiver of the rights of recovery provided in sections 2207A or 2207B of the Internal Revenue Code. This provision reflects current law.

Adopting Tax Apportionment Provisions in a Revocable Trust. The Internal Revenue Code enables the personal representative of an estate to recover the estate tax attributable to life insurance or property subject to a general power of appointment from the beneficiaries of those interests, but provides that the decedent may direct otherwise by will. Many decedents put their tax apportionment provisions in their revocable trusts. Section 733.817(5)(h)2., F.S., provides that a provision in the will that the tax is to be apportioned as provided in the revocable trust is deemed to be a direction in the will as well as the revocable trust.

The bill requires that the provision in the will adopting the apportionment provisions of the revocable trust and the apportionment provision of the revocable trust must be express in order to be effective.

Directing that taxes are paid from a revocable trust. Current law permits the decedent's will to direct that estate taxes be paid from the decedent's revocable trust unless the trust contains a contrary provision.³⁶ It is implicit in current law that the revocable trust that is to pay the tax must be specifically identified and that for an apportionment provision in the revocable trust to be contrary, it must be express. The bill requires that a direction in a will to pay estate taxes from a revocable trust must contain a specific reference to the trust, and that for an apportionment provision in a revocable trust to be considered contrary, it must be an express direction.

Conflicting Provisions. If there is a conflict as to payment of taxes between the decedent's will and the governing instrument, the decedent's will controls, except that the governing instrument will be given effect with respect to any tax remaining unpaid after the application of the decedent's will and a direction in a governing instrument to pay the tax attributable to assets that pass pursuant to the governing instrument from assets that pass pursuant to that governing instrument is effective notwithstanding any conflict with the decedent's will, unless the tax provision in the decedent's will expressly overrides the conflicting provision in the governing instrument.³⁷

³⁶ Section 733.817(5)(h)3., F.S.

³⁷ Section 733.817(5)(h)5., F.S.

The bill provides that apportionment conflicts between all governing instruments (whether a conflicting instrument is a will or other instrument) are controlled by the last executed governing instrument containing an effective tax apportionment clause to the extent of the conflict. If a will or trust is amended, the date of the amendment is the controlling date only if the amendment contains an express tax apportionment provision. Only tax apportionment provisions that would be effective, but for the conflict, create a conflict. The new rule applies to estates of decedents dying on or after July 1, 2015.

Construction

Apportionment of Property Received By a Will or Trust as a Beneficiary

Property passing under a will or trust is apportioned under the provisions of s. 733.817(5)(a) and (b), F.S. This is the case even if the will or trust received the property as beneficiary of an annuity, insurance policy, IRA, or similar interest, or as recipient of appointed property. This has caused some uncertainty among practitioners as the general “catch-all” apportionment provision in s. 733.817(5)(f), F.S., would seem to apply to these interests. However, the general provisions do not apply if the recipient is the estate or trust. The statute does not contemplate a double tax on what is essentially the same property. However, property subject to a power of appointment does not pass under the will simply because the power is exercised by the will unless the property passes to the estate.³⁸

The bill provides that the beneficiary of an annuity or insurance policy or the recipient of property subject to a power of appointment is the “recipient” as defined in s. 733.817(1)(i), F.S. If those interests are paid to the estate or a trust, and subsequently disposed of pursuant to the will or trust, the tax on them is to be apportioned in the manner provided for interests passing from the estate or the trust. Property passing under a general power of appointment to the decedent’s creditors (or the creditors of the decedent’s estate) benefits the estate and is treated as if it were apportioned to the estate.

Common Instrument Construction

Section 733.817(5)(d), F.S., provides that a decedent’s will and revocable trust are construed together to apportion the tax as if all recipients of the estate and trust (other than the estate and trust themselves) were taking under one common instrument for the purpose of apportioning tax to recipients of residuary and non-residuary interests under the provisions regarding wills, trusts and protected homesteads. However, the statute applies to a will and revocable trust in which one does not pour into the other, an application that serves no purpose.

For estates of decedents dying on or after July 1, 2015, the bill requires that a decedent's will or revocable trust (or two revocable trusts, if applicable) must pour into the other for the common instrument construction to apply. The purpose of this provision is to determine which interests are in effect pre-residuary interests and which are residuary interests where a will or trust (or another trust) pours into the other so that the tax attributable to those interests may be apportioned accordingly.

³⁸ *In re Estate of Wylie*, 342 So.2d 996 (Fla. 4th DCA 1977); *Smith v. Bank of Clearwater*, 479 So.2d 755 (Fla. 2nd DCA 1985).

Updates in Response to Changes in Federal Tax Law

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001.³⁹ That federal legislation phased out over a 5-year period, starting in 2002, the credit for state death taxes and effectively eliminated the Florida estate tax. The credit was replaced by a deduction for state death taxes.⁴⁰ This bill reflects the changes in federal tax law as follows:

- The definition of “net tax” is amended to take into account the deduction for state death taxes that replaced the credit for state death taxes. Additionally, s. 733.817(2)(c), F.S., was created to allocate the state death tax deduction to the interests producing the deduction for the purpose of determining the tax attributable to the interest. This is a curative revision intended to clarify existing law and applies retroactively to all proceedings in which the apportionment of taxes has not been finally determined or agreed for estates of decedents dying on or after January 1, 2005. It does not affect any tax payable to the state of Florida.
- Provisions regarding the allocation of the reduction of the Florida estate tax for tax paid to others states are made contingent upon the reinstatement of the Florida estate tax.

Other Changes Related to the Apportionment of the Estate Tax

The bill defines the terms “generation skipping transfer tax” and “Section 2044 interest” as used in s. 733.817, F.S. The definitions are consistent with the terms as used in the Internal Revenue Code.⁴¹

The bill provides that the generation-skipping transfer tax be apportioned in accordance with s. 2603 of the Internal Revenue Code.⁴² Section 2603(b) charges the tax to the property constituting the transfer in effect charging it to the transferee.

The definition of the term “tax” as used in s. 733.817, F.S., is amended to explicitly exclude any additional estate tax that may be imposed by s. 2032A(c) or s. 2057(f) of the Internal Revenue Code to recapture tax savings related to family owned farms and businesses. The payment of the recaptured tax is imposed upon the applicable beneficiaries by ss. 2032(A) and 2057 of the Internal Revenue Code and is not a part of the “tax” apportioned by s. 733.817, F.S.

The bill fills a current gap in the statute by providing that if the apportionment statute does not apportion part of the tax that was not effectively directed by a governing instrument, the court may assess liability for payment of the tax in the manner it finds equitable.

The bill clarifies that the taxes on property that would pass to others but for the elective share pursuant to s. 732.2075(2), F.S., are apportioned under the general “catch all” provision of the statute, to the extent those assets do not qualify for the marital deduction. It further provides that

³⁹ Pub. L. 107-16 (June 7, 2001); 115 Stat. 38.

⁴⁰ 26 U.S.C. s. 2058.

⁴¹ 26 U.S.C. ss. 2611-2612 and 26 U.S.C s. 2044.

⁴² The generation-skipping transfer tax is based on the value of property received by the beneficiary, i.e., net of the estate tax charged against that property. Accordingly, the estate tax apportionment provisions must be determined first. Section 733.817, F.S., does not currently give any guidance on this matter.

this provision applies only to interests passing by reason of the exercise or non-exercise of a general power of appointment, if not passing to the estate or a trust.

Currently, the net tax attributable to property over which the decedent held a general power of appointment is calculated in the same manner as other property included in the measure of the tax. For estates of decedents dying on or after July 1, 2015, the bill authorizes the power holder to direct that the property subject to the general power of appointment bear the additional tax incurred by reason of the inclusion of the property subject to the general power of appointment in the power holder's gross estate. This only applies if the direction is express and is in the will.

Effective for decedents dying on or after July 1, 2015, the bill provides that if property is included in the gross estate under both sections 2044 and 2041 of the Internal Revenue Code, the property is deemed included under section 2044 for the purposes of s. 733.817, F.S.

The bill codifies existing law that a grant of permission or authority to pay or collect taxes is not a direction against statutory apportionment⁴³ and that an effective direction for payment of tax on a type of interest in a manner different from that provided in s. 733.817, F.S., is not effective as an express direction for payment of tax on other types of interests.⁴⁴

Effective for decedents dying on or after July 1, 2015, the bill updates references regarding notice of a petition for an order of apportionment to provide that the personal representative must give notice "in the manner of formal notice" instead of simply "formal notice" as "formal notice" is not currently required by the Florida Probate Rules.

Except as otherwise noted in this analysis, the changes to s. 733.817, F.S., apply retroactively to all estate proceedings pending on July 1, 2015, in which the apportionment of taxes has not been finally determined or agreed.

Effective Date

Except as otherwise provided in sections of the bill, the bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, it does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

⁴³ *Nations Bank v. Brenner*, 756 So.2d 203 (Fla. 3d DCA 2000); *In re Estate of McClaran*, 811 So.2d 799 (Fla.2d DCA 2002).

⁴⁴ *In re Estate of McClaran*, 811 So.2d. 799 (Fla.2d DCA 2002).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Several provisions in this bill have retroactive applications. A bill may apply retroactively provided that it does not impair vested rights.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 733.106, 733.212, 733.2123, 733.3101, 733.504, 733.617, 733.817, 736.0708, 736.1005, 736.1006, and 738.302.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Banking and Insurance on March 31, 2015:

The amendment makes the changes to sections 733.212, 733.2123, 733.3101, and 733.504, F.S., effective to proceedings commencing on or after July 1, 2015. This removes a provision making those changes retroactive to proceedings commencing before July 1, 2015.

CS by Judiciary on March 10, 2015:

The changes made by the committee substitute were technical, not substantive, changes.

The effective date of the bill was changed from “upon becoming a law” to July 1, 2015, which necessitated deleting effective date provisions of July 1, 2015, in sections 1, 7, 9, and 10, but adding an effective date of July 1, 2015, for retroactive provisions in the new section 11. An additional date change in new section 13 is clarified to read ‘July 1, 2015.’

Additional stylistic and statutory cross-references are made and the phrase “trust agreement” is changed to “trust instrument.” Previous section 11, involving the reenactment of s. 738.802, F.S., is deleted at the suggestion of Senate Bill Drafting.

B. Amendments:

None.

By the Committees on Banking and Insurance; and Judiciary; and
Senator Hukill

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1 A bill to be entitled
2 An act relating to estates; amending s. 733.106, F.S.;
3 authorizing the court, if costs and attorney fees are
4 to be paid from the estate under specified sections of
5 law, to direct payment from a certain part of the
6 estate or, under specified circumstances, to direct
7 payment from a trust; authorizing costs and fees to be
8 assessed against one or more persons' part of the
9 trust in such proportions as the court finds just and
10 proper; specifying factors that the court may consider
11 in directing the assessment of such costs and fees;
12 authorizing a court to assess costs and fees without
13 finding that the person engaged in specified wrongful
14 acts; amending s. 733.212, F.S.; revising the required
15 content for a notice of administration; revising
16 provisions that require an interested person, who has
17 been served a notice of administration, to file
18 specified objections in an estate matter within 3
19 months after service of such notice; providing that
20 the 3-month period may only be extended for certain
21 estoppel; providing that objections that are not
22 barred by the 3-month period must be filed no later
23 than a specified date; deleting references to
24 objections based upon the qualifications of a personal
25 representative; amending s. 733.2123, F.S.; conforming
26 provisions to changes made by the act; amending s.
27 733.3101, F.S.; requiring a personal representative to
28 resign immediately if he or she knows that he or she
29 was not qualified to act at the time of appointment;

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30 requiring a personal representative who was qualified
31 to act at such appointment to file a notice if no
32 longer qualified; authorizing an interested person
33 within a specified period to request the removal of a
34 personal representative who files such notice;
35 providing that a personal representative is liable for
36 costs and attorney fees incurred in a removal
37 proceeding if he or she is removed and should have
38 known of the facts supporting the removal; defining
39 the term "qualified"; amending s. 733.504, F.S.;
40 requiring a personal representative to be removed and
41 the letters of administration revoked if he or she was
42 not qualified to act at the time of appointment;
43 amending s. 733.617, F.S.; prohibiting an attorney or
44 person related to the attorney from receiving
45 compensation for serving as a personal representative
46 if the attorney prepared or supervised execution of
47 the will unless the attorney or person is related to
48 the testator or the testator acknowledges in writing
49 the receipt of certain disclosures; specifying the
50 disclosures that must be acknowledged; specifying when
51 an attorney is deemed to have prepared or supervised
52 the execution of a will; specifying when a person is
53 "related" to another individual; specifying when an
54 attorney or person related to the attorney is deemed
55 to be nominated as personal representative; providing
56 that the provisions do not limit an interested
57 person's rights or remedies at law or equity except
58 for compensation payable to a personal representative;

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59 providing that the failure to obtain a written
60 acknowledgment of the disclosure does not disqualify a
61 personal representative from serving or affect the
62 validity of a will; providing a form for the written
63 acknowledgment; providing applicability; amending s.
64 733.817, F.S.; defining and redefining terms; deleting
65 a provision that exempts an interest in protected
66 homestead from the apportionment of taxes; providing
67 for the payment of taxes on protected homestead family
68 allowance and exempt property by certain other
69 property to the extent such other property is
70 sufficient; revising the allocation of taxes; revising
71 the apportionment of the net tax attributable to
72 specified interests; authorizing a court to assess
73 liability in an equitable manner under certain
74 circumstances; providing that a governing instrument
75 may not direct that taxes be paid from property other
76 than property passing under the governing instrument,
77 except under specified conditions; requiring that
78 direction in a governing instrument be express to
79 apportion taxes under certain circumstances; requiring
80 that the right of recovery provided in the Internal
81 Revenue Code for certain taxes be expressly waived in
82 the decedent's will or revocable trust with certain
83 specificity; specifying the property upon which
84 certain tax is imposed for allocation and
85 apportionment of certain tax; providing that a general
86 statement in the decedent's will or revocable trust
87 waiving all rights of reimbursement or recovery under

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88 the Internal Revenue Code is not an express waiver of
89 certain rights of recovery; requiring direction to
90 specifically reference the generation-skipping
91 transfer tax imposed by the Internal Revenue Code to
92 direct its apportionment; authorizing, under certain
93 circumstances, the decedent to direct by will the
94 amount of net tax attributable to property over which
95 the decedent held a general power of appointment under
96 certain circumstances; providing that an express
97 direction in a revocable trust is deemed to be a
98 direction contained in the decedent's will as well as
99 the revocable trust under certain circumstances;
100 providing that an express direction in the decedent's
101 will to pay tax from the decedent's revocable trust by
102 specific reference to the revocable trust is effective
103 unless a contrary express direction is contained in
104 the revocable trust; revising the resolution of
105 conflicting directions in governing instruments with
106 regard to payment of taxes; providing that the later
107 express direction in the will or other governing
108 instrument controls; providing that the date of an
109 amendment to a will or other governing instrument is
110 the date of the will or trust for conflict resolution
111 only if the codicil or amendment contains an express
112 tax apportionment provision or an express modification
113 of the tax apportionment provision; providing that a
114 will is deemed executed after another governing
115 instrument if the decedent's will and another
116 governing instrument were executed on the same date;

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117 providing that an earlier conflicting governing
 118 instrument controls as to any tax remaining unpaid
 119 after the application of the later conflicting
 120 governing instrument; providing that a grant of
 121 permission or authority in a governing instrument to
 122 request payment of tax from property passing under
 123 another governing instrument is not a direction
 124 apportioning the tax to the property passing under the
 125 other governing instrument; providing a grant of
 126 permission or authority in a governing instrument to
 127 pay tax attributable to property not passing under the
 128 governing instrument is not a direction apportioning
 129 the tax to property passing under the governing
 130 instrument; providing application; prohibiting the
 131 requiring of a personal representative or fiduciary to
 132 transfer to a recipient property that may be used for
 133 payment of taxes; amending s. 736.0708, F.S.;
 134 prohibiting an attorney or person related to the
 135 attorney from receiving compensation for serving as a
 136 trustee if the attorney prepared or supervised
 137 execution of the trust instrument unless the attorney
 138 or person is related to the settlor or the settlor
 139 acknowledges in writing the receipt of certain
 140 disclosures; specifying the disclosures that must be
 141 acknowledged; specifying when an attorney is deemed to
 142 have prepared or supervised the execution of a trust
 143 instrument; specifying when a person is "related" to
 144 another individual; specifying when an attorney or
 145 person related to the attorney is deemed to be

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146 appointed as trustee; providing that the provisions do
 147 not limit an interested person's rights or remedies at
 148 law or equity except for compensation payable to a
 149 trustee; providing that the failure to obtain a
 150 written acknowledgment of the disclosure does not
 151 disqualify a trustee from serving or affect the
 152 validity of a trust instrument; providing a form for
 153 the written acknowledgment; providing applicability;
 154 amending s. 736.1005, F.S.; authorizing the court, if
 155 attorney fees are to be paid from the trust under
 156 specified sections of law, to direct payment from a
 157 certain part of the trust; providing that fees may be
 158 assessed against one or more persons' part of the
 159 trust in such proportions as the court finds just and
 160 proper; specifying factors that the court may consider
 161 in directing the assessment of such fees; providing
 162 that a court may assess fees without finding that a
 163 person engaged specified wrongful acts; amending s.
 164 736.1006, F.S.; authorizing the court, if costs are to
 165 be paid from the trust under specified sections of
 166 law, to direct payment from a certain part of the
 167 trust; providing that costs may be assessed against
 168 one or more persons' part of the trust in such
 169 proportions as the court finds just and proper;
 170 specifying factors that the court may consider in
 171 directing the assessment of such costs; providing that
 172 specified provisions of the act are remedial and
 173 intended to clarify existing law; providing for
 174 retroactive and prospective application of specified

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175 portions of the act; providing effective dates.

176

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

178

179 Section 1. Section 733.106, Florida Statutes, is amended to
180 read:

181 733.106 Costs and ~~attorney attorney's~~ fees.—

182 (1) In all probate proceedings, costs may be awarded as in
183 chancery actions.

184 (2) A person nominated as personal representative, or any
185 proponent of a will if the person so nominated does not act
186 within a reasonable time, if in good faith justified in offering
187 the will in due form for probate, shall receive costs and
188 ~~attorney attorney's~~ fees from the estate even though probate is
189 denied or revoked.

190 (3) Any attorney who has rendered services to an estate may
191 be awarded reasonable compensation from the estate.

192 (4) ~~If when~~ costs and ~~attorney attorney's~~ fees are to be
193 paid from the estate under this section, s. 733.6171(4), s.
194 736.1005, or s. 736.1006, the court, in its discretion, may
195 direct from what part of the estate they shall be paid.

196 (a) If the court directs an assessment against a person's
197 part of the estate and such part is insufficient to fully pay
198 the assessment, the court may direct payment from the person's
199 part of a trust, if any, if a pourover will is involved and the
200 matter is interrelated with the trust.

201 (b) All or any part of the costs and attorney fees to be
202 paid from the estate may be assessed against one or more
203 persons' part of the estate in such proportions as the court

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204 finds to be just and proper.

205 (c) In the exercise of its discretion, the court may

206 consider the following factors:

207 1. The relative impact of an assessment on the estimated
208 value of each person's part of the estate.

209 2. The amount of costs and attorney fees to be assessed
210 against a person's part of the estate.

211 3. The extent to which a person whose part of the estate is
212 to be assessed, individually or through counsel, actively
213 participated in the proceeding.

214 4. The potential benefit or detriment to a person's part of
215 the estate expected from the outcome of the proceeding.

216 5. The relative strength or weakness of the merits of the
217 claims, defenses, or objections, if any, asserted by a person
218 whose part of the estate is to be assessed.

219 6. Whether a person whose part of the estate is to be
220 assessed was a prevailing party with respect to one or more
221 claims, defenses, or objections.

222 7. Whether a person whose part of the estate is to be
223 assessed unjustly caused an increase in the amount of costs and
224 attorney fees incurred by the personal representative or another
225 interested person in connection with the proceeding.

226 8. Any other relevant fact, circumstance, or equity.

227 (d) The court may assess a person's part of the estate
228 without finding that the person engaged in bad faith,
229 wrongdoing, or frivolousness.

230 Section 2. Paragraph (c) of subsection (2) and subsection
231 (3) of section 733.212, Florida Statutes, are amended to read:
232 733.212 Notice of administration; filing of objections.—

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233 (2) The notice shall state:

234 (c) That any interested person on whom a copy of the notice
 235 of administration is served must file on or before the date that
 236 is 3 months after the date of service of a copy of the notice of
 237 administration on that person any objection that challenges the
 238 validity of the will, ~~the qualifications of the personal~~
 239 ~~representative,~~ the venue, or the jurisdiction of the court. The
 240 3-month time period may only be extended for estoppel based upon
 241 a misstatement by the personal representative regarding the time
 242 period within which an objection must be filed. The time period
 243 may not be extended for any other reason, including affirmative
 244 representation, failure to disclose information, or misconduct
 245 by the personal representative or any other person. Unless
 246 sooner barred by subsection (3), all objections to the validity
 247 of a will, venue, or the jurisdiction of the court must be filed
 248 no later than the earlier of the entry of an order of final
 249 discharge of the personal representative or 1 year after service
 250 of the notice of administration.

251 (3) Any interested person on whom a copy of the notice of
 252 administration is served must object to the validity of the
 253 will, ~~the qualifications of the personal representative,~~ the
 254 venue, or the jurisdiction of the court by filing a petition or
 255 other pleading requesting relief in accordance with the Florida
 256 Probate Rules on or before the date that is 3 months after the
 257 date of service of a copy of the notice of administration on the
 258 objecting person, or those objections are forever barred. The 3-
 259 month time period may only be extended for estoppel based upon a
 260 misstatement by the personal representative regarding the time
 261 period within which an objection must be filed. The time period

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262 may not be extended for any other reason, including affirmative
 263 representation, failure to disclose information, or misconduct
 264 by the personal representative or any other person. Unless
 265 sooner barred by this subsection, all objections to the validity
 266 of a will, venue, or the jurisdiction of the court must be filed
 267 no later than the earlier of the entry of an order of final
 268 discharge of the personal representative or 1 year after service
 269 of the notice of administration.

270 Section 3. Section 733.2123, Florida Statutes, is amended
 271 to read:

272 733.2123 Adjudication before issuance of letters.—A
 273 petitioner may serve formal notice of the petition for
 274 administration on interested persons. A person who is served
 275 with such notice before the issuance of letters or who has
 276 waived notice may not challenge the validity of the will,
 277 testacy of the decedent, ~~qualifications of the personal~~
 278 ~~representative,~~ venue, or jurisdiction of the court, except in
 279 the proceedings before issuance of letters.

280 Section 4. Section 733.3101, Florida Statutes, is amended
 281 to read:

282 733.3101 Personal representative not qualified.—

283 (1) A personal representative shall resign immediately if
 284 the personal representative knows that he or she was not
 285 qualified to act at the time of appointment.

286 (2) Any time a personal representative, who was qualified
 287 to act at the time of appointment, knows ~~or should have known~~
 288 that he or she would not be qualified for appointment if
 289 application for appointment were then made, the personal
 290 representative shall promptly file and serve a notice setting

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291 forth the reasons. The personal representative's notice shall
 292 state that any interested person may petition to remove the
 293 personal representative. An interested person on whom a copy of
 294 the personal representative's notice is served may file a
 295 petition requesting the personal representative's removal within
 296 30 days after the date on which such notice is served.

297 (3) A personal representative who fails to comply with this
 298 section shall be personally liable for costs, including attorney
 299 attorney's fees, incurred in any removal proceeding, if the
 300 personal representative is removed. This liability extends to a
 301 personal representative who does not know, but should have
 302 known, of the facts that would have required him or her to
 303 resign under subsection (1) or to file and serve notice under
 304 subsection (2). This liability shall be cumulative to any other
 305 provided by law.

306 (4) As used in this section, the term "qualified" means
 307 that the personal representative is qualified under ss. 733.302
 308 -733.305.

309 Section 5. Section 733.504, Florida Statutes, is amended to
 310 read:

311 733.504 Removal of personal representative; causes for
 312 removal.—A personal representative shall be removed and the
 313 letters revoked if he or she was not qualified to act at the
 314 time of appointment. A personal representative may be removed
 315 and the letters revoked for any of the following causes, ~~and the~~
 316 ~~removal shall be in addition to any penalties prescribed by law:~~

317 (1) Adjudication that the personal representative is
 318 incapacitated.

319 (2) Physical or mental incapacity rendering the personal

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320 representative incapable of the discharge of his or her duties.

321 (3) Failure to comply with any order of the court, unless
 322 the order has been superseded on appeal.

323 (4) Failure to account for the sale of property or to
 324 produce and exhibit the assets of the estate when so required.

325 (5) Wasting or maladministration of the estate.

326 (6) Failure to give bond or security for any purpose.

327 (7) Conviction of a felony.

328 (8) Insolvency of, or the appointment of a receiver or
 329 liquidator for, any corporate personal representative.

330 (9) Holding or acquiring conflicting or adverse interests
 331 against the estate that will or may interfere with the
 332 administration of the estate as a whole. This cause of removal
 333 shall not apply to the surviving spouse because of the exercise
 334 of the right to the elective share, family allowance, or
 335 exemptions, as provided elsewhere in this code.

336 (10) Revocation of the probate of the decedent's will that
 337 authorized or designated the appointment of the personal
 338 representative.

339 (11) Removal of domicile from Florida, if domicile was a
 340 requirement of initial appointment.

341 (12) The personal representative was qualified to act at
 342 the time of appointment, but is ~~would~~ not now ~~be~~ entitled to
 343 appointment.

344 Removal under this section is in addition to any penalties
 345 prescribed by law.

347 Section 6. Effective October 1, 2015, subsection (6) of
 348 section 733.617, Florida Statutes, is amended, and subsection

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349 (8) is added to that section, to read:

350 733.617 Compensation of personal representative.—

351 (6) ~~Except as provided in subsection (8), a If the personal~~
 352 ~~representative who~~ is a member of The Florida Bar and ~~who~~ has
 353 rendered legal services in connection with the administration of
 354 the estate, ~~then in addition to a fee as personal~~
 355 ~~representative, there also~~ shall be allowed a fee for the legal
 356 services rendered in addition to a fee as personal
 357 representative.

358 (8) (a) An attorney, or a person related to the attorney, is
 359 not entitled to compensation for serving as personal
 360 representative if the attorney prepared or supervised the
 361 execution of the will that nominates the attorney or person
 362 related to the attorney as personal representative, unless the
 363 attorney or person nominated is related to the testator or the
 364 attorney makes the following disclosures to the testator in
 365 writing before the will is executed:

366 1. Subject to certain statutory limitations, most family
 367 members regardless of their residence, other persons who are
 368 residents of Florida, including friends, and corporate
 369 fiduciaries are eligible to serve as a personal representative.

370 2. Any person, including an attorney, who serves as a
 371 personal representative is entitled to receive reasonable
 372 compensation for serving as personal representative.

373 3. Compensation payable to the personal representative is
 374 in addition to any attorney fees payable to the attorney or the
 375 attorney's firm for legal services rendered to the personal
 376 representative.

377 (b) The testator must execute a written statement

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378 acknowledging that the disclosures required by this subsection
 379 were made prior to the execution of the will. The written
 380 acknowledgment must be in a separate writing from the will, but
 381 may be annexed to the will. The written acknowledgment may be
 382 executed before or after the execution of the will in which the
 383 attorney or related person is nominated as the personal
 384 representative.

385 (c) For purposes of this subsection:

386 1. An attorney is deemed to have prepared or supervised the
 387 execution of a will if the preparation or the supervision of the
 388 execution of the will was performed by an employee or attorney
 389 employed by the same firm as the attorney at the time the will
 390 was executed.

391 2.a. A person is "related" to an individual if, at the time
 392 the attorney prepared or supervised the execution of the will,
 393 the person is:

394 (I) A spouse of the individual;

395 (II) A lineal ascendant or descendant of the individual;

396 (III) A sibling of the individual;

397 (IV) A relative of the individual or of the individual's
 398 spouse with whom the attorney maintains a close, familial

399 relationship;

400 (V) A spouse of a person described in sub-sub-subparagraphs

401 (I)-(IV); or

402 (VI) A person who cohabits with the individual.

403 b. An employee or attorney employed by the same firm as the
 404 attorney at the time the will is executed is deemed to be
 405 related to the attorney.

406 3. An attorney or person related to the attorney is deemed

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407 to be nominated in the will if the will provided the attorney or
 408 a person related to the attorney with the power to nominate the
 409 personal representative and the attorney or person related to
 410 the attorney was nominated using that power.

411 (d) This subsection applies to provisions nominating an
 412 attorney or a person related to the attorney as personal
 413 representative, copersonal representative, or successor or
 414 alternate personal representative if the person nominated is
 415 unable or unwilling to serve.

416 (e) Other than compensation payable to the personal
 417 representative, this subsection does not limit any rights or
 418 remedies that an interested person may have at law or equity.

419 (f) The failure to obtain a written acknowledgment from the
 420 testator under this subsection does not disqualify a personal
 421 representative from serving and does not affect the validity of
 422 a will.

423 (g) A written acknowledgment signed by the testator that is
 424 in substantially the following form is deemed to comply with the
 425 disclosure requirements of this subsection:

426

427 I, ... (Name)..., declare that:

428 I have designated ... (my attorney, an attorney employed in
 429 the same law firm as my attorney, or a person related to my
 430 attorney)... as a nominated personal representative in my will
 431 (or codicil) dated ... (Date)... .

432 Before executing the will (or codicil), I was informed
 433 that:

434 (1) Subject to certain statutory limitations, most family
 435 members regardless of their residence, other persons who are

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436 residents of Florida, including friends, and corporate
 437 fiduciaries are eligible to serve as a personal representative.

438 (2) Any person, including an attorney, who serves as a
 439 personal representative is entitled to receive reasonable
 440 compensation for serving as personal representative.

441 (3) Compensation payable to the personal representative is
 442 in addition to any attorney fees payable to the attorney or the
 443 attorney's firm for legal services rendered to the personal
 444 representative.

445

446 ...(Testator)...

447

448 ...(Dated)...

449

450 (h) This subsection applies to each nomination made
 451 pursuant to a will that is:

452 1. Executed by a resident of this state on or after October
 453 1, 2015.

454 2. Republished by a resident of this state on or after
 455 October 1, 2015, if the republished will nominates the attorney
 456 who prepared or supervised the execution of the instrument that
 457 republished the will, or a person related to such attorney, as
 458 personal representative.

459 Section 7. Section 733.817, Florida Statutes, is amended to
 460 read:

461 (Substantial rewording of section. See
 462 s. 733.817, F.S., for present text.)

463 733.817 Apportionment of estate taxes.—

464 (1) DEFINITIONS.—As used in this section, the term:

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465 (a) "Fiduciary" means a person, other than the personal
 466 representative in possession of property included in the measure
 467 of the tax, who is liable to the applicable taxing authority for
 468 payment of the entire tax to the extent of the value of the
 469 property in possession.

470 (b) "Generation-skipping transfer tax" means the
 471 generation-skipping transfer tax imposed by chapter 13 of the
 472 Internal Revenue Code on direct skips of interests includible in
 473 the federal gross estate or a corresponding tax imposed by any
 474 state or country or political subdivision of the foregoing. The
 475 term does not include the generation-skipping transfer tax on
 476 taxable distributions, taxable terminations, or any other
 477 generation-skipping transfer. The terms "direct skip," "taxable
 478 distribution," and "taxable termination" have the same meanings
 479 as provided in s. 2612 of the Internal Revenue Code.

480 (c) "Governing instrument" means a will, trust instrument,
 481 or any other document that controls the transfer of property on
 482 the occurrence of the event with respect to which the tax is
 483 being levied.

484 (d) "Gross estate" means the gross estate, as determined by
 485 the Internal Revenue Code with respect to the federal estate tax
 486 and the Florida estate tax, and as that concept is otherwise
 487 determined by the estate, inheritance, or death tax laws of the
 488 particular state, country, or political subdivision whose tax is
 489 being apportioned.

490 (e) "Included in the measure of the tax" means for each
 491 separate tax that an interest may incur, only interests included
 492 in the measure of that particular tax are considered. As used in
 493 this section, the term does not include:

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494 1. Any interest, whether passing under the will or not, to
 495 the extent the interest is initially deductible from the gross
 496 estate, without regard to any subsequent reduction of the
 497 deduction by reason of the charge of any part of the applicable
 498 tax to the interest. If an election is required for
 499 deductibility, an interest is not initially deductible unless
 500 the election for deductibility is allowed.

501 2. Interests or amounts that are not included in the gross
 502 estate but are included in the amount upon which the applicable
 503 tax is computed, such as adjusted taxable gifts pursuant to s.
 504 2001 of the Internal Revenue Code.

505 3. Gift taxes included in the gross estate pursuant to s.
 506 2035 of the Internal Revenue Code and the portion of any inter
 507 vivos transfer included in the gross estate pursuant to s. 529
 508 of the Internal Revenue Code, notwithstanding inclusion in the
 509 gross estate.

510 (f) "Internal Revenue Code" means the Internal Revenue Code
 511 of 1986, as amended.

512 (g) "Net tax" means the net tax payable to the particular
 513 state, country, or political subdivision whose tax is being
 514 apportioned, after taking into account all credits against the
 515 applicable tax except as provided in this section. With respect
 516 to the federal estate tax, net tax is determined after taking
 517 into account all credits against the tax except for the credit
 518 for foreign death taxes and except for the credit or deduction
 519 for state taxes imposed by states other than this state.

520 (h) "Nonresiduary devise" means any devise that is not a
 521 residuary devise.

522 (i) "Nonresiduary interest," in connection with a trust,

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523 means any interest in a trust which is not a residuary interest.

524 (j) "Recipient" means, with respect to property or an
 525 interest in property included in the gross estate, an heir at
 526 law in an intestate estate, devisee in a testate estate,
 527 beneficiary of a trust, beneficiary of a life insurance policy,
 528 annuity, or other contractual right, surviving tenant, taker as
 529 a result of the exercise or in default of the exercise of a
 530 general power of appointment, person who receives or is to
 531 receive the property or an interest in the property, or person
 532 in possession of the property, other than a creditor.

533 (k) "Residuary devise" has the meaning in s. 731.201.

534 (l) "Residuary interest," in connection with a trust, means
 535 an interest in the assets of a trust which remain after
 536 provision for any distribution that is to be satisfied by
 537 reference to a specific property or type of property, fund, sum,
 538 or statutory amount.

539 (m) "Revocable trust" means a trust as described in s.
 540 733.707(3).

541 (n) "Section 2044 interest" means an interest included in
 542 the measure of the tax by reason of s. 2044 of the Internal
 543 Revenue Code.

544 (o) "State" means any state, territory, or possession of
 545 the United States, the District of Columbia, or the Commonwealth
 546 of Puerto Rico.

547 (p) "Tax" means any estate tax, inheritance tax,
 548 generation-skipping transfer tax, or other tax levied or
 549 assessed under the laws of this or any other state, the United
 550 States, any other country, or any political subdivision of the
 551 foregoing, as finally determined, which is imposed as a result

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552 of the death of the decedent. The term also includes any
 553 interest or penalties imposed in addition to the tax. Unless the
 554 context indicates otherwise, the term means each separate tax.
 555 The term does not include any additional estate tax imposed by
 556 s. 2032A(c) or s. 2057(f) of the Internal Revenue Code or a
 557 corresponding tax imposed by any state or country or political
 558 subdivision of the foregoing. The additional estate tax imposed
 559 shall be apportioned as provided in s. 2032A or s. 2057 of the
 560 Internal Revenue Code.

561 (q) "Temporary interest" means an interest in income or an
 562 estate for a specific period of time, for life, or for some
 563 other period controlled by reference to extrinsic events,
 564 whether or not in trust.

565 (r) "Tentative Florida tax" with respect to any property
 566 means the net Florida estate tax that would have been
 567 attributable to that property if no tax were payable to any
 568 other state in respect of that property.

569 (s) "Value" means the pecuniary worth of the interest
 570 involved as finally determined for purposes of the applicable
 571 tax after deducting any debt, expense, or other deduction
 572 chargeable to it for which a deduction was allowed in
 573 determining the amount of the applicable tax. A lien or other
 574 encumbrance is not regarded as chargeable to a particular
 575 interest to the extent that it will be paid from other
 576 interests. The value of an interest is not reduced by reason of
 577 the charge against it of any part of the tax, except as provided
 578 in paragraph (3)(a).

579 (2) ALLOCATION OF TAX.—Except as effectively directed in
 580 the governing instrument pursuant to subsection (4), the net tax

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581 attributable to the interests included in the measure of each
 582 tax shall be determined by the proportion that the value of each
 583 interest included in the measure of the tax bears to the total
 584 value of all interests included in the measure of the tax.

585 Notwithstanding the foregoing provision of this subsection and
 586 except as effectively directed in the governing instrument:

587 (a) The net tax attributable to section 2044 interests
 588 shall be determined in the manner provided for the federal
 589 estate tax in s. 2207A of the Internal Revenue Code, and the
 590 amount so determined shall be deducted from the tax to determine
 591 the net tax attributable to all other interests included in the
 592 measure of the tax.

593 (b) The foreign tax credit allowed with respect to the
 594 federal estate tax shall be allocated among the recipients of
 595 interests finally charged with the payment of the foreign tax in
 596 reduction of any federal estate tax chargeable to the recipients
 597 of the foreign interests, whether or not any federal estate tax
 598 is attributable to the foreign interests. Any excess of the
 599 foreign tax credit shall be applied to reduce proportionately
 600 the net amount of federal estate tax chargeable to the remaining
 601 recipients of the interests included in the measure of the
 602 federal estate tax.

603 (c) The reduction in the net tax attributable to the
 604 deduction for state death taxes allowed by s. 2058 of the
 605 Internal Revenue Code shall be allocated to the recipients of
 606 the interests that produced the deduction. For this purpose, the
 607 reduction in the net tax shall be calculated in the manner
 608 provided for interests other than those described in paragraph
 609 (a).

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610 (d) The reduction in the Florida tax, if one is imposed, on
 611 the estate of a Florida resident for tax paid to another state
 612 shall be allocated as follows:

613 1. If the net tax paid to another state is greater than or
 614 equal to the tentative Florida tax attributable to the property
 615 subject to tax in the other state, none of the Florida tax shall
 616 be attributable to that property.

617 2. If the net tax paid to another state is less than the
 618 tentative Florida tax attributable to the property subject to
 619 tax in the other state, the net Florida tax attributable to the
 620 property subject to tax in the other state shall be the excess
 621 of the amount of the tentative Florida tax attributable to the
 622 property over the net tax payable to the other state with
 623 respect to the property.

624 3. Any remaining net Florida tax shall be attributable to
 625 property included in the measure of the Florida tax exclusive of
 626 the property subject to tax in another state.

627 4. The net federal tax attributable to the property subject
 628 to tax in the other state shall be determined as if the property
 629 were located in that state.

630 (e) The net tax attributable to a temporary interest, if
 631 any, is regarded as attributable to the principal that supports
 632 the temporary interest.

633 (3) APPORTIONMENT OF TAX.—Except as otherwise effectively
 634 directed in the governing instrument pursuant to subsection (4),
 635 the net tax attributable to each interest shall be apportioned
 636 as follows:

637 (a) Generation-skipping transfer tax.—Any federal or state
 638 generation-skipping transfer tax shall be apportioned as

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639 provided in s. 2603 of the Internal Revenue Code after the
 640 application of the remaining provisions of this subsection to
 641 taxes other than the generation-skipping transfer tax.

642 (b) Section 2044 interests.—The net tax attributable to
 643 section 2044 interests shall be apportioned among the recipients
 644 of the section 2044 interests in the proportion that the value
 645 of each section 2044 interest bears to the total of all section
 646 2044 interests. The net tax apportioned by this paragraph to
 647 section 2044 interests that pass in the manner described in
 648 paragraph (c) or paragraph (d) shall be apportioned to the
 649 section 2044 interests in the manner described in those
 650 paragraphs before the apportionment of the net tax attributable
 651 to the other interests passing as provided in those paragraphs.
 652 The net tax attributable to the interests other than the section
 653 2044 interests which pass in the manner described in paragraph
 654 (c) or paragraph (d) shall be apportioned only to such other
 655 interests pursuant to those paragraphs.

656 (c) Wills.—The net tax attributable to property passing
 657 under the decedent's will shall be apportioned in the following
 658 order of priority:

659 1. The net tax attributable to nonresiduary devises shall
 660 be charged to and paid from the residuary estate, whether or not
 661 all interests in the residuary estate are included in the
 662 measure of the tax. If the residuary estate is insufficient to
 663 pay the net tax attributable to all nonresiduary devises, the
 664 balance of the net tax attributable to nonresiduary devises
 665 shall be apportioned among the recipients of the nonresiduary
 666 devises in the proportion that the value of each nonresiduary
 667 devise included in the measure of the tax bears to the total of

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668 all nonresiduary devises included in the measure of the tax.

669 2. The net tax attributable to residuary devises shall be
 670 apportioned among the recipients of the residuary devises
 671 included in the measure of the tax in the proportion that the
 672 value of each residuary devise included in the measure of the
 673 tax bears to the total of all residuary devises included in the
 674 measure of the tax. If the residuary estate is insufficient to
 675 pay the net tax attributable to all residuary devises, the
 676 balance of the net tax attributable to residuary devises shall
 677 be apportioned among the recipients of the nonresiduary devises
 678 in the proportion that the value of each nonresiduary devise
 679 included in the measure of the tax bears to the total of all
 680 nonresiduary devises included in the measure of the tax.

681 (d) Trusts.—The net tax attributable to property passing
 682 under the terms of any trust other than a trust created in the
 683 decedent's will shall be apportioned in the following order of
 684 priority:

685 1. The net tax attributable to nonresiduary interests of
 686 the trust shall be charged to and paid from the residuary
 687 portion of the trust, whether or not all interests in the
 688 residuary portion are included in the measure of the tax. If the
 689 residuary portion is insufficient to pay the net tax
 690 attributable to all nonresiduary interests, the balance of the
 691 net tax attributable to nonresiduary interests shall be
 692 apportioned among the recipients of the nonresiduary interests
 693 in the proportion that the value of each nonresiduary interest
 694 included in the measure of the tax bears to the total of all
 695 nonresiduary interests included in the measure of the tax.

696 2. The net tax attributable to residuary interests of the

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697 trust shall be apportioned among the recipients of the residuary
 698 interests of the trust included in the measure of the tax in the
 699 proportion that the value of each residuary interest included in
 700 the measure of the tax bears to the total of all residuary
 701 interests of the trust included in the measure of the tax. If
 702 the residuary portion is insufficient to pay the net tax
 703 attributable to all residuary interests, the balance of the net
 704 tax attributable to residuary interests shall be apportioned
 705 among the recipients of the nonresiduary interests in the
 706 proportion that the value of each nonresiduary interest included
 707 in the measure of the tax bears to the total of all nonresiduary
 708 interests included in the measure of the tax.

709
 710 Except as provided in paragraph (g), this paragraph applies
 711 separately for each trust.

712 (e) Protected homestead, exempt property, and family
 713 allowance.—

714 1. The net tax attributable to an interest in protected
 715 homestead, exempt property, and the family allowance determined
 716 under s. 732.403 shall be apportioned against the recipients of
 717 other interests in the estate or passing under any revocable
 718 trust in the following order of priority:

719 a. Class I.—Recipients of interests passing by intestacy
 720 that are included in the measure of the federal estate tax.

721 b. Class II.—Recipients of residuary devises, residuary
 722 interests, and pretermitted shares under ss. 732.301 and 732.302
 723 that are included in the measure of the federal estate tax.

724 c. Class III.—Recipients of nonresiduary devises and
 725 nonresiduary interests that are included in the measure of the

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726 federal estate tax.

727 2. Any net tax apportioned to a class pursuant to this
 728 paragraph shall be apportioned among each recipient in the class
 729 in the proportion that the value of the interest of each bears
 730 to the total value of all interests included in that class. A
 731 tax may not be apportioned under this paragraph to the portion
 732 of any interest applied in satisfaction of the elective share
 733 whether or not included in the measure of the tax. For purposes
 734 of this paragraph, if the value of the interests described in s.
 735 732.2075(1) exceeds the amount of the elective share, the
 736 elective share shall be treated as satisfied first from
 737 interests other than those described in classes I, II, and III,
 738 and to the extent that those interests are insufficient to
 739 satisfy the elective share, from the interests passing to or for
 740 the benefit of the surviving spouse described in classes I, II,
 741 and III, beginning with those described in class I, until the
 742 elective share is satisfied. This paragraph has priority over
 743 paragraphs (a) and (h).

744 3. The balance of the net tax attributable to any interest
 745 in protected homestead, exempt property, and the family
 746 allowance determined under s. 732.403 which is not apportioned
 747 under the preceding provisions of this paragraph shall be
 748 apportioned to the recipients of those interests included in the
 749 measure of the tax in the proportion that the value of each
 750 bears to the total value of those interests included in the
 751 measure of the tax.

752 (f) Construction.—For purposes of this subsection:

753 1. If the decedent's estate is the beneficiary of a life
 754 insurance policy, annuity, or contractual right included in the

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757 decedent's gross estate, or is the taker as a result of the
 758 exercise or default in exercise of a general power of
 759 appointment held by the decedent, that interest shall be
 760 regarded as passing under the terms of the decedent's will for
 761 the purposes of paragraph (c) or by intestacy if not disposed of
 762 by will. Additionally, any interest included in the measure of
 763 the tax by reason of s. 2041 of the Internal Revenue Code
 764 passing to the decedent's creditors or the creditors of the
 765 decedent's estate shall be regarded as passing to the decedent's
 766 estate for the purpose of this subparagraph.

767 2. If a trust is the beneficiary of a life insurance
 768 policy, annuity, or contractual right included in the decedent's
 769 gross estate, or is the taker as a result of the exercise or
 770 default in exercise of a general power of appointment held by
 771 the decedent, that interest shall be regarded as passing under
 772 the trust for purposes of paragraph (d).

773 (g) Common instrument construction.—In the application of
 774 this subsection, paragraphs (b)-(f) shall be applied to
 775 apportion the net tax to the recipients under certain governing
 776 instruments as if all recipients under those instruments, other
 777 than the estate or revocable trust itself, were taking under a
 778 common instrument. This construction applies to the following:

779 1. The decedent's will and revocable trust if the estate is
 780 a beneficiary of the revocable trust or if the revocable trust
 781 is a beneficiary of the estate.

782 2. A revocable trust of the decedent and another revocable
 783 trust of the decedent if either trust is the beneficiary of the
 784 other trust.

785 (h) Other interests.—The net tax that is not apportioned to

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786 interests under paragraphs (b)-(g), including, but not limited
 787 to, the net tax attributable to interests passing by intestacy,
 788 interests applied in satisfaction of the elective share pursuant
 789 to s. 732.2075(2), interests passing by reason of the exercise
 790 or nonexercise of a general power of appointment, jointly held
 791 interests passing by survivorship, life insurance, properties in
 792 which the decedent held a reversionary or revocable interest,
 793 annuities, and contractual rights, shall be apportioned among
 794 the recipients of the remaining interests included in the
 795 measure of the tax in the proportion that the value of each such
 796 interest bears to the total value of all remaining interests
 797 included in the measure of the tax.

798 (i) Assessment of liability by court.—If the court finds
 799 that:

800 1. It is inequitable to apportion interest or penalties, or
 801 both, in the manner provided in paragraphs (a)-(h), the court
 802 may assess liability for the payment thereof in the manner that
 803 the court finds equitable.

804 2. The payment of any tax was not effectively directed in
 805 the governing instrument pursuant to subsection (4) and that
 806 such tax is not apportioned by this subsection, the court may
 807 assess liability for the payment of such tax in the manner that
 808 the court finds equitable.

809 (4) DIRECTION AGAINST APPORTIONMENT.—

810 (a) Except as provided in this subsection, a governing
 811 instrument may not direct that taxes be paid from property other
 812 than that passing under the governing instrument.

813 (b) For a direction in a governing instrument to be
 814 effective to direct payment of taxes attributable to property

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813 passing under the governing instrument in a manner different
 814 from that provided in this section, the direction must be
 815 express.

816 (c) For a direction in a governing instrument to be
 817 effective to direct payment of taxes attributable to property
 818 not passing under the governing instrument from property passing
 819 under the governing instrument, the governing instrument must
 820 expressly direct that the property passing under the governing
 821 instrument bear the burden of taxation for property not passing
 822 under the governing instrument. Except as provided in paragraph
 823 (d), a direction in the governing instrument to the effect that
 824 all taxes are to be paid from property passing under the
 825 governing instrument whether attributable to property passing
 826 under the governing instrument or otherwise shall be effective
 827 to direct payment from property passing under the governing
 828 instrument of taxes attributable to property not passing under
 829 the governing instrument.

830 (d) In addition to satisfying the other provisions of this
 831 subsection:

832 1.a. For a direction in the decedent's will or revocable
 833 trust to be effective in waiving the right of recovery provided
 834 in s. 2207A of the Internal Revenue Code for the tax
 835 attributable to section 2044 interests, and for any tax imposed
 836 by Florida based upon such section 2044 interests, the direction
 837 must expressly waive that right of recovery. An express
 838 direction that property passing under the will or revocable
 839 trust bear the tax imposed by s. 2044 of the Internal Revenue
 840 Code is deemed an express waiver of the right of recovery
 841 provided in s. 2207A of the Internal Revenue Code. A reference

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842 to "qualified terminable interest property," "QTIP," or property
 843 in which the decedent had a "qualifying income interest for
 844 life" is deemed to be a reference to property upon which tax is
 845 imposed by s. 2044 of the Internal Revenue Code which is subject
 846 to the right of recovery provided in s. 2207A of the Internal
 847 Revenue Code.

848 b. If property is included in the gross estate pursuant to
 849 ss. 2041 and 2044 of the Internal Revenue Code, the property is
 850 deemed included under s. 2044, and not s. 2041, for purposes of
 851 allocation and apportionment of the tax.

852 2. For a direction in the decedent's will or revocable
 853 trust to be effective in waiving the right of recovery provided
 854 in s. 2207B of the Internal Revenue Code for tax imposed by
 855 reason of s. 2036 of the Internal Revenue Code, and any tax
 856 imposed by Florida based upon s. 2036 of the Internal Revenue
 857 Code, the direction must expressly waive that right of recovery.
 858 An express direction that property passing under the will or
 859 revocable trust bear the tax imposed by s. 2036 of the Internal
 860 Revenue Code is deemed an express waiver of the right of
 861 recovery provided in s. 2207B of the Internal Revenue Code. If
 862 property is included in the gross estate pursuant to ss. 2036
 863 and 2038 of the Internal Revenue Code, the property is deemed
 864 included under s. 2038, not s. 2036, for purposes of allocation
 865 and apportionment of the tax, and there is no right of recovery
 866 under s. 2207B of the Internal Revenue Code.

867 3. A general statement in the decedent's will or revocable
 868 trust waiving all rights of reimbursement or recovery under the
 869 Internal Revenue Code is not an express waiver of the rights of
 870 recovery provided in s. 2207A or s. 2207B of the Internal

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871 Revenue Code.

872 4. For a direction in a governing instrument to be
 873 effective to direct payment of generation-skipping transfer tax
 874 in a manner other than as provided in s. 2603 of the Internal
 875 Revenue Code, and any tax imposed by Florida based on s. 2601 of
 876 the Internal Revenue Code, the direction must specifically
 877 reference the tax imposed by s. 2601 of the Internal Revenue
 878 Code. A reference to the generation-skipping transfer tax or s.
 879 2603 of the Internal Revenue Code is deemed to be a reference to
 880 property upon which tax is imposed by reason of s. 2601 of the
 881 Internal Revenue Code.

882 (e) If the decedent expressly directs by will, the net tax
 883 attributable to property over which the decedent held a general
 884 power of appointment may be determined in a manner other than as
 885 provided in subsection (2) if the net tax attributable to that
 886 property does not exceed the difference between the total net
 887 tax determined pursuant to subsection (2), determined without
 888 regard to this paragraph, and the total net tax that would have
 889 been payable if the value of the property subject to such power
 890 of appointment had not been included in the decedent's gross
 891 estate. If tax is attributable to one or more section 2044
 892 interests pursuant to subsection (2), the net tax attributable
 893 to the section 2044 interests shall be calculated before the
 894 application of this paragraph unless the decedent expressly
 895 directs otherwise by will.

896 (f) If the decedent's will expressly provides that the tax
 897 is to be apportioned as provided in the decedent's revocable
 898 trust by specific reference to the revocable trust, an express
 899 direction in the revocable trust is deemed to be a direction

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900 contained in the will as well as the revocable trust.

901 (g) An express direction in the decedent's will to pay tax
 902 from the decedent's revocable trust by specific reference to the
 903 revocable trust is effective unless a contrary express direction
 904 is contained in the revocable trust.

905 (h) If governing instruments contain effective directions
 906 that conflict as to payment of taxes, the most recently executed
 907 tax apportionment provision controls to the extent of the
 908 conflict. For the purpose of this subsection, if a will or other
 909 governing instrument is amended, the date of the codicil to the
 910 will or amendment to the governing instrument is regarded as the
 911 date of the will or other governing instrument only if the
 912 codicil or amendment contains an express tax apportionment
 913 provision or an express modification of the tax apportionment
 914 provision. A general statement ratifying or republishing all
 915 provisions not otherwise amended does not meet this condition.
 916 If the decedent's will and another governing instrument were
 917 executed on the same date, the will is deemed executed after the
 918 other governing instrument. The earlier conflicting governing
 919 instrument controls as to any tax remaining unpaid after the
 920 application of the later conflicting governing instrument.

921 (i) A grant of permission or authority in a governing
 922 instrument to request payment of tax from property passing under
 923 another governing instrument is not a direction apportioning the
 924 tax to the property passing under the other governing
 925 instrument. A grant of permission or authority in a governing
 926 instrument to pay tax attributable to property not passing under
 927 the governing instrument is not a direction apportioning the tax
 928 to property passing under the governing instrument.

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929 (j) This section applies to any tax remaining to be paid
 930 after the application of any effective express directions. An
 931 effective express direction for payment of tax on specific
 932 property or a type of property in a manner different from that
 933 provided in this section is not effective as an express
 934 direction for payment of tax on other property or other types of
 935 property included in the measure of the tax.

936 (5) TRANSFER OF PROPERTY.—A personal representative or
 937 fiduciary shall not be required to transfer to a recipient any
 938 property reasonably anticipated to be necessary for the payment
 939 of taxes. Further, the personal representative or fiduciary is
 940 not required to transfer any property to the recipient until the
 941 amount of the tax due from the recipient is paid by the
 942 recipient. If property is transferred before final apportionment
 943 of the tax, the recipient shall provide a bond or other security
 944 for his or her apportioned liability in the amount and form
 945 prescribed by the personal representative or fiduciary.

946 (6) ORDER OF APPORTIONMENT.—

947 (a) The personal representative may petition at any time
 948 for an order of apportionment. If administration of the
 949 decedent's estate has not commenced at any time after 90 days
 950 from the decedent's death, any fiduciary may petition for an
 951 order of apportionment in the court in which venue would be
 952 proper for administration of the decedent's estate. Notice of
 953 the petition for order of apportionment must be served on all
 954 interested persons in the manner provided for service of formal
 955 notice. At any time after 6 months from the decedent's death,
 956 any recipient may petition the court for an order of
 957 apportionment.

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958 (b) The court shall determine all issues concerning
 959 apportionment. If the tax to be apportioned has not been finally
 960 determined, the court shall determine the probable tax due or to
 961 become due from all interested persons, apportion the probable
 962 tax, and retain jurisdiction over the parties and issues to
 963 modify the order of apportionment as appropriate until after the
 964 tax is finally determined.

965 (7) DEFICIENCY.—

966 (a) If the personal representative or fiduciary does not
 967 have possession of sufficient property otherwise distributable
 968 to the recipient to pay the tax apportioned to the recipient,
 969 whether under this section, the Internal Revenue Code, or the
 970 governing instrument, if applicable, the personal representative
 971 or fiduciary shall recover the deficiency in tax so apportioned
 972 to the recipient:

973 1. From the fiduciary in possession of the property to
 974 which the tax is apportioned, if any; and

975 2. To the extent of any deficiency in collection from the
 976 fiduciary, or to the extent collection from the fiduciary is
 977 excused pursuant to subsection (8) and in all other cases, from
 978 the recipient of the property to which the tax is apportioned,
 979 unless relieved of this duty as provided in subsection (8).

980 (b) In any action to recover the tax apportioned, the order
 981 of apportionment is prima facie correct.

982 (c) In any action for the enforcement of an order of
 983 apportionment, the court shall award taxable costs as in
 984 chancery actions, including reasonable attorney fees, and may
 985 award penalties and interest on the unpaid tax in accordance
 986 with equitable principles.

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987 (d) This subsection does not authorize the recovery of any
 988 tax from a company issuing life insurance included in the gross
 989 estate, or from a bank, trust company, savings and loan
 990 association, or similar institution with respect to any account
 991 in the name of the decedent and any other person which passed by
 992 operation of law at the decedent's death.

993 (8) RELIEF FROM DUTY.—

994 (a) A personal representative or fiduciary who has the duty
 995 under this section of collecting the apportioned tax from
 996 recipients may be relieved of the duty to collect the tax by an
 997 order of the court finding that:

998 1. The estimated court costs and attorney fees in
 999 collecting the apportioned tax from a person against whom the
 1000 tax has been apportioned will approximate or exceed the amount
 1001 of the recovery;

1002 2. The person against whom the tax has been apportioned is
 1003 a resident of a foreign country other than Canada and refuses to
 1004 pay the apportioned tax on demand; or

1005 3. It is impracticable to enforce contribution of the
 1006 apportioned tax against a person against whom the tax has been
 1007 apportioned in view of the improbability of obtaining a judgment
 1008 or the improbability of collection under any judgment that might
 1009 be obtained, or otherwise.

1010 (b) A personal representative or fiduciary is not liable
 1011 for failure to attempt to enforce collection if the personal
 1012 representative or fiduciary reasonably believes that collection
 1013 would have been economically impracticable.

1014 (9) UNCOLLECTED TAX.—Any apportioned tax that is not
 1015 collected shall be reapportioned in accordance with this section

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1016 as if the portion of the property to which the uncollected tax
 1017 had been apportioned had been exempt.

1018 (10) CONTRIBUTION.—This section does not limit the right of
 1019 any person who has paid more than the amount of the tax
 1020 apportionable to that person, calculated as if all apportioned
 1021 amounts would be collected, to obtain contribution from those
 1022 who have not paid the full amount of the tax apportionable to
 1023 them, calculated as if all apportioned amounts would be
 1024 collected, and that right is hereby conferred. In any action to
 1025 enforce contribution, the court shall award taxable costs as in
 1026 chancery actions, including reasonable attorney fees.

1027 (11) FOREIGN TAX.—This section does not require the
 1028 personal representative or fiduciary to pay any tax levied or
 1029 assessed by a foreign country unless specific directions to that
 1030 effect are contained in the will or other instrument under which
 1031 the personal representative or fiduciary is acting.

1032 Section 8. Effective October 1, 2015, subsection (4) is
 1033 added to section 736.0708, Florida Statutes, to read:

1034 736.0708 Compensation of trustee.—

1035 (4) (a) An attorney, or a person related to the attorney, is
 1036 not entitled to compensation for serving as trustee if the
 1037 attorney prepared or supervised the execution of the trust
 1038 instrument that appoints the attorney or person related to the
 1039 attorney as trustee, unless the attorney or person appointed is
 1040 related to the settlor or the attorney makes the following
 1041 disclosures to the settlor in writing before the trust
 1042 instrument is executed:

1043 1. Unless specifically disqualified by the terms of the
 1044 trust instrument, any person, regardless of his or her

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1045 residence, including a family member, friend, or corporate
 1046 fiduciary is eligible to serve as a trustee.

1047 2. Any person, including an attorney, who serves as a
 1048 trustee is entitled to receive reasonable compensation for
 1049 servicing as trustee.

1050 3. Compensation payable to the trustee is in addition to
 1051 any attorney fees payable to the attorney or the attorney's firm
 1052 for legal services rendered to the trustee.

1053 (b) The settlor must execute a written statement
 1054 acknowledging that the disclosures required by this subsection
 1055 were made before the execution of the trust instrument. The
 1056 written acknowledgment must be in a separate writing from the
 1057 trust instrument, but may be annexed to the trust instrument.
 1058 The written acknowledgment may be executed before or after the
 1059 execution of the trust instrument in which the attorney or
 1060 related person is appointed as the trustee.

1061 (c) For purposes of this subsection:

1062 1. An attorney is deemed to have prepared or supervised the
 1063 execution of a trust instrument if the preparation or the
 1064 supervision of the execution of the trust instrument was
 1065 performed by an employee or attorney employed by the same firm
 1066 as the attorney at the time the trust instrument was executed.

1067 2.a. A person is "related" to an individual if, at the time
 1068 the attorney prepared or supervised the execution of the trust
 1069 instrument, the person is:

1070 (I) A spouse of the individual;

1071 (II) A lineal ascendant or descendant of the individual;

1072 (III) A sibling of the individual;

1073 (IV) A relative of the individual or of the individual's

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1074 spouse with whom the lawyer maintains a close, familial
 1075 relationship;

1076 (V) A spouse of a person described in sub-sub-subparagraphs
 1077 (I)-(IV); or

1078 (VI) A person who cohabitates with the individual.

1079 b. An employee or attorney employed by the same firm as the
 1080 attorney at the time the trust instrument is executed is deemed
 1081 to be related to the attorney.

1082 3. An attorney or person related to the attorney is deemed
 1083 to be appointed in the trust instrument if the trust instrument
 1084 provided the attorney or a person related to the attorney with
 1085 the power to appoint the trustee and the attorney or person
 1086 related to the attorney was appointed using that power.

1087 (d) This subsection applies to provisions appointing an
 1088 attorney or a person related to the attorney as trustee,
 1089 cotrustee, or as successor or alternate trustee if the person
 1090 appointed is unable or unwilling to serve.

1091 (e) Other than compensation payable to the trustee, this
 1092 subsection does not limit any rights or remedies that an
 1093 interested person may have at law or equity.

1094 (f) The failure to obtain a written acknowledgment from the
 1095 settlor under this subsection does not disqualify a trustee from
 1096 serving and does not affect the validity of a trust instrument.

1097 (g) A written acknowledgment signed by the settlor that is
 1098 in substantially the following form is deemed to comply with the
 1099 disclosure requirements of this subsection:

1100
 1101 I, ... (Name) ... declare that:

1102 I have designated ... (my attorney, an attorney employed in

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1103 the same law firm as my attorney, or a person related to my
 1104 attorney)... as a trustee in my trust instrument dated
 1105 ...(Date)....

1106 Before executing the trust, I was informed that:

1107 1. Unless specifically disqualified by the terms of the
 1108 trust instrument, any person, regardless of his or her
 1109 residence, including a family member, friend, or corporate
 1110 fiduciary is eligible to serve as a trustee.

1111 2. Any person, including an attorney, who serves as a
 1112 trustee is entitled to receive reasonable compensation for
 1113 servng as trustee.

1114 3. Compensation payable to the trustee is in addition to
 1115 any attorney fees payable to the attorney or the attorney's firm
 1116 for legal services rendered to the trustee.

1117
 1118 ...(Settlor)...

1119
 1120 ...(Dated)...

1121
 1122 (h) This subsection applies to each appointment made
 1123 pursuant to a trust instrument that is:

1124 1. Executed by a resident of this state on or after October
 1125 1, 2015.

1126 2. Amended by a resident of this state on or after October
 1127 1, 2015, if the trust instrument appoints the attorney who
 1128 prepared or supervised the execution of the amendment, or a
 1129 person related to such attorney, as trustee.

1130 Section 9. Section 736.1005, Florida Statutes, is amended
 1131 to read:

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1132 736.1005 Attorney ~~attorney's~~ fees for services to the
 1133 trust.-

1134 (1) Any attorney who has rendered services to a trust may
 1135 be awarded reasonable compensation from the trust. The attorney
 1136 may apply to the court for an order awarding attorney ~~attorney's~~
 1137 fees and, after notice and service on the trustee and all
 1138 beneficiaries entitled to an accounting under s. 736.0813, the
 1139 court shall enter an order on the fee application.

1140 (2) If attorney ~~Whenever attorney's~~ fees are to be paid
 1141 from ~~out of~~ the trust under subsection (1), s. 736.1007(5) (a),
 1142 or s. 733.106(4) (a), the court, in its discretion, may direct
 1143 from what part of the trust the fees shall be paid.

1144 (a) All or any part of the attorney fees to be paid from
 1145 the trust may be assessed against one or more persons' part of
 1146 the trust in such proportions as the court finds to be just and
 1147 proper.

1148 (b) In the exercise of its discretion, the court may
 1149 consider the following factors:

1150 1. The relative impact of an assessment on the estimated
 1151 value of each person's part of the trust.

1152 2. The amount of attorney fees to be assessed against a
 1153 person's part of the trust.

1154 3. The extent to which a person whose part of the trust is
 1155 to be assessed, individually or through counsel, actively
 1156 participated in the proceeding.

1157 4. The potential benefit or detriment to a person's part of
 1158 the trust expected from the outcome of the proceeding.

1159 5. The relative strength or weakness of the merits of the
 1160 claims, defenses, or objections, if any, asserted by a person

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1161 whose part of the trust is to be assessed.

1162 6. Whether a person whose part of the trust is to be
 1163 assessed was a prevailing party with respect to one or more
 1164 claims, defenses, or objections.

1165 7. Whether a person whose part of the trust is to be
 1166 assessed unjustly caused an increase in the amount of attorney
 1167 fees incurred by the trustee or another person in connection
 1168 with the proceeding.

1169 8. Any other relevant fact, circumstance, or equity.

1170 (c) The court may assess a person's part of the trust
 1171 without finding that the person engaged in bad faith,
 1172 wrongdoing, or frivolousness.

1173 (3) Except when a trustee's interest may be adverse in a
 1174 particular matter, the attorney shall give reasonable notice in
 1175 writing to the trustee of the attorney's retention by an
 1176 interested person and the attorney's entitlement to fees
 1177 pursuant to this section. A court may reduce any fee award for
 1178 services rendered by the attorney prior to the date of actual
 1179 notice to the trustee, if the actual notice date is later than a
 1180 date of reasonable notice. In exercising this discretion, the
 1181 court may exclude compensation for services rendered after the
 1182 reasonable notice date but before ~~prior to~~ the date of actual
 1183 notice.

1184 Section 10. Section 736.1006, Florida Statutes, is amended
 1185 to read:

1186 736.1006 Costs in trust proceedings.—

1187 (1) In all trust proceedings, costs may be awarded as in
 1188 chancery actions.

1189 (2) If ~~Whenever~~ costs are to be paid from ~~out of~~ the trust

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1190 under subsection (1) or s. 733.106(4)(a), the court, in its
 1191 discretion, may direct from what part of the trust the costs
 1192 shall be paid. All or any part of the costs to be paid from the
 1193 trust may be assessed against one or more persons' part of the
 1194 trust in such proportions as the court finds to be just and
 1195 proper. In the exercise of its discretion, the court may
 1196 consider the factors set forth in s. 736.1005(2).

1197 Section 11. The amendments made by this act to ss. 733.212,
 1198 733.2123, 733.3101, and 733.504, Florida Statutes, apply to
 1199 proceedings commenced on or after July 1, 2015. The law in
 1200 effect before July 1, 2015, applies to proceedings commenced
 1201 before that date.

1202 Section 12. (1) The amendment made by this act to s.
 1203 733.817(1)(g) and (2)(c), Florida Statutes, is remedial in
 1204 nature, is intended to clarify existing law, and applies
 1205 retroactively to all proceedings pending or commenced on or
 1206 after July 1, 2015, in which the apportionment of taxes has not
 1207 been finally determined or agreed for the estates of decedents
 1208 who die after December 31, 2004.

1209 (2) The amendment made by this act to s. 733.817(1)(e)3.,
 1210 (3)(e), (3)(g), (4)(b), (4)(c), (4)(d)1.b., (4)(e), (4)(h), and
 1211 (6), Florida Statutes, applies to the estates of decedents who
 1212 die on or after July 1, 2015.

1213 (3) Except as provided in subsections (1) and (2), the
 1214 amendment made by this act to s. 733.817, Florida Statutes, is
 1215 remedial in nature, is intended to clarify existing law, and
 1216 applies retroactively to all proceedings pending or commenced on
 1217 or after July 1, 2015, in which the apportionment of taxes has
 1218 not been finally determined or agreed and without regard to the

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1219 date of the decedent's death.

1220 Section 13. The amendments made by this act to ss. 733.106,
1221 736.1005, and 736.1006, Florida Statutes, apply to proceedings
1222 commenced on or after July 1, 2015. The law in effect before
1223 July 1, 2015, applies to proceedings commenced before that date.

1224 Section 14. Except as otherwise expressly provided in this
1225 act, this act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/2015
Meeting Date

872
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Cari Roth

Job Title _____

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Email croth@deanmead.com

Speaking: For Against Information

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

Representing Real Property Section of Fl. Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

APPEARANCE RECORD

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

4 1 9 1201 5

Meeting Date

Topic _____

Bill Number 872
*(if applicable)*Name BRIAN PITTSAmendment Barcode _____
*(if applicable)*Job Title TRUSTEEAddress 1119 NEWTON AVNUE SOUTHPhone 727-897-9291*Street*SAINT PETERSBURGFLORIDA33705E-mail JUSTICE2JESUS@YAHOO.COM*City**State**Zip*Speaking: For Against InformationRepresenting JUSTICE-2-JESUSAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL

8th District

March 31, 2015

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

Re: Senate Bill 872 – Estates

Dear Chairman Simmons:

Senate Bill 872, relating Estates has been referred to the Rules Committee. I am requesting your consideration on placing SB 872 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee
Cissy DuBose, Administrative Assistant of the Rules Committee

REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: SB 982

INTRODUCER: Senators Thompson and Smith

SUBJECT: Florida Civil Rights Act

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Siples</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Siples</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 982 amends the Florida Civil Rights Act (FCRA) by expressly prohibiting discrimination because of pregnancy. The FCRA currently prohibits discrimination based on race, creed, color, sex, physical disability, or national origin in the areas of education, employment, housing, and public accommodation. However, the decisions of the district courts of appeal were in conflict as to whether discrimination based on sex includes discrimination based on pregnancy. The conflict among the appellate courts was resolved by the Florida Supreme Court in a 2014 case ruling that discrimination based on pregnancy is subsumed within the prohibition in the FCRA against sex discrimination. This bill effectively codifies that decision.

Although pregnancy discrimination is prohibited under federal law, by specifically permitting a state cause of action for pregnancy discrimination, plaintiffs will have more time to file suit than is available under federal law. After the federal Equal Employment Opportunity Commission concludes an investigation of a complaint and issues a “right-to-sue” letter, the plaintiff has 90 days to file an action in federal court. Plaintiffs bringing pregnancy discrimination cases in state court will have up to 1 year to file after a determination of reasonable cause by the Florida Commission on Human Relations (FCHR). Also, plaintiffs filing a lawsuit against a small-sized employer may be able to recoup greater punitive damages in state court due to the difference in caps on punitive damages in state and federal court.

II. Present Situation:

Title VII of the Civil Rights Act of 1964¹

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination based on race, color, religion, national origin, or sex. Title VII applies to employers having 15 or more employees and

¹ 42 U.S.C. 2000e et. seq.

outlines a number of unlawful employment practices. Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.²

Pregnancy Discrimination Act³

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert* that Title VII did not provide protection based on pregnancy discrimination.⁴ In response, in 1978, Congress passed the Pregnancy Discrimination Act (PDA). The PDA amended Title VII to expressly provide that discrimination because of sex includes discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.⁵

Americans with Disabilities Act⁶

The Americans with Disabilities Act (ADA) prohibits discrimination based on disability in employment, public accommodation, and telecommunications. The ADA defines disability as a “physical or mental impairment that substantially limits one or more major life activities ...; a record of such an impairment; or ... being regarded as having such an impairment.”⁷ Although pregnancy is not generally considered a disability, pregnancy-related impairments may be protected under the ADA if they substantially limit one or more major life activities, such as walking or lifting.⁸

Family and Medical Leave Act⁹

The Family and Medical Leave Act (FMLA) provides that employees of certain covered employers are entitled to take up to 12 weeks of unpaid leave a year for a serious illness, injury, or other health condition that involves continuing treatment by a health care provider. The FMLA also guarantees that employees can return to the same or an equivalent position. To apply, the FMLA sets certain threshold requirements regarding a minimum number of employees and time worked in that position.¹⁰ In addition to providing coverage for birth or adoption, the FMLA authorizes leave for prenatal care, incapacity related to pregnancy, and any serious health condition following childbirth.¹¹

² 42 U.S.C. 2000e-2.

³ Pub. L. No. 95-555, 92 Stat. 2076.

⁴ 429 U.S. 125, 145-146 (1976).

⁵ The PDA provides that individuals qualifying for protection on the basis of pregnancy must be treated the same for employment purposes, including the receipt of benefits, as any other person who does not have that condition but is similarly able or unable to work.

⁶ 42 U.S.C. s. 101.

⁷ 42 U.S.C. s. 12102.

⁸ Equal Employment Opportunity Commission, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (July 14, 2014), available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#dissta.

⁹ 29 U.S.C. s. 2611 (11)(1993).

¹⁰ The FMLA applies to private employers with at least 50 employees and all public employers. To be eligible for FMLA leave, an individual must have worked for the employer for at least 12 months and must have worked at least 1,250 hours during the 12 months prior to the leave.

¹¹ For more information, see U.S. Dept. of Labor, Wage and Hour Division, *Family and Medical Leave Act*, <http://www.dol.gov/whd/fmla/>.

Florida Civil Rights Act

The 1992 Florida Legislature enacted the Florida Civil Rights Act to protect persons from discrimination in education, employment, housing, and public accommodations. In addition to the classes of race, color, religion, sex, and national origin protected in federal law, the FCRA includes age, handicap, and marital status as protected classes.¹²

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, are considered unlawful employment practices.¹³ Unlike Title VII, the FCRA has not been amended to expressly prohibit pregnancy discrimination.

Courts interpreting the FCRA typically follow federal precedent because the FCRA is generally patterned after Title VII. Still, differences between state and federal law persist. As noted above, the FCRA includes age, handicap, and marital status as protected categories. Although Title VII does not include these statuses, other federal laws address age and disability, albeit in a different manner.¹⁴

Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a form of sex discrimination, the FCRA does not. The fact that the FCRA is modeled after Title VII but failed to include this provision caused divisions among federal and state courts as to whether the Legislature intended to provide protection on the basis of pregnancy status. Thus, the ability to bring a claim based on pregnancy discrimination varied among jurisdictions until recently when the Florida Supreme Court ruled that by prohibiting discrimination based on sex, the FCRA also prohibits discrimination based on pregnancy.

The case of *O'Loughlin v. Pinchback* was the first time that a Florida district court of appeal reviewed a claim of pregnancy discrimination in the context of the FCRA (then known as the Florida Human Rights Act).¹⁵ In this case, the plaintiff alleged that her employer unlawfully terminated her from her position as a correctional officer based on her pregnancy. The First District Court of Appeal indicated as an initial matter that Florida styled its anti-discrimination law on the federal model.¹⁶ Although the Legislature did not amend Florida law to conform to Title VII as amended by the Pregnancy Discrimination Act, the court held that both federal and state law should be read in concert to provide the maximum protection against discrimination. Therefore, Title VII as amended by the PDA preempts Florida law "to the extent that Florida's law offers less protection to its citizens than does the corresponding federal law."¹⁷ Therefore, the *O'Loughlin* court found that pregnancy discrimination is prohibited by state law.

¹² Section 760.10(1)(a), F.S.

¹³ Section 760.10(2) through (8), F.S.

¹⁴ Kendra D. Presswood, *Interpreting the Florida Civil Rights Act of 1992*, 87 FLA. B.J. 36, 36 (Dec. 2013).

¹⁵ 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

¹⁶ *Id.* at 791.

¹⁷ *Id.* at 792.

Other courts interpreted the issue of pregnancy discrimination in state law differently. In *Carsillo v. City of Lake Worth*, the Fourth District Court of Appeal opined that the FCRA includes pregnancy because Congress originally intended Title VII to include pregnancy, and the PDA merely clarified that intent.¹⁸ The court concluded it was unnecessary for Florida to amend its statute in light of this interpretation. The Florida Supreme Court declined to hear the appeal.¹⁹

However, the Third District Court of Appeal court reached an opposite finding. In *Delva v. Continental Group, Inc.*, the court, by looking at the plain language of the FCRA, found that no remedy exists for a pregnancy claim in state court under Florida law.²⁰ The court certified the conflict with *Carsillo* to the Florida Supreme Court.

In 2014, the Florida Supreme Court reviewed the *Delva* case, quashed the appellate decision, and remanded the case back to the trial court.²¹ The Court ruled that “discrimination based on pregnancy is subsumed within the prohibition in the FCRA against discrimination based on an individual’s sex.”²² The Court considered this interpretation consistent with legislative intent, as expressly provided in the FCRA itself, that the FCRA be liberally construed in favor of ensuring freedom from discrimination based on sex.²³

The decision only addressed pregnancy discrimination claims under the FCRA, but did not speak to s. 509.092, F.S., which addresses discrimination in public lodging and public food establishments.

Procedure for Filing Claims of Discrimination

A Florida employee may file a charge of an unlawful employment practice with either the federal Equal Employment Opportunities Commission (EEOC) or the Florida Commission on Human Relations (FCHR).

For a charge filed with the EEOC, the EEOC must investigate and make a reasonable cause determination within 120 days after the date of the filing.²⁴ If the EEOC finds an absence of reasonable cause, the EEOC will dismiss the charge. If the EEOC finds reasonable cause, the EEOC must engage in informal conferencing, conciliation, and persuasion to remedy the unlawful employment practice.²⁵

After the EEOC concludes its investigation and issues a “right-to-sue” letter to the plaintiff, the plaintiff must file a claim in federal court under Title VII within 90 days of receipt of the letter.²⁶

¹⁸*Carsillo v. City of Lake Worth*, 995 So.2d 1118, 1121 (Fla. 4th DCA 2008).

¹⁹ 20 So.3d 848 (Fla. 2009).

²⁰ *Delva v. Continental Group, Inc.*, 96 So.3d 956, 958 (Fla. 3d DCA 2012), *reh’g denied*.

²¹ *Delva v. Continental Group, Inc.*, 137 So.3d 371 (Fla. 2014).

²² *Id.* at 375.

²³ *Id.*

²⁴ 42 U.S.C. s. 2000e-5(b).

²⁵ *Id.*

²⁶ 42 U.S.C. s. 2000e-5(f)(1).

For a charge filed with the FCHR, the FCHR must make a reasonable cause determination within 180 days after the filing of the complaint.²⁷ If the FCHR finds reasonable cause, the plaintiff may bring either a civil action or request an administrative hearing.²⁸

A plaintiff is required to file a state claim in civil court under the Florida Civil Rights Act within 1 year of the determination of reasonable cause by the FCHR.²⁹

Remedies

Both state and federal law authorize awards of back pay, compensatory damages, and punitive damages.³⁰

In federal court, punitive damages vary depending on the size of the employer. In cases that qualify for punitive damages, the sum of both compensatory and punitive damages is capped at:

- \$50,000 for an employer that has 15 to 100 employees for at least 20 calendar weeks in the current or preceding calendar year;
- \$100,000 for an employer that has between 101 and 200 employees;
- \$200,000 for an employer that has between 201 and 500 employees; and
- \$300,000 for an employer that has more than 500 employees.³¹

In state court, punitive damages are capped at \$100,000 regardless of the size of the employer.³²

III. Effect of Proposed Changes:

SB 982 adds the condition of pregnancy as a protected class under the Florida Civil Rights Act of 1992 (FCRA).

Pregnancy is afforded the same protection as other statuses or classes identified in the FCRA. A woman affected by pregnancy may not be discriminated against:

- By public lodging and food service establishments;
- With respect to education, housing, or public accommodation; or
- With respect to employment, provided that any discriminatory act constitutes an unlawful employment practice.³³

By specifically permitting a state cause of action for pregnancy discrimination claims, plaintiffs will have more time to file suit. As described in the Present Situation, after receiving a “right-to-sue” letter from the EEOC, a plaintiff must file a case in federal court within 90 days. A plaintiff

²⁷ Section 760.11(3), F.S.

²⁸ Section 760.11(4), F.S.

²⁹ Section 760.11(5), F.S.

³⁰ 42 U.S.C. s. 2000e-5(g)(1) and s. 1981a.

³¹ 42 U.S.C. s. 1981a(b)(3).

³² Section 760.11(5), F.S.

³³ Unlawful employment practices include discharging or failing to or refusing to hire a person, or discriminating in compensation, benefits, terms, conditions, or privileges of employment; and limiting or classifying an employee or applicant in such a way as to deprive the person of employment opportunities. The prohibition on unlawful employment practices applies also to employment agencies and labor organizations. *See* s. 760.10, F.S.

has up to 1 year to file a civil action in state court after the FCHR issues its reasonable cause determination.

Additionally, a state cause of action in some cases will allow for greater remedies than the remedies authorized by federal law. Under federal law, the sum of compensatory and punitive damages against an employer having between 15 and 100 employees may not exceed \$50,000. Under a state claim, punitive damages may reach \$100,000, regardless of the size of the employer. However, federal law authorizes the sum of compensatory and punitive damages of up to \$300,000 for discrimination by larger employers.

The bill applies to all private and public employers at the state and local level. In the public sector, the bill will apply to state agencies, counties, municipalities, political subdivisions, school districts, community colleges, and state universities.³⁴

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By codifying an interpretation of the FCRA by the Supreme Court, businesses and individuals will have clearer notice of their rights and obligations under the FCRA.

C. Government Sector Impact:

State and local governments are currently required to comply with Title VII as amended by the Pregnancy Discrimination Act of 1978 (PDA). The PDA has been interpreted by the state and local governments as prohibiting discrimination on the basis of pregnancy,

³⁴ Department of Management Services, *2015 Legislative Bill Analysis* (July 1, 2015).

childbirth, or related medical conditions. Therefore, complying with this bill will not impose any additional burden on state or local government.

The FCHR manages complaints of discrimination brought under Title VII in Florida. According to the analysis conducted by the FCHR, passage of this bill will not result in any additional fiscal or workload burden on the agency.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 509.092, 760.01, 760.05, 760.07, 760.08, and 760.10.

This bill reenacts section 760.11, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

³⁵ Florida Commission on Human Relations, *2015 Legislative Bill Analysis* (Feb. 19, 2015) (on file with the Senate Committee on Judiciary).

By Senator Thompson

12-00862-15

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A bill to be entitled

An act relating to the Florida Civil Rights Act; amending s. 509.092, F.S.; prohibiting discrimination on the basis of pregnancy in public lodging and food service establishments; amending s. 760.01, F.S.; revising the general purpose of the Florida Civil Rights Act of 1992; amending s. 760.05, F.S.; revising the function of the Florida Commission on Human Relations; amending s. 760.07, F.S.; providing civil and administrative remedies for discrimination on the basis of pregnancy; amending s. 760.08, F.S.; prohibiting discrimination on the basis of pregnancy in places of public accommodation; amending s. 760.10, F.S.; prohibiting employment discrimination on the basis of pregnancy; prohibiting discrimination on the basis of pregnancy by labor organizations, joint labor-management committees, and employment agencies; prohibiting discrimination on the basis of pregnancy in occupational licensing, certification, and membership organizations; providing an exception to unlawful employment practices based on pregnancy; reenacting s. 760.11(1), F.S., relating to administrative and civil remedies for violations of the Florida Civil Rights Act of 1992, to incorporate the amendments made to s. 760.10(5), F.S., in a reference thereto; providing an effective date.

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

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Section 1. Section 509.092, Florida Statutes, is amended to read:

509.092 Public lodging establishments and public food service establishments; rights as private enterprises.—Public lodging establishments and public food service establishments are private enterprises, and the operator has the right to refuse accommodations or service to any person who is objectionable or undesirable to the operator, but such refusal may not be based upon race, creed, color, sex, pregnancy, physical disability, or national origin. A person aggrieved by a violation of this section or a violation of a rule adopted under this section has a right of action pursuant to s. 760.11.

Section 2. Subsection (2) of section 760.01, Florida Statutes, is amended to read:

760.01 Purposes; construction; title.—

(2) The general purposes of the Florida Civil Rights Act of 1992 are to secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, pregnancy, national origin, age, handicap, or marital status and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights, and privileges of individuals within the state.

Section 3. Section 760.05, Florida Statutes, is amended to read:

760.05 Functions of the commission.—The commission shall promote and encourage fair treatment and equal opportunity for

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59 all persons regardless of race, color, religion, sex, pregnancy,
60 national origin, age, handicap, or marital status and mutual
61 understanding and respect among all members of all economic,
62 social, racial, religious, and ethnic groups; and shall endeavor
63 to eliminate discrimination against, and antagonism between,
64 religious, racial, and ethnic groups and their members.

65 Section 4. Section 760.07, Florida Statutes, is amended to
66 read:

67 760.07 Remedies for unlawful discrimination.—Any violation
68 of any Florida statute making unlawful discrimination because of
69 race, color, religion, gender, pregnancy, national origin, age,
70 handicap, or marital status in the areas of education,
71 employment, housing, or public accommodations gives rise to a
72 cause of action for all relief and damages described in s.
73 760.11(5), unless greater damages are expressly provided for. If
74 the statute prohibiting unlawful discrimination provides an
75 administrative remedy, the action for equitable relief and
76 damages provided for in this section may be initiated only after
77 the plaintiff has exhausted his or her administrative remedy.
78 The term “public accommodations” does not include lodge halls or
79 other similar facilities of private organizations which are made
80 available for public use occasionally or periodically. The right
81 to trial by jury is preserved in any case in which the plaintiff
82 is seeking actual or punitive damages.

83 Section 5. Section 760.08, Florida Statutes, is amended to
84 read:

85 760.08 Discrimination in places of public accommodation.—
86 All persons are ~~shall be~~ entitled to the full and equal
87 enjoyment of the goods, services, facilities, privileges,

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88 advantages, and accommodations of any place of public
89 accommodation, ~~as defined in this chapter~~, without
90 discrimination or segregation on the ground of race, color,
91 national origin, sex, pregnancy, handicap, familial status, or
92 religion.

93 Section 6. Subsections (1) and (2), paragraphs (a) and (b)
94 of subsection (3), subsections (4) through (6), and paragraph
95 (a) of subsection (8) of section 760.10, Florida Statutes, are
96 amended to read:

97 760.10 Unlawful employment practices.—

98 (1) It is an unlawful employment practice for an employer:

99 (a) To discharge or to fail or refuse to hire any
100 individual, or otherwise to discriminate against any individual
101 with respect to compensation, terms, conditions, or privileges
102 of employment, because of such individual’s race, color,
103 religion, sex, pregnancy, national origin, age, handicap, or
104 marital status.

105 (b) To limit, segregate, or classify employees or
106 applicants for employment in any way which would deprive or tend
107 to deprive any individual of employment opportunities, or
108 adversely affect any individual’s status as an employee, because
109 of such individual’s race, color, religion, sex, pregnancy,
110 national origin, age, handicap, or marital status.

111 (2) It is an unlawful employment practice for an employment
112 agency to fail or refuse to refer for employment, or otherwise
113 to discriminate against, any individual because of race, color,
114 religion, sex, pregnancy, national origin, age, handicap, or
115 marital status or to classify or refer for employment any
116 individual on the basis of race, color, religion, sex,

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117 pregnancy, national origin, age, handicap, or marital status.

118 (3) It is an unlawful employment practice for a labor
119 organization:

120 (a) To exclude or to expel from its membership, or
121 otherwise to discriminate against, any individual because of
122 race, color, religion, sex, pregnancy, national origin, age,
123 handicap, or marital status.

124 (b) To limit, segregate, or classify its membership or
125 applicants for membership, or to classify or fail or refuse to
126 refer for employment any individual, in any way ~~that which~~ would
127 deprive or tend to deprive any individual of employment
128 opportunities, or adversely affect any individual's status as an
129 employee or as an applicant for employment, because of such
130 individual's race, color, religion, sex, pregnancy, national
131 origin, age, handicap, or marital status.

132 (4) It is an unlawful employment practice for any employer,
133 labor organization, or joint labor-management committee
134 controlling apprenticeship or other training or retraining,
135 including on-the-job training programs, to discriminate against
136 any individual because of race, color, religion, sex, pregnancy,
137 national origin, age, handicap, or marital status in admission
138 to, or employment in, any program established to provide
139 apprenticeship or other training.

140 (5) Whenever, in order to engage in a profession,
141 occupation, or trade, it is required that a person receive a
142 license, certification, or other credential, become a member or
143 an associate of any club, association, or other organization, or
144 pass any examination, it is an unlawful employment practice for
145 any person to discriminate against any other person seeking such

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146 license, certification, or other credential, seeking to become a
147 member or associate of such club, association, or other
148 organization, or seeking to take or pass such examination,
149 because of such other person's race, color, religion, sex,
150 pregnancy, national origin, age, handicap, or marital status.

151 (6) It is an unlawful employment practice for an employer,
152 labor organization, employment agency, or joint labor-management
153 committee to print, or cause to be printed or published, any
154 notice or advertisement relating to employment, membership,
155 classification, referral for employment, or apprenticeship or
156 other training, indicating any preference, limitation,
157 specification, or discrimination, based on race, color,
158 religion, sex, pregnancy, national origin, age, absence of
159 handicap, or marital status.

160 (8) Notwithstanding any other provision of this section, it
161 is not an unlawful employment practice under ss. 760.01-760.10
162 for an employer, employment agency, labor organization, or joint
163 labor-management committee to:

164 (a) Take or fail to take any action on the basis of
165 religion, sex, pregnancy, national origin, age, handicap, or
166 marital status in those certain instances in which religion,
167 sex, condition of pregnancy, national origin, age, absence of a
168 particular handicap, or marital status is a bona fide
169 occupational qualification reasonably necessary for the
170 performance of the particular employment to which such action or
171 inaction is related.

172 Section 7. For the purpose of incorporating the amendment
173 made by this act to section 760.10(5), Florida Statutes, in a
174 reference thereto, subsection (1) of section 760.11, Florida

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175 Statutes, is reenacted to read:

176 760.11 Administrative and civil remedies; construction.—

177 (1) Any person aggrieved by a violation of ss. 760.01-
 178 760.10 may file a complaint with the commission within 365 days
 179 of the alleged violation, naming the employer, employment
 180 agency, labor organization, or joint labor-management committee,
 181 or, in the case of an alleged violation of s. 760.10(5), the
 182 person responsible for the violation and describing the
 183 violation. Any person aggrieved by a violation of s. 509.092 may
 184 file a complaint with the commission within 365 days of the
 185 alleged violation naming the person responsible for the
 186 violation and describing the violation. The commission, a
 187 commissioner, or the Attorney General may in like manner file
 188 such a complaint. On the same day the complaint is filed with
 189 the commission, the commission shall clearly stamp on the face
 190 of the complaint the date the complaint was filed with the
 191 commission. In lieu of filing the complaint with the commission,
 192 a complaint under this section may be filed with the federal
 193 Equal Employment Opportunity Commission or with any unit of
 194 government of the state which is a fair-employment-practice
 195 agency under 29 C.F.R. ss. 1601.70-1601.80. If the date the
 196 complaint is filed is clearly stamped on the face of the
 197 complaint, that date is the date of filing. The date the
 198 complaint is filed with the commission for purposes of this
 199 section is the earliest date of filing with the Equal Employment
 200 Opportunity Commission, the fair-employment-practice agency, or
 201 the commission. The complaint shall contain a short and plain
 202 statement of the facts describing the violation and the relief
 203 sought. The commission may require additional information to be

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204 in the complaint. The commission, within 5 days of the complaint
 205 being filed, shall by registered mail send a copy of the
 206 complaint to the person who allegedly committed the violation.
 207 The person who allegedly committed the violation may file an
 208 answer to the complaint within 25 days of the date the complaint
 209 was filed with the commission. Any answer filed shall be mailed
 210 to the aggrieved person by the person filing the answer. Both
 211 the complaint and the answer shall be verified.

212 Section 8. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15

Meeting Date

SB982

Bill Number (if applicable)

Topic PROTECTIONS AGAINST DISCRIMINATION FOR PREGNANCY

Amendment Barcode (if applicable)

Name KIM HANKEY

Job Title CUSTODIAL COORDINATOR

Address 3788 HUNTWICKE BLVD

Phone 407-465-1577

Street

DAVENPORT, FL

City

State

Zip

Email KMJH1577@GMAIL.COM

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

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

Representing SELF

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

4-9-15

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

982

Meeting Date

Bill Number (if applicable)

Topic Preznanca Discrimination

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms

Address 625 E Brevard

Phone 222-3969

Street

City

Well 32308

State

Zip

Email barbaradevane1@yahoo.com

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-15
Meeting Date

SB 982
Bill Number (if applicable)

Topic FL Civil Rights Act

Amendment Barcode (if applicable)

Name Stephanie Kunkel

Job Title _____

Address 1143 Albritton Dr
Street

Phone 850-320-4208

Tallahassee FL 32301
City State Zip

Email Step.Kunkel@gmail.com

Speaking: For Against Information

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

Representing Florida Federation of Business and Professional Women

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-2015

Meeting Date

982

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill # 982**, relating to Florida Civil Rights Act, be placed on the:

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

Geraldine F. Thompson
Senator Geraldine F. Thompson
Florida Senate, District 12

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 Rules

BILL: CS/CS/SB 998

INTRODUCER: Commerce and Tourism Committee; Regulated Industries Committee; and Senator Margolis

SUBJECT: Alcoholic Beverages

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
3.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 998 prohibits the sale, purchase, use, or possession of powdered alcohol, defined in the bill as alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill prohibits licensed alcoholic beverage vendors from selling powdered alcohol.

The bill provides that a person who violates the prohibition on selling or offering to sell powdered alcohol commits a first degree misdemeanor, and a second violation within 5 years is a third degree felony.

A person who purchases, uses, offers for use, or possess powdered alcohol commits a noncriminal violation, punishable by a fine of \$250.

The bill provides an exception for the use of powdered alcohol for research purposes by specified entities.

The prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by or on behalf of a licensed manufacturer or a common carrier.

II. Present Situation:

Florida Beverage Law

Alcoholic beverages are regulated by the Beverage Law,¹ which regulates the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation administers and enforces the Beverage Law.³

Section 561.01(4)(a), F.S., defines the term “alcoholic beverages” to mean:

“...distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume.

(b) The percentage of alcohol by volume shall be determined by measuring the volume of the standard ethyl alcohol in the beverage and comparing it with the volume of the remainder of the ingredients as though said remainder ingredients were distilled water.”

Section 561.01(5), F.S., defines the terms “intoxicating beverage” and “intoxicating liquor” to “mean only those alcoholic beverages containing more than 4.007 percent of alcohol by volume.”

Chapter 565, F.S., provides for the regulation of liquor. Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean:

“...that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.”

Section 500.04(2), F.S., prohibits the adulteration or misbranding of any food.

Section 500.10(3), F.S., provides that food may be deemed adulterated if it is:

“...a confectionary that bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of 0.4 percent, harmless natural gum, and pectin; however, this subsection shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances; to any confectionery by reason of its containing less than 0.5 percent by volume of alcohol derived solely from the use of flavoring extracts; or to any candy by reason of its containing more than 0.5 percent but less than 5 percent by volume of alcohol derived from any source, if such candy:

(a) Is not sold to persons under 21 years of age;

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

² *See* s. 561.14, F.S.

³ Section 561.02, F.S.

- (b) Is labeled with the following statement written in conspicuous print on the principal display panel of the package, or if sold in individual units, in a conspicuous manner adjacent to the product: “This product may not be sold to anyone under 21 years of age”;
- (c) Is not sold in a form containing liquid alcohol so that it constitutes an alcoholic beverage under the Beverage Law; and
- (d) Is distributed directly to Florida consumers only from permanent facilities owned or controlled by the product's manufacturer, or from a vendor licensed pursuant to chapter 565, or from a vendor approved by the Department of Business and Professional Regulation consistent with rules adopted by such department establishing standards for such vendors.”

The Alcohol and Tobacco Tax and Trade Bureau

The Alcohol and Tobacco Tax and Trade Bureau (TTB) is a bureau under the U.S. Department of Treasury. The TTB is responsible for assuring that alcohol and tobacco industry operators meet permit requirements; that alcohol beverage products comply with federal production, labeling, and marketing requirements; and for enforcing the tax code to ensure proper federal tax payment on alcohol, tobacco, firearms, and ammunition products. The TTB carries out these responsibilities by developing regulations, analyzing products, and ensuring tax and trade compliance with the Federal Alcohol Administration Act and the Internal Revenue Code. The TTB approved labels for several varieties of the powdered alcohol product “Palcohol” on March 10, 2015.^{4,5}

Powdered Alcohol

Powdered alcohol is alcohol that has been molecularly encapsulated in a starch or sugar. The product which, when combined with a liquid, produces an alcoholic beverage. A U.S. patent for the process was registered as early as 1974.⁶

It is not clear under the Beverage Law whether powdered alcohol may be considered an alcoholic beverage. According to the Department of Business and Professional Regulation, the definition of liquor in s. 565.01, F.S., would include powdered distilled spirits.⁷ The TTB recognizes that powdered alcohol intended for beverage use falls within the jurisdiction of both the federal government and state governments.

⁴ Alcohol and Tobacco Tax and Trade Bureau Public COLA Registry, available at: <https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do> (last visited March 25, 2015). The Application for Certification of Label Approval for the aforementioned Palcohol products is on file with the Senate Committee on Commerce and Tourism.

⁵ According to labels for the product, Palcohol has 10 percent alcohol-by-volume when mixed with 6 ounces of water.

⁶ General Foods Corporation, *Preparation of an Alcohol Containing Powder* (March 31, 1972) available at: <http://www.google.com/patents/US3795747> (last visited March 25, 2015).

⁷ 2015 Department of Business and Professional Regulation Legislative Bill Analysis for HB 823/SB 998, (March 12, 2015) (on file with the Senate Regulated Industries Committee).

The states of Alaska, Louisiana, South Carolina, Vermont, and Virginia have banned the sale of powdered alcohol.⁸ The states of Delaware and Michigan define powdered alcohol as an alcoholic beverage.⁹

III. Effect of Proposed Changes:

The bill creates s. 562.63(1), F.S., to define the term “powdered alcohol” to mean alcohol prepared in a powdered form for either direct use or consumption after the powder is combined with a liquid.

The bill creates s. 562.63(2), F.S., to prohibit the sale, offering for sale, purchase, use, offering for use, or possession of powdered alcohol.

The bill creates s. 562.63(3), F.S., to prohibit alcoholic beverage vendors licensed under s. 565.02(1)(a)-(f), F.S.,¹⁰ from selling or offering for sale powdered alcohol.

The bill creates s. 562.63(4)(a), F.S., to provide that a person who violates the prohibition in this section by selling or offering to sell powdered alcohol commits a misdemeanor of the first degree, which is punishable by a term of imprisonment not to exceed 1 year or a fine not to exceed \$1,000. The bill provides that a second violation within 5 years is a felony of the third degree, which is punishable by a term of imprisonment not to exceed 5 years, or a fine not to exceed \$5,000. A person who violates the prohibition within 5 years of a first offense may also be treated as a habitual offender, which, in the case of a felony of the third degree, may result in a term of imprisonment not to exceed 10 years.

The bill creates s. 562.63(4)(b), F.S., to provide that a person who violates the prohibition in this section by purchasing, using, offering for use, or possessing powdered alcohol commits a noncriminal violation, punishable by a fine of \$250.

The bill creates s. 562.63(5), F.S., to provide an exception for the use of powdered alcohol for research purposes by health care providers that primarily conduct scientific research, state institutions, state universities, private colleges and universities, and pharmaceutical or biotechnology companies.

The bill creates s. 562.63(6), F.S., to provide that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

The bill provides an effective date of July 1, 2015.

⁸ See Morton, Heather, *Powdered Alcohol 2015 Legislation*, National Conference of State Legislatures (March 11, 2015) at <http://www.ncsl.org/research/financial-services-and-commerce/powdered-alcohol-2015-legislation/ct/df8216d7b7de6938c301e601e592f776eb0045dd9244348e1143cf5a1e963a3ae43cfdc60de6aeb2bc5403695afb7fbd8f4528943d913bb079480573998f6cb7.aspx> (last visited March 25, 2015).

⁹ *Id.*

¹⁰ Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference reported a positive, but insignificant, impact on prison costs for HB 1247, which is substantially similar.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill permits an exception for research purposes for certain entities including “state institutions,” which are not defined. The phrase would therefore be subject to interpretation.

VIII. Statutes Affected:

This bill creates section 562.63 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Commerce and Tourism on March 30, 2015:

The CS clarifies that a licensed beverage vendor may not sell or offer for sale powdered alcohol for any purpose.

CS by Regulated Industries on March 18, 2015:

The CS creates s. 562.63(6), F.S., to provide that the prohibition on powdered alcohol does not apply to the possession of powdered alcohol solely for the purpose of transportation through Florida by a licensed manufacturer or a common carrier on behalf of a licensed manufacturer.

B. Amendments:

None.

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

By the Committees on Commerce and Tourism; and Regulated Industries; and Senator Margolis

577-03152-15

2015998c2

1 A bill to be entitled
 2 An act relating to alcoholic beverages; creating s.
 3 562.63, F.S.; defining the term "powdered alcohol";
 4 prohibiting the sale, offer for sale, purchase, use,
 5 offer for use, or possession of powdered alcohol;
 6 providing penalties; providing an exemption for the
 7 use of powdered alcohol by specified entities for
 8 research purposes; providing an exemption for the
 9 possession of powdered alcohol solely for the purpose
 10 of transportation through this state by specified
 11 entities; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Section 562.63, Florida Statutes, is created to
 16 read:
 17 562.63 Powdered alcohol; prohibited sale, offer for sale,
 18 purchase, use, offer for use, or possession.-
 19 (1) As used in this section, the term "powdered alcohol"
 20 means alcohol prepared in a powdered form for either direct use
 21 or consumption after the powder is combined with a liquid.
 22 (2) A person may not sell, offer for sale, purchase, use,
 23 offer for use, or possess powdered alcohol.
 24 (3) A vendor licensed under s. 565.02(1)(a)-(f) may not
 25 sell or offer for sale powdered alcohol.
 26 (4) (a) A person who violates this section by selling or
 27 offering for sale powdered alcohol commits a misdemeanor of the
 28 first degree, punishable as provided in s. 775.082 or s.
 29 775.083. A person who violates this section by selling or

Page 1 of 2

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

577-03152-15

2015998c2

30 offering for sale powdered alcohol after having been previously
 31 convicted of such an offense within the past 5 years commits a
 32 felony of the third degree, punishable as provided in s.
 33 775.082, s. 775.083, or s. 775.084.
 34 (b) A person who violates this section by purchasing,
 35 using, offering for use, or possessing powdered alcohol commits
 36 a noncriminal violation, punishable by a fine of \$250.
 37 (5) This section does not apply to the use of powdered
 38 alcohol for research purposes by a:
 39 (a) Health care provider that operates primarily for the
 40 purpose of conducting scientific research;
 41 (b) State institution;
 42 (c) State university or private college or university; or
 43 (d) Pharmaceutical or biotechnology company.
 44 (6) This section does not apply to the possession of
 45 powdered alcohol solely for the purpose of transportation
 46 through this state by a licensed manufacturer or a common
 47 carrier on behalf of a licensed manufacturer.
 48 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2015

Meeting Date

Topic _____

Bill Number 998
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations
Appropriations Subcommittee on General Government
Banking and Insurance
Finance and Tax
Fiscal Policy

SENATOR GWEN MARGOLIS

35th District

March 30, 2015

Chair David Simmons
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Simmons,

I respectfully request that SB 998, Alcoholic Beverages be placed on the next available committee agenda. This bill would ban the retail sale of Powdered Alcohol which was recently approved for sale in the United States. This bill was recommended favorably by both the Regulated Industries and the Commerce and Tourism committee with a unanimous vote. The House companion was also recommended favorably by its first committee of reference last week.

Sincerely,

A handwritten signature in black ink, appearing to read "Gwen Margolis".

REPLY TO:

- 3050 Biscayne Boulevard, Suite 600, Miami, Florida 33137 (305) 571-5777
- 414 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5035

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/SB 1314

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Electronic Noticing of Trust Accounts

DATE: April 8, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1314 provides a mechanism for trustees to provide electronic notices relating to trust accounts. A trustee has a duty to keep beneficiaries of an irrevocable trust reasonably informed of the trust and its administration. Specifically, the trustee must provide beneficiaries with an accounting of the trust at specified periods, disclosure of documents related to the trust, and notice of specific events related to the administration of the trust.

The Florida Trust Code currently provides that the only permissible methods of sending notice or a document to such persons are by first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message. However, for many reasons, some beneficiaries prefer to receive, store, and access correspondence and documents through secured websites and accounts. Trustees also prefer to provide sensitive financial information through secured web accounts rather than through electronic messages that carry greater security risks. Although financial institutions commonly use secure websites for providing statements and other disclosures related to bank or credit accounts, such methods are rarely used for trust accounts due to a perceived lack of authorization within current law.

The bill authorizes a trustee to post required documents to a secure website or account if a beneficiary opts in to receiving electronic documents through a secure website or account. The bill also specifies when notice or the delivery of a document by electronic message or posting is

complete and presumed received by the intended recipient for purposes of commencing a limitations period for breach of trust claims.

II. Present Situation:

“A trust is a fiduciary relationship¹ with respect to property, subjecting the person by whom the title to the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.”² A trust involves three interest holders: the settlor³ who establishes the trust; the trustee⁴ who holds legal title to the property held for the benefit of the beneficiary; and lastly, the beneficiary⁵ who has an equitable interest in property held subject to the trust.

The Florida Trust Code⁶ (the “code”) requires a trustee to administer the trust “in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with [the] code,”⁷ and also imposes a duty of loyalty upon the trustee.⁸ The violation by a trustee of a duty owed to a beneficiary is a breach of trust.⁹

Disclosure and Notice of Trust Administration

To be able to enforce the trustee’s duties, the beneficiary of a trust must know of the existence of the trust and be informed about the administration of the trust:

If there were no duty to inform and report to the beneficiary, the beneficiary might never become aware of breaches of trust or might be unaware of breaches until it is too late to obtain relief. In addition, providing information to the beneficiary protects the trustee from claims being brought long after events that allegedly constituted a breach, because the statute of limitations or the doctrine of laches will prevent the beneficiary from pursuing stale claims. As a result, the duty to inform and report to the beneficiary is fundamental to the trust relationship.¹⁰

¹ *Brundage v. Bank of America*, 996 So.2d 877, 882 (Fla. 4th DCA 2008) (trustee owes a fiduciary duty to settlor/beneficiary).

² 55A FLA.JUR.2D *Trusts* ch. 1.

³ “Settlor” means a person, including a testator, who creates or contributes property to a trust. Section 736.0103(18), F.S.

⁴ “Trustee” means the original trustee and includes any additional trustee, any successor trustee, and any cotrustee. Section 736.0103(23), F.S.

⁵ “Beneficiary” means a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee. Section 736.0103(4), F.S.

⁶ Chapter 736, F.S.

⁷ Section 736.0801, F.S.

⁸ Section 736.0802(1), F.S.

⁹ Section 736.1001(1), F.S.

¹⁰ Kevin D. Millard, *The Trustee’s Duty to Inform and Report Under the Uniform Trust Code*, 40 REAL PROPERTY, PROBATE AND TRUST J. 373, 375, (summer 2005)

http://www.americanbar.org/content/dam/aba/publications/real_property_trust_and_estate_law_journal/V40/02/2005_aba_rpt_e_journal_v40_no2_summer_master.pdf, (last visited Mar. 9, 2015).

Accordingly, s. 736.0813, F.S., imposes a duty on a Florida trustee to keep the qualified beneficiaries¹¹ (hereinafter “beneficiaries”) of an irrevocable trust reasonably informed of the trust and its administration. The duty includes, but is not limited to:¹²

- Notice of the existence of the irrevocable trust, the identity of the settlor or settlors, the right to request a copy of the trust instrument, the right to accountings, and applicability of the fiduciary lawyer-client privilege.
- Notice of the acceptance of the trust, the full name and address of the trustee, and the applicability of the fiduciary lawyer-client privilege.
- Disclosure of a copy of the trust instrument upon reasonable request.
- An annual accounting of the trust to each beneficiary and an accounting on termination of the trust or on change of the trustee. The accounting must address the cash and property transactions in the accounting period and what trust assets are currently on hand.¹³
- Disclosure of relevant information about the assets and liabilities of the trust and the particulars relating to administration upon reasonable request.
- Such additional notices and disclosure requirements related to the trust administration as required by the Florida Trust Code.¹⁴

A beneficiary must bring an action for breach of trust as to any matter adequately disclosed within an accounting or any other written report of the trustee, also known as trust disclosure documents,¹⁵ within 6 months after *receiving* the trust disclosure document or a limitation notice¹⁶ from the trustee that applies to that trust disclosure document, whichever occurs later.¹⁷ A limitation notice informs the beneficiary that an action against the trustee for breach of trust based on any matter adequately disclosed in the trust disclosure document may be barred unless the action is commenced within 6 months.

The code prescribes the permissible methods of sending a document or notice for receipt by a beneficiary.

¹¹ The term “qualified beneficiary” encompasses only a limited subset of all trust beneficiaries. The class is limited to living persons who are current beneficiaries, intermediate beneficiaries, and first-line remainder beneficiaries, whether vested or contingent. Section 736.0103(16), F.S.

¹² Section 736.0813, F.S.

¹³ Sections 736.0813 and 736.08135, F.S.

¹⁴ See, e.g. Section 736.0108(6), F.S. (notice of a proposed transfer of a trust's principal place of administration); Section 736.04117(4), F.S. (notice of the trustee's exercise of the power to invade the principal of the trust); Section 736.0414(1), F.S. (notice of terminating certain minimally funded trusts); Section 736.0417(1), F.S. (notice prior to combining or dividing trusts); Section 736.0705 (notice of resignation of trustee); Section 736.0802, F.S. (disclose and provide notice of investments in funds owned or controlled by trustee; the identity of the investment instruments, and the identity and relationship to the trustee to any affiliate that owns or controls the investment instruments; and notice to beneficiaries whose share of the trust may be affected by certain legal claims); and Section 736.0902(5), F.S., (notice of the non- application of the prudent investor rule to certain transactions).

¹⁵ “Trust disclosure document” means a trust accounting or any other written report of the trustee. A trust disclosure document adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter. Section 736.1008(4)(a), F.S.

¹⁶ “Limitation notice” means a written statement of the trustee that an action by a beneficiary against the trustee for breach of trust based on any matter adequately disclosed in a trust disclosure document may be barred unless the action is commenced within 6 months after receipt of the trust disclosure document or receipt of a limitation notice that applies to that trust disclosure document, whichever is later.

¹⁷ Section 736.1008(2), F.S.

Methods of Disclosure or Notice

Current law requires that notice or sending a document to a person under the code must be accomplished “in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.”¹⁸ However, s. 736.0109, F.S., specifies that the only permissible manners of providing notice, except notice of a judicial proceeding, or sending a document to a person under the code are:

- First-class mail;
- Personal delivery;
- Delivery to the person’s last known place of residence or place of business; or
- A properly directed facsimile or other electronic message.

Notice of a judicial proceeding must be given as provided in the Florida Rules of Civil Procedure.¹⁹

The current methods of permissible notice or service of documents under the code restrict the ability of trustees to meet increasing beneficiary demands to receive information electronically. Trustees have expressed concern regarding protecting confidential information and the privacy hazards inherent in the delivery of financial information via email.²⁰ Some trustees, sensitive to these privacy concerns, deliver required documents, such as a trust account statement, to beneficiaries by emailing notice that a trust statement is available to be viewed and downloaded on a secured website or account and providing a password for the beneficiary to access the account.²¹ However, it is not clear that by using this method, although more secure than email, the trustee technically complies with the duty to provide a trust accounting under s. 736.0813, F.S., because the document itself is not delivered by email but rather delivers information on how to access the document through a secured website. The failure to provide a trust accounting may be actionable as a breach of trust under the code if a beneficiary denies receipt of statements provided by this method. Further, it is not clear that trust documents posted on a secured website have the benefit of the 6 month limitations period for matters adequately disclosed in trust disclosure documents as they are provided in a manner that may not be permissible under the code. If the limitations period does not apply, a trustee may be subject to a breach of trust claim, even if the matters were adequately disclosed in the trust document, for up to 4 years.²²

Due to the uncertainty regarding when the limitations period runs for notice or trust disclosure documents delivered by electronic message or posted on a secured website and whether attempts to provide trust disclosure documents through a secured website or account technically comply with the statutory duty to provide certain documents to a beneficiary, trustees have little incentive to respond to beneficiary requests for electronic communications. Prudent trustees that offer electronic delivery of trust disclosure documents via email or through a secured website may find it necessary to continue providing physical documents in order to comply with notice

¹⁸ Section 736.0109(1), F.S.

¹⁹ Section 736.0109(4), F.S.

²⁰ Florida Bankers Association, *Subcommittee Report on Electronic Delivery of Trust Statements*, (2015) (on file with the Senate Committee on Judiciary).

²¹ *Id.*

²² Section 736.1008(1), F.S. provides that the applicable limitations period is determined under ch. 95, F.S. That is, the normal limitations period will be the 4 year period described in s. 95.11(3), F.S.

and disclosure requirements under the code and to secure the protection of the 6 months limitations period for breach of trust claims.

III. Effect of Proposed Changes:

CS/SB 1314 authorizes a trustee to post documents that must be provided to a person under the code to a secure electronic website or account if the person provides written authorization. The website or account must allow the recipient to download or print the posted document. A document provided solely through electronic posting must be retained on the website or account for at least 4 years after the date it is received. The written authorization to provide electronic posting of documents must:

- Be limited solely to posting documents on the electronic account or website.
- Enumerate the documents that may be posted on the electronic website or account.
- Contain specific instructions for accessing the electronic website or account, including any security measures.
- Advise that a separate notice will be sent, and the manner in which it will be sent, when a document is posted to the electronic website or account.
- Advise that the authorization may be amended or revoked at any time and provide instructions to amend or revoke authorization.
- Advise that the posting of a document on the electronic account or website may commence a limitations period as short as 6 months even if the recipient never access the electronic account, website, or document.

The trustee is required to send a notice to a person receiving trust documents by electronic posting, which notice may be made by any permissible method of notice under the code except electronic posting, at the following intervals:

- Each time a document is posted and the notice must identify each document that has been posted and how the person may access the document.
- Every year (the “annual notice”) to advise such persons that posting of a document commences a limitations period as short as 6 months even if the recipient never accesses the website, account, or document. The annual notice must also address the right to amend or revoke a previous authorization to post trust documents on a website or account. The bill provides the suggested form of the annual notice, which is substantially similar to the suggested form of a limitations notice provided in s. 736.1008(4)(c), F.S. The failure of a trustee to provide the annual notice within 380 days after the last notice automatically revokes the person’s authorization to post trust documents on an electronic website or account.

A document delivered by electronic posting is deemed received by the recipient on the earlier of the date that notice of the document’s posting is received or the date that the recipient accesses the document on the electronic account or website. The posting of a document to an electronic account or website is only effective if done in compliance with the requirements of this bill. The trustee has the burden of demonstrating compliance with such requirements. If a trustee provides notice or sends a document to a person by electronic message, notice or sending of the document is complete when sent and presumed received on the date on which it is sent unless the sender has actual knowledge the electronic message did not reach the recipient.

The bill does not preclude the sending of a document by other permissible means under the code nor does it affect or alter the duties of a trustee to keep clear, distinct, and accurate records pursuant to s. 736.0810, F.S., or the time such records must be retained.

The bill specifically delineates that notice and service of documents in a judicial proceeding related to a trust are governed by the Florida Rules of Civil Procedure rather than the code.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Trustees may see a reduction in stationary, postage, and labor costs by providing required notices and documents electronically to qualified beneficiaries that opt in to receive electronic notices.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 736.0109 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on March 23, 2015:

The CS clarifies that the website or account where trust documents are posted must be secure. The CS provides that the annual notice must be provided within 380 days of the last notice.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Bradley

597-02739-15

20151314c1

1 A bill to be entitled
 2 An act relating to electronic noticing of trust
 3 accounts; amending s. 736.0109, F.S.; authorizing a
 4 sender to post a document to a secure electronic
 5 account or website upon the authorization of a
 6 recipient; providing for effective authorization for
 7 such posting; requiring a sender to provide a separate
 8 notice once a document is electronically posted;
 9 specifying when a document sent electronically is
 10 deemed received by the recipient; requiring a sender
 11 to provide notice of the beginning of a limitations
 12 period and authority of a recipient to amend or revoke
 13 authorization for electronic posting; providing a form
 14 that may be used to effectuate such notice; requiring
 15 documents posted to an electronic website to remain
 16 accessible to the recipient for a specified period;
 17 establishing burdens of proof for purposes of
 18 determining whether proper notifications were
 19 provided; specifying that electronic messages are
 20 deemed received when sent; specifying situations under
 21 which electronic messages are not deemed received;
 22 specifying that service of documents in a judicial
 23 proceeding are governed by the Florida Rules of Civil
 24 Procedure; providing an effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

27
 28 Section 1. Present subsections (3) and (4) of section
 29 736.0109, Florida Statutes, are redesignated as subsections (5)

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

597-02739-15

20151314c1

30 and (6), respectively, present subsection (4) is amended, and
 31 new subsections (3) and (4) are added to that section, to read:
 32 736.0109 Methods and waiver of notice.—
 33 (3) In addition to the methods listed in subsection (1) for
 34 sending a document, a sender may post a document to a secure
 35 electronic account or website where the document can be
 36 accessed.
 37 (a) Before a document may be posted to an electronic
 38 account or website, the recipient must sign a separate written
 39 authorization solely for the purpose of authorizing the sender
 40 to post documents on the electronic account or website. The
 41 written authorization must:
 42 1. Enumerate the documents that may be posted in this
 43 manner.
 44 2. Contain specific instructions for accessing the
 45 electronic account or website, including the security procedures
 46 required to access the electronic account or website, such as a
 47 username and password.
 48 3. Advise the recipient that a separate notice will be sent
 49 when a document is posted to the electronic account or website
 50 and the manner in which the separate notice will be sent.
 51 4. Advise the recipient that the authorization to receive
 52 documents by electronic posting may be amended or revoked at any
 53 time and include specific instructions for revoking or amending
 54 the authorization, including the address designated for the
 55 purpose of receiving notice of the revocation or amendment.
 56 5. Advise the recipient that posting a document on the
 57 electronic account or website may commence a limitations period
 58 as short as 6 months even if the recipient never actually

Page 2 of 5

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20151314c1

59 accesses the electronic account or website or the document.

60 (b) Once the recipient signs the written authorization, the
 61 sender must provide a separate notice to the recipient when a
 62 document is posted to the electronic account or website. As used
 63 in this subsection, the term "separate notice" means a notice
 64 sent to the recipient by means other than electronic posting
 65 which identifies each document posted to the electronic account
 66 or website and provides instructions for accessing the posted
 67 document. The separate notice requirement is satisfied if the
 68 recipient accesses the document on the electronic account or
 69 website.

70 (c) A document sent by electronic posting is deemed
 71 received by the recipient on the earlier of the date that the
 72 separate notice is received or the date that the recipient
 73 accesses the document on the electronic account or website.

74 (d) At least annually after a recipient signs a written
 75 authorization, a sender shall send a notice advising the
 76 recipient that posting a document on the electronic account or
 77 website may commence a limitations period as short as 6 months
 78 even if the recipient never accesses the electronic account or
 79 website or the document and that the authorization to receive
 80 documents by electronic posting may be amended or revoked at any
 81 time. This notice must be given by means other than electronic
 82 posting and may not be accompanied by any other written
 83 communication. Failure to provide such notice within 380 days
 84 after the last notice is deemed to automatically revoke the
 85 authorization to receive documents in the manner permitted under
 86 this subsection 380 days after the last notice is sent.

87 (e) The notice required in paragraph (d) may be in

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20151314c1

88 substantially the following form: "You have authorized receipt
 89 of documents through posting to an electronic account or website
 90 where the documents can be accessed. This notice is being sent
 91 to advise you that a limitations period, which may be as short
 92 as 6 months, may be running as to matters disclosed in a trust
 93 accounting or other written report of a trustee posted to the
 94 electronic account or website even if you never actually access
 95 the electronic account or website or the documents. You may
 96 amend or revoke the authorization to receive documents by
 97 electronic posting at any time. If you have any questions,
 98 please consult your attorney."

99 (f) A sender may rely on the recipient's authorization
 100 until the recipient amends or revokes the authorization by
 101 sending a notice to the address designated for that purpose in
 102 the authorization. The recipient, at any time, may amend or
 103 revoke an authorization to have documents posted on the
 104 electronic account or website.

105 (g) A document provided to a recipient solely through
 106 electronic posting must remain accessible to the recipient on
 107 the electronic account or website for at least 4 years after the
 108 date that the document is deemed received by the recipient. The
 109 electronic account or website must allow the recipient to
 110 download or print the document. This subsection does not affect
 111 or alter the duties of a trustee to keep clear, distinct, and
 112 accurate records pursuant to s. 736.0810 or affect or alter the
 113 time periods for which the trustee must maintain those records.

114 (h) To be effective, the posting of a document to an
 115 electronic account or website must be done in accordance with
 116 this subsection. The sender has the burden of establishing

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20151314c1

117 compliance with this subsection.

118 (i) This subsection does not preclude the sending of a
119 document by other means.

120 (4) Notice to a person under this code, or the sending of a
121 document to a person under this code by electronic message, is
122 complete when the document is sent.

123 (a) An electronic message is presumed received on the date
124 that the message is sent.

125 (b) If the sender has knowledge that an electronic message
126 did not reach the recipient, the electronic message is deemed to
127 have not been received. The sender has the burden to prove that
128 another copy of the notice or document was sent by electronic
129 message or by other means authorized under this section.

130 (6)(4) Notice and service of documents in of a judicial
131 proceeding are governed by must be given as provided in the
132 Florida Rules of Civil Procedure.

133 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/15

Meeting Date

1314

Bill Number (if applicable)

Topic Electronic Noticing of Trust Accounts

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Phone 850-224-2265

Street

Tallahassee

City

FL

State

32303

Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: April 1, 2015

I respectfully request that **Senate Bill # 1314**, relating to Electronic Noticing of Trust Accounts, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley".

Senator Rob Bradley
Florida Senate, District 7

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 Rules

BILL: SM 1422

INTRODUCER: Senator Abruzzo

SUBJECT: Iran/Economic Sanctions

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	Favorable
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Sanders</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SM 1422 urges Congress and the President of the United States to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action (JPOA) or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the JPOA.

II. Present Situation:

In a 2006 resolution, the United Nations Security Council¹ (Security Council) noted with serious concern that Iran's nuclear program could have a military nuclear dimension.² The Security Council also noted that the International Atomic Energy Agency³ (IAEA) has been unable to conclude that there are no undeclared nuclear materials or activities in Iran.⁴ Since then the Security Council has published eight additional resolutions determining that Iran's proliferation of weapons of mass destruction, as well as their means of delivery, continued to constitute a threat to international peace and security.⁵

¹ The United Nations Security Council has primary responsibility for the maintenance of international peace and security. The council also takes the lead in determining the existence of a threat to the peace or act of aggression. The Security Council is composed of five permanent members (China, France, Russia, the United Kingdom, and the United States) and 10 non-permanent members elected for two-year terms by the General Assembly of the United Nations.

² United Nations Security Council, *Resolution 1696*, 1 (2006), [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696(2006)) (last visited March 19, 2015).

³ The International Atomic Energy Agency (IAEA) was established in 1957 as the world's center for cooperation in the nuclear field, the IAEA works with its Member States and multiple partners worldwide to promote the safe, secure and peaceful use of nuclear technologies. <https://www.iaea.org/>.

⁴ United Nations Security Council, *Resolution 1696*, 1 (2006), [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1696(2006)) (last visited March 19, 2015).

⁵ United Nations Security Council, *Resolution 2159*, 1 (2014), [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2159%20\(2014\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2159%20(2014)) (last visited March 19, 2015).

In an effort to perpetuate diplomatic negotiations, the five permanent members of the Security Council (known as the P5) in partnership with Germany convened to negotiate an agreement with Iran to prevent the development of nuclear weapons in Iran. An initial agreement was reached in November 2013 that outlined measures to be taken by all parties within a six month time frame. This initial agreement called for the P5+1⁶ and Iran to also finalize within six months a mutually-agreed upon long-term comprehensive solution that would ensure Iran's nuclear program will be exclusively peaceful.⁷

Joint Plan of Action

On November 24, 2013, the P5+1 and Iran formalized their agreement by signing the Joint Plan of Action (JPOA). The JPOA is an interim agreement and is the first step towards a long-term solution to stop the advance of Iran's nuclear program. Both the P5+1 and Iran are held to a series of voluntary measures for a duration of six months with the option to extend the JPOA, if necessary.⁸ The JPOA has since been renewed and extended twice, first on July 19, 2014, and again on November 24, 2014.⁹

Voluntary Measures Committed to by Iran

As part of the JPOA, Iran agreed to implement the following measures beginning January 20, 2014:¹⁰

- Halt production of enriched uranium¹¹ and disable the centrifuges¹² used to produce the material;
- Dilute and reduce the enriched uranium stockpile;
- Limit safeguarded research and development;
- Provide access for the International Atomic Energy Association (IAEA) to verify compliance on the technical understandings of the JPOA;
- Be transparent about its nuclear program by allowing access to its facilities, equipment, surveillance information, and other infrastructure; and
- Permit IAEA inspectors to conduct scheduled and unannounced inspections.¹³

⁶ Germany is recognized as an additional partner (“+1”) for the P5 in diplomatic negotiations with Iran.

⁷ European Union, European External Action Service, *Joint Plan of Action* (2013).
http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf (last visited March 19, 2015).

⁸ *Id.*

⁹ United States Department of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran*, http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf (last visited March 19, 2015).

¹⁰ The White House, Office of the Press Secretary, *Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program*, <https://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-actio> (last visited March 19, 2015).

¹¹ Uranium enrichment is one of the key steps in building nuclear weapons.

¹² A centrifuge is a device that applies rotational force to a material in order to separate particles by density. The widest use of centrifuges is for the concentration and purification of materials. See Centrifuge. In *Encyclopedia Britannica*.
<http://www.britannica.com/EBchecked/topic/102850/centrifuge> (last visited March 19, 2015).

¹³ The White House, Office of the Press Secretary, *Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program*, <https://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-actio> (last visited March 19, 2015).

Voluntary Measures Committed to by the P5+1

In order to continue negotiations, the P5+1 agreed to temporarily suspend the following sanctions involving Iran's:

- Purchase and sale of gold and other precious metals;
- Export of petrochemical products;
- Automotive industry; and
- Certain associated services regarding each of the foregoing.¹⁴

Additionally, the P5+1 committed to:

- Establish financial channels to facilitate Iran's import of certain humanitarian goods to Iran;
- Payment of medical expenses incurred by Iranians abroad;
- Payment of Iran's UN obligations;
- Payment of \$400 million in governmental tuition assistance for Iranian students studying abroad;
- License certain transactions related to the safety of Iran's civil aviation industry;
- Pause efforts to further reduce Iran's crude oil exports; and
- Enable Iran to access \$4.2 billion in Restricted Funds.¹⁵

These voluntary measures may be revoked at any time should Iran fail to comply with the JPOA.¹⁶

International Atomic Energy Association

The International Atomic Energy Association (IAEA) is designated by the United Nations' Treaty on the Non-Proliferation of Nuclear Weapons (NPT)¹⁷ as the authority responsible for the implementation of a safeguards system intended to prevent the diversion of nuclear material for weapons use.¹⁸ The IAEA has been the authority on nuclear inspections since the inception of the NPT in 1968.

¹⁴ United States Department of the Treasury, Office of Foreign Assets Control, *Frequently Asked Questions Relating to the Extension of Temporary Sanctions Relief through June 30, 2015, to Implement the Joint Plan of Action between the P5 + 1 and the Islamic Republic of Iran*, http://www.treasury.gov/resource-center/sanctions/Programs/Documents/jpoa_ext_faq_11252014.pdf (last visited March 19, 2015).

¹⁵ The term "Restricted Funds" refers to: any existing and future revenues from the sale of Iranian petroleum or petroleum products, wherever they may be held, and any Central Bank of Iran (CBI) funds, with certain exceptions for non-petroleum CBI funds held at a foreign country's central bank.

¹⁶ European Union, European External Action Service, *Joint Plan of Action* (2013).

http://eeas.europa.eu/statements/docs/2013/131124_03_en.pdf (last visited March 19, 2015).

¹⁷ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is a binding, multilateral treaty to the goal of preventing the spread of nuclear weapons and weapons technology, to promote cooperation in the peaceful uses of nuclear energy and to achieve nuclear disarmament and general and complete disarmament. More countries have ratified the NPT than any other arms limitation and disarmament agreement. See <https://www.iaea.org/publications/documents/treaties/npt> (last visited March 19, 2015).

¹⁸ United National Office for Disarmament Affairs, *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, UN.org, <http://www.un.org/disarmament/WMD/Nuclear/NPT.shtml> (last visited March 19, 2015).

As member states of the United Nations, the P5+1 and Iran delegated the IAEA as the investigative authority for determining Iran's compliance with the provisions of the JPOA. The IAEA is tasked to verify that Iran:

- Is not enriching uranium in centrifuges at its major nuclear facilities;
- Limits its centrifuge production to those needed to replace damaged machines, so Iran cannot stockpile centrifuges;
- Does not construct additional enrichment facilities;
- Does not go beyond its current enrichment research and development practices;
- Does not operate, produce or test fuel, install additional components, or transfer material to the Arak¹⁹ reactor; and
- Does not construct a facility capable of reprocessing.^{20, 21}

The IAEA remains concerned about the possible existence in Iran of undisclosed nuclear-related activities involving military-related organizations, including activities related to the development of a nuclear payload for a missile.²²

III. Effect of Proposed Changes:

The memorial urges the Congress and the President of the United States to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action (JPOA) or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the JPOA.

Copies of this memorial will be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁹ The Arak complex is host to a water production plant and the IR-40 heavy water reactor, which remains under construction. See, the Institute for Science and International Security website at <http://www.isisnucleariran.org/sites/detail/arak/>.

²⁰ Reprocessing is a series of chemical operations that separates plutonium and uranium from other nuclear waste contained in the used (or "spent") fuel from nuclear power reactors. The separated plutonium can be used to fuel reactors, but also to make nuclear weapons.

²¹ The White House, Office of the Press Secretary, *Summary of Technical Understandings Related to the Implementation of the Joint Plan of Action on the Islamic Republic of Iran's Nuclear Program*, <https://www.whitehouse.gov/the-press-office/2014/01/16/summary-technical-understandings-related-implementation-joint-plan-actio> (last visited March 19, 2015).

²² Iran is required to cooperate fully with the IAEA on all outstanding issues, particularly those which give rise to concerns about the possible military dimensions to Iran's nuclear program, including by providing access without delay to all sites, equipment, persons and documents requested by the IAEA. See United Nations Security Council Resolution 1929, [http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929\(2010\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1929(2010)) (last visited March 19, 2015).

C. Trust Funds Restrictions:

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:

None.

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 Abruzzo

25-00335A-15

20151422__

Senate Memorial

A memorial to the Congress of the United States and the President of the United States, urging them to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action or fail to reach an acceptable agreement by the dates set forth in the November 2014 extension of the Joint Plan of Action.

WHEREAS, Iran has installed 19,000 centrifuges, and

WHEREAS, Iran continues to research and develop advanced centrifuges and has not cooperated with the International Atomic Energy Agency's investigation into the possible military dimensions of its nuclear program, and

WHEREAS, a nuclear-armed Iran poses a significant threat to the United States and international security, and

WHEREAS, the P5+1 has agreed to two extensions of the Joint Plan of Action and Iran has not publicly agreed to any significant concessions, and

WHEREAS, the United States must make clear that new economic sanctions will be enacted if Iran does not timely enter into a nuclear agreement, NOW, THEREFORE,

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

That the Congress of the United States and the President of the United States are urged to pass and enact new economic sanctions against Iran should that nation be found to be in violation of the Joint Plan of Action or fail to reach an

Page 1 of 2

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25-00335A-15

20151422__

acceptable agreement by the dates set forth in the November 2014 extension of the Joint Plan of Action.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

Page 2 of 2

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THE FLORIDA SENATE

APPEARANCE RECORD

4/9/2015

Meeting Date

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

SM1422

Bill Number (if applicable)

Topic Iran Sanctions

Amendment Barcode (if applicable)

Name Derek Silver

Job Title Student

Address 750 A West St. Augustine Street

Phone 407-666-1627

Tallahassee FL 32304

Email dgs12@my.fsu.edu

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

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

Representing Chapter of the Panhandle Tallahassee

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/09/2015
Meeting Date

SM 1422
Bill Number (if applicable)

Topic IRAN

Amendment Barcode (if applicable)

Name Jordan Moran

Job Title Student FSU

Address 75 North Woodward Ave 61398

Phone 727-418-0372

Street

Tallahassee

City

FL

State

32313

Zip

Email MoranJ90@gmail.com

Speaking: For Against Information

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

Representing FSU College Republicans

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 9 2015

Meeting Date

Topic _____

Bill Number 1422
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Health and Human
Services
Communications, Energy, and Public Utilities
Community Affairs
Fiscal Policy
Regulated Industries

JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Chair*

SENATOR JOSEPH ABRUZZO

Minority Whip
25th District

March 31st, 2015

The Honorable David Simmons
The Florida Senate
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simmons:

I respectfully request that Senate Memorial 1422, related to Iran/Economic Sanctions, be considered for placement on the Rules committee agenda. This memorial will urge Congress and the President of the United States to implement sanctions on Iran if an agreement is not reached by the dates set forth by the Joint Plan of Action.

Thank you in advance for your consideration. Please let me know if I can provide you with any additional information.

Sincerely,

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

Senator Joseph Abruzzo

Cc: John B. Phelps, Staff Director

REPLY TO:

- 12300 Forest Hill Boulevard, Suite 200, Wellington, Florida 33414-5785 (561) 791-4774 FAX: (888) 284-6495
- 110 Dr. Martin Luther King, Jr. Boulevard, Belle Glade, Florida 33430-3900 (561) 829-1410
- 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/CS/SB 538

INTRODUCER: Rules Committee; Criminal Justice Committee; and Senator Simmons

SUBJECT: Disclosure of Sexually Explicit Images

DATE: April 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Sumner</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 538 creates the new criminal offense of electronic disclosure of sexually explicit images.

The bill creates a first degree misdemeanor offense for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person if the person depicted in the sexually explicit image did not consent to the disclosure. For a second or subsequent violation a person commits a third degree felony.

The bill provides for civil remedies including injunctive relief, monetary damages to include \$5,000 or actual damages whichever is greater, reasonable attorney fees and costs.

The new offense is added to the list of offenses for which a court must issue a no-contact order to a defendant, which prohibits the defendant from having contact with the victim at the time of sentencing for the duration of the sentence imposed.

The bill clarifies that providers of Internet and storage services, or other information and communication services, such as electronic communications and messaging, are not liable under the provisions of this bill.

II. Present Situation:

Revenge Porn

Publishing a nude or semi-nude photograph or video on the Internet which was originally intended to be kept private between two people has become known as “revenge porn.” In many cases, the embarrassing photos or videos are posted on a website that is specifically designed to provide a forum for this activity. These websites generally do not create their own content, but allow persons to post content to the site after the person agrees to certain terms and conditions.¹

Section 230 of the Communications Decency Act of 1996 protects website hosts from being considered the publisher or speaker of material posted by third parties provided that the material is not illegal, such as child pornography.²

Florida law does not specifically prohibit posting pictures of a nude adult person on the Internet for viewing by other adults if the picture was taken with the knowledge and consent of the person. In limited circumstances, victims may seek relief through prosecution under the offense of stalking if they can prove cyberstalking (s. 784.048, F.S.), or extortion (s. 836.05, F.S.). Posting a picture that depicts nudity of a child may be punished as a second-degree felony or a third-degree felony under chs. 827 (Abuse of Children) or 847 (Obscenity), F.S. Section 817.568(4), F.S., makes it a first degree misdemeanor for a person without consent to use another person’s personal identification information to harass that person.³ However, victims of unauthorized web postings typically have no recourse in the state.

New Jersey was the first state to respond to “revenge porn” with legislation in 2004. The New Jersey Legislature made it a felony for any person to knowingly disclose or cause the disclosure⁴ of any photograph or video recording of himself or herself engaging in sexual activity with another person without the express consent of the other person.⁵ Since 2013, at least 13 states have enacted revenge porn laws.⁶

¹ The website host typically derives profit from advertising revenue and, in some cases, from charging a fee to remove the offending material.

² The relevant portion of the Act provides: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. 230(c)(1).

³ Section 817.568(1)(f), F.S., defines “personal identification information” as “any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including ... name, postal or electronic mail address, telephone number, social security number, date of birth, mother’s maiden name, official state-issued or United States-issued driver’s license or identification number, alien registration number, governmental passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer; ... unique biometric data; ... unique electronic identification number; ... medical records; ... telecommunication identifying information or access device; or other number or information that can be used to access a person’s financial resources.”

⁴ Disclose is defined to mean sell, manufacture, give, provide, lend trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. N.J. STAT. ANN. § 2C:14-9(2004).

⁵ *Id.*

⁶ As of March 2, 2014, the National Conference of State Legislatures reported that Arizona, California, Colorado, Delaware, Georgia, Hawaii, Idaho, Illinois, Maryland, Pennsylvania, Utah, Virginia, and Wisconsin had passed revenge porn laws. 2015 State Revenge Porn Legislation (Information provided from National Conference of State Legislatures (NCSL) March 2, 2015.)

Criminal Penalties

A second degree misdemeanor is punishable by up to 60 days in jail and up to a \$500 fine. A first degree misdemeanor is punishable by up to a year in jail and up to a \$1,000 fine.

No Contact Orders

In addition to authority provided to the court to prevent an offender from having contact with a victim, s. 921.244, F.S., specifically requires the court to enter an order of no contact when an offender has committed:

- Sexual battery (s. 794.011, F.S.);
- A lewd or lascivious offense on a victim under the age of 16 (s. 800.04, F.S.);
- Specific acts of computer pornography when the offender knows or should know that a victim under the age of 16 has viewed the transmission (s. 847.0135(5), F.S.); or
- An offense for which the offender qualifies for sentencing as a violent career criminal, a habitual felony offender, a habitual violent felony offender, or a three-time violent felony offender (s. 775.084, F.S.).

Telecommunications

Interactive Computer Service (47 U.S.C. s. 230(f))

The term “interactive computer service” means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including a service or system that provides access to the Internet and systems operated or services offered by libraries or educational institutions.

Information Service (47 U.S.C. s. 153 (24))

The term “information service” means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, including electronic publishing. An information service does not include the use of any capability for management, control, or operation of a telecommunications system or the management of a telecommunications service.

Communications Services (Section 202.11, F.S.)

“Communications services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including video services to a point or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method, regardless of the protocol used for transmission or conveyance. The term includes transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing irrespective of whether the service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- Information services.
- Installation or maintenance of wiring or equipment on a customer’s premises.
- The sale or rental of tangible personal property.

- The sale of advertising, including, but not limited to, directory advertising.
- Bad check charges.
- Late payment charges.
- Billing and collection services.
- Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

III. Effect of Proposed Changes:

The bill creates s. 847.0136, F.S., to specifically address the non-consensual transmission or posting of sexually explicit images to social networking services or a website, or by means of any other electronic medium. Currently, it may be possible to prosecute such behavior under s. 817.568(4), F.S., as a first degree misdemeanor for harassment by use of personal identification information. If supported by additional facts, such actions might also be prosecuted as a felony if it includes the elements of crimes such as stalking (s. 784.048, F.S.), extortion (s. 836.05, F.S.), or an offense against a child under chs. 827 or 847, F.S.

Under the bill, a person may not disclose a sexually explicit image⁷ of an identifiable person⁸ to a social networking website or by means of another electronic medium if the disclosure is:

- Made without the person's consent;
- Knowing and intentional; and
- Made with the intent to harass the person.

A person who makes the disclosure commits a first degree misdemeanor. For a second or subsequent violation a person commits a third degree felony. The bill also provides that a violation is considered to take place in this state if any conduct that is an element of the offense or any harm to the identifiable person resulting from the offense occurs within this state.

The bill also adds the new offense to the list of offenses for which a court must issue a no-contact order to a defendant pursuant to s. 921.244, F.S.

The bill does not apply to disclosure of sexually explicit images for:

- Reporting, investigation, and prosecution of an alleged crime for law enforcement purposes; or
- Voluntary and consensual purposes in public or commercial settings.

The bill provides for civil remedies including injunctive relief, monetary damages to include \$5,000 or actual damages whichever is greater and reasonable attorney fees and costs.

Providers of Internet and storage services, or other information and communication services, such as electronic communications and messaging, are not liable under the provisions of this bill.

⁷ "Sexually explicit image" is defined in the bill as a private photograph, film, videotape, recording or other reproduction of nudity or sexual intercourse, including but not limited to, oral or anal sexual intercourse.

⁸ "Identifiable person" is defined in the bill as an individual in a sexually explicit image who can be identified through visual recognition of any part of his or her body depicted in the image or identifying information as defined in s. 397.311(13), F.S. (name, address, social security number, fingerprints, photograph, and other similar information), which accompanies or is associated with the image.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

To date, no First Amendment challenges to statutes prohibiting the conduct of “revenge porn” have been made at the appellate level. Should this bill become law, the potential exists for a First Amendment challenge. However, appellate courts have upheld the prosecution of individuals under anti-harassment and anti-stalking laws for distributing sexually explicit images or sending harassing messages.⁹ Additionally, the United States Supreme Court has ruled that the First Amendment does not attach to the dissemination of child pornography.¹⁰ As such, a defendant would not be successful in asserting a first amendment challenge for disseminating sexually explicit images of children.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁹ A court upheld an anti-stalking act’s anti-harassment provision in the prosecution of a defendant who distributed a sex video of the victim in addition to other prohibited conduct (State v. Bradford, 175 Wash.App. 912, 917 (2013)). A court upheld an anti-stalking statute on the basis that the statute regulated conduct, not speech, and prosecution was proper of a defendant who established a pattern of engaging in intimidating text messages, phone calls, and emails to the victim. Here, the court held “Such intimidating conduct serves no legitimate purpose and merits no First Amendment protection.” (State v. Hemingway, Wis.2d 297, 304-305, 310 (2012)).

¹⁰ New York v. Ferber, 458 U.S. 747, 756-757 (1982). In Ferber, the court upheld as legitimate the state interest in protecting the physical and psychological well-being of children. Id. at 756, 761.

C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) reviewed the identical bill in the House, HB 151. CJIC found that HB 151 will have a positive insignificant impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 921.244 of the Florida Statutes.

This bill creates section 847.0136 of the Florida Statutes.

This bill reenacts section 784.048 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Rules on April 9, 2015:**

- Increases the first violation of this section from a 2nd degree misdemeanor to a 1st degree misdemeanor;
- For a second or subsequent violation it creates a third degree felony;
- Deletes the provision that penalized violations by individuals 18 years or older if the violation involved a sexually explicit image of an individual younger than 16; and
- Provides for civil remedies including injunctive relief, monetary damages to include \$5,000 or actual damages whichever is greater and reasonable attorney fees and costs.

CS by Criminal Justice on March 30, 2015:

- Changes the penalty from a third degree felony to second degree misdemeanor for intentionally and knowingly disclosing sexually explicit images of a person to a social networking service or a website, or by means of any other electronic medium with the intent to harass the person.
- Changes the penalty from a second degree felony to a first degree misdemeanor if the offender was 18 years of age or older and the victim was younger than 16 years of age.

B. Amendments:

None.

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



194958

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 58 - 77
and insert:
who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) An individual who commits a second or subsequent violation under this section commits a felony of the third degree punishable as provided in s. 775.082, s.775.083, or s.775.084.

(4) A violation of this section is committed within this



194958

12 state if any conduct that is an element of the offense described
13 in subsection (2), or any harm to the identifiable person
14 resulting from the offense described in subsection (2), occurs
15 within this state.

16 (5) This section does not apply to the disclosure of a
17 sexually explicit image for:

18 (a) The reporting, investigation, and prosecution of an
19 alleged crime for law enforcement purposes.

20 (b) Voluntary and consensual purposes that, from all facts
21 and circumstances, were not intended to be nor remain
22 confidential, including in public or commercial settings.

23 (6) An aggrieved person may initiate a civil action against
24 a person who violates this section to obtain all appropriate
25 relief in order to prevent or remedy a violation of this
26 section, including:

27 (a) Injunctive relief.

28 (b) Monetary damages to include \$5,000 or actual damages
29 incurred as a result of a violation of this section, whichever
30 is greater.

31 (c) Reasonable attorney fees and costs.

32 (7) This section does not impose liability on a provider of

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

34 And the title is amended as follows:

35 Delete line 10

36 and insert:

37 jurisdiction; providing exceptions; providing civil
38 remedies; exempting

By the Committee on Criminal Justice; and Senator Simmons

591-03139-15

2015538c1

A bill to be entitled

An act relating to the disclosure of sexually explicit images; creating s. 847.0136, F.S.; providing definitions; prohibiting an individual from electronically disclosing a sexually explicit image of an identifiable person with the intent to harass such person if the individual knows or should have known that such person did not consent to the disclosure; providing criminal penalties; providing for jurisdiction; providing exceptions; exempting providers of specified services; amending s. 921.244, F.S.; requiring a court to order that a person convicted of such offense be prohibited from having contact with the victim; providing criminal penalties for a violation of such order; providing that criminal penalties for certain offenses run consecutively with a sentence imposed for a violation of s. 847.0136, F.S.; reenacting s. 784.048(7), F.S., to incorporate the amendment made to s. 921.244, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 847.0136, Florida Statutes, is created to read:

847.0136 Prohibited electronic disclosure of sexually explicit images; penalties; jurisdiction.—

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

(a) "Disclose" means to publish, post, distribute, exhibit,

Page 1 of 4

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

591-03139-15

2015538c1

advertise, offer, or transfer, or cause to be published, posted, distributed, exhibited, advertised, offered, or transferred.

(b) "Harass" means to engage in conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

(c) "Identifiable person" means an individual in a sexually explicit image who can be identified through:

1. Recognition of his or her face as depicted in the sexually explicit image; or

2. Personal identification information that accompanies or is associated with the sexually explicit image.

(d) "Personal identification information" has the same meaning as provided in s. 817.568.

(e) "Sexually explicit image" means a private photograph, film, videotape, recording, or other reproduction of:

1. Nudity; or

2. Sexual intercourse, including, but not limited to, oral sexual intercourse or anal sexual intercourse.

(2) An individual may not intentionally and knowingly disclose a sexually explicit image of an identifiable person or that contains descriptive information in a form that conveys the personal identification information of the person to a social networking service or a website, or by means of any other electronic medium, with the intent to harass such person, if the individual knows or should have known that the person depicted in the sexually explicit image did not consent to such disclosure.

(3) (a) Except as provided in paragraph (b), an individual who violates this section commits a 2nd degree misdemeanor,

Page 2 of 4

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

591-03139-15

2015538c1

59 punishable as provided in s. 775.082 or s. 775.083.

60 (b) An individual who is 18 years of age or older at the
 61 time he or she violates this section commits a 1st degree
 62 misdemeanor, punishable as provided in s. 775.082 or s. 775.083,
 63 if the violation involves a sexually explicit image of an
 64 individual who was younger than 16 years of age at the time the
 65 sexually explicit image was created.

66 (4) A violation of this section is committed within this
 67 state if any conduct that is an element of the offense described
 68 in subsection (2), or any harm to the identifiable person
 69 resulting from the offense described in subsection (2), occurs
 70 within this state.

71 (5) This section does not apply to the disclosure of a
 72 sexually explicit image for:

73 (a) The reporting, investigation, and prosecution of an
 74 alleged crime for law enforcement purposes.

75 (b) Voluntary and consensual purposes in public or
 76 commercial settings.

77 (6) This section does not impose liability on a provider of
 78 an interactive computer service as defined in 47 U.S.C. s.
 79 230(f), an information service as defined in 47 U.S.C. s. 153,
 80 or communications services as defined in s. 202.11, for:

81 (a) The transmission, storage, or caching of electronic
 82 communications or messages of other persons;

83 (b) Other related telecommunications or commercial mobile
 84 radio service; or

85 (c) Content provided by another person.

86 Section 2. Section 921.244, Florida Statutes, is amended to
 87 read:

591-03139-15

2015538c1

88 921.244 Order of no contact; penalties.-

89 (1) At the time of sentencing an offender convicted of a
 90 violation of s. 794.011, s. 800.04, s. 847.0135(5), s. 847.0136,
 91 or any offense in s. 775.084(1)(b)1.a.-o., the court shall order
 92 that the offender be prohibited from having any contact with the
 93 victim, directly or indirectly, including through a third
 94 person, for the duration of the sentence imposed. The court may
 95 reconsider the order upon the request of the victim if the
 96 request is made at any time after the victim has attained 18
 97 years of age. In considering the request, the court shall
 98 conduct an evidentiary hearing to determine whether a change of
 99 circumstances has occurred which warrants a change in the court
 100 order prohibiting contact and whether it is in the best interest
 101 of the victim that the court order be modified or rescinded.

102 (2) An ~~Any~~ offender who violates a court order issued under
 103 this section commits a felony of the third degree, punishable as
 104 provided in s. 775.082, s. 775.083, or s. 775.084.

105 (3) The punishment imposed under this section shall run
 106 consecutive to any former sentence imposed for a conviction for
 107 any offense under s. 794.011, s. 800.04, s. 847.0135(5), s.
 108 847.0136, or any offense in s. 775.084(1)(b)1.a.-o.

109 Section 3. Subsection (7) of s. 784.048, Florida Statutes,
 110 is reenacted for the purpose of incorporating the amendment made
 111 by this act to s. 921.244, Florida Statutes, in a reference
 112 thereto.

113 Section 4. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/19/15
Meeting Date

538
Bill Number (if applicable)

Topic Sexually Explicit Images

Amendment Barcode (if applicable)

Name Jennifer Drift

Job Title Executive Director

Address 1820 E. Park Ave Ste 100

Phone 850 297 2000

Street

Tallahassee

City

FL

State

32301

Zip

Email jdrift@fcasv.org

Speaking: For Against Information

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

Representing FL Council Against Sexual Violence

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 8, 2015

Meeting Date

SB 538

Bill Number (if applicable)

Topic Disclosure of Sexually Explicit Images

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title _____

Address 123 S. Adams Street

Phone 671-4401

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4 1 9 12015

Meeting Date

Topic _____

Bill Number 538
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-15

Meeting Date

5B538

Bill Number (if applicable)

Topic Revenge Porn

Amendment Barcode (if applicable)

Name Gary Hellstrom

Job Title Student

Address 677 W. St. Augustine St.

Phone (352) 871-2160

Street

Tallahassee

City

FL

State

32304

Zip

Email csbillha@my.fsu.edu

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

9 Apr 15

Meeting Date

SB 538

Bill Number (if applicable)

Topic Sexually Explicit Images

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe
Street

Phone 577-3032

Tall FL 32301
City State Zip

Email barney@smartjusticealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 542

INTRODUCER: Criminal Justice Committee and Senators Benacquisto and Simpson

SUBJECT: Interception of Wire, Oral, or Electronic Communication

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Fav/CS
2.	<u>Wiehle</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Erickson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 542 provides that it is lawful for a child under 18 years of age to intercept and record an oral communication if the child has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child. Therefore, the bill creates an exception to the general prohibition against interceptions of oral communications. Absent this exception, the recording is proscribed and is not admissible in evidence in a criminal proceeding.

II. Present Situation:

Definitions of Relevant Terms

Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

Interception of Oral Communications

Paragraphs (1)(a) and (4)(a) of s. 934.03, F.S., make it a third degree felony¹ to intentionally intercept an oral communication. The statute provides for a number of exceptions to this general prohibition.² For example, it is lawful under ss. 934.03-934.09, F.S.,³ for:

- An investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept an oral communication if such person is a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of such interception is to obtain evidence of a criminal act;⁴ and
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to such interception.⁵

The contents of an intercepted communication and evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S. (i.e., creating a statutory exclusionary rule):

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.⁶

McDade v. State

In *McDade v. State*,⁷ the Florida Supreme Court (“Court”) held that it was an error to receive in evidence at McDade’s criminal trial recordings that his stepdaughter surreptitiously made when she was 16 years-old. The recordings, which recorded conversations between McDade and his stepdaughter in McDade’s bedroom, were introduced at McDade’s trial for various crimes involving sexual abuse of his stepdaughter. The recorded conversations included statements by McDade that supported his stepdaughter’s testimony at trial that McDade had sexually abused her. McDade had objected to their introduction.

¹ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

² Section 934.02(2)(a)-(j), F.S.

³ These laws respectively relate to: interception and disclosure of wire, oral, and electronic communications; manufacture of communication-intercepting devices; confiscation of those devices; authorization of an interception; authorization for disclosure and use of an intercepted communication; and the procedure for interception.

⁴ Section 934.03(2)(c), F.S.

⁵ Section 934.03(2)(d), F.S.

⁶ Section 934.06, F.S.

⁷ 2014 WL 6977944 (Fla. 2014).

The question before the Court was whether a recording of solicitation and confirmation of child sexual abuse surreptitiously made by the child victim in the accused's bedroom falls within the proscription of ch. 934, F.S. The Court determined that this was a question of statutory interpretation. The Court found that none of the exceptions in s. 934.03, F.S., to the general prohibition in that statute against interception of oral communications called "for the interception of conversations based on one's status as the victim of a crime."⁸ Further, the Court determined that the facts regarding the conversations and the recording of those conversations indicated the recordings were prohibited and inadmissible under ch. 934, F.S.:

[U]nder the definition of oral communication provided by section 934.02(2), Florida Statutes (2010), McDade's conversations with his stepdaughter in his bedroom are oral communications. The facts related to the recorded conversations support the conclusion that McDade's statements were "uttered by a person exhibiting an expectation that [his] communication [was] not subject to interception" and that McDade made those statements "under circumstances justifying" his expectation that his statements would not be recorded. § 934.02(2), Fla. Stat. (2010). The recordings were made surreptitiously. McDade did not consent to the conversations being recorded, and none of the other exceptions listed in section 934.03(2) apply. The recordings, therefore, were prohibited. Because the recordings impermissibly intercepted oral communications, the recordings are inadmissible under section 934.06, Florida Statutes (2010).⁹

At the conclusion of its analysis, the Court stated:

It may well be that a compelling case can be made for an exception from chapter 934's statutory exclusionary rule for recordings that provide evidence of criminal activity -or at least certain types of criminal activities. But the adoption of such an exception is a matter for the Legislature. It is not within the province of the courts to create such an exception by ignoring the plain import of the statutory text.¹⁰

⁸ *McDade*, 2014 WL 697794 at *4.

⁹ *McDade*, 2014 WL 697794 at *5. The Court obtained jurisdiction when it agreed to consider a question (which the Court rephrased) that had been certified by the Second District Court of Appeal ("Second District") in *McDade v. State*, 114 So.2d 465 (Fla. 2d DCA 2013). In that case, the Second District rejected McDade's argument that the trial court should have suppressed the recordings under the exclusionary rule in s. 934.06, F.S. The Second District determined that the statutory proscription on recording oral communications only applied "where the person uttering the communication has a reasonable expectation of privacy under the circumstances," *McDade*, 114 So.2d at 470, and determined that McDade did not have a reasonable expectation of privacy. The Second District relied on a prior Florida Supreme Court case, *State v. Inciarrano*, 473 So.2d 1272 (Fla. 1985), which involved a victim recording. The Court rejected the Second District's application of *Inciarrano*. It found the circumstances in *Inciarrano* were "starkly different" from the circumstances in the case presented. *McDade*, 2014 WL 697794 at *5. Further, *Inciarrano* was "not based on a general rule that utterances associated with criminal activity are by virtue of that association necessarily uttered in circumstances that make unjustified any expectation that the utterances will not be intercepted" and could not "be used as a basis for the decision reached by the Second District, which turns on McDade's status as a person engaged in crimes involving the sexual abuse of child." *McDade*, 2014 WL 697794 at *6.

¹⁰ *McDade*, 2014 WL 697794 at *7.

III. Effect of Proposed Changes:

The bill addresses the decision of the Florida Supreme Court in *McDade v. State*.¹¹ The bill creates a new exception in s. 934.03, F.S., to the general prohibition in that statute against interception of oral communications. The bill provides that it is lawful for a child under 18 years of age to intercept and record an oral communication if the child has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

As a result of this exception, the recording will not be proscribed and the exclusionary rule in s. 934.06, F.S., will not prohibit the recording from being received in evidence in a criminal proceeding.

The bill takes effect on July 1, 2015.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

¹¹ 2014 WL 6977944 (Fla. 2014).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 934.03 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 2, 2015:

Amends the description of unlawful acts against a child under 18 years of age to include an unlawful sexual act.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senators Benacquisto
and Simpson

591-01815-15

2015542c1

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A bill to be entitled

An act relating to interception of wire, oral, or
electronic communication; amending s. 934.03, F.S.;
authorizing a child younger than 18 years of age to
intercept and record an oral communication if the
child is a party to the communication and certain
conditions are met; providing an effective date.

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

Section 1. Paragraph (k) is added to subsection (2) of
section 934.03, Florida Statutes, to read:

934.03 Interception and disclosure of wire, oral, or
electronic communications prohibited.—

(2)

(k) It is lawful under ss. 934.03-934.09 for a child under
18 years of age to intercept and record an oral communication if
the child is a party to the communication and has reasonable
grounds to believe that recording the communication will capture
a statement by another party to the communication that the other
party intends to commit, is committing, or has committed an
unlawful sexual act or an unlawful act of physical force or
violence against the child.

Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

9 Apr 15
Meeting Date

SB 0542
Bill Number (if applicable)

Topic Interception of Elec. Communication

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title 204 S. Monroe St.

Address _____

Phone 577-3032

Street

Tall
City

FL
State

32301
Zip

Email barney@smartjusticealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 8, 2015

Meeting Date

SB 542

Bill Number (if applicable)

Topic Interception of Wire, Oral, or Electronic Communication

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title _____

Address 123 S. Adams Street

Phone 671-4401

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/15
Meeting Date

542
Bill Number (if applicable)

Topic Int. of Communications

Amendment Barcode (if applicable)

Name Jennifer Drift

Job Title Executive Director

Address 1820 E. Park Ave St 100

Phone 850 297 2000

Street

Tallahassee

State

FL

32301

Zip

Email jdrift@fcasv.org

Speaking: For Against Information

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

Representing FL Council Against Sexual Violence

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Banking and Insurance, *Chair*
Appropriations, *Vice Chair*
Appropriations Subcommittee on Health
and Human Services
Education Pre-K-12
Higher Education
Judiciary
Rules

SENATOR LIZBETH BENACQUISTO
30th District

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

March 31, 2015

The Honorable David Simmons
Senate Rules, Chair
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 542- Relating to Interception of a Communication

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to agenda SB 542, Relating to Interception of a Communication, for a public hearing at your earliest convenience.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in cursive script that reads "Lizbeth Benacquisto".

Lizbeth Benacquisto
Senate District 30

Cc: John Phelps

REPLY TO:

- 2310 First Street, Suite 305, Fort Myers, Florida 33901 (239) 338-2570
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5030

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/CS/SB 656

INTRODUCER: Regulated Industries Committee, Judiciary Committee, and Senator Latvala

SUBJECT: Unlawful Detention by a Transient Occupant

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Fav/CS
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 656 establishes a new remedy for homeowners or rightful residents to remove a transient occupant who has no legal right to the property.

This bill identifies a number of factors for a property owner, or other rightful resident, law enforcement, or the court to consider in determining whether a person is a transient occupant. These factors include whether the person:

- Has an ownership, financial, or leasehold interest in the property;
- Has property utility subscriptions;
- Lists the property as the address of record with governmental agencies;
- Receives mail at the property;
- Has designated space at the property; and
- Has no apparent permanent residence elsewhere.

Instead of pursuing legal action for unlawful detainer, a person who is rightfully in possession of a residence has the option of providing a law enforcement officer with a sworn affidavit that includes the required factors that establish that the person they wish to be removed is a transient occupant. If the transient occupant does not leave, the law enforcement officer may charge him or her with criminal trespassing. Alternatively, if a person pursues legal action and a court finds that a defendant is properly a tenant rather than a transient occupant, the court must allow the plaintiff the opportunity to provide notice and amend pleadings to pursue eviction.

II. Present Situation:

Unlawful Detainer

An unlawful detainer is the “unjustifiable retention of the possession of real property by one whose original entry was lawful”¹

The party entitled to possession has a cause of action for unlawful detainer if a person enters a property in a peaceable manner and stays without consent.²

The party who is the rightful possessor is entitled to an action for unlawful retainer resolved through summary procedure under s. 51.011, F.S.,³ for expedited review by the court.⁴ The rightful possessor may bring an action for unlawful detainer any time within 3 years after the possession has been withheld from the party against his or her consent. If the person to be served is not found at the usual place of residence, the process server may serve a summons by posting a copy in a conspicuous place on the property.⁵

If the plaintiff prevails, the court must enter judgment that the plaintiff recover possession of the property described in the complaint, along with damages and costs, and award a writ of possession without delay.⁶ Upon a showing that the defendant is willful and knowingly wrongful, damages are double the rental value of the premises from the time of the unlawful holding.⁷

An action for unlawful detainer is not available to residential tenancies.⁸

The Florida Residential Landlord and Tenant Act

Residential tenancies are governed by the Florida Residential Landlord and Tenant Act (act).⁹

The landlord is the owner or lessor of a dwelling unit. The tenant is a person entitled to occupy a dwelling unit under a rental agreement, in which the tenant makes periodic payments of rent to the landlord.¹⁰ When people enter into a landlord and tenant relationship, as evidenced by a

¹ BLACK’S LAW DICTIONARY (10th ed. 2014).

² Section 82.04(1), F.S.

³ Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant’s answer which must be filed within 5 days after service of process of the plaintiff’s complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within 5 days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

⁴ Section 82.04(1), F.S.

⁵ Section 82.061, F.S.

⁶ Section 82.091, F.S.

⁷ Section 82.071, F.S.

⁸ Section 82.04(2), F.S.

⁹ Part II of Chapter 83, F.S., s. 83.40, F.S.

¹⁰ Sections 83.43(3), (4), and (6), F.S.

rental agreement, each party commits to abide by certain legal obligations and responsibilities. Rental agreements may be written or oral.¹¹ Oral rental agreements are for a duration of less than one year.¹² Every rental agreement carries with it an obligation of good faith in both performance and enforcement.¹³ Landlords are entitled to collect security deposits from tenants and hold the deposits as security against the performance of the rental agreement.¹⁴

Landlords and tenants have different obligations to maintain the property. Landlords must comply with building, housing, and health codes, and for dwelling units other than a single-family home or a duplex, a landlord must provide for:

- The extermination of insects and rodents;
- Locks and keys;
- The clean and safe condition of common areas;
- Garbage removal; and
- Heat during winter, running water, and hot water.¹⁵

Tenants, in turn, must:

- Comply with building, housing and health codes that apply to tenants;
- Keep the premises clean and sanitary;
- Keep plumbing fixtures clean and sanitary and in repair;
- Use and operate electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other appliances in a reasonable manner;
- Not destroy or damage the premises or property or allow others to do so; and
- Not disturb the peace.¹⁶

A landlord or tenant may petition the court to enforce rights and duties through a civil action.¹⁷

If a tenant fails to materially comply with the rental agreement, or with his or her legal obligation to maintain the dwelling, a landlord may begin eviction proceedings. Prior to initiating eviction proceedings, for both residential and nonresidential tenancies, the landlord generally must provide the tenant written notice of the violation and an opportunity to correct the problem.¹⁸

If the tenant fails to correct the problem, the landlord may bring an action in the county court where the property is located.¹⁹ The filing fee for the removal of a tenant is \$180.²⁰ If the court enters a judgment for the landlord, the clerk will issue a writ of possession to the sheriff.²¹ After

¹¹ Section 83.43(7), F.S.

¹² *Id.*

¹³ Section 83.44, F.S.

¹⁴ Section 83.43(12), F.S.

¹⁵ Sections 83.51(1)(a) and (2)(a), F.S.

¹⁶ Section 83.52, F.S.

¹⁷ Section 83.54, F.S.

¹⁸ Section 83.56(2), F.S.; *3618 Lantana Road Partners, LLC v. Palm Beach Pain Management, Inc.*, 57 So. 3d 966, 968 (Fla. 4th DCA 2011).

¹⁹ Section 83.59(2), F.S.

²⁰ Section 34.041(1)(a)7., F.S.

²¹ Section 83.62(1), F.S.

the sheriff provides 24 hours' notice to the tenant, through a posting on the premises, the landlord may remove the tenant's property and change the locks.²²

Criminal Trespass

Section 810.08, F.S., establishes the offense of trespass for anyone who:

willfully enters or remains in any structure or conveyance, or having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.²³

Charges range from a second degree misdemeanor for simple trespass to a first degree misdemeanor if a person is in the structure or conveyance at the time the offender trespassed or attempted to trespass.²⁴

Media on Unwelcome House Guests

News articles report that an increasing number of property owners or tenants are inviting guests into their homes and having difficulty getting them to leave.²⁵ If a law enforcement agency is called for assistance to remove guests who have overstayed their welcome, the property owner or person having a written lease is typically told that the law enforcement agency is not authorized to remove the guest because the matter is a civil matter, not criminal trespassing. Additionally, law enforcement agencies reportedly advise property owners and tenants that the law requires a court order prior to changing the locks on the property or taking other actions to remove the person from the home.

A legal action to remove a guest who has overstayed his or her welcome at a residence is known as an unlawful detainer action. In Hillsborough County alone, filings for unlawful detainer increased from 14 in 1999 to 67 in 2003.²⁶

III. Effect of Proposed Changes:

This bill establishes a new remedy for homeowners or rightful residents to remove a transient occupant from the residence.

²² Section 83.62(2), F.S.

²³ Section 810.08(1), F.S.

²⁴ Section 810.08(2)(a) and (b), F.S.; A second degree misdemeanor is punishable by a jail term of up to 60 days. A first degree misdemeanor is punishable by a jail term of up to 1 year. A third degree felony is punishable by a term of imprisonment of up to 5 years. Section 775.082 (4)(a) and (b), F.S. Section 775.083(1)(d) and (e), F.S., authorizes fines of up to \$500 for a second degree misdemeanor and up to \$1,000 for a first degree misdemeanor.

²⁵ Hayes, Stephanie, "In Florida, Evicting Unwelcome Guest is no Simple Matter," Tampa Bay Times (Apr. 2, 2009), available at: <http://www.tampabay.com/news/humaninterest/in-florida-evicting-unwelcome-guest-is-no-simple-matter/989264>, (last visited March 27, 2015); and Behnken, Shannon, "Only Court Order Will Rid You of Unwanted House Guest," Tampa Bay Online (Sept. 22, 2014), available at: <http://tbo.com/news/business/only-court-order-will-rid-you-of-unwanted-house-guest-255859> (last visited March 27, 2015).

²⁶ Franklin, Marcus, "Law Slanted in Favor of Unwanted Guests," *St. Petersburg Times Online* (Feb. 17, 2004); available at: http://www.sptimes.com/2004/02/17/Tampabay/Law_slanted_in_favor_.shtml (last visited March 27, 2015).

Transient Occupancy and Unlawful Detention

The bill defines a transient occupant as a person whose residency in a residential dwelling is not subject to a lease, is intended to be transient, and has occurred for a brief length of time.

Transient occupancy can be shown by the following:

- The person has no ownership or financial interest in the property;
- The person has no property utility subscriptions;
- The person does not list the property address as an address of record with any governmental agency, including the Department of Highway Safety and Motor Vehicles or the supervisor of elections;
- The person does not get mail at the property;
- The person pays little or no rent;
- The person has no designated space of his or her own or keeps minimal personal belongings at the property; or
- The person has an apparent permanent residence somewhere else.

The bill provides that minor contributions towards household goods or expenses do not establish residency.

The stay at the property becomes an unlawful detention if the transient occupant remains at the property after the party rightfully in possession has asked the transient occupant to leave.

Process to Remove Transient Occupant

The party entitled to possession must provide to a law enforcement officer a sworn affidavit that a transient occupant is unlawfully detaining residential property. The sworn affidavit must set forth the facts, including the applicable factors listed in s. 82.045(1)(a), F.S., which establish that a transient occupant is unlawfully detaining the residential property. The law enforcement officer may then order the transient occupant to surrender possession of the residential property.

A transient occupant who fails to surrender possession of property is subject to the criminal charge of trespassing. In any prosecution for trespassing, the state only need prove the elements of trespass and not that the defendant is actually a transient occupant.

Additionally, the bill creates a cause of action for unlawful detainer and removal of a transient occupant pursuant to s. 82.04, F.S. Under existing s. 82.07, F.S., a court in an unlawful detainer action may award a prevailing plaintiff damages equal to double the rental value of the premises if the detention is willful and knowingly wrongful.²⁷ Whether the damages available under the bill are intended to be less than those under existing s. 82.07, F.S., is unclear.

If the court finds that the defendant is not a transient occupant but is instead a tenant, the court must allow the plaintiff an opportunity to proceed under an eviction action.

The bill takes effect July 1, 2015.

²⁷ Section 82.071, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill provides an option to a rightful owner or possessor of property to provide a sworn affidavit with a law enforcement officer to have the transient occupant removed from the property. In situations in which a transient occupant is financially unable to pay the plaintiff's legal costs or damages, this bill provides a financial advantage to a rightful possessor plaintiff in avoiding the need for costly litigation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to clarify whether the damages available under existing s. 82.071, F.S., apply to the unlawful detainer actions authorized by the bill.

VIII. Statutes Affected:

This bill creates section 82.045 of the Florida Statutes.

IX. Additional Information:

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

CS/CS by Regulated Industries on March 31, 2015:

The CS/CS:

- Amends s. 82.045(1), F.S., to delete the condition of not being subject to a written lease as one of the conditions of transient occupancy. Instead, it provides that a transient occupant is not subject to a lease;
- Amends s. 82.045(1)(a)1., F.S., to include not having a leasehold in the property among factors that establish that a person is a transient occupant;
- Amends s. 82.045(3), F.S., to require that the sworn affidavit must set forth the facts, including the applicable factors listed in s. 82.045(1)(a), F.S., which establish that a transient occupant is unlawfully detaining residential property; and
- Does not amend s. 82.045(4), F.S., to provide that:
 - The party entitled to possession may use the summary procedure in s. 51.011, F.S., to remove a transient occupant;
 - The court may award the plaintiff compensatory damages if it determines that the defendant is a transient occupant;
 - The county courts jurisdiction over action for unlawful detainer; and
 - That the filing fee for an action under s. 82.045(4), F.S., is the fee established in s. 34.041(1)(a)7., F.S., for removal of a tenant.

CS by Judiciary Committee on March 10, 2015:

This CS:

- Provides a remedy for persons who are in rightful possession of a residential property to have transient occupants removed based on unlawful detainer;
- Provides a process for a law enforcement officer, upon receipt of a sworn affidavit from a person in rightful possession of a property to remove a transient occupant or charge that person with criminal trespass;
- Authorizes persons the option to pursue legal action against a transient occupant or file a sworn affidavit with a law enforcement officer to have the person removed or charged with criminal trespass; and
- Authorizes a plaintiff who pursues legal action based on unlawful detainer law the opportunity to provide notice to the defendant and amend pleadings to pursue eviction if the court finds that the defendant is a tenant.

- B. **Amendments:**

None.

By the Committees on Regulated Industries; and Judiciary; and
Senator Latvala

580-03236-15

2015656c2

1 A bill to be entitled
2 An act relating to unlawful detention by a transient
3 occupant; creating s. 82.045, F.S.; defining the term
4 "transient occupant"; providing factors that establish
5 a transient occupancy; providing for removal of a
6 transient occupant by a law enforcement officer;
7 providing a cause of action for wrongful removal;
8 limiting actions for wrongful removal; providing a
9 civil action for removal of a transient occupant;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 82.045, Florida Statutes, is created to
15 read:

16 82.045 Remedy for unlawful detention by a transient
17 occupant of residential property.-

18 (1) As used in this section, the term "transient occupant"
19 means a person whose residency in a dwelling intended for
20 residential use has occurred for a brief length of time, is not
21 pursuant to a lease, and whose occupancy was intended as
22 transient in nature.

23 (a) Factors that establish that a person is a transient
24 occupant include, but are not limited to:

25 1. The person does not have an ownership interest,
26 financial interest, or leasehold interest in the property
27 entitling him or her to occupancy of the property.

28 2. The person does not have any property utility
29 subscriptions.

Page 1 of 3

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

580-03236-15

2015656c2

30 3. The person does not use the property address as an
31 address of record with any governmental agency, including, but
32 not limited to, the Department of Highway Safety and Motor
33 Vehicles or the supervisor of elections.

34 4. The person does not receive mail at the property.

35 5. The person pays minimal or no rent for his or her stay
36 at the property.

37 6. The person does not have a designated space of his or
38 her own, such as a room, at the property.

39 7. The person has minimal, if any, personal belongings at
40 the property.

41 8. The person has an apparent permanent residence
42 elsewhere.

43 (b) Minor contributions made for the purchase of household
44 goods or minor contributions toward other household expenses, do
45 not establish residency.

46 (2) A transient occupant unlawfully detains a residential
47 property if the transient occupant remains in occupancy of the
48 residential property after the party entitled to possession of
49 the property has directed the transient occupant to leave.

50 (3) Any law enforcement officer may, upon receipt of a
51 sworn affidavit of the party entitled to possession that a
52 person who is a transient occupant is unlawfully detaining
53 residential property, direct a transient occupant to surrender
54 possession of residential property. The sworn affidavit must set
55 forth the facts, including the applicable factors listed in
56 paragraph (1) (a), which establish that a transient occupant is
57 unlawfully detaining residential property.

58 (a) A person who fails to comply with the direction of the

Page 2 of 3

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

580-03236-15

2015656c2

59 law enforcement officer to surrender possession or occupancy
60 violates s. 810.08. In any prosecution of a violation of s.
61 810.08 related to this section, whether the defendant was
62 properly classified as a transient occupant is not an element of
63 the offense, the state is not required to prove that the
64 defendant was in fact a transient occupant, and the defendant's
65 status as a permanent resident is not an affirmative defense.

66 (b) A person wrongfully removed pursuant to this subsection
67 has a cause of action for wrongful removal against the person
68 who requested the removal, and may recover injunctive relief and
69 compensatory damages. However, a wrongfully removed person does
70 not have a cause of action against the law enforcement officer
71 or the agency employing the law enforcement officer absent a
72 showing of bad faith by the law enforcement officer.

73 (4) A party entitled to possession of a dwelling has a
74 cause of action for unlawful detainer against a transient
75 occupant pursuant to s. 82.04. The party entitled to possession
76 is not required to notify the transient occupant before filing
77 the action. If the court finds that the defendant is not a
78 transient occupant but is instead a tenant of residential
79 property governed by part II of chapter 83, the court may not
80 dismiss the action without first allowing the plaintiff to give
81 the transient occupant notice required by that part and to
82 thereafter amend the complaint to pursue eviction under that
83 part.

84 Section 2. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

April 8, 2015

Meeting Date

SB 656

Bill Number (if applicable)

Topic Homeowner's Rights

Amendment Barcode (if applicable)

Name Sarrah Carroll

Job Title _____

Address 123 S. Adams Street

Phone 671-4401

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
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 Rules

BILL: CS/CS/SB 806

INTRODUCER: Rules Committee, Banking and Insurance Committee and Senator Richter

SUBJECT: Regulation of Financial Institutions

DATE: April 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	<u>Johnson/Knudson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 806 makes the following changes to the regulation of financial institutions by the Office of Financial Regulation (OFR):

- Simplifies the process by which a financial institution can notify the OFR when re-designating its main or principal office.
- Specifies the ways semiannual assessments can be transmitted electronically and further specifies the dates by which assessments must be received by the OFR.
- Deletes the requirement that the OFR select an appraiser to conduct certain real-estate appraisals.
- Provides that the production of books and records of a Florida office of an international banking corporation is not required in response to a subpoena issued in a matter governed by rules of civil procedure if such books and records are maintained outside of the United States and are not in the possession, control, or custody of the international banking corporation's office, agency, or branch established in Florida. This provision does not apply to a subpoena issued on behalf of a federal, state, or local government law enforcement agency, legislative body, or grand jury. Currently, such subpoena requests may relate to records not in the possession of the Florida office or may conflict with the privacy laws of the foreign country regulating the international banking corporation thereby subjecting the Florida office and its officers and employees to be in violation of such privacy laws.
- Specifies the date by which an international banking corporation must provide its annual certification of capital accounts to the OFR.

II. Present Situation:

State Regulation of Financial Institutions

The Division of Financial Institutions of the Florida Office of Financial Regulation (OFR)'s charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and the Florida Financial Institutions Rules, adopted by the Financial Services Commission.¹ This includes subjecting these entities to the OFR subpoena powers, regular examinations, and the general enforcement powers of the OFR provided in ch. 655, F.S. The specific chapters under the Codes are:

- Chapter 655, F.S. – Financial Institutions Generally;
- Chapter 657, F.S. – Credit Unions;
- Chapter 658, F.S. – Banks and Trust Companies;
- Chapter 660, F.S. – Trust Business;
- Chapter 663, F.S. – International Banking;
- Chapter 665, F.S. – Capital Stock Associations; and
- Chapter 667, F.S. – Savings Banks.

As of June 30, 2014, the Division of Financial Institutions licenses and regulates 254 state-chartered financial institutions for safety and soundness:²

- 132 banks;
- 72 credit unions;
- 25 international bank offices; and
- 12 trust companies

Access to Books and Records; Subpoenas

For a financial institution that is subject to the Financial Institutions Codes,³ access to the books and records of the institution is governed by section 655.059, F.S. While s. 655.059, F.S., serves to limit access to books and records of the institution, it specifically permits inspection and examination of books and records “as compelled by a court of competent jurisdiction, pursuant to a subpoena issued pursuant to the Florida Rules of Civil Procedure, the Florida Rules of Criminal Procedure, or the Federal Rules of Civil Procedure, or pursuant to a subpoena issued in accordance with state or federal law.”⁴

As a matter of general jurisdictional principle in Florida, s. 48.193, F.S., provides a list of acts which will subject a person to the jurisdiction of the courts of this state. Such acts include, among other acts, “operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state,” “committing a tortious act within this state,” and “breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.”

¹ Chapters 69U-100 through 69U-150, F.A.C.

² Office of Financial Regulation, *Fast Facts* (2nd ed., Dec. 2014), available at: <http://flofr.com/StaticPages/documents/FastFacts2015.pdf>; last visited March 27, 2015.

³ The Financial Institutions Codes comprise Chapters 655, 657, 658, 660, 663, 665, and 667, Florida Statutes, as well as ch. 662, Florida Statutes, once that chapter takes effect on October 1, 2015. *See* s. 655.005(1)(k), Florida Statutes.

⁴ Section 655.059(1)(e), F.S.

Main or Principal Office

Section 655.005, F.S., provides the definition for “main office” or “principal office” of a financial institution as the main business office designated in its articles of incorporation or bylaws. The identified location is approved by the OFR in the case of a state financial institution, or by the appropriate federal regulatory agency in the case of a federal financial institution. When an institution desires to redesignate the location of its main office, it must file an amendment to its articles of incorporation or bylaws and provide the changes to the OFR for review and approval.⁵

Assessments

Section 655.047, F.S., requires each state financial institution to pay the OFR a semiannual assessment based on the total assets as shown on the statement of condition for each financial institution. The mailing of such assessments must be postmarked on or before January 31 and July 31 of each year. The current statute does not explicitly authorize the acceptance of semiannual assessment payments made to the OFR electronically; however, the OFR states in its agency analysis⁶ that electronic payment of assessments are currently accepted and most financial institutions have chosen to send payments electronically rather than U.S. standard mail.

Appraisals

Section 655.60, F.S., authorizes the OFR to request appraisals of real estate or other property held by any state financial institution when the OFR believes a state financial institution’s own appraisals or evaluations of its ability to make payments may be excessive. The statute provides that an appraisal must be made by a licensed or certified appraiser or an appraiser that is selected by the OFR. The cost of the appraisal must be paid by the state financial institution directly to the appraiser upon the institution’s receipt of a statement of appraisal cost. Following the completion of the appraisal, a copy of the appraisal report made by the OFR pursuant to this section is then furnished to the financial institution within a reasonable time, not exceeding 60 days.

Banks and Trust Companies

Section 655.005, F.S., provides that “executive officer” means an individual, whether or not the individual has an official title or receives a salary or other compensation, who participates or has authority to participate, other than in the capacity of a director, in the major policymaking functions of a financial institution. The term does not include an individual who may have an official title and may exercise discretion in the performance of duties and functions, including discretion in the making of loans, but who does not participate in the determination of major policies of the financial institution and whose decisions are limited by policy standards established by other officers, whether or not the policy standards have been adopted by the board of directors. The chair of the board of directors, the president, the chief executive officer, the chief financial officer, the senior loan officer, and every executive vice president of a financial

⁵ Sections 655.043 and 658.23(6), F.S.

⁶ Office of Financial Regulation, 2015 Legislative Bill Analysis of SB 806 (March 13, 2015) (on file with the Senate Commerce and Tourism Committee).

institution, and the senior trust officer of a trust company, are presumed to be executive officers unless such officer is excluded, by resolution of the board of directors or by the bylaws of the financial institution, from participating, other than in the capacity of a director, in major policymaking functions of the financial institution and the individual holding such office so excluded does not actually participate therein. Section 658.19, F.S., which relates to application for authority to organize a bank or trust company, references “president,” “chief executive officer” (if other than the president), such terms appear duplicative given the definition of “executive officer” provided in s. 655.005, F.S.

International Banking

The OFR regulates international banking corporations⁷ that transact business in Florida. Such an entity must be licensed by the OFR⁸ to transact business in Florida. International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of ch. 663, F.S., and the applicable codes. An international banking corporation may operate through a variety of business models, all of which must be licensed,⁹ and include international bank agencies,¹⁰ international representative offices,¹¹ international trust company representative offices,¹² international administrative offices,¹³ and international branches.¹⁴

Section 663.02, F.S., provides in general that international banking corporations having offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies. Further, s. 663.02, F.S., provides that neither an international bank agency nor an international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state. Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions are applicable to such entities:

- Section 655.031, F.S., relating to administrative enforcement guidelines;
- Section 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses;
- Section 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access;
- Section 655.033, F.S., relating to cease and desist orders;

⁷ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes, Section 663.01(6), F.S.

⁸ Sections 663.04 and 663.05, F.S.

⁹ Section 663.06(1), F.S.

¹⁰ Section 663.061, F.S.

¹¹ Section 663.062, F.S.

¹² Section 663.0625, F.S.

¹³ Section 663.063, F.S.

¹⁴ Section 663.064, F.S.

- Section 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person;
- Section 655.041, F.S., relating to administrative fines and enforcement; and
- Section 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31 F.S., for facilitating or furthering terrorism.

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. They may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper.

International representative offices and international administrative offices perform activities that are more limited. An international representative office may solicit business, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts. An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.

An international trust company representative office (ITCRO) is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in nonfiduciary activities described in s. 663.0625, F.S. An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.

Section 663.08, F.S., provides for the certification of capital accounts for international banking corporations having offices in Florida both prior to opening an office in this state and annually thereafter. The statute does not provide a specific due date for the required annual certification of capital accounts. According to the OFR, this has resulted in the OFR receiving the annual certifications at various times throughout the year, and has caused confusion for these institutions regarding the date for submission.

Court Orders to Branch Offices of Foreign Banks

Representatives of international banking corporations have expressed concern that their branch offices in Florida could be subject to court orders to produce records that are held in other jurisdictions and that the Florida branch office does not control. Under 28 U.S. Code s. 1782, the federal district court in which a person resides or is found may order him to give testimony or a state or to produce a document or other thing for use in a proceeding in a foreign or international tribunal. The request for the order may be made by a foreign or international tribunal or any interested person.

Chevron Ecuadorian Litigation and the Application of 28 U.S.C. 1782 to an International Banking Corporation Branch Office in Florida

The application of 28 U.S.C. s. 1782 was at issue in a 2014 Court Order issued by the United States District Court, Southern District of Florida.¹⁵ The Order was related to litigation in which a group of Ecuadorian residents sued Chevron for environmental damages. The litigation occurred in a court in Lago Agrio, Ecuador (Lago Agrio litigation). The judge's order provides the following background information regarding the litigation:

The Lago Agrio litigation has been plagued with allegations of corruption and fraud, on both sides, since its inception. At the outset, the court ordered that a "global assessment" of damages be conducted by a team of experts. Chevron claims that the presiding judge, under pressure from the LAPs (plaintiffs), eventually agreed to replace the independent experts with a single Ecuadorian "global expert...." They found their man in "Richard Stalin Cabrera Vega" ("Cabrera"). According to Chevron, Cabrera was bribed by LAP attorneys and consultants, with payments from secret accounts at Banco Pichincha. It is alleged that the LAP attorneys and/or consultants later ghostwrote Cabrera's \$27.3 Billion damages assessment. This anecdote represents a mere snapshot of the many salient events that transpired during the Lago Agrio litigation.

Chevron presented evidence of the alleged fraud to the Ecuadorian Court, which nevertheless issued a judgment against Chevron in the amount of \$18.2 billion. Chevron appealed the award in the Ecuadorian courts and also filed an international arbitration claim against Ecuador in the Permanent Court of Arbitration in The Hague. The action was filed pursuant to the United States – Ecuador Bilateral Investment Treaty (BIT). Such arbitration proceedings are generally designed to settle investment disputes between foreign investors and the host government. Chevron alleged that Ecuador colluded with the Lago Agrio plaintiffs to impose an improper damage award against Chevron and shift the government's own liability. Chevron also filed a declaratory action in the federal court in the Southern District of New York.

Chevron requested the United States District Court, Southern District of Florida grant it leave to conduct discovery from Banco Pichincha, C.A. Miami Agency (Banco Pichincha Miami) for use in the Ecuadorian and BIT litigation. Chevron sought all information related to certain Banco Pinchincha accounts and related discovery. Banco Pinchincha Miami opposed the discovery on a number of grounds, including that it had already produced the documents within its possession, custody or control, and that any other responsive documents are located in Ecuador and are not in its control. It also argued that the discovery would require Banco Pinchincha Miami to violate the laws of Ecuador, and that comity considerations mandate that the request be denied. Banco Pinchincha Miami suggested that Chevron should use the letters rogatory process in Ecuador, with which the bank could comply with. The Magistrate Judge applied 28 U.S.C. s. 1782 and allowed Chevron to go forward with discovery.

¹⁵ *In re: the Application of Chevron Corporation*, 2012 WL 3636925; .

New York's Separate Entity Rule

New York separate entity rule is a common law doctrine that provides that when a bank garnishee with a New York branch is subject to personal jurisdiction, its other branches are treated as separate entities for certain purposes, particularly with respect to prejudgment attachments and post-judgment restraining notices and turnover orders. The rule functions as a limiting principle in the context of international banking, particularly in situations involving attempts to restrain assets held in a garnishee bank's foreign branches. Three basic rationales have historically been provided for the rule. The first is the importance of international banking comity and the related fact that a foreign bank is subject to the laws and regulation of the foreign country. The second rationale is to protect banks from being subject to double liability and competing claims. The third is that requiring banks to monitor and determine the status of bank accounts in other branches would be an intolerable burden.

The separate entity rule in New York was recently applied in *Motorola Credit Corp. v. Standard Chartered Bank* by that state's highest court.¹⁶ Motorola Credit Corporation (Motorola) had obtained a \$2.1 billion judgment¹⁷ and a subsequent \$1 billion punitive damage award¹⁸ in federal district court against several members of the Uzan family for alleged fraud related to a loan made to a Turkish telecommunications company the family owned. The Uzans subsequently went to great lengths to avoid satisfying the judgments, were held in contempt, and made subject to arrest upon entry to the United States.¹⁹

Motorola pursued collection through third-party discovery. As part of those efforts, Motorola served a restraining order on the New York branch of Standard Chartered Bank (SCB), a foreign bank incorporated and headquartered in the United Kingdom.²⁰ A global search of SCB branches subsequently found roughly \$30 million in Uzan-related assets at the SCB branch in the United Arab Emirates (UAE). The respective central banks of Jordan and the UAE took action against SCB, with the latter debiting \$30 million from SCB's account with the UAE central bank. Subsequently, SCB sought relief from the restraining order under New York's separate entity rule.

The New York Court of Appeals held that the separate entity applied and precluded Motorola from ordering SCB from restraining the Uzan's assets held in foreign SCB branches.²¹ The Court held that the separate entity rule remains necessary. The court noted that SCB's efforts to comply with the restraining order resulted in regulatory and financial repercussions in other countries and put SCB in the position of having to comply with contradictory directives of multiple nations. Such circumstances, in the estimation of the Court, "would result in serious consequences in the realm of international banking to the detriment of New York's preeminence in global financial affairs."²²

¹⁶ *Motorola Credit Corp. v. Standard Chartered Bank*, 24 N.Y.3d 149 (N.Y. 2014)

¹⁷ *Motorola Credit Corp. v. Uzan*, 274 F.Supp.2d 481, 490 (S.D.N.Y. 2003).

¹⁸ *Motorola Credit Corp. v. Uzan*, 413 F.Supp.2d (S.D.N.Y. 2006).

¹⁹ *Motorola Credit Corp. v. Standard Chartered Banks*, 24 N.Y.3d. 149 at 156, 157 (N.Y. 2014).

²⁰ *See id.* at 157.

²¹

²² *See id.* at 230.

III. Effect of Proposed Changes:

Main Office Designation

Section 1 amends the definition of “main office” in s. 665.005(1)(q), F.S., which will give a financial institution the ability to submit to the OFR an application for a re-designation of its main or principal office. This application is intended to streamline such changes by removing the current process that requires institutions to amend their articles of incorporation or bylaws in order to make such re-designations with the OFR.

Assessments

Section 2 amends s. 655.047, F.S., to authorize a financial institution to make an electronic payment of semiannual assessments by a wire transfer, automated clearinghouse, or other electronic means, and requires that such electronic payments must be transmitted to the OFR on or before January 31 and July 31 of each year.

The bill also changes a current requirement that assessment payments sent by mail to the OFR must be *postmarked* on or before January 31 and July 31 of each year, to a requirement that mailed assessment payments must be *received by* the OFR on or before January 31 and July 31 of each year.

Appraisals

Section 3 amends s. 655.60, F.S., to remove the requirement that the OFR select an appraiser to perform the appraisal of real estate or other property held by a state financial institution. The section also no longer requires the cost of each appraisal to be approved in writing by the OFR. The changes in this section do not affect the requirement that institutions must still hire a licensed appraiser at the request of the OFR.

Applications for Authority to Organize Banks or Trust Companies

Section 4 removes the terms “president” and “chief executive officer” from the requirements for an application for authority to organize a bank or trust company in s. 658.19, F.S. Since “president” and “chief executive officer” are included within the defined term of “executive officer”²³ elsewhere in the Codes, the bill deletes these two terms, and replaces them with the term “executive officer.”

Corrected Cross Reference Related to Trust Service Offices

Section 5 corrects a cross reference. Subsection 660.33(1), F.S., includes an obsolete cross-reference to s. 660.32, F.S., which has been repealed. This section updates the cross-reference to reference s. 658.26, F.S., which is currently applicable.

²³ Section 655.005(1)(g), F.S.

Certification of Capital Accounts for International Banking Corporations

Section 6 amends s. 663.08, F.S., to mandate that a required certification of capital accounts by international banking corporations must be received by the OFR on or before June 30th of each year. Current law does not contain a specific due date for these required certifications, so this deadline should provide clarity to the industry and allow the OFR to better manage and review such certifications.

Civil Action Subpoena Enforcement of International Banking Corporations

Section 7 creates s. 663.021, F.S., to provide that an international representative office, international banking agency international branch office, international trust company representative office, or international administrative office is not required to produce books or records, pertaining to an investment or deposit account or loan of a customer of the international banking corporation's offices, that are located outside of the United States or its territories in response to a subpoena relating to a civil matter if such books or records are maintained outside the United States or its territories and are not in the possession, control, or custody of the corporation's office, agency, or branch established in this state.

The bill specifies that this provision only applies to a subpoena issued pursuant to Florida or Federal Rules of Procedure, or other similar law or rule of civil procedure in another state. Further, this section does not apply to a subpoena issued by or on behalf of a federal, state, or local government law enforcement agency, administrative or regulatory agency, legislative body, or grand jury. This provision would not limit the power of the OFR to access all books and records in the exercise of its regulatory and supervisory powers.

Reenactments

Sections 8 **through 13** of the bill reenact the following statutory provisions, for the purposes of incorporating the changes made by the bill:

- **Section 8** reenacts subsection 655.960(8), F.S.
- **Section 9** reenacts paragraph 663.302(1)(a), F.S.
- **Section 10** reenacts subsection 658.165(1), F.S.
- **Section 11** reenacts subsection 665.013(3), F.S.
- **Section 12** reenacts subsection 667.003(3), F.S.
- **Section 13** reenacts subsection 658.12(4), F.S.

Effective Date

Section 14 provides that the effective date of the bill is October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The changes in Section 1 will allow a financial institution to notify the office of a re-designation of its main or principal office without having to amend its articles of incorporation or bylaws. This could provide a small saving to an institution when making such a change.

The changes in Section 2 that allow for the electronic payment of semiannual assessments may provide savings on postage costs to state financial institutions.

International banking corporations that have offices in Florida would not be required in response to a civil subpoena to produce certain books and records that are maintained outside of the United States or its territories and are not in the possession, custody, or control of the office located in Florida. International banking corporations doing business in Florida may experience a reduction in administration expenses and litigation costs associated with responding to civil subpoenas for account records maintained outside of the United States or its territories. This provision should alleviate the risk of offices of international banking corporations operating in Florida facing competing claims in local and foreign jurisdictions and the potential for double liability in these separate jurisdictions. When an account is established or maintained outside of the United States or its territories, production of books and records would be conducted pursuant to letters rogatory or in accordance with any applicable treaty and convention governing service of process entered into by the United States.²⁴

C. Government Sector Impact:

The OFR has indicated that clarifying the due date for statutorily required assessments may have an insignificant negative fiscal impact in terms of the potential reduction in fine collection from non-compliance. The streamlining of some processes may result in a positive fiscal impact in terms of decreased costs and staff time.²⁵

²⁴ Office of Financial Regulation, 2015 Legislative Bill Analysis of SB 828 (February 23, 2015) (on file with the Banking and Insurance Committee).

²⁵ Office of Financial Regulation, 2015 Legislative Bill Analysis of SB 806 (March 13, 2015), (on file with the Commerce and Tourism Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that the ²⁶intent of the protection afforded certain books and records by this bill be applicable to proceedings governed by the Florida Rules of Civil Procedure, Federal Rules of Procedure, or other similar law or rule of civil procedure in another state. This state law may not be applicable in a federal proceeding governed by the Federal Rules of Civil Procedure.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 655.005, 655.047, 655.60, 658.19, 660.33, and 663.08.

This bill creates section 663.021 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 655.960, 663.302, 658.165, 665.013, 667.003, and 658.12.

IX. Additional Information:

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

CS/CS by Rules on April 9, 2015

Provides that the production of books and records of a Florida office of an international banking corporation is not required in response to a subpoena issued in a matter governed by rules of civil procedure if such books and records are maintained outside of the United States and are not in the possession, control, or custody of the international banking corporation's office, agency, or branch established in Florida.

CS by Banking and Insurance on March 17, 2015:

Removed section 4 of the bill dealing with the reporting of elected or appointed officers of a Credit Union.

- B. **Amendments:**

None.

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

²⁶ Office of Financial Regulation, 2015 Legislative Bill Analysis of SB 828 (February 23, 2015) (on file with the Banking and Insurance Committee).



795412

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Between lines 153 and 154

insert:

Section 7. Section 663.021, Florida Statutes, is created to read:

663.021 Civil action subpoena enforcement.-

(1) Notwithstanding s. 655.059, an international representative office, international bank agency, international branch, international trust company representative office, or



795412

11 international administrative office established under this
12 chapter is not required to produce a book or record pertaining
13 to a deposit account, investment account, or loan of a customer
14 of the international banking corporation's offices that are
15 located outside the United States or its territories in response
16 to a subpoena if the book or record is maintained outside the
17 United States or its territories and is not in the possession,
18 custody, or control of the international banking corporation's
19 office, agency, or branch established in this state.

20 (2) This section applies only to a subpoena issued pursuant
21 to the Florida Rules of Civil Procedure, the Federal Rules of
22 Civil Procedure, or other similar law or rule of civil procedure
23 in another state. This section does not apply to a subpoena
24 issued by or on behalf of a federal, state, or local government
25 law enforcement agency, administrative or regulatory agency,
26 legislative body, or grand jury and does not limit the power of
27 the office to access all books and records in the exercise of
28 the office's regulatory and supervisory powers under the
29 financial institutions codes.

30
31 ===== T I T L E A M E N D M E N T =====

32 And the title is amended as follows:

33 Delete line 24

34 and insert:

35 by a specified date; creating s. 663.021, F.S.;

36 providing that specified entities of an international

37 banking corporation are not required in response to a

38 subpoena to produce certain books or records that are

39 maintained outside the United States or its



795412

40 territories and are not in the entities' possession,
41 custody, or control; specifying the applicability of
42 the section to certain types of subpoenas; providing
43 that the section does not limit certain regulatory and
44 supervisory powers of the office; reenacting ss.
45 655.960(8) and

By the Committee on Banking and Insurance; and Senator Richter

597-02403-15

2015806c1

1 A bill to be entitled
 2 An act relating to the regulation of financial
 3 institutions; amending s. 655.005, F.S.; redefining
 4 the terms "main office" and "principal office";
 5 amending s. 655.047, F.S.; requiring mailed semiannual
 6 assessments to be received by the Office of Financial
 7 Regulation by a specified date; requiring
 8 electronically transmitted semiannual assessments to
 9 be transmitted to the office by specified dates;
 10 amending s. 655.60, F.S.; deleting the requirement
 11 that the office select a licensed or certified
 12 appraiser to conduct certain appraisals; deleting the
 13 requirement that the office approve the cost of
 14 certain appraisals before payment of that cost by a
 15 state financial institution, subsidiary, or service
 16 corporation; amending s. 658.19, F.S.; revising the
 17 individuals for whom certain information must be
 18 provided to the office on an application for authority
 19 to organize a banking corporation or trust company;
 20 amending s. 660.33, F.S.; conforming a cross-
 21 reference; amending s. 663.08, F.S.; requiring an
 22 international banking corporation to provide its
 23 annual certification of capital accounts to the office
 24 by a specified date; reenacting ss. 655.960(8) and
 25 663.302(1)(a), F.S., to incorporate the amendment made
 26 to s. 655.005, F.S., in references thereto; reenacting
 27 ss. 658.165(1), 665.013(3), and 667.003(3), F.S., to
 28 incorporate the amendment made to s. 658.19, F.S., in
 29 references thereto; reenacting s. 658.12(4), F.S., to

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30 incorporate the amendment made to s. 660.33, F.S., in
 31 references thereto; providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Paragraph (q) of subsection (1) of section
 36 655.005, Florida Statutes, is amended to read:
 37 655.005 Definitions.—
 38 (1) As used in the financial institutions codes, unless the
 39 context otherwise requires, the term:
 40 (q) "Main office" or "principal office" of a financial
 41 institution means the main business office designated in its
 42 articles of incorporation or bylaws, or redesignated in a
 43 relocation application filed with the office, at an identified
 44 location approved by the office in the case of a state financial
 45 institution, or by the appropriate federal regulatory agency in
 46 the case of a federal financial institution. With respect to the
 47 trust department of a bank or association that has trust powers,
 48 the terms mean the office or place of business of the trust
 49 department at an identified location, which need not be the same
 50 location as the main office of the bank or association, approved
 51 by the office in the case of a state bank or association, or by
 52 the appropriate federal regulatory agency in the case of a
 53 national bank or federal association. The "main office" or
 54 "principal office" of a trust company means the office
 55 designated or provided for in its articles of incorporation, ~~at~~
 56 an identified location as approved by the relevant chartering
 57 authority.
 58 Section 2. Subsection (2) of section 655.047, Florida

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59 Statutes, is amended to read:

60 655.047 Assessments; financial institutions.—

61 (2) If mailed, the mailing of a semiannual assessment must
 62 be received by the office postmarked on or before January 31 and
 63 July 31 of each year. If transmitted through a wire transfer, an
 64 automated clearinghouse, or other electronic means approved by
 65 the office, the semiannual assessment must be transmitted to the
 66 office on or before January 31 and July 31 of each year. The
 67 office may levy a late payment penalty of up to \$100 per day or
 68 part thereof that a semiannual assessment payment is overdue,
 69 unless it is excused for good cause. However, for intentional
 70 late payment of a semiannual assessment, the office shall levy
 71 an administrative fine of up to \$1,000 a day for each day the
 72 semiannual assessment is overdue.

73 Section 3. Subsection (1) of section 655.60, Florida
 74 Statutes, is amended to read:

75 655.60 Appraisals.—

76 (1) The office is authorized to cause appraisals to be made
 77 ~~appraisals~~ of real estate or other property held by a any state
 78 financial institution, subsidiary, or service corporation or
 79 securing the assets of the state financial institution,
 80 subsidiary, or service corporation if when specific facts or
 81 information with respect to real estate or other property held,
 82 secured loans, or lending, or when in its opinion the state
 83 financial institution's policies, practices, operating results,
 84 and trends give evidence that the state financial institution's
 85 appraisals or evaluations of ability to make payments may be
 86 excessive, that lending or investment may be of a marginal
 87 nature, that appraisal policies and loan practices may not

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88 conform with generally accepted and established professional
 89 standards, or that real estate or other property held by the
 90 state financial institution, subsidiary, or service corporation
 91 or assets secured by real estate or other property are
 92 overvalued. In lieu of causing such appraisals to be made, the
 93 office may accept any appraisal caused to be made by an
 94 appropriate state or federal regulatory agency or other insuring
 95 agency or corporation of a state financial institution. Unless
 96 otherwise ordered by the office, an appraisal of real estate or
 97 other property pursuant to this section must be made by a
 98 licensed or certified appraiser ~~or appraisers selected by the~~
 99 ~~office, and the cost of such appraisal shall be paid promptly by~~
 100 ~~such state financial institution, subsidiary, or service~~
 101 ~~corporation directly to such appraiser or appraisers upon~~
 102 ~~receipt by the state financial institution of a statement of~~
 103 ~~such cost bearing the written approval of the office.~~ A copy of
 104 the report of each appraisal caused to be made by the office
 105 pursuant to this section shall be furnished to the state
 106 financial institution, subsidiary, or service corporation within
 107 a reasonable time, not exceeding 60 days, following the
 108 completion of the such appraisal and may be furnished to the
 109 insuring agency or corporation or federal or state regulatory
 110 agency.

111 Section 4. Paragraph (f) of subsection (1) of section
 112 658.19, Florida Statutes, is amended to read:

113 658.19 Application for authority to organize a bank or
 114 trust company.—

115 (1) A written application for authority to organize a
 116 banking corporation or a trust company shall be filed with the

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117 office by the proposed directors and shall include:

118 (f) Such detailed financial, business, and biographical
119 information as the commission or office may reasonably require
120 for each proposed director, ~~president, chief executive officer~~
121 ~~(if other than the president)~~, and, if applicable, trust officer
122 ~~(if applicable)~~.

123 Section 5. Subsection (1) of section 660.33, Florida
124 Statutes, is amended to read:

125 660.33 Trust service offices.—

126 (1) In addition to its principal office and any branch
127 trust company authorized under s. 658.26 ~~s. 660.32~~, a trust
128 company or a trust department with its principal place of doing
129 business in this state may maintain one or more trust service
130 offices at the location of any bank, association, or credit
131 union that ~~which~~ is organized under the laws of this state or
132 under the laws of the United States with its principal place of
133 doing business in this state. However, a trust service office
134 may be established only after the trust company or ~~the~~ trust
135 department has secured the consent of a majority of the
136 stockholders or members entitled to vote on such proposal at a
137 meeting of stockholders or members, and of a majority of the
138 board of directors, of the bank, association, or credit union at
139 which a trust service office is proposed to be maintained, and
140 after a certificate of authorization has been issued to the
141 trust company or ~~the~~ trust department by the office.

142 Section 6. Section 663.08, Florida Statutes, is amended to
143 read:

144 663.08 Certification of capital accounts.—Before opening an
145 office in this state, and annually thereafter so long as a bank

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146 office is maintained in this state, an international banking
147 corporation licensed pursuant to ss. 663.01-663.14 shall certify
148 to the office the amount of its capital accounts, expressed in
149 the currency of the jurisdiction of its incorporation. The
150 dollar equivalent of these amounts, as determined by the office,
151 shall be deemed to be the amount of its capital accounts. The
152 annual certification of capital accounts must be received by the
153 office on or before June 30 of each year.

154 Section 7. For the purpose of incorporating the amendment
155 made by this act to section 655.005, Florida Statutes, in a
156 reference thereto, subsection (8) of section 655.960, Florida
157 Statutes, is reenacted to read:

158 655.960 Definitions; ss. 655.960-655.965.—As used in this
159 section and ss. 655.961-655.965, unless the context otherwise
160 requires:

161 (8) "Financial institution office" means a main office or
162 principal office, as defined in s. 655.005, and a branch or
163 branch office as defined in s. 658.12(4).

164 Section 8. For the purpose of incorporating the amendment
165 made by this act to section 655.005, Florida Statutes, in a
166 reference thereto, paragraph (a) of subsection (1) of section
167 663.302, Florida Statutes, is reenacted to read:

168 663.302 Applicability of state banking laws.—

169 (1)(a) International development banks shall be subject to
170 the following provisions of chapter 655 as though such
171 international development banks were state banks:

172 1. Section 655.005, relating to definitions.

173 2. Section 655.012, relating to general supervisory powers
174 of the office.

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175 3. Section 655.016, relating to liability.
 176 4. Section 655.031, relating to administrative enforcement
 177 guidelines.
 178 5. Section 655.032, relating to investigations; etc.
 179 6. Section 655.0321, relating to hearings and proceedings.
 180 7. Section 655.033, relating to cease and desist orders.
 181 8. Section 655.034, relating to injunctions.
 182 9. Section 655.037, relating to removal of financial
 183 institution-affiliated party.
 184 10. Section 655.041, relating to administrative fines.
 185 11. Section 655.043, relating to articles of incorporation.
 186 12. Section 655.044, relating to accounting practices.
 187 13. Section 655.045, relating to examinations, reports, and
 188 internal audits.
 189 14. Section 655.049, relating to deposit of fees and
 190 assessments.
 191 15. Section 655.057, relating to records.
 192 16. Section 655.071, relating to international banking
 193 facilities.
 194 17. Section 655.50, relating to reports of transactions
 195 involving currency.
 196 Section 9. For the purpose of incorporating the amendment
 197 made by this act to section 658.19, Florida Statutes, in a
 198 reference thereto, subsection (1) of section 658.165, Florida
 199 Statutes, is reenacted to read:
 200 658.165 Banker's banks; formation; applicability of
 201 financial institutions codes; exceptions.—
 202 (1) If authorized by the office, a corporation may be
 203 formed under the laws of this state for the purpose of becoming

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204 a banker's bank. An application for authority to organize a
 205 banker's bank is subject to ss. 658.19, 658.20, and 658.21,
 206 except that s. 658.20(1)(b) and (c) and the minimum stock
 207 ownership requirements for the organizing directors provided in
 208 s. 658.21(2) do not apply.
 209 Section 10. For the purpose of incorporating the amendment
 210 made by this act to section 658.19, Florida Statutes, in a
 211 reference thereto, subsection (3) of section 665.013, Florida
 212 Statutes, is reenacted to read:
 213 665.013 Applicability of chapter 658.—The following
 214 sections of chapter 658, relating to banks and trust companies,
 215 are applicable to an association to the same extent as if the
 216 association were a "bank" operating thereunder:
 217 (3) Section 658.19, relating to application for authority
 218 to organize a bank or trust company.
 219 Section 11. For the purpose of incorporating the amendment
 220 made by this act to section 658.19, Florida Statutes, in a
 221 reference thereto, subsection (3) of section 667.003, Florida
 222 Statutes, is reenacted to read:
 223 667.003 Applicability of chapter 658.—Any state savings
 224 bank is subject to all the provisions, and entitled to all the
 225 privileges, of the financial institutions codes except where it
 226 appears, from the context or otherwise, that such provisions
 227 clearly apply only to banks or trust companies organized under
 228 the laws of this state or the United States. Without limiting
 229 the foregoing general provisions, it is the intent of the
 230 Legislature that the following provisions apply to a savings
 231 bank to the same extent as if the savings bank were a "bank"
 232 operating under such provisions:

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233 (3) Section 658.19, relating to application for authority
234 to organize a bank or trust company.

235 Section 12. For the purpose of incorporating the amendment
236 made by this act to section 660.33, Florida Statutes, in a
237 reference thereto, subsection (4) of section 658.12, Florida
238 Statutes, is reenacted to read:

239 658.12 Definitions.—Subject to other definitions contained
240 in the financial institutions codes and unless the context
241 otherwise requires:

242 (4) "Branch" or "branch office" of a bank means any office
243 or place of business of a bank, other than its main office and
244 the facilities and operations authorized by ss. 658.26(4) and
245 660.33, at which deposits are received, checks are paid, or
246 money is lent. With respect to a bank that has a trust
247 department, the terms have the meanings herein ascribed to a
248 branch or a branch office of a trust company and mean any office
249 or place of business of a trust company, other than its main
250 office and its trust service offices established pursuant to s.
251 660.33, where trust business is transacted with its customers.

252 Section 13. This act shall take effect October 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/15

Meeting Date

806

Bill Number (if applicable)

795412

Amendment Barcode (if applicable)

Topic Regulation of Financial Institutions

Name Kenneth Pratt

Job Title Senior VP of Govt. Affairs

Address 1001 Thomasville Rd Ste 201
Street

Phone 850-224-2265

Tallahassee
City

FL
State

32303
Zip

Email kpratt@floridabankers.com

Speaking: For Against Information

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

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4/9/2015
Meeting Date

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

CS/SB 806
Bill Number (if applicable)

795412
Amendment Barcode (if applicable)

Topic Financial Institutions

Name David Schwartz

Job Title CEO, Florida International Bankers Assn.

Address 106 East Gaines Street

Phone _____

Tallahassee FL 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FIBA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/2015
Meeting Date

CS/SB 806
Bill Number (if applicable)

795412
Amendment Barcode (if applicable)

Topic Financial Institutions

Name Linda Charidy

Job Title Policy Advisor, Akerman, LLP

Address 106 East College Ave, Suite 1200 Phone (850) 425-1610

Street

Tallahassee, FL 32301

City

State

Zip

Email linda.charidy@akerman.com

Speaking: For Against Information

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

Representing Florida International Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

04/09/2015, 9:00 am

806

Meeting Date

Bill Number (if applicable)

Topic Regulation of Financial Institutions

Amendment Barcode (if applicable)

Name Ross Nobles

Job Title Chief Financial Officer

Address 200 E. Gaines Street, The Fletcher Bldg, Suite 118

Phone 850-410-9601

Street

Tallahassee

FL

32399

Email ross.nobles@flofr.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Office of Financial Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Ethics and Elections, *Chair*
Banking and Insurance, *Vice Chair*
Appropriations
Appropriations Subcommittee on Health
and Human Services
Commerce and Tourism
Regulated Industries
Rules

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

March 31, 2015

The Honorable David Simmons, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Simmons:

Committee Substitute for Senate Bill 806 relating to Regulation of Financial Institutions, has passed the committees on Banking and Insurance and Commerce and Tourism. It has now been referred to your committee.

I would appreciate your consideration to place this bill on your committee's agenda at the earliest opportunity.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Richter".

Garrett Richter

cc: John Phelps, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/SB 916

INTRODUCER: Banking and Insurance Committee and Senator Montford

SUBJECT: Commercial Insurer Rate Filing Procedures

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	<u>Favorable</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 916 amends certification requirements for certain types of commercial insurance by limiting the certification requirement to residential property insurance rate filings. Most commercial nonresidential property insurers, which are not statutorily required to make rate filings, will no longer have to complete certifications.

This bill revises the types of commercial property and casualty insurance for which annual base rate filings are not required by exempting commercial nonresidential multiperil insurance and commercial motor vehicle insurance from the annual base rate filing requirement.

II. Present Situation:

Rate Filing for Property, Casualty, and Surety Insurance

The rating requirements for property, casualty, and surety insurance are located in part I of ch. 627, F.S., entitled the "Rating Law," and apply to property, casualty, and surety insurance. The law states that the rates for all classes to which part I applies "shall not be excessive, inadequate, or unfairly discriminatory."¹ The Office of Insurance Regulation (OIR) has the responsibility to review and approve or disapprove rates charged by insurance companies to ensure compliance with the rate standards.

¹ Section 627.062(1), F.S.

Section 627.062(2)(a), F.S., describes the filing process and time frames that must be followed by all insurers subject to its provisions. Generally, insurers may choose to submit their rate to the OIR pursuant to either the “file and use” method or the “use and file” method. Under “file and use,” the insurer submits its proposed rate to the OIR at least 90 days before the rate’s effective date but does not implement the rate until it is approved. Under “use and file,” the insurer may implement the rate before filing for approval, but must submit the filing within 30 days of the rate’s effective date. Under “use and file,” if a portion of the rate is subsequently found to be excessive, the insurer must refund to policyholders the portion of the rate that is excessive.

For those insurers that file under s. 627.062(2)(a), F.S., the OIR applies the following factors in determining whether a rate is excessive, inadequate, or unfairly discriminatory:

- Past and prospective loss experience in Florida and in other jurisdictions;
- Past and prospective expenses;
- Degree of competition to insure the risk;
- Investment income reasonably expected by the insurer;
- Reasonableness of the judgment reflected in the filing;
- Dividends, savings, or unabsorbed premium deposits returned to Florida insureds;
- Adequacy of loss reserves;
- Cost of reinsurance;
- Trend factors, including those for actual losses per insured unit;
- Catastrophe and conflagration hazards, when applicable;
- Projected hurricane losses, if applicable;
- A reasonable margin for underwriting profit and contingencies;
- Cost of medical services, when applicable; and
- Other relevant factors impacting frequency and severity of claims or expenses.

Insurance Exemptions from Rate Filing and Review Requirements

The following types of insurance are exempt from the filing and review requirements of s. 627.062(2)(a), F.S.:

- Excess or umbrella;
- Surety and fidelity;
- Boiler and machinery and leakage and fire-extinguishing equipment;
- Errors and omissions;
- Directors and officers, employment practices and management liability;
- Intellectual property and patent infringement liability;
- Advertising injury and Internet liability;
- Property risks rated under a highly protected risks rating plan;
- General liability;
- Nonresidential property, except for collateral protection insurance;²
- Nonresidential multiperil;
- Excess property;

² Section 624.6085, F.S., defines “collateral protection insurance” to mean commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property.

- Burglary and theft;
- Certain types of medical malpractice insurance; and
- Any other commercial lines categories of insurance or commercial lines risks that the OIR determines should not be subject to the filing and review requirements because of the existence of a competitive market for such insurance or to improve the general operational efficiency of the OIR.

These types of insurance coverages continue to be subject to the requirement that rates shall not be excessive, inadequate, or unfairly discriminatory. An insurer or rating organization covered by the exemption must notify the OIR within 30 days after the effective date of a rate change. Notice is limited to the name of the insurer, the type or kind of insurance, and the statewide percentage change in rates. The OIR, at its discretion, may review the rates for compliance with the statutory requirements.³

Rate Filing Certification Requirements

Current law requires the chief executive officer or chief financial officer and the chief actuary of a property insurer to certify, under oath, that they have reviewed a rate filing and that it:

- Is accurate;
- Fairly represents the basis for the filing;
- Reflects all premium savings reasonably expected to result from legislative enactments; and
- Is compliant with generally accepted and reasonable actuarial techniques.⁴

The certification requirement applies to all property insurance even though rate filings are not required for all property insurance.

Annual Base Rate Filing

Current law requires every insurer writing any line of property or casualty insurance, except workers' compensation, employer's liability and specified commercial property and casualty insurance, to make an annual base rate filing for each line of insurance written. If no rate change is proposed, the insurer may submit a certification from an actuary, in lieu of the base rate filing, which states that the existing rate is actuarially sound and is not inadequate.⁵

The current exemption from the requirement to make an annual base rate filing does not cover all types of insurance that are exempt from rate filing and approval requirements.

Rate Filing for Motor Vehicle Insurance

The rate filing and review process for motor vehicle insurance rates is similar to the rating law for other property and casualty lines of insurance.⁶ Under s. 627.0651(14), F.S., commercial motor vehicle insurance is not subject to these requirements, or the requirement to make an

³ Section 627.062(3)(d)1., F.S.

⁴ Section 627.062(8)(a), F.S.

⁵ Section 627.0645, F.S.

⁶ Section 627.0651, F.S.

annual base rate filing. Section 627.0645, F.S., however, indicates that commercial motor vehicle insurers do have to make the annual base rate filing, creating a statutory conflict.

III. Effect of Proposed Changes:

Section 1 of this bill amends s. 627.062(8)(a), F.S., to limit the certification requirements to property insurance rate filings. Most commercial nonresidential property insurers, which are not statutorily required to make rate filings, will no longer have to complete certifications.

Section 2 of this bill revises the types of commercial property and casualty insurance for which annual base rate filings are not required by exempting commercial nonresidential multiperil insurance and commercial motor vehicle insurance from the annual base rate filing requirement. These exemptions are only for types of insurance that are already exempt from rate filing and approval requirements required under current law.

Section 3 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may result in a nominal reduction in costs to insurers.

C. Government Sector Impact:

The Office of Financial Regulation indicated that the bill has no impact on the agency.⁷

⁷ Email from C. Michael Marschall, Assistant General Counsel, Florida Office of Financial Regulation, to Ross Nobles (March 4, 2015) available at <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=6429> (last visited March 26, 2015) (on file with the Senate Committee on Banking and Insurance and the Senate Committee on Commerce and Tourism).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.062 and 627.0645.

IX. Additional Information:

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

CS by Banking and Insurance on March 10, 2015:

The CS requires a certification only of residential property insurance rate filings and removes the requirement for an annual base rate filing for commercial nonresidential multiperil insurance.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Montford

597-02118-15

2015916c1

A bill to be entitled

An act relating to commercial insurer rate filing procedures; amending s. 627.062, F.S.; restricting to certain property rate filings a requirement that the chief executive officer or chief financial officer and chief actuary of a property insurer certify the information contained in a rate filing; amending s. 627.0645, F.S.; exempting commercial nonresidential multiperil insurance from annual base rate filing; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(8) (a) The chief executive officer or chief financial officer of a property insurer and the chief actuary of a property insurer must certify under oath and subject to the penalty of perjury, on a form approved by the commission, the following information, which must accompany a property rate filing subject to paragraph (2) (a):

1. The signing officer and actuary have reviewed the rate filing;

2. Based on the signing officer's and actuary's knowledge, the rate filing does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading;

Page 1 of 2

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

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3. Based on the signing officer's and actuary's knowledge, the information and other factors described in paragraph (2) (b), including, but not limited to, investment income, fairly present in all material respects the basis of the rate filing for the periods presented in the filing; and

4. Based on the signing officer's and actuary's knowledge, the rate filing reflects all premium savings that are reasonably expected to result from legislative enactments and are in accordance with generally accepted and reasonable actuarial techniques.

Section 2. Subsection (1) of section 627.0645, Florida Statutes, is amended to read:

627.0645 Annual filings.—

(1) Each rating organization filing rates for, and each insurer writing, any line of property or casualty insurance to which this part applies, except:

(a) Workers' compensation and employer's liability insurance; or

(b) ~~Commercial property and casualty~~ Insurance as defined in ss. 624.604 and 624.605, but limited to coverage of commercial risks ~~s. 627.0625(1) other than commercial residential multiperil multiple line and commercial motor vehicle,~~

shall make an annual base rate filing for each such line with the office no later than 12 months after its previous base rate filing, demonstrating that its rates are not inadequate.

Section 3. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.9.15
Meeting Date

916
Bill Number (if applicable)

Topic comm ins

Amendment Barcode (if applicable)

Name Gerald Westor

Job Title lobbyist - CCC

Address 101 E. Collyer Blvd

Phone 222-9075

Tallahassee FL

Email gerald.westor@americaninsurance.com

City State Zip

Speaking: For Against Information

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

Representing American Insurance Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4.9.15

Meeting Date

916

Bill Number (if applicable)

Topic Commercial Insurance

Amendment Barcode (if applicable)

Name Ashley Kalifen (ca-leafy)

Job Title lobbyist - CCC

Address 101 E. Collier Ave 502

Phone 222-9075

Street

Tallahassee FL 32301

City

State

Zip

Email akalifen@capitolinsur.com

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

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

Representing Assoc. Industries of FL (AIF)

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-2015

Meeting Date

916

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name BRIAN PITTS

Job Title Trustee

Address 1119 Newton Ave S

Phone 727/897-9291

Street

St Petersburg

City

FL

State

33705

Zip

Email justice2jesus@yahoo.com

Speaking: For Against Information

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

Representing Justice-2-Jesus

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD
3rd District

March 31, 2015

Senator David Simmons, Chair
Senate Rules Committee
400 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Simmons:

I respectfully request that CS/SB 916 be scheduled for a hearing before the Senate Rules Committee. CS/SB 916 would clarify types of commercial insurance not currently subject to OIR rate-filing procedures.

Your assistance and favorable consideration of my request is greatly appreciated

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: John Phelps, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: SB 944

INTRODUCER: Senator Soto

SUBJECT: Secondhand Dealers

DATE: April 8, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Harmsen</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 944 requires law enforcement officers to place a 90-day written order (“hold order”) mandating a secondhand dealer to hold a specific item that an officer has probable cause to believe was stolen. This process allows the item to be used as evidence in a criminal case, and to be returned to its rightful owner, should a judge enter an order to that effect. Current law permits, but does not require, a law enforcement officer to place a hold order.

II. Present Situation:

A secondhand dealer engages in the business of buying, reselling, or consigning certain types of used personal property.¹ Part I of ch. 538, F.S., grants authority to regulate secondhand dealers to the Department of Revenue (department). The department requires secondhand dealers to register on an annual basis, and currently has 5,048 secondhand dealer registrants.² Pawnbrokers were formerly regulated as secondhand dealers, but are now separately regulated under ch. 539, F.S.

Upon each acquisition, a secondhand dealer is required to complete a transaction record that details the goods purchased and the seller’s identity. The secondhand dealer must retain this document for at least 1 year and forward a copy to local law enforcement within 24 hours of the acquisition of the goods. Secondhand dealers are required to hold all property for at least 15 days after they acquire the property.³ Should a law enforcement officer have probable cause to believe that the goods held by a secondhand dealer are stolen, the officer may place a 90-day written

¹ Section 538.03, F.S.

² Section 538.09, F.S.; Florida Department of Revenue, *Secondhand Dealers Registered with the Florida Department of Revenue*, (2015), available at http://dor.myflorida.com/dor/taxes/documents/secondhand_dealers_recyclers_08_09_13.pdf, (last accessed March 18, 2015).

³ Section 538.06, F.S.

hold order on the goods, which prevents the secondhand dealer from selling them.⁴ This allows the goods to be preserved for use as evidence in a criminal trial, and for the possible return to their rightful owner.

A victim of a theft whose property is subject to a hold order may recover his or her goods or the value thereof through one of three methods:⁵

- A court may order restitution or return of the goods to the secondhand dealer or victim of the crime.⁶ If the court orders return of the goods or restitution to the victim, the court must also order restitution to the secondhand dealer from the person who sold the goods to the secondhand dealer;⁷
- A victim may file an action for replevin against the secondhand dealer;⁸ or
- A victim may purchase her items back from the secondhand dealer, and then file a civil action against the thief for reimbursement of the cost expended.

Local law enforcement enforces secondhand dealer compliance with registration, record keeping, holding periods, and inspection requirements.⁹

III. Effect of Proposed Changes:

The bill requires law enforcement officers to place a 90-day hold order on goods in the possession of a secondhand dealer for which there is probable cause to believe have been stolen. Previously, such action by law enforcement was optional. This 90-day hold order may be overridden by a court order to return the goods to either the secondhand dealer or another rightful owner.¹⁰

Section 2 of the bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ Section 538.06, F.S.

⁵ Interview with representative of the Florida Law Enforcement Property Recovery Unit, March 18, 2015.

⁶ Section 538.07, F.S.

⁷ Section 538.06(4), F.S.

⁸ Section 538.08, F.S.

⁹ Section 538.05, F.S.; http://dor.myflorida.com/dor/taxes/secondhand_dealers_recyclers.html.

¹⁰ Section 538.06(4), F.S.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This may result in increased workload and costs for law enforcement officers involved in the recovery of stolen property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill does not affect the procedures for placement of a hold order on property in the possession of a pawnbroker.

VIII. Statutes Affected:

This bill substantially amends section 538.06 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 Soto

14-01345-15

2015944__

1 A bill to be entitled

2 An act relating to secondhand dealers; amending s.
3 538.06, F.S.; requiring a law enforcement officer with
4 jurisdiction to place a specified written hold order
5 on specified goods; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Subsection (3) of section 538.06, Florida
10 Statutes, is amended to read:

11 538.06 Holding period.—

12 (3) Upon probable cause that goods held by a secondhand
13 dealer are stolen, a law enforcement officer with jurisdiction
14 shall ~~may~~ place a 90-day written hold order on the goods subject
15 to the court's disposition under subsection (4). However, the
16 hold may be extended beyond 90 days by a court of competent
17 jurisdiction upon a finding of probable cause that the property
18 is stolen and further holding is necessary for the purposes of
19 trial or to safeguard such property. The dealer shall assume all
20 responsibility, civil or criminal, relative to the property or
21 evidence in question, including responsibility for the actions
22 of any employee with respect thereto.

23 Section 2. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Democratic Caucus Rules Chair
14th District

April 1, 2015

The Honorable David Simmons
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Simmons,

I respectfully request that Senate Bill 944, Secondhand Dealers, be placed on the agenda as soon as possible. Senate Bill 944 would require law enforcement to place a 90 day hold on items believed to be stolen. Currently, law enforcement is permitted to place a 90 day hold on those items. This bill aims to protect victims of theft.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto
State Senator, District 14

Cc: John Phelps, Staff Director
Cissy DuBose, Committee Administrative Assistant

REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

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 Rules

BILL: CS/CS/SB 7066

INTRODUCER: Rules Committee, Health Policy Committee, and Regulated Industries Committee

SUBJECT: Low-THC Cannabis

DATE: April 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Kraemer/Oxamendi</u>	<u>Imhof</u>		RI Submitted as Committee Bill
1.	<u>Looke</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Oxamendi/Kraemer</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 7066 significantly revises the provisions of s. 381.986, F.S., related to the compassionate use of low-THC cannabis.

The bill amends provisions related to the use of low-THC cannabis by:

- Increasing the number of conditions for which a physician may order the use of low-THC cannabis. The new list of conditions includes human immunodeficiency virus, acquired immune deficiency syndrome, epilepsy, amyotrophic lateral sclerosis, autism, multiple sclerosis, Crohn's disease, Parkinson's disease, paraplegia, quadriplegia, and terminal illness;
- Permitting the use of low-THC cannabis to treat the listed conditions, symptoms of those conditions, and symptoms created by treatments for those conditions;
- Requiring a physician to register a patient's legal representative with the compassionate use registry in order for that person to be authorized to assist the patient with his or her use of low-THC cannabis;
- Requiring a dispensing organization (DO) to verify the identity of the person being dispensed low-THC cannabis before dispensing; and
- Restricting the locations where low-THC cannabis may be used;
- Providing that low-THC cannabis food products may not include candy or similar confectionary products that appeal to children; and
- Prohibiting persons who have direct or indirect interest in the dispensing organization, and the dispensing organization's managers, employees, and contractors who directly interact

with low-THC cannabis or low-THC cannabis products from making recommendations, offering prescriptions, or providing medical advice to qualified patients.

The bill amends provisions related to the cultivation, processing, and dispensing of low-THC cannabis by:

- Increasing the number of DOs that the Department of Health (DOH or department) is required to license from 5 to 20;
- Providing for the selection by lottery of two qualified applicants in each of the following defined regions: Northwest Florida, Northeast Florida, Central Florida, Southwest Florida, and Southeast Florida;
- Providing for the selection by lottery the 10 additional dispensing organizations;
- Specifying an application fee of \$50,000, a licensure fee of \$125,000, and a licensure renewal fee of \$125,000;
- Reducing the performance and compliance bond from \$5 million to \$1 million;
- Significantly revising and expanding the criteria required for an applicant to qualify for licensure;
- Preempting regulation of DO cultivation and processing facilities to the state and allowing municipalities and counties to choose by ordinance the number and location of any DO retail facilities authorized in that municipality or the unincorporated area of that county, respectively;
- Requiring DO vehicles to be permitted by the DOH;
- Authorizing the DOH to inspect DO premises and facilities. The DOH is required to perform an inspection of all DO facilities before such facilities become operational and at licensure renewal;
- Allowing the DOH to fine a DO up to \$10,000 or to revoke, suspend, or deny a DO's license for listed violations including failure to maintain the qualifications for licensure and endangering the health, safety, and welfare of a qualified patient; and
- Requiring DOs to have all low-THC cannabis and low-THC cannabis product tested by an independent testing laboratory before dispensing it. The DO must determine that the tests results show that the low-THC cannabis or product meets the applicable definition, is free from contaminants, and is safe for human consumption. Licensed laboratories and their employees are exempt from provisions in ch. 893, F.S., for the possession of cannabis for the purpose of testing such cannabis.

The bill also amends provisions related to the study of the safety and efficacy of low-THC cannabis by the University of Florida (UF) by requiring the UF College of Pharmacy (UFCP) to create a research program that includes a fully integrated electronic information system. The bill allows UF researchers to access the compassionate use registry, the prescription drug monitoring program database (PDMP), and Medicaid records¹ for qualified patients in order to conduct research required by the bill. The bill also requires physicians to submit requested medical records for qualifying patients to the UFCP.

The bill exempts the rules of the DOH under this act from the rule ratification requirements of s. 120.541(3), F.S.

¹ To the extent allowed by Federal law.

The bill is effective upon becoming law.

II. Present Situation:

Compassionate Medical Cannabis Act of 2014

Patient Treatment with Low-THC Cannabis

The Compassionate Medical Cannabis Act of 2014² (act) legalized a low tetrahydrocannabinol (THC) and high cannabidiol (CBD) form of cannabis (low-THC cannabis)³ for the medical use⁴ by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. The act provides that a Florida licensed allopathic or osteopathic physician who has completed the required training⁵ and has examined and is treating such a patient may order low-THC cannabis for that patient to treat a disease, disorder, or condition or to alleviate its symptoms, if no other satisfactory alternative treatment options exist for that patient. In order to meet the requirements of the act all of the following conditions must apply:

- The patient is a permanent resident of Florida;
- The physician determines that the risks of ordering low-THC cannabis are reasonable in light of the potential benefit for that patient;⁶
- The physician registers as the orderer of low-THC cannabis for the patient on the compassionate use registry (registry) maintained by the DOH and updates the registry to reflect the contents of the order;
- The physician maintains a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indicators of tolerance or reaction to the low-THC cannabis;
- The physician submits the patient treatment plan quarterly to the UF College of Pharmacy for research on the safety and efficacy of low-THC cannabis on patients; and
- The physician obtains the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis after sufficiently explaining the current state of

² See ch. 2014-157, L.O.F., and s. 381.986, F.S.

³ The act defined "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. See s. 381.986(1)(b), F.S. Eleven states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol): Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin. Twenty-three states, the District of Columbia, and Guam have laws that permit the use of marijuana for medicinal purposes. See infra note 28. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (Tables 1 and 2), (last visited on March 27, 2015).

⁴ Pursuant to s. 381.986(1)(c), F.S., "medical use" means administration of the ordered amount of low-THC cannabis; and the term does not include the possession, use, or administration by smoking, or the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative. Section 381.986(1)(e), F.S., defines "smoking" as burning or igniting a substance and inhaling the smoke; smoking does not include the use of a vaporizer.

⁵ Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association that encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing

⁶ If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

knowledge in the medical community of the effectiveness of treatment of the patient's condition with low-THC cannabis, the medically acceptable alternatives, and the potential risks and side effects.

A physician who orders low-THC cannabis for a patient without a reasonable belief that the patient is suffering from a required condition and any person who fraudulently represents that he or she has a required condition to a physician for the purpose of being ordered low-THC cannabis commits a misdemeanor of the first degree. The DOH is required to monitor physician registration and ordering of low-THC cannabis in order to take disciplinary action as needed.

The act creates exceptions to existing law to allow qualified patients⁷ and their legal representatives to purchase, acquire, and possess low-THC cannabis (up to the amount ordered) for that patient's medical use, and to allow DOs, and their owners, managers, and employees, to acquire, possess, cultivate, and dispose of excess product in reasonable quantities to produce low-THC cannabis and to possess, process, and dispense low-THC cannabis. DOs and their owners, managers, and employees are not subject to licensure and regulation under ch. 465, F.S., relating to pharmacies.⁸

Dispensing Organizations

The act requires the DOH to approve five DOs with one in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida and southwest Florida.⁹ In order to be approved as a DO, an applicant must possess a certificate of registration issued by the Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants, be operated by a nurseryman, and have been operating as a registered nursery in this state for at least 30 continuous years. Applicants are also required to demonstrate:

- The technical and technological ability to cultivate and produce low-THC cannabis.
- The ability to secure the premises, resources, and personnel necessary to operate as a DO.
- The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.
- An infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.
- The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department;
- That all owners and managers have been fingerprinted and have successfully passed a level 2 background screening pursuant to s. 435.04, F.S.; and
- The employment of a medical director, who must be a physician and have successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.¹⁰

⁷ See s. 381.986(1)(d), F.S., which provides that a "qualified patient" is a Florida resident who has been added by a physician licensed under ch. 458, F.S., or ch. 459, F.S., to the compassionate use registry to receive low-THC cannabis from a DO.

⁸ See s. 381.986(7)(c), F.S.

⁹ See s. 381.986(5)(b), F.S.

¹⁰ Id.

Upon approval, a DO must post a \$5 million performance bond. The DOH is authorized to charge an initial application fee and a licensure renewal fee, but is not authorized to charge an initial licensure fee.¹¹ An approved DO must also maintain all approval criteria at all times.

The Compassionate Use Registry

The act requires the DOH to create a secure, electronic, and online registry for the registration of physicians and patients and for the verification of patient orders by DOs, which is accessible to law enforcement. The registry must allow DOs to record the dispensation of low-THC cannabis, and must prevent an active registration of a patient by multiple physicians. Physicians must register qualified patients with the registry and DOs are required to verify that the patient has an active registration in the registry, that the order presented matches the order contents as recorded in the registry, and that the order has not already been filled before dispensing any low-THC cannabis. DOs are also required to record in the registry the date, time, quantity, and form of low-THC cannabis dispensed. The DOH has indicated that the registry is built and ready to move to the operational phase.¹²

The Office of Compassionate Use and Research on Low-THC Cannabis

The act requires the DOH to establish the Office of Compassionate Use under the direction of the deputy state health officer to administer the act. The Office of Compassionate Use is authorized to enhance access to investigational new drugs for Florida patients through approved clinical treatment plans or studies, by:

- Creating a network of state universities and medical centers recognized for demonstrating excellence in patient-centered coordinated care for persons undergoing cancer treatment and therapy in this state.¹³
- Making any necessary application to the United States Food and Drug Administration or a pharmaceutical manufacturer to facilitate enhanced access to compassionate use for Florida patients; and
- Entering into agreements necessary to facilitate enhanced access to compassionate use for Florida patients.¹⁴

The act includes several provisions related to research on low-THC cannabis and cannabidiol including:

- Requiring physicians to submit quarterly patient treatment plans to the UFCP for research on the safety and efficacy of low-THC cannabis;
- Authorizing state universities to perform research on cannabidiol and low-THC cannabis and exempting them from the provisions in ch. 893, F.S., for the purposes of such research; and
- Appropriating \$1 million to the James and Esther King Biomedical Research Program for research on cannabidiol and its effects on intractable childhood epilepsy.

¹¹ Id.

¹² Conversation with Jennifer Tschetter, Chief of Staff (DOH) (March 20, 2015).

¹³ See s. 381.925, F.S.

¹⁴ See s. 385.212, F.S.

Challenges to Proposed DOH Rules

Beginning on July 7, 2014, the DOH held several rule workshops intended to write and adopt rules implementing the provisions of s. 381.986, F.S., and the DOH put forward a proposed rule on September 9, 2014. This proposed rule was challenged by multiple organizations involved in the rulemaking workshops and was found to be an invalid exercise of delegated legislative authority by the Administrative Law Judge on November 14, 2014.¹⁵ Afterward, the DOH held a negotiated rulemaking workshop in February of 2015, which resulted in a new proposed rule being published on February 6, 2015. The new proposed rule has also been challenged and a hearing is scheduled for April 14, 2015.¹⁶ The challenge on the February 6, 2015, rule includes, among other things, a challenge of the DOH's statement of estimated regulatory costs (SERC) and the DOH's conclusion that the rule will not require legislative ratification.

Section 120.541, F.S., requires legislative ratification of rules that are likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of \$1 million in the aggregate within 5 years after the implementation of the rule. The DOH has estimated a 5-year regulatory cost totaling \$750,000 on the five DOs. The Joint Administrative Procedures Committee has raised several questions regarding the DOH's estimate, including additional impacts for nurseries that are approved for more than one region, and the cost of the biennial renewal. If a rule exceeds the threshold amount, the rule may not take effect until it is ratified by the Legislature.

Treatment of Marijuana in Florida

Florida law defines cannabis as “all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin,”¹⁷ and places it, along with other sources of THC, on the list of Schedule I controlled substances.¹⁸ The definition of cannabis was amended by the act to exclude “low-THC cannabis” as defined in s. 381.986, F.S., if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with that section. Schedule I controlled substances are substances that have a high potential for abuse and no currently accepted medical use in the United States. As a Schedule I controlled substance, possession and trafficking in cannabis carry criminal penalties that vary from a first degree misdemeanor¹⁹ up to a first degree felony with a mandatory minimum sentence of 15 years in state prison and a \$200,000 fine.²⁰ Paraphernalia²¹ that is sold, manufactured, used, or possessed with the intent to be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack,

¹⁵ See <https://www.doah.state.fl.us/ROS/2014/14004296.pdf> (last accessed March 27, 2015).

¹⁶ E-mail from Marjorie Holladay, Chief Attorney, Joint Administrative Procedures Committee, to Patrick Imhof, Staff Director, Senate Committee on Regulated Industries (March 19, 2015) (on file with the Senate Committee on Regulated Industries).

¹⁷ Section 893.02(3), F.S.

¹⁸ Section 893.03(1)(c)7. and 37., F.S.

¹⁹ This penalty is applicable to possession or delivery of less than 20 grams of cannabis. See s. 893.13(3) and (6)(b), F.S.

²⁰ Trafficking in more than 25 pounds, or 300 plants, of cannabis is a first degree felony with a mandatory minimum sentence that varies from 3 to 15 years in state prison depending on the quantity of the cannabis possessed, sold, etc. See s. 893.135(1)(a), F.S.

²¹ This term is defined in s. 893.145, F.S.

store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, is also prohibited and carries criminal penalties ranging from a first degree misdemeanor to a third degree felony.²²

Medical Marijuana in Florida: The Necessity Defense

Despite the fact that the use, possession, and sale of marijuana are prohibited by state law, Florida courts have found that circumstances can necessitate medical use of marijuana and circumvent the application of criminal penalties. The necessity defense was successfully applied in a marijuana possession case in *Jenks v. State*²³ where the First District Court of Appeal found that “section 893.03 does not preclude the defense of medical necessity” for the use of marijuana if the defendant:

- Did not intentionally bring about the circumstance which precipitated the unlawful act;
- Could not accomplish the same objective using a less offensive alternative available; and
- The evil sought to be avoided was more heinous than the unlawful act.

In the cited case, the defendants, a married couple, were suffering from uncontrollable nausea due to AIDS treatment and had testimony from their physician that he could find no effective alternative treatment. Under these facts, the court found that the defendants met the criteria to qualify for the necessity defense and ordered an acquittal of the charges of cultivating cannabis and possession of drug paraphernalia.

Medical Marijuana Laws in Other States

Currently, 23 states, the District of Columbia, and Guam²⁴ have some form of law that permits the use of marijuana for medicinal purposes. These laws vary widely in detail but most are similar in that they touch on several recurring themes. Most state laws include the following in some form:

- A list of medical conditions for which a practitioner can recommend the use of medical marijuana to a patient.
 - Nearly every state that permits the use of marijuana for medicinal purposes has a list of applicable medical conditions, though the particular conditions vary from state to state. Most states also include a way to expand the list either by allowing a state agency or board to add medical conditions to the list or by including a “catch-all” phrase.²⁵ Most states require that the patient receive certification from at least one, but often two,

²² Section 893.147, F.S.

²³ *Jenks v. State*, 582 So.2d 676 (Fla. 1st DCA 1991), *review denied*, 589 So.2d 292 (Fla. 1991)

²⁴ These states include: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and New York was the most recent state to pass medical marijuana legislation in June 2014. The New York legislation became effective July 5, 2014. Eleven states allow limited access to marijuana products (low-THC and/or high CBD-cannabidiol). Alabama, Florida, Iowa, Kentucky, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, Utah, and Wisconsin. See <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> (last visited on March 27, 2015).

²⁵ An example is California’s law that includes “any other chronic or persistent medical symptom that either: Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.”

- physicians designating that the patient has a qualifying condition before the patient may be issued an identification card needed for the acquisition of medical marijuana.
- Provisions for the patient to designate one or more caregivers who can possess the medical marijuana and assist the patient in preparing and using the medical marijuana.
 - The number of caregivers allowed and the qualifications to become a caregiver vary from state to state. Most states allow one or two caregivers and require that they be at least 21 years of age and, typically, cannot be the patient's physician. Caregivers are generally allowed to purchase or grow marijuana for the patient, be in possession of the allowed quantity of marijuana, and aid the patient in using the marijuana, but are strictly prohibited from using the marijuana themselves.
 - A required identification card for the patient, caregiver, or both that is typically issued by a state agency.
 - A registry of people who have been issued an identification card.
 - A method for registered patients and caregivers to obtain medical marijuana.
 - There are two general methods by which patients can obtain medical marijuana. They must either self-cultivate the marijuana in their homes or the state allows specified marijuana points-of-sale or dispensaries. The regulations governing such dispensaries vary widely.
 - General restrictions on where medical marijuana may be used.
 - Typically, medical marijuana may not be used in public places, such as parks and on buses, or in areas where there are more stringent restrictions placed on the use of drugs, such as in or around schools or in prisons.

Most states with low-THC cannabis laws similar to s. 381.986, F.S., specify that the use of such low-THC cannabis is reserved for patients with epileptic or seizure disorders. Of the 11 states with such laws, only Florida allows the treatment of cancer with low-THC cannabis. Additionally, the definition of low-THC cannabis differs from state to state. Iowa has the highest THC level allowed in such states at 3 percent and most other states have the level of THC restricted to below 1 percent. CBD levels are generally required to be high with most states requiring at least 10 percent CBD.²⁶

State Medical Marijuana Laws and Their Interaction with the Federal Government

The Federal Controlled Substances Act lists Marijuana as a Schedule 1 drug with no accepted medical uses. Under federal law possession, manufacturing, and distribution of marijuana is a crime.²⁷ Although a state's medical marijuana laws protect patients from prosecution for the legitimate use of marijuana under the guidelines established in that state, such laws do not protect individuals from prosecution under federal law if the federal government decides to enforce those laws.

In August 2013, the United States Justice Department (USDOJ) issued a publication entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century."²⁸ This

²⁶ Supra note 24, table 2.

²⁷ The punishments vary depending on the amount of marijuana and the intent with which the marijuana is possessed. See <http://www.fda.gov/regulatoryinformation/legislation/ucm148726.htm#cntlsbd>. (last visited on March 27, 2015).

²⁸ See <http://www.justice.gov/ag/smart-on-crime.pdf>. (last visited on March 27, 2015).

document details the federal government's current stance on low-level drug crimes and contains the following passage:

... the Attorney General is announcing a change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels, will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins.

In addition, the USDOJ published, on August 29, 2013, a memorandum with the subject "Guidance Regarding Marijuana Enforcement." This memorandum makes clear that the USDOJ considers small-scale marijuana use to be a state matter which states may choose to punish or not, and, while larger operations would fall into the purview of the USDOJ, those operations that adhere to state laws legalizing marijuana in conjunction with robust regulatory systems would be far less likely to come under federal scrutiny.²⁹ These announcements generally indicate the USDOJ's current unwillingness to prosecute such cases and its inclination to leave such prosecutions largely up to state authorities.

Tetrahydrocannabinol

THC is the major psychoactive constituent of marijuana. The potency of marijuana, in terms of psychoactivity, is dependent on THC concentration and is usually expressed as a percent of THC per dry weight of material.

The average THC concentration in marijuana is 1 percent to 5 percent; the form of marijuana known as *sinemilla* is derived from the unpollinated female cannabis plant and is preferred for its high THC content (up to 17 percent THC). Recreational doses are highly variable and users often concentrate their own dose. A single intake of smoke from a pipe or joint is called a hit (approximately 1/20th of a gram). The lower the potency or THC content the more hits are needed to achieve the desired effects.³⁰

Marinol is a currently-approved drug³¹ that consists of a man-made form of THC known as dornabinol.³² Marinol is used to treat anorexia associated with weight loss in patients with AIDS and nausea and vomiting associated with cancer chemotherapy in patients who have failed to adequately respond to conventional antiemetic treatments. Marinol has a variety of side-effects including a cannabinoid dose-related "high."³³

²⁹ See USDOJ memo on "Guidance Regarding Marijuana Enforcement," (August 29, 2013) available at <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> (last visited on March 27, 2015).

³⁰ Drugs and Human Performance Fact Sheet for Cannabis / Marijuana, National Highway Traffic Safety Administration (April 2014) available at <http://www.nhtsa.gov/people/injury/research/job185drugs/cannabis.htm> (last visited on March 27, 2015).

³¹ The drug is approved by the US Food and Drug Administration.

³² See <http://www.marinol.com/about-marinol.cfm> (last visited on March 27, 2015).

³³ For Marinol prescribing information, see http://www.rxabbvie.com/pdf/marinol_PI.pdf (last visited on March 27, 2015).

Cannabidiol

CBD is another cannabinoid that is found in marijuana and, although THC has psychoactive effects, CBD and other cannabinoids are not known to cause intoxication.³⁴ Some evidence shows that CBD is effective in treating seizure disorders,^{35,36} although much of this evidence is anecdotal. Currently, the drug Epidiolex, which is a liquid form of highly purified CBD extract, was approved by the FDA in November 2013, as an orphan drug³⁷ that may be used to treat Dravet syndrome.^{38,39}

Dravet Syndrome

Also known as Severe Myoclonic Epilepsy of Infancy (SMEI), Dravet syndrome is a rare form of intractable epilepsy that begins in infancy.⁴⁰ Initial seizures are most often prolonged events and, in the second year of life, other seizure types begin to emerge. Individuals with Dravet syndrome face a higher incidence of SUDEP (sudden unexplained death in epilepsy) and typically have associated conditions that also need to be properly treated and managed. These conditions include:

- Behavioral and developmental delays;
- Movement and balance issues;
- Orthopedic conditions;
- Delayed language and speech issues;
- Growth and nutrition issues;
- Sleeping difficulties;
- Chronic infections;
- Sensory integration disorders; and
- Disruptions of the autonomic nervous system (which regulates bodily functions such as temperature regulation and sweating).

Individuals with Dravet syndrome do not outgrow the condition. Current treatment options are extremely limited and constant care and supervision are typically required.

³⁴ This information is from GW Pharmaceuticals, see <http://www.gwpharm.com/FAQ.aspx> (last visited on March 27, 2015).

³⁵ See Sandra Young, *Marijuana Stops Child's Severe Seizures*, CNN (August 7, 2013) available at <http://www.cnn.com/2013/08/07/health/charlotte-child-medical-marijuana/> (last visited on March 27, 2015).

³⁶ See also the presentation to the Florida House Criminal Justice Subcommittee on the Charlotte's Web strain of marijuana on January 9, 2014.

³⁷ An orphan drug is defined as a drug that is intended for the safe and effective treatment, diagnosis, or prevention of rare diseases/disorders that affect fewer than 200,000 people in the U.S., or that affect more than 200,000 persons but are not expected to recover the costs of developing and marketing a treatment drug. See <http://www.fda.gov/forindustry/DevelopingProductsforRareDiseasesConditions/default.htm>. (last visited on March 27, 2015).

³⁸ See <http://www.gwpharm.com/LGS%20Orphan%20Designation.aspx> (last visited on March 27, 2015).

³⁹ National Institute of Neurological Disorders and Stroke, *Dravet Syndrome Information Page*. See http://www.ninds.nih.gov/disorders/dravet_syndrome/dravet_syndrome.htm (last visited on March 27, 2015).

⁴⁰ Dravet Syndrome Foundation, *What is Dravet Syndrome?* <http://www.dravetfoundation.org/dravet-syndrome/what-is-dravet-syndrome> (last visited on March 27, 2015).

III. Effect of Proposed Changes:

The bill significantly revises the provisions of s. 381.986, F.S., related to the compassionate use of low-THC cannabis.

Definitions

The bill amends s. 381.986(1), F.S., to define the terms “applicant,” “batch,” “harvest,” “independent testing laboratory,” and “low-THC cannabis product.”

The bill defines the term “applicant” to mean a person⁴¹ that has submitted an application to the department for licensure or renewal as a dispensing organization.

The bill defines the term “independent testing laboratory” to mean a laboratory, and the managers, employees, or contractors of the laboratory, which have no direct or indirect interest in a dispensing organization.

The definition of “low-THC cannabis product” includes, but are not limited to, oils, tinctures, creams, encapsulations, and food products. The definition provides that low-THC cannabis food products may not include candy or similar confectionary products that appeal to children.

Patient Use of Low-THC Cannabis

The bill amends s. 381.986(2), F.S., to revise the conditions for which low-THC cannabis may be ordered for a qualified patient’s medical use. A physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms no longer qualifies as an eligible condition. Along with cancer, the following additional conditions qualify for the ordering of low-THC cannabis to qualified patients:⁴²

- Human immunodeficiency virus;
- Acquired immune deficiency syndrome;
- Epilepsy;
- Amyotrophic lateral sclerosis;
- Autism;
- Multiple sclerosis;
- Crohn’s disease;
- Parkinson’s disease;
- Paraplegia;
- Quadriplegia; or
- Terminal illness.

⁴¹ Section 1.01(3), F.S., provides that in the Florida Statutes the term “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

⁴² Anyone who fraudulently represents to a physician that he or she has at least one of the above conditions for the purpose of being ordered low-THC cannabis commits a first degree misdemeanor, which is punishable as provided in s. 775.082, F.S., or s. 775.083, F.S.; a sentence of a term of imprisonment up to 1 year may be imposed, along with a fine not to exceed \$1,000.

The bill also revises the definition of “medical use” of low-THC cannabis to exclude the use of or administration of low-THC cannabis:

- On any form of public transportation;
- In any public place;
- In a registered qualified patient’s place of work, if restricted by his or her employer;
- In a correctional facility;
- On the grounds of any preschool, primary school, or secondary school; or
- On a school bus.

The bill provides that low-THC cannabis may be ordered to treat a listed disease, disorder, or condition; to alleviate symptoms of such disease, disorder, or condition; or to alleviate symptoms caused by a treatment for such disease, disorder, or condition.

Requirements for Physicians

The bill requires that the physician register the patient and the patient’s legal representative, if requested by the patient, with the compassionate use registry established by the DOH. If the patient is a minor, the physician must register a legal representative with the registry.

The bill also requires physicians to submit all requested medical records to the UFCP for research on the safety and efficacy of low-THC cannabis on patients, in addition to the patient treatment plan currently required.

A physician who improperly orders low-THC cannabis is subject to disciplinary action under the applicable practice act and under s. 456.072(1)(k), F.S., addressing grounds for discipline. The bill also conforms the criminal penalties to the change in listed conditions required to qualify for low-THC cannabis for physicians and patients who fraudulently order or attempt to receive low-THC cannabis.

Duties and Powers of the Department

The bill increases the number of DO licenses from 5 to 20 and requires, if more than 20 applicants meet the licensure criteria, that the DOH must determine the licensees by lottery.

The bill amends s. 381.986(5)(b), F.S., to provide the following time frame for the issuance of DO licenses:

- Seven days after the effective date of the act the DOH must begin to accept applications for licensure and to review the applications to determine compliance with the license criteria;
- Within 10 days of receiving an application, the DOH must notify the applicant of any errors in the application;
- Applications for licensure must be filed with the DOH no later than 30 days after the effective date of this act; and
- All applications must be complete no later than 60 days after the effective date of this act.

Before the 75th day after the effective date of the act, the DOH must select by lottery two qualified applicants in each of the following regions:

- Northwest Florida, consisting of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Santa Rosa, Okaloosa, Taylor, Wakulla, Walton, and Washington counties.
- Northeast Florida, consisting of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Suwannee, and Union counties.
- Central Florida, consisting of Brevard, Citrus, Hardee, Hernando, Hillsborough, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia counties.
- Southwest Florida, consisting of Charlotte, Collier, DeSoto, Glades, Hendry, Highlands, Lee, Manatee, Okeechobee, and Sarasota counties.
- Southeast Florida, consisting of Broward, Miami-Dade, Martin, Monroe, and Palm Beach counties.

After selecting by lottery the 10 dispensing organizations for the five regions, the DOH must select an additional 10 dispensing organizations. Dispensing organizations may not have cultivation or processing facilities outside the region in which it is licensed.

The bill requires that selected applicants must pay the required licensure fee within 10 days of selection. If the selected applicant does not timely pay the licensure fee, the department must select another applicant from the existing pool of eligible applicants.

If a dispensing organization has its license revoked or renewal application denied, the department must use a lottery to select a new DO within 24 hours after the revocation denial.

If the department does not have sufficient applicants to issue two licenses for each region or to license the additional 10 dispensing organizations, the department must use the lottery process to every 6 months until each region has 2 licensed dispensing organizations and the 10 additional dispensing organizations are licensed.

The bill provides that s. 381.986, F.S., is exempt from the license application process in s. 120.60(1), F.S.

The bill deletes the requirement that the DOH must approve five DOs with one in northwest Florida, one in northeast Florida, one in central Florida, one in southeast Florida, and one in southwest Florida. It also deletes the license criteria in current law.

Section 381.986(5)(c), F.S., specifies the identifying information that must be included in the initial licensure or renewal application.

Section 381.986(5)(d), F.S., provides the following fees:

- Initial application fee of \$50,000.
- Initial license fee of \$125,000.
- Biennial renewal fee of \$125,000.

Section 381.986(5)(e), F.S., requires the DOH to inspect each DO's properties, cultivation facilities, processing facilities, and retail facilities before they begin operations. The DOH must conduct inspections at least once every 2 years after licensure, but may conduct additional announced or unannounced inspections, including follow-up inspections, at reasonable hours in order to ensure that such property and facilities maintain compliance with all applicable requirements. The DO must make all facility premises, equipment, documents, low-THC cannabis, and low-THC cannabis products available to the DOH upon inspection. The DOH may test any low-THC cannabis or low-THC cannabis product in order to ensure that it is safe for human consumption and meets the testing requirements in s. 381.986(7), F.S.

Section 381.986(5)(f), F.S., provides the grounds for revoking, suspending, denying, or refusing to renew a license, and for imposing an administrative penalty not to exceed \$10,000, including a violation of any provision in s. 381.986, F.S., failure to maintain the qualifications for a license, and endangering the health, safety, and welfare of a qualified patient.

Section 381.986(5)(g), F.S., requires the DOH to create a permitting process for all vehicles used by DOs to transport low-THC cannabis and low-THC products.

Dispensing Organization Applications

The bill amends ss. 381.986(6)(a)-(b), F.S., to detail the criteria for the issuance or renewal of a DO license. It requires the DOH to review all applications for completeness and to inspect the applicant's property and facilities to verify the authenticity of the information provided in, or in connection with, the application. It provides that an applicant authorizes the DOH to inspect his or her property and facilities for licensure by applying for the license.

The applicant must also have a \$1 million performance and compliance bond, or other means of security deemed equivalent by the DOH, such as an irrevocable letter of credit or a deposit in a trust account or financial institution. The bond must be payable to the DOH, and posted once the applicant is approved as a DO. The purpose of the bond is to secure payment of any administrative penalties imposed by the DOH and any fees and costs incurred by the DOH regarding the DO license, such as the DO failing to pay 30 days after the fine or costs become final.

The DOs must also employ a medical director who is a physician licensed under ch. 458, F.S., or ch. 459, F.S., to supervise the activities of the DO.

An approved DO is required to maintain compliance with the license criteria at all times.

Dispensing Low-THC Cannabis and Products

Section 381.986(6)(c), F.S., requires DOs to verify the identity of the qualified patient or the legal representative before dispensing low-THC cannabis or low-THC product by requiring the person to produce a government issued identification.

Section 381.986(6)(d), F.S., permits DOs to have cultivation facilities, processing facilities, and retail facilities.

The bill preempts to the state all matters regarding the location of cultivation facilities and processing facilities. It requires that cultivation facilities and processing facilities must be closed to the public, and low-THC cannabis may not be dispensed on the premises of such facilities.

The bill requires that a municipality or county determine by ordinance the criteria for the number, location, and other permitting requirements for all retail facilities located within that municipality or the unincorporated area of that county, respectively. A retail facility may only be established after a municipality or county has adopted such an ordinance. The bill states that retail facilities must have all utilities and resources necessary to store and dispense low-THC cannabis and low-THC cannabis products and that retail facilities must be secured and have theft-prevention systems including an alarm system, cameras, and 24-hour security personnel.

Section 381.986(6)(e), F.S., requires that a DO provide the DOH with the following information within 15 days of such information becoming available:

- The location of any new or proposed facilities;
- Updated contact information for all DO facilities;
- Registration information for any vehicles used for the transportation of low-THC cannabis and low-THC cannabis product; and
- A plan for the recall of any or all low-THC cannabis or low-THC cannabis product.

Section 381.986(6)(f), F.S., requires that all vehicles used to transport all low-THC cannabis or low-THC cannabis products must have a permit issued by the DOH. The cost of the permit is \$5. The permit must be in the vehicle whenever low-THC cannabis or low-THC cannabis products is being transported. The vehicle must be driven by the person identified in the permit. By acceptance of a DO license and the use of the vehicles, the licensee agrees that the vehicle shall always be subject to be inspected and searched without a search warrant, for the purpose of ascertaining that the licensee is complying with all provisions of the act. The inspection may be made during business hours or other times the vehicle is being used to transport low-THC cannabis or low-THC cannabis products.

Testing and Labeling of Low-THC Cannabis

The bill creates s. 381.986(7), F.S., to require that all low-THC cannabis and low-THC cannabis products must be tested by an independent testing laboratory before the DO may dispense it. The independent testing laboratory shall provide the lab results to the DO, and the DO must determine that the lab results indicate that the low-THC cannabis or low-THC cannabis products meet the definition of low-THC cannabis or low-THC cannabis product, is safe for human consumption, and is free from harmful contaminants before it can be given to a patient.

The bill requires that all low-THC cannabis and low-THC cannabis products must be labeled before dispensing, and specifies the information that must be included on the label, including the batch and harvest numbers.

Safety and Efficacy Research for Low-THC Cannabis

The bill creates s. 381.986(8), F.S., to require the UFCP to establish and maintain a safety and efficacy research program for the use of low-THC cannabis or low-THC cannabis products to treat qualifying conditions and symptoms. The bill requires that the DOH provide the UFCP with access to information from the compassionate use registry and the PDMP database, established in s. 893.055, F.S., as needed to conduct research. The Agency for Healthcare Administration must also provide access to registered patient Medicaid records, to the extent allowed under federal law, as needed to conduct research.

Prohibited Activities

The bill amends s. 381.986(9), F.S., to prohibit the following person from making recommendations, offering prescriptions, or providing medical advice to qualified patients:

- Persons who have direct or indirect interest in the dispensing organization; and
- The dispensing organization's managers, employees, and contractors who directly interact with low-THC cannabis or low-THC cannabis products.

Exemptions to Other Laws

The bill amends s. 381.986(10), F.S., to exempt the following persons from the prohibition against the possession of the controlled substance cannabis in ss. 893.13, 893.135, and 893.147, F.S., or any other provision of law:

- The patient's qualified representative who is registered with the DOH on the compassionate use registry as a condition to having legal possession of low-THC cannabis;
- The owners, managers, and employees of contractors of a DO who have direct contact with low-THC cannabis or low-THC cannabis products; and
- A licensed laboratory and its employees who receive and possess low-THC cannabis for the sole purpose of testing to ensure compliance.

The bill clarifies that nothing in s. 381.986, F.S., exempts any person from the prohibition against driving under the influence in s. 326.193, F.S.

Legislative Ratification

The bill creates s. 381.986(11), F.S., to exempt rules of the DOH under this section from the ratification requirements of s. 120.541(3), F.S.

Public Records Exceptions

The bill revises the public records exemption relating to the compassionate use registry in s. 381.987, F.S., to permit UF employees to have access to the compassionate use registry for the purpose of maintaining the registry and periodic reporting or disclosure of information that has been redacted to exclude personal identifying information. It also permits persons engaged in research at the UF pursuant to s. 381.986(8), F.S., to have access to the registry.

The bill amends the public records exemption for the PDMP in ss. 893.055 and 893.0551, F.S., to permit persons engaged in research at the UF pursuant to s. 381.986(8), F.S., to have access to information in the prescription drug monitoring program's database which relates to qualified patients as defined in s. 381.986(1), F.S., for the purpose of conducting research.

Effective Date

The bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Persons who apply for a DO license will incur costs in the preparation of the application. A dispensing organization must pay the fees required for applying for and obtaining a license. Section 381.986(5)(d), F.S., provides the following fees:

- Initial application fee of \$50,000;
- Initial license fee of \$125,000; and
- Biennial renewal fee of \$125,000.

Section 381.986(6)(f), F.S., requires that all vehicles used to transport all low-THC cannabis or low-THC cannabis products must have a permit issued by the DOH, and the permit cost is \$5.

B. Private Sector Impact:

CS/CS/SB 7066 requires that all persons who have a direct or indirect interest in the DO and the applicant's managers, employees, and contractors who directly interact with low-THC cannabis or low-THC cannabis products must be fingerprinted and successfully pass a level 2 background screening pursuant to s. 435.04, F.S. The amount of the fee for fingerprinting varies by vendor. For example, the Department of Business and Professional Regulation assesses a total fee of \$54.50, which includes a \$40.50 payment to the Florida Department of Law Enforcement and the Federal Bureau of Investigation

to process the fingerprints, and an additional \$14.00 processing charge to have the fingerprints scanned and submitted electronically.

Dispensing organizations may incur regulatory costs once licensed including costs for any violations for which they may be fined and costs for testing low-THC cannabis and low-THC cannabis product. A DO is also required to post a \$1 million bond which will cover the costs of fines incurred from cited violations.

C. Government Sector Impact:

The DOH must accept and review applications for approval of licensure as a DO. Depending on the number of qualified applicants, a lottery may be needed to determine the selection of the qualified applicants for the 20 available licenses to be issued to DOs. The DOH may also incur costs for rulemaking and for the requirement to inspect DO facilities at least once every 2 years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 381.986, 381.987, 893.055, and 893.0551.

IX. Additional Information:

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

CS/CS by Rules Committee on April 9, 2015:

The committee substitute:

- Amends s. 381.986(1), F.S., to define the term “independent testing laboratory.”
- Amends the definition of “low-THC cannabis product” in s. 381.986(1)(g), F.S., to provide that low-THC cannabis food products may not include candy or similar confectionary products that appeal to children.
- Amends s. 381.986(2), F.S., to include autism among the conditions for which low-THC cannabis may be ordered by a physician for treatment.
- Amends s. 381.986(5), F.S., to provide for the selection by lottery of two qualified applicants in each of the following defined regions: Northwest Florida, Northeast Florida, Central Florida, Southwest Florida, and Southeast Florida. It also provides for the selection by lottery the 10 additional dispensing organizations.
- Amends s. 381.986(5)(b)8., F.S., to exempt this section from the license application process in s. 120.60(1), F.S., instead of s. 120.60, F.S.

- Amends s. 381.986(9), F.S., to prohibit persons who have direct or indirect interest in the dispensing organization, and the dispensing organization's managers, employees, and contractors who directly interact with low-THC cannabis or low-THC cannabis products from making recommendations, offering prescriptions, or providing medical advice to qualified patients.

CS by Health Policy on March 31, 2015:

The CS incorporates a number of amendments which:

- Allow municipalities to determine by ordinance the number and location of retail facilities within the municipality's boundaries and allow counties to determine the number and location of retail facilities within unincorporated areas of the county;
- Clarify that the DOH must use the same timeframes for future DO licensing cycles and lotteries as will be used for the first licensure cycle;
- Clarify that retail facilities must have all utilities and resources necessary to store and dispense low-THC cannabis and low-THC cannabis products and that retail facilities must be secured and have certain theft-prevention systems;
- Clarify that all law enforcement officials may stop and inspect permitted dispensing organization vehicles;
- Clarify that patients using low-THC cannabis must adhere to laws regarding driving under the influence; and
- Make several technical amendments including:
 - Correcting a drafting error so that a dispensing organization is run by a nurseryman and has been operated as a nursery for 30 years; and
 - Correcting a reference to low-THC cannabis.

B. Amendments:

None.



906436

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Joyner) recommended the following:

Senate Amendment

Delete lines 473 - 476
and insert:
to s. 581.131 for the cultivation of more than 100,000 plants,
is operated by a nurseryman as defined in s. 581.011, and has
been operated as a registered nursery in this state for at least
5 continuous years.



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LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 381.986, Florida Statutes, is amended to
read:

381.986 Compassionate use of ~~low-THC~~ cannabis.—

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

(a) “Applicant” means a person that has submitted an
application to the department for licensure or renewal as a
dispensing organization.



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12 (b) "Batch" means a specific quantity of cannabis product
13 that is intended to have uniform character and quality, within
14 specified limits, and is produced at the same time from one or
15 more harvests.

16 (c) "Dispensing organization" means an applicant licensed
17 organization approved by the department to cultivate, process,
18 and dispense low-THC cannabis pursuant to this section.

19 (d) "Harvest" means a specifically identified and numbered
20 quantity of cannabis cultivated using the same herbicides,
21 pesticides, and fungicides and harvested at the same time from a
22 single facility.

23 (e) ~~(b)~~ "Low-THC Cannabis" means a plant of the genus
24 Cannabis, the dried flowers of which contain 0.8 percent or less
25 of tetrahydrocannabinol and more than 10 percent of cannabidiol
26 weight for weight; the seeds thereof; the resin extracted from
27 any part of such plant; or any compound, manufacture, salt,
28 derivative, mixture, or preparation of such plant or its seeds
29 or resin that is dispensed only from a dispensing organization.

30 (f) "Cannabis product" means any product derived from
31 cannabis, including the resin extracted from any part of such
32 plant or any compound, manufacture, salt, derivative, mixture,
33 or preparation of such plant or its seeds or resin which is
34 dispensed from a dispensing organization. Cannabis products
35 include, but are not limited to, oils, tinctures, creams,
36 encapsulations, and food products. All cannabis products must
37 maintain concentrations, weight for weight, of more than 10
38 percent of cannabidiol.

39 (g) ~~(e)~~ "Medical use" means administration of the ordered
40 amount of low-THC cannabis. The term does not include:



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- 41 1. The possession, use, or administration by smoking;
42 ~~2. The term also does not include~~ The transfer of ~~low-THC~~
43 cannabis to a person other than the qualified patient for whom
44 it was ordered or the qualified patient's legal representative
45 who is registered in the compassionate use registry on behalf of
46 the qualified patient; ~~or-~~
47 3. The use or administration of cannabis or cannabis
48 products:
49 a. On any form of public transportation.
50 b. In any public place.
51 c. In a registered qualified patient's place of work, if
52 restricted by his or her employer.
53 d. In a correctional facility.
54 e. On the grounds of any preschool, primary school, or
55 secondary school.
56 f. On a school bus.
57 (h)-(d) "Qualified patient" means a resident of this state
58 who has been added to the compassionate use registry by a
59 physician licensed under chapter 458 or chapter 459 to receive
60 ~~low-THC~~ cannabis from a dispensing organization.
61 (i)-(e) "Smoking" means burning or igniting a substance and
62 inhaling the smoke. Smoking does not include the use of a
63 vaporizer.
64 (2) PHYSICIAN ORDERING.—
65 (a) Effective January 1, 2015, A physician licensed under
66 chapter 458 or chapter 459 who has examined and is treating a
67 patient suffering from cancer, human immunodeficiency virus,
68 acquired immune deficiency syndrome, epilepsy, amyotrophic
69 lateral sclerosis, multiple sclerosis, Crohn's disease,



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70 Parkinson's disease, paraplegia, quadriplegia, or terminal
71 illness ~~a physical medical condition that chronically produces~~
72 ~~symptoms of seizures or severe and persistent muscle spasms~~ may
73 order for the patient's medical use ~~low-THC~~ cannabis to treat
74 such disease, disorder, or condition; ~~or~~ to alleviate symptoms
75 of such disease, disorder, or condition; ~~r~~ or to alleviate
76 symptoms caused by a treatment for such disease, disorder, or
77 condition if no other satisfactory alternative treatment options
78 exist for that patient and all of the following ~~conditions~~
79 apply:

80 1.(a) The patient is a permanent resident of this state.

81 2.(b) The physician determines that the risks of ordering
82 ~~low-THC~~ cannabis are reasonable in light of the potential
83 benefit for that patient. If a patient is younger than 18 years
84 of age, a second physician must concur with this determination,
85 and such determination must be documented in the patient's
86 medical record.

87 3.(c) The physician registers the patient, the patient's
88 legal representative if requested by the patient, and himself or
89 herself as the orderer of ~~low-THC~~ cannabis for the named patient
90 on the compassionate use registry maintained by the department
91 and updates the registry to reflect the contents of the order.
92 If the patient is a minor, the physician must register a legal
93 representative on the compassionate use registry. The physician
94 shall deactivate the patient's registration when treatment is
95 discontinued.

96 4.(d) The physician maintains a patient treatment plan that
97 includes the dose, route of administration, planned duration,
98 and monitoring of the patient's symptoms and other indicators of



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99 tolerance or reaction to the ~~low-THC~~ cannabis.

100 5.(e) The physician submits the patient treatment plan, as
101 well as any other requested medical records, quarterly to the
102 University of Florida College of Pharmacy for research on the
103 safety and efficacy of ~~low-THC~~ cannabis on patients pursuant to
104 subsection (8).

105 6.(f) The physician obtains the voluntary informed consent
106 of the patient or the patient's legal guardian to treatment with
107 ~~low-THC~~ cannabis after sufficiently explaining the current state
108 of knowledge in the medical community of the effectiveness of
109 treatment of the patient's conditions or symptoms ~~condition~~ with
110 ~~low-THC~~ cannabis, the medically acceptable alternatives, and the
111 potential risks and side effects.

112 (b) A physician who improperly orders cannabis is subject
113 to disciplinary action under the applicable practice act and
114 under s. 456.072(1)(k).

115 (3) PENALTIES.—

116 (a) A physician commits a misdemeanor of the first degree,
117 punishable as provided in s. 775.082 or s. 775.083, if the
118 physician orders ~~low-THC~~ cannabis for a patient without a
119 reasonable belief that the patient is suffering from at least
120 one of the conditions listed in subsection (2).†

121 ~~1. Cancer or a physical medical condition that chronically~~
122 ~~produces symptoms of seizures or severe and persistent muscle~~
123 ~~spasms that can be treated with low-THC cannabis; or~~

124 ~~2. Symptoms of cancer or a physical medical condition that~~
125 ~~chronically produces symptoms of seizures or severe and~~
126 ~~persistent muscle spasms that can be alleviated with low-THC~~
127 ~~cannabis.~~



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128 (b) Any person who fraudulently represents that he or she
129 has at least one condition listed in subsection (2) ~~cancer or a~~
130 ~~physical medical condition that chronically produces symptoms of~~
131 ~~seizures or severe and persistent muscle spasms~~ to a physician
132 for the purpose of being ordered ~~low-THC~~ cannabis by such
133 physician commits a misdemeanor of the first degree, punishable
134 as provided in s. 775.082 or s. 775.083.

135 (4) PHYSICIAN EDUCATION.—

136 (a) Before ordering ~~low-THC~~ cannabis for use by a patient
137 in this state, the appropriate board shall require the ordering
138 physician licensed under chapter 458 or chapter 459 to
139 successfully complete an 8-hour course and subsequent
140 examination offered by the Florida Medical Association or the
141 Florida Osteopathic Medical Association that encompasses the
142 clinical indications for the appropriate use of ~~low-THC~~
143 cannabis, the appropriate delivery mechanisms, the
144 contraindications for such use, as well as the relevant state
145 and federal laws governing the ordering, dispensing, and
146 possessing of this substance. The first course and examination
147 shall be presented by October 1, 2014, and shall be administered
148 at least annually thereafter. Successful completion of the
149 course may be used by a physician to satisfy 8 hours of the
150 continuing medical education requirements required by his or her
151 respective board for licensure renewal. This course may be
152 offered in a distance learning format.

153 (b) The appropriate board shall require the medical
154 director of each dispensing organization approved under
155 subsection (5) to successfully complete a 2-hour course and
156 subsequent examination offered by the Florida Medical



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157 Association or the Florida Osteopathic Medical Association that
158 encompasses appropriate safety procedures and knowledge of ~~low-~~
159 ~~THC~~ cannabis.

160 (c) Successful completion of the course and examination
161 specified in paragraph (a) is required for every physician who
162 orders ~~low-THC~~ cannabis each time such physician renews his or
163 her license. In addition, successful completion of the course
164 and examination specified in paragraph (b) is required for the
165 medical director of each dispensing organization each time such
166 physician renews his or her license.

167 (d) A physician who fails to comply with this subsection
168 and who orders ~~low-THC~~ cannabis may be subject to disciplinary
169 action under the applicable practice act and under s.
170 456.072(1)(k).

171 (5) DUTIES AND POWERS OF THE DEPARTMENT. ~~By January 1,~~
172 ~~2015, The department shall:~~

173 (a) The department shall create a secure, electronic, and
174 online compassionate use registry for the registration of
175 physicians and patients as provided under this section. The
176 registry must be accessible to law enforcement agencies and to a
177 dispensing organization in order to verify patient authorization
178 for ~~low-THC~~ cannabis and record the ~~low-THC~~ cannabis dispensed.
179 The registry must prevent an active registration of a patient by
180 multiple physicians.

181 (b) 1. Beginning 7 days after the effective date of this
182 act, the department shall accept applications for licensure as a
183 dispensing organization. The department shall review each
184 application to determine whether the applicant meets the
185 criteria in subsection (6) and qualifies for licensure.



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186 2. Within 10 days after receiving an application for
187 licensure, the department shall examine the application, notify
188 the applicant of any apparent errors or omissions, and request
189 any additional information the department is allowed by law to
190 require. An application for licensure must be filed with the
191 department no later than 5 p.m. on the 30th day after the
192 effective date of this act, and all applications must be
193 complete no later than 5 p.m. on the 60th day after the
194 effective date of this act.

195 3. If fewer than 20 applicants meet the criteria specified
196 in subsection (6), the department shall, by the 75th day after
197 the effective date of this act, license each such applicant. If
198 more than 20 applicants meet these criteria, licensure shall be
199 determined by lottery.

200 4. Beginning March 15, 2016, and every 6 months thereafter,
201 if fewer than 20 dispensing organization licenses have been
202 issued in this state, the department may issue additional
203 licenses to qualified applicants up to the 20-organization
204 maximum. The department shall use the same timeframes as set
205 forth in subparagraphs 1.-3., beginning 75 days before the date
206 specified for issuing additional licenses. If the number of
207 qualified applicants under this subparagraph exceeds the number
208 of dispensing organization licenses available for issuance,
209 licensure shall be determined by lottery.

210 5. This section is exempt from s. 120.60 ~~Authorize the~~
211 ~~establishment of five dispensing organizations to ensure~~
212 ~~reasonable statewide accessibility and availability as necessary~~
213 ~~for patients registered in the compassionate use registry and~~
214 ~~who are ordered low-THC cannabis under this section, one in each~~



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215 ~~of the following regions: northwest Florida, northeast Florida,~~
216 ~~central Florida, southeast Florida, and southwest Florida.~~

217 (c) The department shall use develop an application form
218 that requires the applicant to state:

219 1. Whether the application is for initial licensure or
220 renewal licensure;

221 2. The name, the physical address, the mailing address, the
222 address listed on the Department of Agriculture and Consumer
223 Services certificate required in paragraph (6) (b), and the
224 contact information for the applicant and for the nursery that
225 holds the Department of Agriculture and Consumer Services
226 certificate, if different from the applicant;

227 3. The name, address, and contact information for the
228 operating nurseryman of the organization that holds the
229 Department of Agriculture and Consumer Services certificate;

230 4. The name, address, license number, and contact
231 information for the applicant's medical director; and

232 5. All information required to be included by subsection
233 (6).

234 (d) The department shall and impose an initial application
235 fee of \$50,000, an initial licensure fee of \$125,000, and a
236 biennial renewal fee of \$125,000 that is sufficient to cover the
237 costs of administering this section. An applicant for approval
238 as a dispensing organization must be able to demonstrate:

239 1. The technical and technological ability to cultivate and
240 produce low-THC cannabis. The applicant must possess a valid
241 certificate of registration issued by the Department of
242 Agriculture and Consumer Services pursuant to s. 581.131 that is
243 issued for the cultivation of more than 400,000 plants, be



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244 ~~operated by a nurseryman as defined in s. 581.011, and have been~~
245 ~~operated as a registered nursery in this state for at least 30~~
246 ~~continuous years.~~

247 ~~2. The ability to secure the premises, resources, and~~
248 ~~personnel necessary to operate as a dispensing organization.~~

249 ~~3. The ability to maintain accountability of all raw~~
250 ~~materials, finished products, and any byproducts to prevent~~
251 ~~diversion or unlawful access to or possession of these~~
252 ~~substances.~~

253 ~~4. An infrastructure reasonably located to dispense low-THC~~
254 ~~cannabis to registered patients statewide or regionally as~~
255 ~~determined by the department.~~

256 ~~5. The financial ability to maintain operations for the~~
257 ~~duration of the 2-year approval cycle, including the provision~~
258 ~~of certified financials to the department. Upon approval, the~~
259 ~~applicant must post a \$5 million performance bond.~~

260 ~~6. That all owners and managers have been fingerprinted and~~
261 ~~have successfully passed a level 2 background screening pursuant~~
262 ~~to s. 435.04.~~

263 ~~7. The employment of a medical director who is a physician~~
264 ~~licensed under chapter 458 or chapter 459 to supervise the~~
265 ~~activities of the dispensing organization.~~

266 (e) The department shall inspect each dispensing
267 organization's properties, cultivation facilities, processing
268 facilities, and retail facilities before they begin operations
269 and at least once every 2 years thereafter. The department may
270 conduct additional announced or unannounced inspections,
271 including followup inspections, at reasonable hours in order to
272 ensure that such property and facilities maintain compliance



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273 with all applicable requirements in subsections (6) and (7) and
274 to ensure that the dispensing organization has not committed any
275 other act that would endanger the health, safety, or security of
276 a qualified patient, dispensing organization staff, or the
277 community in which the dispensing organization is located.

278 Licensure under this section constitutes permission for the
279 department to enter and inspect the premises and facilities of
280 any dispensing organization. The department may inspect any
281 licensed dispensing organization, and a dispensing organization
282 must make all facility premises, equipment, documents, cannabis,
283 and cannabis products available to the department upon
284 inspection. The department may test any cannabis or cannabis
285 product in order to ensure that it is safe for human consumption
286 and that it meets the requirements in this section.

287 (f) The department may suspend or revoke a license, deny or
288 refuse to renew a license, or impose an administrative penalty
289 not to exceed \$10,000 for the following acts or omissions:

290 1. A violation of this section or department rule.

291 2. Failing to maintain qualifications for licensure.

292 3. Endangering the health, safety, or security of a
293 qualified patient.

294 4. Improperly disclosing personal and confidential
295 information of the qualified patient.

296 5. Attempting to procure a license by bribery or fraudulent
297 misrepresentation.

298 6. Being convicted or found guilty of, or entering a plea
299 of nolo contendere to, regardless of adjudication, a crime in
300 any jurisdiction which directly relates to the business of a
301 dispensing organization.



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- 302 7. Making or filing a report or record that the licensee
303 knows to be false.
- 304 8. Willfully failing to maintain a record required by this
305 section or rule of the department.
- 306 9. Willfully impeding or obstructing an employee or agent
307 of the department in the furtherance of his or her official
308 duties.
- 309 10. Engaging in fraud or deceit, negligence, incompetence,
310 or misconduct in the business practices of a dispensing
311 organization.
- 312 11. Making misleading, deceptive, or fraudulent
313 representations in or related to the business practices of a
314 dispensing organization.
- 315 12. Having a license or the authority to engage in any
316 regulated profession, occupation, or business that is related to
317 the business practices of a dispensing organization revoked,
318 suspended, or otherwise acted against, including the denial of
319 licensure, by the licensing authority of any jurisdiction,
320 including its agencies or subdivisions, for a violation that
321 would constitute a violation under state law. A licensing
322 authority's acceptance of a relinquishment of licensure or a
323 stipulation, consent order, or other settlement, offered in
324 response to or in anticipation of the filing of charges against
325 the license, shall be construed as an action against the
326 license.
- 327 13. Violating a lawful order of the department or an agency
328 of the state, or failing to comply with a lawfully issued
329 subpoena of the department or an agency of the state.
- 330 (g) The department shall create a permitting process for



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331 all dispensing organization vehicles used for the transportation
332 of cannabis or cannabis products.

333 (h)-(e) The department shall monitor physician registration
334 and ordering of ~~low-THC~~ cannabis for ordering practices that
335 could facilitate unlawful diversion or misuse of ~~low-THC~~
336 cannabis and take disciplinary action as indicated.

337 (i)-(d) The department shall adopt rules as necessary to
338 implement this section.

339 (6) DISPENSING ORGANIZATION.—

340 (a) An applicant seeking licensure as a dispensing
341 organization, or the renewal of its license, must submit an
342 application to the department. The department must review all
343 applications for completeness, including an appropriate
344 inspection of the applicant's property and facilities to verify
345 the authenticity of the information provided in, or in
346 connection with, the application. An applicant authorizes the
347 department to inspect his or her property and facilities for
348 licensure by applying under this subsection.

349 (b) In order to receive or maintain licensure as a
350 dispensing organization, an applicant must provide proof that:

351 1. The applicant, or a separate entity that is owned solely
352 by the same persons or entities in the same ratio as the
353 applicant, possesses a valid certificate of registration issued
354 by the Department of Agriculture and Consumer Services pursuant
355 to s. 581.131 for the cultivation of more than 400,000 plants,
356 is operated by a nurseryman as defined in s. 581.011, and has
357 been operated as a registered nursery in this state for at least
358 30 continuous years.

359 2. The personnel on staff or under contract for the



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360 applicant have experience cultivating and introducing multiple
361 varieties of plants in this state, including plants that are not
362 native to Florida; experience with propagating plants; and
363 experience with genetic modification or breeding of plants.

364 3. The personnel on staff or under contract for the
365 applicant include at least one person who:

366 a. Has at least 5 years' experience with United States
367 Department of Agriculture Good Agricultural Practices and Good
368 Handling Practices;

369 b. Has at least 5 years' experience with United States Food
370 and Drug Administration Good Manufacturing Practices for food
371 production;

372 c. Has a doctorate degree in organic chemistry or
373 microbiology;

374 d. Has at least 5 years of experience with laboratory
375 procedures which includes analytical laboratory quality control
376 measures, chain of custody procedures, and analytical laboratory
377 methods;

378 e. Has experience with cannabis cultivation and processing,
379 including cannabis extraction techniques and producing cannabis
380 products;

381 f. Has experience and qualifications in chain of custody or
382 other tracking mechanisms;

383 g. Works solely on inventory control; and

384 h. Works solely for security purposes.

385 4. The persons who have a direct or indirect interest in
386 the dispensing organization and the applicant's managers,
387 employees, and contractors who directly interact with cannabis
388 or cannabis products have been fingerprinted and have



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389 successfully passed a level 2 background screening pursuant to
390 s. 435.04.

391 5. The applicant owns, or has at least a 2-year lease of,
392 all properties, facilities, and equipment necessary for the
393 cultivation and processing of cannabis. The applicant must
394 provide a detailed description of each facility and its
395 equipment, a cultivation and processing plan, and a detailed
396 floor plan. The description must include proof that:

397 a. The applicant is capable of sufficient cultivation and
398 processing to serve at least 15,000 patients with an assumed
399 daily use of 1,000 mg per patient per day of cannabis or
400 cannabis product;

401 b. The applicant has arranged for access to all utilities
402 and resources necessary to cultivate or process cannabis at each
403 listed facility; and

404 c. Each facility is secured and has theft-prevention
405 systems including an alarm system, cameras, and 24-hour security
406 personnel.

407 6. The applicant has diversion and tracking prevention
408 procedures, including:

409 a. A system for tracking material through cultivation,
410 processing, and dispensing, including the use of batch and
411 harvest numbers;

412 b. An inventory control system for cannabis and cannabis
413 products;

414 c. A vehicle tracking and security system; and

415 d. A cannabis waste-disposal plan.

416 7. The applicant has recordkeeping policies and procedures
417 in place.



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418 8. The applicant has a facility emergency management plan.

419 9. The applicant has a plan for dispensing cannabis
420 throughout the state. This plan must include planned retail
421 facilities and a delivery plan for providing cannabis and
422 cannabis products to qualified patients who cannot travel to a
423 retail facility.

424 10. The applicant has financial documentation, including:

425 a. Documentation that demonstrates the applicant's
426 financial ability to operate. If the applicant's assets, credit,
427 and projected revenues meet or exceed projected liabilities and
428 expenses and the applicant provides independent evidence that
429 the funds necessary for startup costs, working capital, and
430 contingency financing exist and are available as needed, the
431 applicant has demonstrated the financial ability to operate.
432 Financial ability to operate must be documented by:

433 I. The applicant's audited financial statements. If the
434 applicant is a newly formed entity and does not have a financial
435 history of business upon which audited financial statements may
436 be submitted, the applicant must provide audited financial
437 statements for the separate entity that is owned solely by the
438 same persons or entities in the same ratio as the applicant that
439 possesses the valid certificate of registration issued by the
440 Department of Agriculture and Consumer Services;

441 II. The applicant's projected financial statements,
442 including a balance sheet, an income and expense statement, and
443 a statement of cash flow for the first 2 years of operation,
444 which provides evidence that the applicant has sufficient
445 assets, credit, and projected revenues to cover liabilities and
446 expenses; and



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447 III. A statement of the applicant's estimated startup costs
448 and sources of funds, including a break-even projection and
449 documentation demonstrating that the applicant has the ability
450 to fund all startup costs, working capital costs, and
451 contingency financing requirements.

452
453 All documents required under this sub-subparagraph shall be
454 prepared in accordance with generally accepted accounting
455 principles and signed by a certified public accountant. The
456 statements required by sub-sub-subparagraph II. and III. may be
457 presented as a compilation.

458 b. A list of all subsidiaries of the applicant;

459 c. A list of all lawsuits pending and completed within the
460 past 7 years of which the applicant was a party; and

461 d. Proof of a \$1 million performance and compliance bond,
462 or other equivalent means of security deemed equivalent by the
463 department, such as an irrevocable letter of credit or a deposit
464 in a trust account or financial institution, payable to the
465 department, which must be posted once the applicant is approved
466 as a dispensing organization. The purpose of the bond is to
467 secure payment of any administrative penalties imposed by the
468 department and any fees and costs incurred by the department
469 regarding the dispensing organization license, such as the
470 dispensing organization failing to pay 30 days after the fine or
471 costs become final. The department may make a claim against such
472 bond or security until 1 year after the dispensing
473 organization's license ceases to be valid or until 60 days after
474 any administrative or legal proceeding authorized in this
475 section involving the dispensing organization concludes,



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476 including any appeal, whichever occurs later.

477 11. The employment of a medical director who is a physician
478 licensed under chapter 458 or chapter 459 to supervise the
479 activities of the dispensing organization.

480 (c) An approved dispensing organization shall maintain
481 compliance with the criteria in paragraphs (b), (d), and (e) and
482 subsection (7) ~~demonstrated for selection and approval as a~~
483 ~~dispensing organization under subsection (5)~~ at all times.
484 Before dispensing ~~low-THC~~ cannabis or cannabis products to a
485 qualified patient or to the qualified patient's legal
486 representative, the dispensing organization shall verify the
487 identity of the qualified patient or the qualified patient's
488 legal representative by requiring the qualified patient or the
489 qualified patient's legal representative to produce a
490 government-issued identification card and shall verify that the
491 qualified patient and the qualified patient's legal
492 representative have ~~has~~ an active registration in the
493 compassionate use registry, that the order presented matches the
494 order contents as recorded in the registry, and that the order
495 has not already been filled. Upon dispensing the ~~low-THC~~
496 cannabis, the dispensing organization shall record in the
497 registry the date, time, quantity, and form of ~~low-THC~~ cannabis
498 dispensed.

499 (d) A dispensing organization may have cultivation
500 facilities, processing facilities, and retail facilities.

501 1. All matters regarding the location of cultivation
502 facilities and processing facilities are preempted to the state.
503 Cultivation facilities and processing facilities must be closed
504 to the public, and cannabis may not be dispensed on the premises



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505 of such facilities.

506 2. A municipality must determine by ordinance the criteria
507 for the number, location, and other permitting requirements for
508 all retail facilities located within its municipal boundaries. A
509 retail facility may be established in a municipality only after
510 such an ordinance has been created. A county must determine by
511 ordinance the criteria for the number, location, and other
512 permitting requirements for all retail facilities located within
513 the unincorporated areas of that county. A retail facility may
514 be established in the unincorporated areas of a county only
515 after such an ordinance has been created. Retail facilities must
516 have all utilities and resources necessary to store and dispense
517 cannabis and cannabis products. Retail facilities must be
518 secured and have theft-prevention systems, including an alarm
519 system, cameras, and 24-hour security personnel. Retail
520 facilities may not sell, or contract for the sale of, anything
521 other than cannabis or cannabis products on the property of the
522 retail facility. Before a retail facility may dispense cannabis
523 or a cannabis product, the dispensing organization must have a
524 computer network compliant with the federal Health Insurance
525 Portability and Accountability Act of 1996 which is able to
526 access and upload data to the compassionate use registry and
527 which shall be used by all retail facilities.

528 (e) Within 15 days of such information becoming available,
529 a dispensing organization must provide the department with
530 updated information, as applicable, including:

531 1. The location and a detailed description of any new or
532 proposed facilities.

533 2. The updated contact information, including electronic



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534 and voice communication, for all dispensing organization
535 facilities.

536 3. The registration information for any vehicles used for
537 the transportation of cannabis and cannabis product, including
538 confirmation that all such vehicles have tracking and security
539 systems.

540 4. A plan for the recall of any or all cannabis or cannabis
541 product.

542 (f)1. A dispensing organization may transport cannabis or
543 cannabis products in vehicles departing from their places of
544 business only in vehicles that are owned or leased by the
545 licensee or by a person designated by the dispensing
546 organization, and for which a valid vehicle permit has been
547 issued for such vehicle by the department.

548 2. A vehicle owned or leased by the dispensing organization
549 or a person designated by the dispensing organization and
550 approved by the department must be operated by such person when
551 transporting cannabis or products from the licensee's place of
552 business.

553 3. A vehicle permit may be obtained by a dispensing
554 organization upon application and payment of a fee of \$5 per
555 vehicle to the department. The signature of the person
556 designated by the dispensing organization to drive the vehicle
557 must be included on the vehicle permit application. Such permit
558 remains valid and does not expire unless the licensee or any
559 person designated by the dispensing organization disposes of his
560 or her vehicle, or the licensee's license is transferred,
561 canceled, not renewed, or is revoked by the department,
562 whichever occurs first. The department shall cancel a vehicle



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563 permit upon request of the licensee or owner of the vehicle.

564 4. By acceptance of a license issued under this section,
565 the licensee agrees that the licensed vehicle is, at all times
566 it is being used to transport cannabis or cannabis products,
567 subject to inspection and search without a search warrant by
568 authorized employees of the department, sheriffs, deputy
569 sheriffs, police officers, or other law enforcement officers to
570 determine that the licensee is transporting such products in
571 compliance with this section.

572 (7) TESTING AND LABELING OF CANNABIS.-

573 (a) All cannabis and cannabis products must be tested by an
574 independent testing laboratory before the dispensing
575 organization may dispense them. The independent testing
576 laboratory shall provide the dispensing organization with lab
577 results. Before dispensing, the dispensing organization must
578 determine that the lab results indicate that the cannabis or
579 cannabis product meets the definition of cannabis or cannabis
580 product, is safe for human consumption, and is free from harmful
581 contaminants.

582 (b) All cannabis and cannabis products must be labeled
583 before dispensing. The label must include, at a minimum:

584 1. A statement that the cannabis or cannabis product meets
585 the requirements in paragraph (a);

586 2. The name of the independent testing laboratory that
587 tested the cannabis or cannabis product;

588 3. The name of the cultivation and processing facility
589 where the cannabis or cannabis product originates; and

590 4. The batch number and harvest number from which the
591 cannabis or cannabis product originates.



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592 (8) SAFETY AND EFFICACY RESEARCH FOR CANNABIS.—The
593 University of Florida College of Pharmacy must establish and
594 maintain a safety and efficacy research program for the use of
595 cannabis or cannabis products to treat qualifying conditions and
596 symptoms. The program must include a fully integrated electronic
597 information system for the broad monitoring of health outcomes
598 and safety signal detection. The electronic information system
599 must include information from the compassionate use registry;
600 provider reports, including treatment plans, adverse event
601 reports, and treatment discontinuation reports; patient reports
602 of adverse impacts; event-triggered interviews and medical chart
603 reviews performed by University of Florida clinical research
604 staff; information from external databases, including Medicaid
605 billing reports and information in the prescription drug
606 monitoring database for registered patients; and all other
607 medical reports required by the University of Florida to conduct
608 the research required by this subsection. The department must
609 provide access to information from the compassionate use
610 registry and the prescription drug monitoring database,
611 established in s. 893.055, as needed by the University of
612 Florida to conduct research under this subsection. The Agency
613 for Health Care Administration must provide access to registered
614 patient Medicaid records, to the extent allowed under federal
615 law, as needed by the University of Florida to conduct research
616 under this subsection.

617 (9) ~~(7)~~ EXCEPTIONS TO OTHER LAWS.—

618 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
619 any other ~~provision of~~ law, but subject to the requirements of
620 this section, a qualified patient and the qualified patient's



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621 legal representative who is registered with the department on
622 the compassionate use registry may purchase and possess for the
623 patient's medical use up to the amount of ~~low-THC~~ cannabis
624 ordered for the patient. Nothing in this section exempts any
625 person from the prohibition against driving under the influence
626 provided in s. 316.193.

627 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
628 any other provision of law, but subject to the requirements of
629 this section, an approved dispensing organization and its
630 owners, managers, ~~and~~ employees and the owners, managers, and
631 employees of contractors who have direct contact with cannabis
632 or cannabis product may manufacture, possess, sell, deliver,
633 distribute, dispense, and lawfully dispose of reasonable
634 quantities, as established by department rule, of ~~low-THC~~
635 cannabis. For purposes of this subsection, the terms
636 "manufacture," "possession," "deliver," "distribute," and
637 "dispense" have the same meanings as provided in s. 893.02.

638 (c) An approved dispensing organization and its owners,
639 managers, and employees are not subject to licensure or
640 regulation under chapter 465 or chapter 499 for manufacturing,
641 possessing, selling, delivering, distributing, dispensing, or
642 lawfully disposing of reasonable quantities, as established by
643 department rule, of ~~low-THC~~ cannabis.

644 (d) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
645 any other law, but subject to the requirements of this section,
646 a licensed laboratory and its employees may receive and possess
647 cannabis for the sole purpose of testing the cannabis to ensure
648 compliance with this section.

649 (10) Rules adopted by the department under this section are



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650 exempt from the requirement that they be ratified by the
651 Legislature pursuant to s. 120.541(3).

652 Section 2. Subsections (1) and (2) and paragraphs (b) and
653 (c) of subsection (3) of section 381.987, Florida Statutes, are
654 amended, and paragraph (g) is added to subsection (3) of that
655 section, to read:

656 381.987 Public records exemption for personal identifying
657 information in the compassionate use registry.—

658 (1) A patient's personal identifying information held by
659 the department in the compassionate use registry established
660 under s. 381.986, including, but not limited to, the patient's
661 name, address, telephone number, and government-issued
662 identification number, and all information pertaining to the
663 physician's order for ~~low-THC~~ cannabis and the dispensing
664 thereof are confidential and exempt from s. 119.07(1) and s.
665 24(a), Art. I of the State Constitution.

666 (2) A physician's identifying information held by the
667 department in the compassionate use registry established under
668 s. 381.986, including, but not limited to, the physician's name,
669 address, telephone number, government-issued identification
670 number, and Drug Enforcement Administration number, and all
671 information pertaining to the physician's order for ~~low-THC~~
672 cannabis and the dispensing thereof are confidential and exempt
673 from s. 119.07(1) and s. 24(a), Art. I of the State
674 Constitution.

675 (3) The department shall allow access to the registry,
676 including access to confidential and exempt information, to:

677 (b) A dispensing organization approved by the department
678 pursuant to s. 381.986 which is attempting to verify the



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679 authenticity of a physician's order for ~~low-THC~~ cannabis,
680 including whether the order had been previously filled and
681 whether the order was written for the person attempting to have
682 it filled.

683 (c) A physician who has written an order for ~~low-THC~~
684 cannabis for the purpose of monitoring the patient's use of such
685 cannabis or for the purpose of determining, before issuing an
686 order for ~~low-THC~~ cannabis, whether another physician has
687 ordered the patient's use of ~~low-THC~~ cannabis. The physician may
688 access the confidential and exempt information only for the
689 patient for whom he or she has ordered or is determining whether
690 to order the use of ~~low-THC~~ cannabis pursuant to s. 381.986.

691 (g) Persons engaged in research at the University of
692 Florida pursuant to s. 381.986(8).

693 Section 3. Subsection (1) of section 385.211, Florida
694 Statutes, is amended to read:

695 385.211 Refractory and intractable epilepsy treatment and
696 research at recognized medical centers.—

697 (1) As used in this section, the term "~~low-THC~~ cannabis"
698 means "~~low-THC~~ cannabis" as defined in s. 381.986 that is
699 dispensed only from a dispensing organization as defined in s.
700 381.986.

701 Section 4. Subsection (3) of section 893.02, Florida
702 Statutes, is amended to read:

703 893.02 Definitions.—The following words and phrases as used
704 in this chapter shall have the following meanings, unless the
705 context otherwise requires:

706 (3) "Cannabis" means all parts of any plant of the genus
707 *Cannabis*, whether growing or not; the seeds thereof; the resin



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708 extracted from any part of the plant; and every compound,
709 manufacture, salt, derivative, mixture, or preparation of the
710 plant or its seeds or resin. ~~The term does not include "low-THC~~
711 ~~cannabis," as defined in s. 381.986, if manufactured, possessed,~~
712 ~~sold, purchased, delivered, distributed, or dispensed, in~~
713 ~~conformance with s. 381.986.~~

714 Section 5. Paragraph (b) of subsection (7) of section
715 893.055, Florida Statutes, is amended to read:

716 893.055 Prescription drug monitoring program.—

717 (7)

718 (b) A pharmacy, prescriber, or dispenser shall have access
719 to information in the prescription drug monitoring program's
720 database which relates to a patient of that pharmacy,
721 prescriber, or dispenser in a manner established by the
722 department as needed for the purpose of reviewing the patient's
723 controlled substance prescription history. Persons engaged in
724 research at the University of Florida pursuant to s. 381.986(8)
725 shall have access to information in the prescription drug
726 monitoring program's database which relates to qualified
727 patients as defined in s. 381.986(1) for the purpose of
728 conducting such research. Other access to the program's database
729 shall be limited to the program's manager and to the designated
730 program and support staff, who may act only at the direction of
731 the program manager or, in the absence of the program manager,
732 as authorized. Access by the program manager or such designated
733 staff is for prescription drug program management only or for
734 management of the program's database and its system in support
735 of the requirements of this section and in furtherance of the
736 prescription drug monitoring program. Confidential and exempt



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737 information in the database shall be released only as provided
738 in paragraph (c) and s. 893.0551. The program manager,
739 designated program and support staff who act at the direction of
740 or in the absence of the program manager, and any individual who
741 has similar access regarding the management of the database from
742 the prescription drug monitoring program shall submit
743 fingerprints to the department for background screening. The
744 department shall follow the procedure established by the
745 Department of Law Enforcement to request a statewide criminal
746 history record check and to request that the Department of Law
747 Enforcement forward the fingerprints to the Federal Bureau of
748 Investigation for a national criminal history record check.

749 Section 6. Paragraph (h) is added to subsection (3) of
750 section 893.0551, Florida Statutes, to read:

751 893.0551 Public records exemption for the prescription drug
752 monitoring program.—

753 (3) The department shall disclose such confidential and
754 exempt information to the following persons or entities upon
755 request and after using a verification process to ensure the
756 legitimacy of the request as provided in s. 893.055:

757 (h) Persons engaged in research at the University of
758 Florida pursuant to s. 381.986(8).

759 Section 7. Subsection (1) of section 1004.441, Florida
760 Statutes, is amended to read:

761 1004.441 Refractory and intractable epilepsy treatment and
762 research.—

763 (1) As used in this section, the term "~~low-THC~~ cannabis"
764 means "~~low-THC~~ cannabis" as defined in s. 381.986 that is
765 dispensed only from a dispensing organization as defined in s.



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766 381.986.

767 Section 8. This act shall take effect upon becoming a law.

768

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

770 And the title is amended as follows:

771 Delete everything before the enacting clause

772 and insert:

773 A bill to be entitled

774 An act relating to cannabis; amending s. 381.986,

775 F.S.; defining terms; revising the illnesses and

776 symptoms for which a physician may order a patient the

777 medical use of cannabis in certain circumstances;

778 providing that a physician who improperly orders

779 cannabis is subject to specified disciplinary action;

780 revising the duties of the Department of Health;

781 requiring the department to create a secure,

782 electronic, and online compassionate use registry;

783 requiring the department to begin to accept

784 applications for licensure as a dispensing

785 organization according to a specified application

786 process; requiring the department to review all

787 applications, notify applicants of deficient

788 applications, and request any additional information

789 within a specified period; requiring an application

790 for licensure to be filed and complete by specified

791 dates; providing for a lottery for licensure as a

792 dispensing organization in certain circumstances;

793 authorizing the department to issue additional

794 licenses to qualified applicants in certain



795 circumstances; providing an exemption for the
796 application process; requiring the department to use
797 an application form that requires specified
798 information from the applicant; requiring the
799 department to impose specified application fees;
800 requiring the department to inspect each dispensing
801 organization's properties, cultivation facilities,
802 processing facilities, and retail facilities before
803 those facilities may operate; authorizing followup
804 inspections at reasonable hours; providing that
805 licensure constitutes permission for the department to
806 enter and inspect the premises and facilities of any
807 dispensing organization; authorizing the department to
808 inspect any licensed dispensing organization;
809 requiring dispensing organizations to make all
810 facility premises, equipment, documents, cannabis, and
811 cannabis products available to the department upon
812 inspection; authorizing the department to test
813 cannabis or cannabis products; authorizing the
814 department to suspend or revoke a license, deny or
815 refuse to renew a license, or impose a maximum
816 administrative penalty for specified acts or
817 omissions; requiring the department to create a
818 permitting process for vehicles used for the
819 transportation of cannabis or cannabis products;
820 authorizing the department to adopt rules as necessary
821 for implementation of specified provisions and
822 procedures, and to provide specified guidance;
823 providing procedures and requirements for an applicant



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824 seeking licensure as a dispensing organization or the
825 renewal of its license; requiring the dispensing
826 organization to verify specified information of
827 specified persons in certain circumstances;
828 authorizing a dispensing organization to have
829 cultivation facilities, processing facilities, and
830 retail facilities; authorizing a retail facility to be
831 established in a municipality only after such an
832 ordinance has been created; authorizing a retail
833 facility to be established in the unincorporated areas
834 of a county only after such an ordinance has been
835 created; requiring retail facilities to have all
836 utilities and resources necessary to store and
837 dispense and cannabis products; requiring retail
838 facilities to be secured with specified theft-
839 prevention systems; requiring a dispensing
840 organization to provide the department with specified
841 updated information within a specified period;
842 authorizing a dispensing organization to transport
843 cannabis or cannabis products in vehicles in certain
844 circumstances; requiring such vehicles to be operated
845 by specified persons in certain circumstances;
846 requiring a fee for a vehicle permit; requiring the
847 signature of the designated driver with a vehicle
848 permit application; providing for expiration of the
849 permit in certain circumstances; requiring the
850 department to cancel a vehicle permit upon the request
851 of specified persons; providing that the licensee
852 authorizes the inspection and search of his or her



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853 vehicle without a search warrant by specified persons;
854 requiring all cannabis and cannabis products to be
855 tested by an independent testing laboratory before the
856 dispensing organization may dispense it; requiring the
857 independent testing laboratory to provide the lab
858 results to the dispensing organization for a specified
859 determination; requiring all cannabis and cannabis
860 products to be labeled with specified information
861 before dispensing; requiring the University of Florida
862 College of Pharmacy to establish and maintain a
863 specified safety and efficacy research program;
864 providing program requirements; requiring the
865 department to provide information from the
866 prescription drug monitoring program to the University
867 of Florida as needed; requiring the Agency for Health
868 Care Administration to provide access to specified
869 patient records under certain circumstances; providing
870 that the act does not provide an exception to the
871 prohibition against driving under the influence;
872 authorizing specified individuals to manufacture,
873 possess, sell, deliver, distribute, dispense, and
874 lawfully dispose of reasonable quantities of cannabis;
875 authorizing a licensed laboratory and its employees to
876 receive and possess cannabis in certain circumstances;
877 providing that specified rules adopted by the
878 department are exempt from the requirement to be
879 ratified by the Legislature; amending s. 381.987,
880 F.S.; conforming provisions to changes made by the
881 act; requiring the department to allow specified



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882 persons engaged in research to access the
883 compassionate use registry; amending ss. 385.221 and
884 893.02, F.S.; conforming provisions to changes made by
885 the act; amending s. 893.055, F.S.; providing that
886 persons engaged in research at the University of
887 Florida shall have access to specified information;
888 amending s. 893.0551, F.S.; providing a specified
889 public records exemption for persons engaged in
890 research at the University of Florida; amending s.
891 1004.441, F.S.; conforming provisions to changes made
892 by the act; providing an effective date.



599394

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Joyner) recommended the following:

Senate Amendment to Amendment (429168)

Delete lines 355 - 358
and insert:
to s. 581.131 for the cultivation of more than 100,000 plants,
is operated by a nurseryman as defined in s. 581.011, and has
been operated as a registered nursery in this state for at least
5 continuous years.



430162

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment

Delete line 164

and insert:

3. The use or administration of vaporized low-THC cannabis
or low-THC



159158

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/09/2015	.	
	.	
	.	
	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 140 - 154

and insert:

Cannabis, the dried flowers of which contain ~~0.8 percent or less~~
of tetrahydrocannabinol and more than 10 percent of cannabidiol
weight for weight; the seeds thereof; the resin extracted from
any part of such plant; or any compound, manufacture, salt,
derivative, mixture, or preparation of such plant or its seeds
or resin that is dispensed only from a dispensing organization.

(f) "Low-THC cannabis product" means any product derived



159158

12 from low-THC cannabis, including the resin extracted from any
13 part of such plant or any compound, manufacture, salt,
14 derivative, mixture, or preparation of such plant or its seeds
15 or resin which is dispensed from a dispensing organization. Low-
16 THC cannabis products include, but are not limited to, oils,
17 tinctures, creams, encapsulations, and food products. All low-
18 THC cannabis products must maintain concentrations, weight for
19 weight, of more

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete line 3

24 and insert:

25 381.986, F.S.; defining and redefining terms; revising
26 the illnesses



481462

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/09/2015	.	
	.	
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	.	

The Committee on Rules (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete lines 139 - 771
and insert:

(e) "Independent testing laboratory" means a laboratory, and the managers, employees, or contractors of the laboratory, which have no direct or indirect interest in a dispensing organization.

(f) ~~(b)~~ "Low-THC cannabis" means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol



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12 weight for weight; the seeds thereof; the resin extracted from
13 any part of such plant; or any compound, manufacture, salt,
14 derivative, mixture, or preparation of such plant or its seeds
15 or resin that is dispensed only from a dispensing organization.

16 (g) "Low-THC cannabis product" means any product derived
17 from low-THC cannabis, including the resin extracted from any
18 part of such plant or any compound, manufacture, salt,
19 derivative, mixture, or preparation of such plant or its seeds
20 or resin which is dispensed from a dispensing organization. Low-
21 THC cannabis products include, but are not limited to, oils,
22 tinctures, creams, encapsulations, and food products. Low-THC
23 cannabis food products may not include candy or similar
24 confectionary products that appeal to children. All low-THC
25 cannabis products must maintain concentrations, weight for
26 weight, of 0.8 percent or less of tetrahydrocannabinol and more
27 than 10 percent of cannabidiol.

28 (h)-(e) "Medical use" means administration of the ordered
29 amount of low-THC cannabis. The term does not include:

30 1. The possession, use, or administration by smoking.

31 2. ~~The term also does not include~~ The transfer of low-THC
32 cannabis to a person other than the qualified patient for whom
33 it was ordered or the qualified patient's legal representative
34 who is registered in the compassionate use registry on behalf of
35 the qualified patient.

36 3. The use or administration of low-THC cannabis or low-THC
37 cannabis products:

38 a. On any form of public transportation.

39 b. In any public place.

40 c. In a registered qualified patient's place of work, if



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41 restricted by his or her employer.

42 d. In a correctional facility.

43 e. On the grounds of any preschool, primary school, or
44 secondary school.

45 f. On a school bus.

46 (i)~~(d)~~ "Qualified patient" means a resident of this state
47 who has been added to the compassionate use registry by a
48 physician licensed under chapter 458 or chapter 459 to receive
49 low-THC cannabis from a dispensing organization.

50 (j)~~(e)~~ "Smoking" means burning or igniting a substance and
51 inhaling the smoke. Smoking does not include the use of a
52 vaporizer.

53 (2) PHYSICIAN ORDERING.—

54 (a) ~~Effective January 1, 2015,~~ A physician licensed under
55 chapter 458 or chapter 459 who has examined and is treating a
56 patient suffering from cancer, human immunodeficiency virus,
57 acquired immune deficiency syndrome, epilepsy, amyotrophic
58 lateral sclerosis, autism, multiple sclerosis, Crohn's disease,
59 Parkinson's disease, paraplegia, quadriplegia, or terminal
60 illness ~~a physical medical condition that chronically produces~~
61 ~~symptoms of seizures or severe and persistent muscle spasms~~ may
62 order for the patient's medical use low-THC cannabis to treat
63 such disease, disorder, or condition; ~~or~~ to alleviate symptoms
64 of such disease, disorder, or condition; or to alleviate
65 symptoms caused by a treatment for such disease, disorder, or
66 condition, ~~if no other satisfactory alternative treatment~~
67 options exist for that patient and all of the following
68 conditions apply:

69 1.~~(a)~~ The patient is a permanent resident of this state.



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70 ~~2.(b)~~ The physician determines that the risks of ordering
71 low-THC cannabis are reasonable in light of the potential
72 benefit for that patient. If a patient is younger than 18 years
73 of age, a second physician must concur with this determination,
74 and such determination must be documented in the patient's
75 medical record.

76 ~~3.(e)~~ The physician registers the patient, the patient's
77 legal representative if requested by the patient, and himself or
78 herself as the orderer of low-THC cannabis for the named patient
79 on the compassionate use registry maintained by the department
80 and updates the registry to reflect the contents of the order.
81 If the patient is a minor, the physician must register a legal
82 representative on the compassionate use registry. The physician
83 shall deactivate the patient's registration when treatment is
84 discontinued.

85 ~~4.(d)~~ The physician maintains a patient treatment plan that
86 includes the dose, route of administration, planned duration,
87 and monitoring of the patient's symptoms and other indicators of
88 tolerance or reaction to the low-THC cannabis.

89 ~~5.(e)~~ The physician submits the patient treatment plan, as
90 well as any other requested medical records, quarterly to the
91 University of Florida College of Pharmacy for research on the
92 safety and efficacy of low-THC cannabis on patients pursuant to
93 subsection (8).

94 ~~6.(f)~~ The physician obtains the voluntary informed consent
95 of the patient or the patient's legal guardian to treatment with
96 low-THC cannabis after sufficiently explaining the current state
97 of knowledge in the medical community of the effectiveness of
98 treatment of the patient's conditions or symptoms ~~condition~~ with



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99 low-THC cannabis, the medically acceptable alternatives, and the
100 potential risks and side effects.

101 (b) A physician who improperly orders low-THC cannabis is
102 subject to disciplinary action under the applicable practice act
103 and under s. 456.072(1)(k).

104 (3) PENALTIES.—

105 (a) A physician commits a misdemeanor of the first degree,
106 punishable as provided in s. 775.082 or s. 775.083, if the
107 physician orders low-THC cannabis for a patient without a
108 reasonable belief that the patient is suffering from at least
109 one of the conditions listed in subsection (2).÷

110 ~~1. Cancer or a physical medical condition that chronically~~
111 ~~produces symptoms of seizures or severe and persistent muscle~~
112 ~~spasms that can be treated with low-THC cannabis; or~~

113 ~~2. Symptoms of cancer or a physical medical condition that~~
114 ~~chronically produces symptoms of seizures or severe and~~
115 ~~persistent muscle spasms that can be alleviated with low-THC~~
116 ~~cannabis.~~

117 (b) Any person who fraudulently represents that he or she
118 has at least one condition listed in subsection (2) ~~cancer or a~~
119 ~~physical medical condition that chronically produces symptoms of~~
120 ~~seizures or severe and persistent muscle spasms~~ to a physician
121 for the purpose of being ordered low-THC cannabis by such
122 physician commits a misdemeanor of the first degree, punishable
123 as provided in s. 775.082 or s. 775.083.

124 (4) PHYSICIAN EDUCATION.—

125 (a) Before ordering low-THC cannabis for use by a patient
126 in this state, the appropriate board shall require the ordering
127 physician licensed under chapter 458 or chapter 459 to



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128 successfully complete an 8-hour course and subsequent
129 examination offered by the Florida Medical Association or the
130 Florida Osteopathic Medical Association that encompasses the
131 clinical indications for the appropriate use of low-THC
132 cannabis, the appropriate delivery mechanisms, the
133 contraindications for such use, as well as the relevant state
134 and federal laws governing the ordering, dispensing, and
135 possessing of this substance. The first course and examination
136 shall be presented by October 1, 2014, and shall be administered
137 at least annually thereafter. Successful completion of the
138 course may be used by a physician to satisfy 8 hours of the
139 continuing medical education requirements required by his or her
140 respective board for licensure renewal. This course may be
141 offered in a distance learning format.

142 (b) The appropriate board shall require the medical
143 director of each dispensing organization approved under
144 subsection (5) to successfully complete a 2-hour course and
145 subsequent examination offered by the Florida Medical
146 Association or the Florida Osteopathic Medical Association that
147 encompasses appropriate safety procedures and knowledge of low-
148 THC cannabis.

149 (c) Successful completion of the course and examination
150 specified in paragraph (a) is required for every physician who
151 orders low-THC cannabis each time such physician renews his or
152 her license. In addition, successful completion of the course
153 and examination specified in paragraph (b) is required for the
154 medical director of each dispensing organization each time such
155 physician renews his or her license.

156 (d) A physician who fails to comply with this subsection



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157 and who orders low-THC cannabis may be subject to disciplinary
158 action under the applicable practice act and under s.
159 456.072(1)(k).

160 (5) DUTIES AND POWERS OF THE DEPARTMENT. ~~By January 1,~~
161 ~~2015, The department shall:~~

162 (a) The department shall create a secure, electronic, and
163 online compassionate use registry for the registration of
164 physicians and patients as provided under this section. The
165 registry must be accessible to law enforcement agencies and to a
166 dispensing organization in order to verify patient authorization
167 for low-THC cannabis and record the low-THC cannabis dispensed.
168 The registry must prevent an active registration of a patient by
169 multiple physicians.

170 (b) 1. Beginning 7 days after the effective date of this
171 act, the department shall accept applications for licensure as a
172 dispensing organization. The department shall review each
173 application to determine whether the applicant meets the
174 criteria in subsection (6) and qualifies for licensure.

175 2. Within 10 days after receiving an application for
176 licensure, the department shall examine the application, notify
177 the applicant of any apparent errors or omissions, and request
178 any additional information the department is allowed by law to
179 require. An application for licensure must be filed with the
180 department no later than 5 p.m. on the 30th day after the
181 effective date of this act, and all applications must be
182 complete no later than 5 p.m. on the 60th day after the
183 effective date of this act.

184 3. Prior to the 75th day after the effective date of this
185 act, the department shall select by lottery two applicants who



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186 meet the criteria in subsection (6) in each of the following
187 regions:

188 a. Northwest Florida, consisting of Bay, Calhoun, Escambia,
189 Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon,
190 Liberty, Madison, Santa Rosa, Okaloosa, Taylor, Wakulla, Walton,
191 and Washington counties.

192 b. Northeast Florida, consisting of Alachua, Baker,
193 Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist,
194 Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns,
195 Suwannee, and Union counties.

196 c. Central Florida, consisting of Brevard, Citrus, Hardee,
197 Hernando, Hillsborough, Indian River, Lake, Orange, Osceola,
198 Pasco, Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia
199 counties.

200 d. Southwest Florida, consisting of Charlotte, Collier,
201 DeSoto, Glades, Hendry, Highlands, Lee, Manatee, Okeechobee, and
202 Sarasota counties.

203 e. Southeast Florida, consisting of Broward, Miami-Dade,
204 Martin, Monroe, and Palm Beach counties.

205 4. After the department has selected by lottery the 10
206 dispensing organizations pursuant to subparagraph 3., the
207 department shall select by lottery 10 more applicants who meet
208 the criteria in subsection (6) for licensure. Once licensed,
209 those applicants are authorized to operate in any region in the
210 state, but a dispensing organization may not have cultivation or
211 processing facilities outside the region in which it is
212 licensed.

213 5. The department shall license an applicant selected
214 pursuant to subparagraph 3. or subparagraph 4. unless the



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215 applicant fails to pay the licensure fee within 10 days of
216 selection. If a selected applicant fails to timely pay the
217 licensure fee, the department shall select by lottery another
218 applicant from the existing pool of eligible applicants.

219 6. If the department revokes a license or denies the
220 renewal of a license pursuant to paragraph (f), the department
221 shall conduct a new lottery using the selection process outlined
222 in this paragraph. The selection process must begin 24 hours
223 after such revocation or denial.

224 7. If the department does not have a sufficient pool of
225 qualified applicants to issue 2 licenses in each region, or to
226 license 10 dispensing organizations pursuant to subparagraph 4.,
227 the department shall conduct a lottery using the process in this
228 paragraph every 6 months until each region has 2 licensed
229 dispensing organizations and 10 additional dispensing
230 organizations are licensed, totaling 20 licensed dispensing
231 organizations in this state.

232 8. This section is exempt from s. 120.60(1) ~~Authorize the~~
233 ~~establishment of five dispensing organizations to ensure~~
234 ~~reasonable statewide accessibility and availability as necessary~~
235 ~~for patients registered in the compassionate use registry and~~
236 ~~who are ordered low-THC cannabis under this section, one in each~~
237 ~~of the following regions: northwest Florida, northeast Florida,~~
238 ~~central Florida, southeast Florida, and southwest Florida.~~

239 (c) The department shall use ~~develop~~ an application form
240 that requires the applicant to state:

241 1. Whether the application is for initial licensure or
242 renewal licensure;

243 2. The name, the physical address, the mailing address, the



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244 address listed on the Department of Agriculture and Consumer
245 Services certificate required in paragraph (6) (b), and the
246 contact information for the applicant and for the nursery that
247 holds the Department of Agriculture and Consumer Services
248 certificate, if different from the applicant;

249 3. The name, address, and contact information for the
250 operating nurseryman of the organization that holds the
251 Department of Agriculture and Consumer Services certificate;

252 4. The name, address, license number, and contact
253 information for the applicant's medical director; and

254 5. All information required to be included by subsection
255 (6).

256 (d) The department shall and impose an initial application
257 fee of \$50,000, an initial licensure fee of \$125,000, and a
258 biennial renewal fee of \$125,000 that is sufficient to cover the
259 costs of administering this section. An applicant for approval
260 as a dispensing organization must be able to demonstrate:

261 1. The technical and technological ability to cultivate and
262 produce low-THC cannabis. The applicant must possess a valid
263 certificate of registration issued by the Department of
264 Agriculture and Consumer Services pursuant to s. 581.131 that is
265 issued for the cultivation of more than 400,000 plants, be
266 operated by a nurseryman as defined in s. 581.011, and have been
267 operated as a registered nursery in this state for at least 30
268 continuous years.

269 2. The ability to secure the premises, resources, and
270 personnel necessary to operate as a dispensing organization.

271 3. The ability to maintain accountability of all raw
272 materials, finished products, and any byproducts to prevent



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273 ~~diversion or unlawful access to or possession of these~~
274 ~~substances.~~

275 ~~4. An infrastructure reasonably located to dispense low-THC~~
276 ~~cannabis to registered patients statewide or regionally as~~
277 ~~determined by the department.~~

278 ~~5. The financial ability to maintain operations for the~~
279 ~~duration of the 2-year approval cycle, including the provision~~
280 ~~of certified financials to the department. Upon approval, the~~
281 ~~applicant must post a \$5 million performance bond.~~

282 ~~6. That all owners and managers have been fingerprinted and~~
283 ~~have successfully passed a level 2 background screening pursuant~~
284 ~~to s. 435.04.~~

285 ~~7. The employment of a medical director who is a physician~~
286 ~~licensed under chapter 458 or chapter 459 to supervise the~~
287 ~~activities of the dispensing organization.~~

288 (e) The department shall inspect each dispensing
289 organization's properties, cultivation facilities, processing
290 facilities, and retail facilities before they begin operations
291 and at least once every 2 years thereafter. The department may
292 conduct additional announced or unannounced inspections,
293 including followup inspections, at reasonable hours in order to
294 ensure that such property and facilities maintain compliance
295 with all applicable requirements in subsections (6) and (7) and
296 to ensure that the dispensing organization has not committed any
297 other act that would endanger the health, safety, or security of
298 a qualified patient, dispensing organization staff, or the
299 community in which the dispensing organization is located.
300 Licensure under this section constitutes permission for the
301 department to enter and inspect the premises and facilities of



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302 any dispensing organization. The department may inspect any
303 licensed dispensing organization, and a dispensing organization
304 must make all facility premises, equipment, documents, low-THC
305 cannabis, and low-THC cannabis products available to the
306 department upon inspection. The department may test any low-THC
307 cannabis or low-THC cannabis product in order to ensure that it
308 is safe for human consumption and that it meets the requirements
309 in this section.

310 (f) The department may suspend or revoke a license, deny or
311 refuse to renew a license, or impose an administrative penalty
312 not to exceed \$10,000 for the following acts or omissions:

313 1. A violation of this section or department rule.

314 2. Failing to maintain qualifications for licensure.

315 3. Endangering the health, safety, or security of a
316 qualified patient.

317 4. Improperly disclosing personal and confidential
318 information of the qualified patient.

319 5. Attempting to procure a license by bribery or fraudulent
320 misrepresentation.

321 6. Being convicted or found guilty of, or entering a plea
322 of nolo contendere to, regardless of adjudication, a crime in
323 any jurisdiction which directly relates to the business of a
324 dispensing organization.

325 7. Making or filing a report or record that the licensee
326 knows to be false.

327 8. Willfully failing to maintain a record required by this
328 section or rule of the department.

329 9. Willfully impeding or obstructing an employee or agent
330 of the department in the furtherance of his or her official



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331 duties.
332 10. Engaging in fraud or deceit, negligence, incompetence,
333 or misconduct in the business practices of a dispensing
334 organization.
335 11. Making misleading, deceptive, or fraudulent
336 representations in or related to the business practices of a
337 dispensing organization.
338 12. Having a license or the authority to engage in any
339 regulated profession, occupation, or business that is related to
340 the business practices of a dispensing organization revoked,
341 suspended, or otherwise acted against, including the denial of
342 licensure, by the licensing authority of any jurisdiction,
343 including its agencies or subdivisions, for a violation that
344 would constitute a violation under state law. A licensing
345 authority's acceptance of a relinquishment of licensure or a
346 stipulation, consent order, or other settlement, offered in
347 response to or in anticipation of the filing of charges against
348 the license, shall be construed as an action against the
349 license.
350 13. Violating a lawful order of the department or an agency
351 of the state, or failing to comply with a lawfully issued
352 subpoena of the department or an agency of the state.
353 (g) The department shall create a permitting process for
354 all dispensing organization vehicles used for the transportation
355 of low-THC cannabis or low-THC cannabis products.
356 (h) ~~(e)~~ The department shall monitor physician registration
357 and ordering of low-THC cannabis for ordering practices that
358 could facilitate unlawful diversion or misuse of low-THC
359 cannabis and take disciplinary action as indicated.



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360 (i) ~~(d)~~ The department shall adopt rules as necessary to
361 implement this section.

362 (6) DISPENSING ORGANIZATION.—

363 (a) An applicant seeking licensure as a dispensing
364 organization, or the renewal of its license, must submit an
365 application to the department. The department must review all
366 applications for completeness, including an appropriate
367 inspection of the applicant's property and facilities to verify
368 the authenticity of the information provided in, or in
369 connection with, the application. An applicant authorizes the
370 department to inspect his or her property and facilities for
371 licensure by applying under this subsection.

372 (b) In order to receive or maintain licensure as a
373 dispensing organization, an applicant must provide proof that:

374 1. The applicant, or a separate entity that is owned solely
375 by the same persons or entities in the same ratio as the
376 applicant, possesses a valid certificate of registration issued
377 by the Department of Agriculture and Consumer Services pursuant
378 to s. 581.131 for the cultivation of more than 400,000 plants,
379 is operated by a nurseryman as defined in s. 581.011, and has
380 been operated as a registered nursery in this state for at least
381 30 continuous years.

382 2. The personnel on staff or under contract for the
383 applicant have experience cultivating and introducing multiple
384 varieties of plants in this state, including plants that are not
385 native to Florida; experience with propagating plants; and
386 experience with genetic modification or breeding of plants.

387 3. The personnel on staff or under contract for the
388 applicant include at least one person who:



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389 a. Has at least 5 years' experience with United States
390 Department of Agriculture Good Agricultural Practices and Good
391 Handling Practices;

392 b. Has at least 5 years' experience with United States Food
393 and Drug Administration Good Manufacturing Practices for food
394 production;

395 c. Has a doctorate degree in organic chemistry or
396 microbiology;

397 d. Has at least 5 years' of experience with laboratory
398 procedures which includes analytical laboratory quality control
399 measures, chain of custody procedures, and analytical laboratory
400 methods;

401 e. Has experience with cannabis cultivation and processing,
402 including cannabis extraction techniques and producing cannabis
403 products;

404 f. Has experience and qualifications in chain of custody or
405 other tracking mechanisms;

406 g. Works solely on inventory control; and

407 h. Works solely for security purposes.

408 4. The persons who have a direct or indirect interest in
409 the dispensing organization and the applicant's managers,
410 employees, and contractors who directly interact with low-THC
411 cannabis or low-THC cannabis products have been fingerprinted
412 and have successfully passed a level 2 background screening
413 pursuant to s. 435.04.

414 5. The applicant owns, or has at least a 2-year lease of,
415 all properties, facilities, and equipment necessary for the
416 cultivation and processing of low-THC cannabis. The applicant
417 must provide a detailed description of each facility and its



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418 equipment, a cultivation and processing plan, and a detailed
419 floor plan. The description must include proof that:
420 a. The applicant is capable of sufficient cultivation and
421 processing to serve at least 15,000 patients with an assumed
422 daily use of 1,000 mg per patient per day of low-THC cannabis or
423 low-THC cannabis product;
424 b. The applicant has arranged for access to all utilities
425 and resources necessary to cultivate or process low-THC cannabis
426 at each listed facility; and
427 c. Each facility is secured and has theft-prevention
428 systems including an alarm system, cameras, and 24-hour security
429 personnel.
430 6. The applicant has diversion and tracking prevention
431 procedures, including:
432 a. A system for tracking low-THC material through
433 cultivation, processing, and dispensing, including the use of
434 batch and harvest numbers;
435 b. An inventory control system for low-THC cannabis and
436 low-THC cannabis products;
437 c. A vehicle tracking and security system; and
438 d. A cannabis waste-disposal plan.
439 7. The applicant has recordkeeping policies and procedures
440 in place.
441 8. The applicant has a facility emergency management plan.
442 9. The applicant has a plan for dispensing low-THC cannabis
443 throughout the state. This plan must include planned retail
444 facilities and a delivery plan for providing low-THC cannabis
445 and low-THC cannabis products to qualified patients who cannot
446 travel to a retail facility.



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447 10. The applicant has financial documentation, including:
448 a. Documentation that demonstrates the applicant's
449 financial ability to operate. If the applicant's assets, credit,
450 and projected revenues meet or exceed projected liabilities and
451 expenses and the applicant provides independent evidence that
452 the funds necessary for startup costs, working capital, and
453 contingency financing exist and are available as needed, the
454 applicant has demonstrated the financial ability to operate.
455 Financial ability to operate must be documented by:

456 I. The applicant's audited financial statements. If the
457 applicant is a newly formed entity and does not have a financial
458 history of business upon which audited financial statements may
459 be submitted, the applicant must provide audited financial
460 statements for the separate entity that is owned solely by the
461 same persons or entities in the same ratio as the applicant that
462 possesses the valid certificate of registration issued by the
463 Department of Agriculture and Consumer Services;

464 II. The applicant's projected financial statements,
465 including a balance sheet, an income and expense statement, and
466 a statement of cash flow for the first 2 years of operation,
467 which provides evidence that the applicant has sufficient
468 assets, credit, and projected revenues to cover liabilities and
469 expenses; and

470 III. A statement of the applicant's estimated startup costs
471 and sources of funds, including a break-even projection and
472 documentation demonstrating that the applicant has the ability
473 to fund all startup costs, working capital costs, and
474 contingency financing requirements.
475



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476 All documents required under this sub-subparagraph shall be
477 prepared in accordance with generally accepted accounting
478 principles and signed by a certified public accountant. The
479 statements required by sub-sub-subparagraphs II. and III. may be
480 presented as a compilation.

481 b. A list of all subsidiaries of the applicant;

482 c. A list of all lawsuits pending and completed within the
483 past 7 years of which the applicant was a party; and

484 d. Proof of a \$1 million performance and compliance bond,
485 or other equivalent means of security deemed equivalent by the
486 department, such as an irrevocable letter of credit or a deposit
487 in a trust account or financial institution, payable to the
488 department, which must be posted once the applicant is approved
489 as a dispensing organization. The purpose of the bond is to
490 secure payment of any administrative penalties imposed by the
491 department and any fees and costs incurred by the department
492 regarding the dispensing organization license, such as the
493 dispensing organization failing to pay 30 days after the fine or
494 costs become final. The department may make a claim against such
495 bond or security until 1 year after the dispensing
496 organization's license ceases to be valid or until 60 days after
497 any administrative or legal proceeding authorized in this
498 section involving the dispensing organization concludes,
499 including any appeal, whichever occurs later.

500 11. The employment of a medical director who is a physician
501 licensed under chapter 458 or chapter 459 to supervise the
502 activities of the dispensing organization.

503 (c) An approved dispensing organization shall maintain
504 compliance with the criteria in paragraphs (b), (d), and (e) and



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505 ~~subsection (7) demonstrated for selection and approval as a~~
506 ~~dispensing organization under subsection (5) at all times.~~
507 Before dispensing low-THC cannabis or low-THC cannabis products
508 to a qualified patient or to the qualified patient's legal
509 representative, the dispensing organization shall verify the
510 identity of the qualified patient or the qualified patient's
511 legal representative by requiring the qualified patient or the
512 qualified patient's legal representative to produce a
513 government-issued identification card and shall verify that the
514 qualified patient and the qualified patient's legal
515 representative have ~~has~~ an active registration in the
516 compassionate use registry, that the order presented matches the
517 order contents as recorded in the registry, and that the order
518 has not already been filled. Upon dispensing the low-THC
519 cannabis, the dispensing organization shall record in the
520 registry the date, time, quantity, and form of low-THC cannabis
521 dispensed.

522 (d) A dispensing organization may have cultivation
523 facilities, processing facilities, and retail facilities.

524 1. All matters regarding the location of cultivation
525 facilities and processing facilities are preempted to the state.
526 Cultivation facilities and processing facilities must be closed
527 to the public, and low-THC cannabis may not be dispensed on the
528 premises of such facilities.

529 2. A municipality must determine by ordinance the criteria
530 for the number and location of, and other permitting
531 requirements for, all retail facilities located within its
532 municipal boundaries. A retail facility may be established in a
533 municipality only after such an ordinance has been created. A



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534 county must determine by ordinance the criteria for the number,
535 location, and other permitting requirements for all retail
536 facilities located within the unincorporated areas of that
537 county. A retail facility may be established in the
538 unincorporated areas of a county only after such an ordinance
539 has been created. Retail facilities must have all utilities and
540 resources necessary to store and dispense low-THC cannabis and
541 low-THC cannabis products. Retail facilities must be secured and
542 have theft-prevention systems, including an alarm system,
543 cameras, and 24-hour security personnel. Retail facilities may
544 not sell, or contract for the sale of, anything other than low-
545 THC cannabis or low-THC cannabis products on the property of the
546 retail facility. Before a retail facility may dispense low-THC
547 cannabis or a low-THC cannabis product, the dispensing
548 organization must have a computer network compliant with the
549 federal Health Insurance Portability and Accountability Act of
550 1996 which is able to access and upload data to the
551 compassionate use registry and which shall be used by all retail
552 facilities.

553 (e) Within 15 days of such information becoming available,
554 a dispensing organization must provide the department with
555 updated information, as applicable, including:

556 1. The location and a detailed description of any new or
557 proposed facilities.

558 2. The updated contact information, including electronic
559 and voice communication, for all dispensing organization
560 facilities.

561 3. The registration information for any vehicles used for
562 the transportation of low-THC cannabis and low-THC cannabis



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563 products, including confirmation that all such vehicles have
564 tracking and security systems.

565 4. A plan for the recall of any or all low-THC cannabis or
566 low-THC cannabis products.

567 (f)1. A dispensing organization may transport low-THC
568 cannabis or low-THC cannabis products in vehicles departing from
569 their places of business only in vehicles that are owned or
570 leased by the licensee or by a person designated by the
571 dispensing organization, and for which a valid vehicle permit
572 has been issued for such vehicle by the department.

573 2. A vehicle owned or leased by the dispensing organization
574 or a person designated by the dispensing organization and
575 approved by the department must be operated by such person when
576 transporting low-THC cannabis or low-THC products from the
577 licensee's place of business.

578 3. A vehicle permit may be obtained by a dispensing
579 organization upon application and payment of a fee of \$5 per
580 vehicle to the department. The signature of the person
581 designated by the dispensing organization to drive the vehicle
582 must be included on the vehicle permit application. Such permit
583 remains valid and does not expire unless the licensee or any
584 person designated by the dispensing organization disposes of his
585 or her vehicle, or the licensee's license is transferred,
586 canceled, not renewed, or is revoked by the department,
587 whichever occurs first. The department shall cancel a vehicle
588 permit upon request of the licensee or owner of the vehicle.

589 4. By acceptance of a license issued under this section,
590 the licensee agrees that the licensed vehicle is, at all times
591 it is being used to transport low-THC cannabis or low-THC



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592 cannabis products, subject to inspection and search without a
593 search warrant by authorized employees of the department,
594 sheriffs, deputy sheriffs, police officers, or other law
595 enforcement officers to determine that the licensee is
596 transporting such products in compliance with this section.

597 (7) TESTING AND LABELING OF LOW-THC CANNABIS.—

598 (a) All low-THC cannabis and low-THC cannabis products must
599 be tested by an independent testing laboratory before the
600 dispensing organization may dispense them. The independent
601 testing laboratory shall provide the dispensing organization
602 with lab results. Before dispensing, the dispensing organization
603 must determine that the lab results indicate that the low-THC
604 cannabis or low-THC cannabis product meets the definition of
605 low-THC cannabis or low-THC cannabis product, is safe for human
606 consumption, and is free from harmful contaminants.

607 (b) All low-THC cannabis and low-THC cannabis products must
608 be labeled before dispensing. The label must include, at a
609 minimum:

610 1. A statement that the low-THC cannabis or low-THC
611 cannabis product meets the requirements in paragraph (a);

612 2. The name of the independent testing laboratory that
613 tested the low-THC cannabis or low-THC cannabis product;

614 3. The name of the cultivation and processing facility
615 where the low-THC cannabis or low-THC cannabis product
616 originates; and

617 4. The batch number and harvest number from which the low-
618 THC cannabis or low-THC cannabis product originates.

619 (8) SAFETY AND EFFICACY RESEARCH FOR LOW-THC CANNABIS.—The
620 University of Florida College of Pharmacy shall establish and



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621 maintain a safety and efficacy research program for the use of
622 low-THC cannabis or low-THC cannabis products to treat
623 qualifying conditions and symptoms. The program must include a
624 fully integrated electronic information system for the broad
625 monitoring of health outcomes and safety signal detection. The
626 electronic information system must include information from the
627 compassionate use registry; provider reports, including
628 treatment plans, adverse event reports, and treatment
629 discontinuation reports; patient reports of adverse impacts;
630 event-triggered interviews and medical chart reviews performed
631 by University of Florida clinical research staff; information
632 from external databases, including Medicaid billing reports and
633 information in the prescription drug monitoring database for
634 registered patients; and all other medical reports required by
635 the University of Florida to conduct the research required by
636 this subsection. The department must provide access to
637 information from the compassionate use registry and the
638 prescription drug monitoring database, established in s.
639 893.055, as needed by the University of Florida to conduct
640 research under this subsection. The Agency for Health Care
641 Administration must provide access to registered patient
642 Medicaid records, to the extent allowed under federal law, as
643 needed by the University of Florida to conduct research under
644 this subsection.

645 (9) The persons who have direct or indirect interest in the
646 dispensing organization and the dispensing organization's
647 managers, employees, and contractors who directly interact with
648 low-THC cannabis or low-THC cannabis products are prohibited
649 from making recommendations, offering prescriptions, or



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650 providing medical advice to qualified patients.

651 (10)~~(7)~~ EXCEPTIONS TO OTHER LAWS.—

652 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
653 any other ~~provision of~~ law, but subject to the requirements of
654 this section, a qualified patient and the qualified patient's
655 legal representative who is registered with the department on
656 the compassionate use registry may purchase and possess for the
657 patient's medical use up to the amount of low-THC cannabis
658 ordered for the patient. Nothing in this section exempts any
659 person from the prohibition against driving under the influence
660 provided in s. 316.193.

661 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
662 any other provision of law, but subject to the requirements of
663 this section, an approved dispensing organization and its
664 owners, managers, ~~and~~ employees and the owners, managers, and
665 employees of contractors who have direct contact with low-THC
666 cannabis or low-THC cannabis product may manufacture, possess,
667 sell, deliver, distribute, dispense, and lawfully dispose of
668 reasonable quantities, as established by department rule, of
669 low-THC cannabis. For purposes of this subsection, the terms
670 "manufacture," "possession," "deliver," "distribute," and
671 "dispense" have the same meanings as provided in s. 893.02.

672 (c) An approved dispensing organization and its owners,
673 managers, and employees are not subject to licensure or
674 regulation under chapter 465 or chapter 499 for manufacturing,
675 possessing, selling, delivering, distributing, dispensing, or
676 lawfully disposing of reasonable quantities, as established by
677 department rule, of low-THC cannabis.

678 (d) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or



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679 any other law, but subject to the requirements of this section,
680 a licensed laboratory and its employees may receive and possess
681 low-THC cannabis for the sole purpose of testing the low-THC
682 cannabis to ensure compliance with this section.

683 (11) Rules adopted by the department under this section are

684
685 ===== T I T L E A M E N D M E N T =====

686 And the title is amended as follows:

687 Delete lines 19 - 98

688 and insert:

689 dates; requiring the department to select two
690 applicants in specified regions for licensure as a
691 dispensing organization; requiring the department to
692 issue 10 additional licenses to qualified applicants
693 by lottery; authorizing applicants to operate in any
694 region of the state; prohibiting a dispensing
695 organization from having cultivation or processing
696 facilities outside the region in which it is licensed;
697 requiring the department to select by lottery another
698 applicant in certain circumstances; requiring the
699 department to conduct a new lottery after the
700 revocation or the denial of renewal of a license;
701 requiring the department to conduct a lottery at
702 specified intervals if there are available dispensing
703 organization licenses; providing an exemption for the
704 application process; requiring the department to use
705 an application form that requires specified
706 information from the applicant; requiring the
707 department to impose specified application fees;



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708 requiring the department to inspect each dispensing
709 organization's properties, cultivation facilities,
710 processing facilities, and retail facilities before
711 those facilities may operate; authorizing followup
712 inspections at reasonable hours; providing that
713 licensure constitutes permission for the department to
714 enter and inspect the premises and facilities of any
715 dispensing organization; authorizing the department to
716 inspect any licensed dispensing organization;
717 requiring dispensing organizations to make all
718 facility premises, equipment, documents, low-THC
719 cannabis, and low-THC cannabis products available to
720 the department upon inspection; authorizing the
721 department to test low-THC cannabis or low-THC
722 cannabis products; authorizing the department to
723 suspend or revoke a license, deny or refuse to renew a
724 license, or impose a maximum administrative penalty
725 for specified acts or omissions; requiring the
726 department to create a permitting process for vehicles
727 used for the transportation of low-THC cannabis or
728 low-THC cannabis products; authorizing the department
729 to adopt rules as necessary for implementation of
730 specified provisions and procedures, and to provide
731 specified guidance; providing procedures and
732 requirements for an applicant seeking licensure as a
733 dispensing organization or the renewal of its license;
734 requiring the dispensing organization to verify
735 specified information of specified persons in certain
736 circumstances; authorizing a dispensing organization



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737 to have cultivation facilities, processing facilities,
738 and retail facilities; authorizing a retail facility
739 to be established in a municipality only after such an
740 ordinance has been created; authorizing a retail
741 facility to be established in the unincorporated areas
742 of a county only after such an ordinance has been
743 created; requiring retail facilities to have all
744 utilities and resources necessary to store and
745 dispense low-THC and low-THC cannabis products;
746 requiring retail facilities to be secured with
747 specified theft-prevention systems; requiring a
748 dispensing organization to provide the department with
749 specified updated information within a specified
750 period; authorizing a dispensing organization to
751 transport low-THC cannabis or low-THC cannabis
752 products in vehicles in certain circumstances;
753 requiring such vehicles to be operated by specified
754 persons in certain circumstances; requiring a fee for
755 a vehicle permit; requiring the signature of the
756 designated driver with a vehicle permit application;
757 providing for expiration of the permit in certain
758 circumstances; requiring the department to cancel a
759 vehicle permit upon the request of specified persons;
760 providing that the licensee authorizes the inspection
761 and search of his or her vehicle without a search
762 warrant by specified persons; requiring all low-THC
763 cannabis and low-THC cannabis products to be tested by
764 an independent testing laboratory before the
765 dispensing organization may dispense it; requiring the



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766 independent testing laboratory to provide the lab
767 results to the dispensing organization for a specified
768 determination; requiring all low-THC cannabis and low-
769 THC cannabis products to be labeled with specified
770 information before dispensing; requiring the
771 University of Florida College of Pharmacy to establish
772 and maintain a specified safety and efficacy research
773 program; providing program requirements; requiring the
774 department to provide information from the
775 prescription drug monitoring program to the University
776 of Florida as needed; requiring the Agency for Health
777 Care Administration to provide access to specified
778 patient records under certain circumstances;
779 prohibiting persons who have direct or indirect
780 interest in a dispensing organization and the
781 dispensing organization's managers, employees, and
782 contractors who directly interact with low-THC
783 cannabis and low-THC cannabis products from making
784 recommendations, offering prescriptions, or providing
785 medical advice to qualified patients; providing



341214

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/09/2015	.	
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	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment

Delete lines 515 - 524
and insert:

a. The applicant has arranged for access to all utilities and resources necessary to cultivate or process low-THC cannabis at each listed facility; and

b. Each facility is secured and has theft prevention systems including an alarm system, cameras, and 24-hour security personnel.



895340

LEGISLATIVE ACTION

Senate	.	House
Comm: OO	.	
04/09/2015	.	
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	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment

1
2
3 Delete lines 141 - 142
4 and insert:
5 of tetrahydrocannabinol ~~and more than 10 percent of cannabidiol~~
6 ~~weight for weight~~; the seeds thereof; the resin extracted from



479744

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/09/2015	.	
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	.	
	.	

The Committee on Rules (Soto) recommended the following:

Senate Amendment

Delete lines 164 - 165
and insert:

3. The use or administration of vaporized low-THC cannabis:

By the Committees on Health Policy; and Regulated Industries

588-03206-15

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1 A bill to be entitled
 2 An act relating to low-THC cannabis; amending s.
 3 381.986, F.S.; defining terms; revising the illnesses
 4 and symptoms for which a physician may order a patient
 5 the medical use of low-THC cannabis in certain
 6 circumstances; providing that a physician who
 7 improperly orders low-THC cannabis is subject to
 8 specified disciplinary action; revising the duties of
 9 the Department of Health; requiring the department to
 10 create a secure, electronic, and online compassionate
 11 use registry; requiring the department to begin to
 12 accept applications for licensure as a dispensing
 13 organization according to a specified application
 14 process; requiring the department to review all
 15 applications, notify applicants of deficient
 16 applications, and request any additional information
 17 within a specified period; requiring an application
 18 for licensure to be filed and complete by specified
 19 dates; providing for a lottery for licensure as a
 20 dispensing organization in certain circumstances;
 21 authorizing the department to issue additional
 22 licenses to qualified applicants in certain
 23 circumstances; providing an exemption for the
 24 application process; requiring the department to use
 25 an application form that requires specified
 26 information from the applicant; requiring the
 27 department to impose specified application fees;
 28 requiring the department to inspect each dispensing
 29 organization's properties, cultivation facilities,

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30 processing facilities, and retail facilities before
 31 those facilities may operate; authorizing followup
 32 inspections at reasonable hours; providing that
 33 licensure constitutes permission for the department to
 34 enter and inspect the premises and facilities of any
 35 dispensing organization; authorizing the department to
 36 inspect any licensed dispensing organization;
 37 requiring dispensing organizations to make all
 38 facility premises, equipment, documents, low-THC
 39 cannabis, and low-THC cannabis products available to
 40 the department upon inspection; authorizing the
 41 department to test low-THC cannabis or low-THC
 42 cannabis products; authorizing the department to
 43 suspend or revoke a license, deny or refuse to renew a
 44 license, or impose a maximum administrative penalty
 45 for specified acts or omissions; requiring the
 46 department to create a permitting process for vehicles
 47 used for the transportation of low-THC cannabis or
 48 low-THC cannabis products; authorizing the department
 49 to adopt rules as necessary for implementation of
 50 specified provisions and procedures, and to provide
 51 specified guidance; providing procedures and
 52 requirements for an applicant seeking licensure as a
 53 dispensing organization or the renewal of its license;
 54 requiring the dispensing organization to verify
 55 specified information of specified persons in certain
 56 circumstances; authorizing a dispensing organization
 57 to have cultivation facilities, processing facilities,
 58 and retail facilities; authorizing a retail facility

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59 to be established in a municipality only after such an
60 ordinance has been created; authorizing a retail
61 facility to be established in the unincorporated areas
62 of a county only after such an ordinance has been
63 created; requiring retail facilities to have all
64 utilities and resources necessary to store and
65 dispense low-THC and low-THC cannabis products;
66 requiring retail facilities to be secured with
67 specified theft-prevention systems; requiring a
68 dispensing organization to provide the department with
69 specified updated information within a specified
70 period; authorizing a dispensing organization to
71 transport low-THC cannabis or low-THC cannabis
72 products in vehicles in certain circumstances;
73 requiring such vehicles to be operated by specified
74 persons in certain circumstances; requiring a fee for
75 a vehicle permit; requiring the signature of the
76 designated driver with a vehicle permit application;
77 providing for expiration of the permit in certain
78 circumstances; requiring the department to cancel a
79 vehicle permit upon the request of specified persons;
80 providing that the licensee authorizes the inspection
81 and search of his or her vehicle without a search
82 warrant by specified persons; requiring all low-THC
83 cannabis and low-THC cannabis products to be tested by
84 an independent testing laboratory before the
85 dispensing organization may dispense it; requiring the
86 independent testing laboratory to provide the lab
87 results to the dispensing organization for a specified

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88 determination; requiring all low-THC cannabis and low-
89 THC cannabis products to be labeled with specified
90 information before dispensing; requiring the
91 University of Florida College of Pharmacy to establish
92 and maintain a specified safety and efficacy research
93 program; providing program requirements; requiring the
94 department to provide information from the
95 prescription drug monitoring program to the University
96 of Florida as needed; requiring the Agency for Health
97 Care Administration to provide access to specified
98 patient records under certain circumstances; providing
99 that the act does not provide an exception to the
100 prohibition against driving under the influence;
101 authorizing specified individuals to manufacture,
102 possess, sell, deliver, distribute, dispense, and
103 lawfully dispose of reasonable quantities of low-THC
104 cannabis; authorizing a licensed laboratory and its
105 employees to receive and possess low-THC cannabis in
106 certain circumstances; providing that specified rules
107 adopted by the department are exempt from the
108 requirement to be ratified by the Legislature;
109 amending s. 381.987, F.S.; requiring the department to
110 allow specified persons engaged in research to access
111 the compassionate use registry; amending s. 893.055,
112 F.S.; providing that persons engaged in research at
113 the University of Florida shall have access to
114 specified information; amending s. 893.0551, F.S.;
115 providing a specified public records exemption for
116 persons engaged in research at the University of

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117 Florida; providing an effective date.

118

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

120

121 Section 1. Section 381.986, Florida Statutes, is amended to
122 read:

123 381.986 Compassionate use of low-THC cannabis.—

124 (1) DEFINITIONS.—As used in this section, the term:

125 (a) “Applicant” means a person that has submitted an
126 application to the department for licensure or renewal as a
127 dispensing organization.

128 (b) “Batch” means a specific quantity of low-THC cannabis
129 product that is intended to have uniform character and quality,
130 within specified limits, and is produced at the same time from
131 one or more harvests.

132 (c) “Dispensing organization” means an applicant licensed
133 organization approved by the department to cultivate, process,
134 and dispense low-THC cannabis pursuant to this section.

135 (d) “Harvest” means a specifically identified and numbered
136 quantity of low-THC cannabis cultivated using the same
137 herbicides, pesticides, and fungicides and harvested at the same
138 time from a single facility.

139 (e) ~~(b)~~ “Low-THC cannabis” means a plant of the genus
140 Cannabis, the dried flowers of which contain 0.8 percent or less
141 of tetrahydrocannabinol and more than 10 percent of cannabidiol
142 weight for weight; the seeds thereof; the resin extracted from
143 any part of such plant; or any compound, manufacture, salt,
144 derivative, mixture, or preparation of such plant or its seeds
145 or resin that is dispensed only from a dispensing organization.

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146 (f) “Low-THC cannabis product” means any product derived
147 from low-THC cannabis, including the resin extracted from any
148 part of such plant or any compound, manufacture, salt,
149 derivative, mixture, or preparation of such plant or its seeds
150 or resin which is dispensed from a dispensing organization. Low-
151 THC cannabis products include, but are not limited to, oils,
152 tinctures, creams, encapsulations, and food products. All low-
153 THC cannabis products must maintain concentrations, weight for
154 weight, of 0.8 percent or less of tetrahydrocannabinol and more
155 than 10 percent of cannabidiol.

156 (g) ~~(e)~~ “Medical use” means administration of the ordered
157 amount of low-THC cannabis. The term does not include:

158 1. The possession, use, or administration by smoking;—

159 2. ~~The term also does not include~~ The transfer of low-THC
160 cannabis to a person other than the qualified patient for whom
161 it was ordered or the qualified patient’s legal representative
162 who is registered in the compassionate use registry on behalf of
163 the qualified patient; or—

164 3. The use or administration of low-THC cannabis or low-THC
165 cannabis products:

166 a. On any form of public transportation.

167 b. In any public place.

168 c. In a registered qualified patient’s place of work, if
169 restricted by his or her employer.

170 d. In a correctional facility.

171 e. On the grounds of any preschool, primary school, or
172 secondary school.

173 f. On a school bus.

174 (h) ~~(d)~~ “Qualified patient” means a resident of this state

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175 who has been added to the compassionate use registry by a
 176 physician licensed under chapter 458 or chapter 459 to receive
 177 low-THC cannabis from a dispensing organization.

178 ~~(i)(e)~~ "Smoking" means burning or igniting a substance and
 179 inhaling the smoke. Smoking does not include the use of a
 180 vaporizer.

181 (2) PHYSICIAN ORDERING.—

182 ~~(a) Effective January 1, 2015,~~ A physician licensed under
 183 chapter 458 or chapter 459 who has examined and is treating a
 184 patient suffering from cancer, human immunodeficiency virus,
 185 acquired immune deficiency syndrome, epilepsy, amyotrophic
 186 lateral sclerosis, multiple sclerosis, Crohn's disease,
 187 Parkinson's disease, paraplegia, quadriplegia, or terminal
 188 illness a physical medical condition that chronically produces
 189 symptoms of seizures or severe and persistent muscle spasms may
 190 order for the patient's medical use low-THC cannabis to treat
 191 such disease, disorder, or condition; ~~or~~ to alleviate symptoms
 192 of such disease, disorder, or condition; ~~or~~ to alleviate
 193 symptoms caused by a treatment for such disease, disorder, or
 194 condition if no other satisfactory alternative treatment options
 195 exist for that patient and all of the following ~~conditions~~
 196 apply:

197 ~~1.(a)~~ The patient is a permanent resident of this state.

198 ~~2.(b)~~ The physician determines that the risks of ordering
 199 low-THC cannabis are reasonable in light of the potential
 200 benefit for that patient. If a patient is younger than 18 years
 201 of age, a second physician must concur with this determination,
 202 and such determination must be documented in the patient's
 203 medical record.

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204 ~~3.(e)~~ The physician registers the patient, the patient's
 205 legal representative if requested by the patient, and himself or
 206 herself as the orderer of low-THC cannabis for the named patient
 207 on the compassionate use registry maintained by the department
 208 and updates the registry to reflect the contents of the order.
 209 If the patient is a minor, the physician must register a legal
 210 representative on the compassionate use registry. The physician
 211 shall deactivate the patient's registration when treatment is
 212 discontinued.

213 ~~4.(d)~~ The physician maintains a patient treatment plan that
 214 includes the dose, route of administration, planned duration,
 215 and monitoring of the patient's symptoms and other indicators of
 216 tolerance or reaction to the low-THC cannabis.

217 ~~5.(e)~~ The physician submits the patient treatment plan, as
 218 well as any other requested medical records, quarterly to the
 219 University of Florida College of Pharmacy for research on the
 220 safety and efficacy of low-THC cannabis on patients pursuant to
 221 subsection (8).

222 ~~6.(f)~~ The physician obtains the voluntary informed consent
 223 of the patient or the patient's legal guardian to treatment with
 224 low-THC cannabis after sufficiently explaining the current state
 225 of knowledge in the medical community of the effectiveness of
 226 treatment of the patient's conditions or symptoms ~~condition~~ with
 227 low-THC cannabis, the medically acceptable alternatives, and the
 228 potential risks and side effects.

229 (b) A physician who improperly orders low-THC cannabis is
 230 subject to disciplinary action under the applicable practice act
 231 and under s. 456.072(1)(k).

232 (3) PENALTIES.—

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233 (a) A physician commits a misdemeanor of the first degree,
 234 punishable as provided in s. 775.082 or s. 775.083, if the
 235 physician orders low-THC cannabis for a patient without a
 236 reasonable belief that the patient is suffering from at least
 237 one of the conditions listed in subsection (2).+

238 ~~1. Cancer or a physical medical condition that chronically~~
 239 ~~produces symptoms of seizures or severe and persistent muscle~~
 240 ~~spasms that can be treated with low-THC cannabis; or~~

241 ~~2. Symptoms of cancer or a physical medical condition that~~
 242 ~~chronically produces symptoms of seizures or severe and~~
 243 ~~persistent muscle spasms that can be alleviated with low-THC~~
 244 ~~cannabis.~~

245 (b) Any person who fraudulently represents that he or she
 246 has at least one condition listed in subsection (2) ~~cancer or a~~
 247 ~~physical medical condition that chronically produces symptoms of~~
 248 ~~seizures or severe and persistent muscle spasms~~ to a physician
 249 for the purpose of being ordered low-THC cannabis by such
 250 physician commits a misdemeanor of the first degree, punishable
 251 as provided in s. 775.082 or s. 775.083.

252 (4) PHYSICIAN EDUCATION.—

253 (a) Before ordering low-THC cannabis for use by a patient
 254 in this state, the appropriate board shall require the ordering
 255 physician licensed under chapter 458 or chapter 459 to
 256 successfully complete an 8-hour course and subsequent
 257 examination offered by the Florida Medical Association or the
 258 Florida Osteopathic Medical Association that encompasses the
 259 clinical indications for the appropriate use of low-THC
 260 cannabis, the appropriate delivery mechanisms, the
 261 contraindications for such use, as well as the relevant state

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262 and federal laws governing the ordering, dispensing, and
 263 possessing of this substance. The first course and examination
 264 shall be presented by October 1, 2014, and shall be administered
 265 at least annually thereafter. Successful completion of the
 266 course may be used by a physician to satisfy 8 hours of the
 267 continuing medical education requirements required by his or her
 268 respective board for licensure renewal. This course may be
 269 offered in a distance learning format.

270 (b) The appropriate board shall require the medical
 271 director of each dispensing organization approved under
 272 subsection (5) to successfully complete a 2-hour course and
 273 subsequent examination offered by the Florida Medical
 274 Association or the Florida Osteopathic Medical Association that
 275 encompasses appropriate safety procedures and knowledge of low-
 276 THC cannabis.

277 (c) Successful completion of the course and examination
 278 specified in paragraph (a) is required for every physician who
 279 orders low-THC cannabis each time such physician renews his or
 280 her license. In addition, successful completion of the course
 281 and examination specified in paragraph (b) is required for the
 282 medical director of each dispensing organization each time such
 283 physician renews his or her license.

284 (d) A physician who fails to comply with this subsection
 285 and who orders low-THC cannabis may be subject to disciplinary
 286 action under the applicable practice act and under s.
 287 456.072(1)(k).

288 (5) DUTIES AND POWERS OF THE DEPARTMENT. ~~By January 1,~~
 289 ~~2015, The department shall:~~

290 (a) The department shall create a secure, electronic, and

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291 online compassionate use registry for the registration of
 292 physicians and patients as provided under this section. The
 293 registry must be accessible to law enforcement agencies and to a
 294 dispensing organization in order to verify patient authorization
 295 for low-THC cannabis and record the low-THC cannabis dispensed.
 296 The registry must prevent an active registration of a patient by
 297 multiple physicians.

298 (b)1. Beginning 7 days after the effective date of this
 299 act, the department shall accept applications for licensure as a
 300 dispensing organization. The department shall review each
 301 application to determine whether the applicant meets the
 302 criteria in subsection (6) and qualifies for licensure.

303 2. Within 10 days after receiving an application for
 304 licensure, the department shall examine the application, notify
 305 the applicant of any apparent errors or omissions, and request
 306 any additional information the department is allowed by law to
 307 require. An application for licensure must be filed with the
 308 department no later than 5 p.m. on the 30th day after the
 309 effective date of this act, and all applications must be
 310 complete no later than 5 p.m. on the 60th day after the
 311 effective date of this act.

312 3. If fewer than 20 applicants meet the criteria specified
 313 in subsection (6), the department shall, by the 75th day after
 314 the effective date of this act, license each such applicant. If
 315 more than 20 applicants meet these criteria, licensure shall be
 316 determined by lottery.

317 4. Beginning March 15, 2016, and every 6 months thereafter,
 318 if fewer than 20 dispensing organization licenses have been
 319 issued in this state, the department may issue additional

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320 licenses to qualified applicants up to the 20-organization
 321 maximum. The department shall use the same timeframes as set
 322 forth in subparagraphs 1.-3., beginning 75 days before the date
 323 specified for issuing additional licenses. If the number of
 324 qualified applicants under this subparagraph exceeds the number
 325 of dispensing organization licenses available for issuance,
 326 licensure shall be determined by lottery.

327 5. This section is exempt from s. 120.60. Authorize the
 328 establishment of five dispensing organizations to ensure
 329 reasonable statewide accessibility and availability as necessary
 330 for patients registered in the compassionate use registry and
 331 who are ordered low THC cannabis under this section, one in each
 332 of the following regions: northwest Florida, northeast Florida,
 333 central Florida, southeast Florida, and southwest Florida.

334 (c) The department shall use ~~develop~~ an application form
 335 that requires the applicant to state:

336 1. Whether the application is for initial licensure or
 337 renewal licensure;

338 2. The name, the physical address, the mailing address, the
 339 address listed on the Department of Agriculture and Consumer
 340 Services certificate required in paragraph (6)(b), and the
 341 contact information for the applicant and for the nursery that
 342 holds the Department of Agriculture and Consumer Services
 343 certificate, if different from the applicant;

344 3. The name, address, and contact information for the
 345 operating nurseryman of the organization that holds the
 346 Department of Agriculture and Consumer Services certificate;

347 4. The name, address, license number, and contact
 348 information for the applicant's medical director; and

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349 5. All information required to be included by subsection
350 (6).

351 (d) The department shall and impose an initial application
352 fee of \$50,000, an initial licensure fee of \$125,000, and a
353 biennial renewal fee of \$125,000 that is sufficient to cover the
354 costs of administering this section. An applicant for approval
355 as a dispensing organization must be able to demonstrate:

356 1. The technical and technological ability to cultivate and
357 produce low-THC cannabis. The applicant must possess a valid
358 certificate of registration issued by the Department of
359 Agriculture and Consumer Services pursuant to s. 581.131 that is
360 issued for the cultivation of more than 400,000 plants, be
361 operated by a nurseryman as defined in s. 581.011, and have been
362 operated as a registered nursery in this state for at least 30
363 continuous years.

364 2. The ability to secure the premises, resources, and
365 personnel necessary to operate as a dispensing organization.

366 3. The ability to maintain accountability of all raw
367 materials, finished products, and any byproducts to prevent
368 diversion or unlawful access to or possession of these
369 substances.

370 4. An infrastructure reasonably located to dispense low-THC
371 cannabis to registered patients statewide or regionally as
372 determined by the department.

373 5. The financial ability to maintain operations for the
374 duration of the 2-year approval cycle, including the provision
375 of certified financials to the department. Upon approval, the
376 applicant must post a \$5 million performance bond.

377 6. That all owners and managers have been fingerprinted and

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378 ~~have successfully passed a level 2 background screening pursuant~~
379 ~~to s. 435.04.~~

380 ~~7. The employment of a medical director who is a physician~~
381 ~~licensed under chapter 458 or chapter 459 to supervise the~~
382 ~~activities of the dispensing organization.~~

383 (e) The department shall inspect each dispensing
384 organization's properties, cultivation facilities, processing
385 facilities, and retail facilities before they begin operations
386 and at least once every 2 years thereafter. The department may
387 conduct additional announced or unannounced inspections,
388 including followup inspections, at reasonable hours in order to
389 ensure that such property and facilities maintain compliance
390 with all applicable requirements in subsections (6) and (7) and
391 to ensure that the dispensing organization has not committed any
392 other act that would endanger the health, safety, or security of
393 a qualified patient, dispensing organization staff, or the
394 community in which the dispensing organization is located.
395 Licensure under this section constitutes permission for the
396 department to enter and inspect the premises and facilities of
397 any dispensing organization. The department may inspect any
398 licensed dispensing organization, and a dispensing organization
399 must make all facility premises, equipment, documents, low-THC
400 cannabis, and low-THC cannabis products available to the
401 department upon inspection. The department may test any low-THC
402 cannabis or low-THC cannabis product in order to ensure that it
403 is safe for human consumption and that it meets the requirements
404 in this section.

405 (f) The department may suspend or revoke a license, deny or
406 refuse to renew a license, or impose an administrative penalty

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407 not to exceed \$10,000 for the following acts or omissions:
 408 1. A violation of this section or department rule.
 409 2. Failing to maintain qualifications for licensure.
 410 3. Endangering the health, safety, or security of a
 411 qualified patient.
 412 4. Improperly disclosing personal and confidential
 413 information of the qualified patient.
 414 5. Attempting to procure a license by bribery or fraudulent
 415 misrepresentation.
 416 6. Being convicted or found guilty of, or entering a plea
 417 of nolo contendere to, regardless of adjudication, a crime in
 418 any jurisdiction which directly relates to the business of a
 419 dispensing organization.
 420 7. Making or filing a report or record that the licensee
 421 knows to be false.
 422 8. Willfully failing to maintain a record required by this
 423 section or rule of the department.
 424 9. Willfully impeding or obstructing an employee or agent
 425 of the department in the furtherance of his or her official
 426 duties.
 427 10. Engaging in fraud or deceit, negligence, incompetence,
 428 or misconduct in the business practices of a dispensing
 429 organization.
 430 11. Making misleading, deceptive, or fraudulent
 431 representations in or related to the business practices of a
 432 dispensing organization.
 433 12. Having a license or the authority to engage in any
 434 regulated profession, occupation, or business that is related to
 435 the business practices of a dispensing organization revoked,

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436 suspended, or otherwise acted against, including the denial of
 437 licensure, by the licensing authority of any jurisdiction,
 438 including its agencies or subdivisions, for a violation that
 439 would constitute a violation under state law. A licensing
 440 authority's acceptance of a relinquishment of licensure or a
 441 stipulation, consent order, or other settlement, offered in
 442 response to or in anticipation of the filing of charges against
 443 the license, shall be construed as an action against the
 444 license.
 445 13. Violating a lawful order of the department or an agency
 446 of the state, or failing to comply with a lawfully issued
 447 subpoena of the department or an agency of the state.
 448 (g) The department shall create a permitting process for
 449 all dispensing organization vehicles used for the transportation
 450 of low-THC cannabis or low-THC cannabis products.
 451 (h)(e) The department shall monitor physician registration
 452 and ordering of low-THC cannabis for ordering practices that
 453 could facilitate unlawful diversion or misuse of low-THC
 454 cannabis and take disciplinary action as indicated.
 455 (i)(d) The department shall adopt rules as necessary to
 456 implement this section.
 457 (6) DISPENSING ORGANIZATION.-
 458 (a) An applicant seeking licensure as a dispensing
 459 organization, or the renewal of its license, must submit an
 460 application to the department. The department must review all
 461 applications for completeness, including an appropriate
 462 inspection of the applicant's property and facilities to verify
 463 the authenticity of the information provided in, or in
 464 connection with, the application. An applicant authorizes the

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465 department to inspect his or her property and facilities for
 466 licensure by applying under this subsection.

467 (b) In order to receive or maintain licensure as a
 468 dispensing organization, an applicant must provide proof that:

469 1. The applicant, or a separate entity that is owned solely
 470 by the same persons or entities in the same ratio as the
 471 applicant, possesses a valid certificate of registration issued
 472 by the Department of Agriculture and Consumer Services pursuant
 473 to s. 581.131 for the cultivation of more than 400,000 plants,
 474 is operated by a nurseryman as defined in s. 581.011, and has
 475 been operated as a registered nursery in this state for at least
 476 30 continuous years.

477 2. The personnel on staff or under contract for the
 478 applicant have experience cultivating and introducing multiple
 479 varieties of plants in this state, including plants that are not
 480 native to Florida; experience with propagating plants; and
 481 experience with genetic modification or breeding of plants.

482 3. The personnel on staff or under contract for the
 483 applicant include at least one person who:

484 a. Has at least 5 years' experience with United States
 485 Department of Agriculture Good Agricultural Practices and Good
 486 Handling Practices;

487 b. Has at least 5 years' experience with United States Food
 488 and Drug Administration Good Manufacturing Practices for food
 489 production;

490 c. Has a doctorate degree in organic chemistry or
 491 microbiology;

492 d. Has at least 5 years of experience with laboratory
 493 procedures which includes analytical laboratory quality control

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494 measures, chain of custody procedures, and analytical laboratory
 495 methods;

496 e. Has experience with cannabis cultivation and processing,
 497 including cannabis extraction techniques and producing cannabis
 498 products;

499 f. Has experience and qualifications in chain of custody or
 500 other tracking mechanisms;

501 g. Works solely on inventory control; and

502 h. Works solely for security purposes.

503 4. The persons who have a direct or indirect interest in
 504 the dispensing organization and the applicant's managers,
 505 employees, and contractors who directly interact with low-THC
 506 cannabis or low-THC cannabis products have been fingerprinted
 507 and have successfully passed a level 2 background screening
 508 pursuant to s. 435.04.

509 5. The applicant owns, or has at least a 2-year lease of,
 510 all properties, facilities, and equipment necessary for the
 511 cultivation and processing of low-THC cannabis. The applicant
 512 must provide a detailed description of each facility and its
 513 equipment, a cultivation and processing plan, and a detailed
 514 floor plan. The description must include proof that:

515 a. The applicant is capable of sufficient cultivation and
 516 processing to serve at least 15,000 patients with an assumed
 517 daily use of 1,000 mg per patient per day of low-THC cannabis or
 518 low-THC cannabis product;

519 b. The applicant has arranged for access to all utilities
 520 and resources necessary to cultivate or process low-THC cannabis
 521 at each listed facility; and

522 c. Each facility is secured and has theft-prevention

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523 systems including an alarm system, cameras, and 24-hour security
 524 personnel.

525 6. The applicant has diversion and tracking prevention
 526 procedures, including:

527 a. A system for tracking low-THC material through
 528 cultivation, processing, and dispensing, including the use of
 529 batch and harvest numbers;

530 b. An inventory control system for low-THC cannabis and
 531 low-THC cannabis products;

532 c. A vehicle tracking and security system; and
 533 d. A cannabis waste-disposal plan.

534 7. The applicant has recordkeeping policies and procedures
 535 in place.

536 8. The applicant has a facility emergency management plan.

537 9. The applicant has a plan for dispensing low-THC cannabis
 538 throughout the state. This plan must include planned retail
 539 facilities and a delivery plan for providing low-THC cannabis
 540 and low-THC cannabis products to qualified patients who cannot
 541 travel to a retail facility.

542 10. The applicant has financial documentation, including:

543 a. Documentation that demonstrates the applicant's
 544 financial ability to operate. If the applicant's assets, credit,
 545 and projected revenues meet or exceed projected liabilities and
 546 expenses and the applicant provides independent evidence that
 547 the funds necessary for startup costs, working capital, and
 548 contingency financing exist and are available as needed, the
 549 applicant has demonstrated the financial ability to operate.
 550 Financial ability to operate must be documented by:

551 I. The applicant's audited financial statements. If the

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552 applicant is a newly formed entity and does not have a financial
 553 history of business upon which audited financial statements may
 554 be submitted, the applicant must provide audited financial
 555 statements for the separate entity that is owned solely by the
 556 same persons or entities in the same ratio as the applicant that
 557 possesses the valid certificate of registration issued by the
 558 Department of Agriculture and Consumer Services;

559 II. The applicant's projected financial statements,
 560 including a balance sheet, an income and expense statement, and
 561 a statement of cash flow for the first 2 years of operation,
 562 which provides evidence that the applicant has sufficient
 563 assets, credit, and projected revenues to cover liabilities and
 564 expenses; and

565 III. A statement of the applicant's estimated startup costs
 566 and sources of funds, including a break-even projection and
 567 documentation demonstrating that the applicant has the ability
 568 to fund all startup costs, working capital costs, and
 569 contingency financing requirements.

570

571 All documents required under this sub-subparagraph shall be
 572 prepared in accordance with generally accepted accounting
 573 principles and signed by a certified public accountant. The
 574 statements required by sub-sub-subparagraph II. and III. may be
 575 presented as a compilation.

576 b. A list of all subsidiaries of the applicant;

577 c. A list of all lawsuits pending and completed within the
 578 past 7 years of which the applicant was a party; and

579 d. Proof of a \$1 million performance and compliance bond,
 580 or other equivalent means of security deemed equivalent by the

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581 department, such as an irrevocable letter of credit or a deposit
 582 in a trust account or financial institution, payable to the
 583 department, which must be posted once the applicant is approved
 584 as a dispensing organization. The purpose of the bond is to
 585 secure payment of any administrative penalties imposed by the
 586 department and any fees and costs incurred by the department
 587 regarding the dispensing organization license, such as the
 588 dispensing organization failing to pay 30 days after the fine or
 589 costs become final. The department may make a claim against such
 590 bond or security until 1 year after the dispensing
 591 organization's license ceases to be valid or until 60 days after
 592 any administrative or legal proceeding authorized in this
 593 section involving the dispensing organization concludes,
 594 including any appeal, whichever occurs later.

595 11. The employment of a medical director who is a physician
 596 licensed under chapter 458 or chapter 459 to supervise the
 597 activities of the dispensing organization.

598 (c) An approved dispensing organization shall maintain
 599 compliance with the criteria in paragraphs (b), (d), and (e) and
 600 subsection (7) ~~demonstrated for selection and approval as a~~
 601 ~~dispensing organization under subsection (5)~~ at all times.
 602 Before dispensing low-THC cannabis or low-THC cannabis products
 603 to a qualified patient or to the qualified patient's legal
 604 representative, the dispensing organization shall verify the
 605 identity of the qualified patient or the qualified patient's
 606 legal representative by requiring the qualified patient or the
 607 qualified patient's legal representative to produce a
 608 government-issued identification card and shall verify that the
 609 qualified patient and the qualified patient's legal

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610 representative have ~~has~~ an active registration in the
 611 compassionate use registry, ~~that~~ the order presented matches the
 612 order contents as recorded in the registry, and ~~that~~ the order
 613 has not already been filled. Upon dispensing the low-THC
 614 cannabis, the dispensing organization shall record in the
 615 registry the date, time, quantity, and form of low-THC cannabis
 616 dispensed.

617 (d) A dispensing organization may have cultivation
 618 facilities, processing facilities, and retail facilities.

619 1. All matters regarding the location of cultivation
 620 facilities and processing facilities are preempted to the state.
 621 Cultivation facilities and processing facilities must be closed
 622 to the public, and low-THC cannabis may not be dispensed on the
 623 premises of such facilities.

624 2. A municipality must determine by ordinance the criteria
 625 for the number, location, and other permitting requirements for
 626 all retail facilities located within its municipal boundaries. A
 627 retail facility may be established in a municipality only after
 628 such an ordinance has been created. A county must determine by
 629 ordinance the criteria for the number, location, and other
 630 permitting requirements for all retail facilities located within
 631 the unincorporated areas of that county. A retail facility may
 632 be established in the unincorporated areas of a county only
 633 after such an ordinance has been created. Retail facilities must
 634 have all utilities and resources necessary to store and dispense
 635 low-THC cannabis and low-THC cannabis products. Retail
 636 facilities must be secured and have theft-prevention systems,
 637 including an alarm system, cameras, and 24-hour security
 638 personnel. Retail facilities may not sell, or contract for the

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639 sale of, anything other than low-THC cannabis or low-THC
 640 cannabis products on the property of the retail facility. Before
 641 a retail facility may dispense low-THC cannabis or a low-THC
 642 cannabis product, the dispensing organization must have a
 643 computer network compliant with the federal Health Insurance
 644 Portability and Accountability Act of 1996 which is able to
 645 access and upload data to the compassionate use registry and
 646 which shall be used by all retail facilities.

647 (e) Within 15 days of such information becoming available,
 648 a dispensing organization must provide the department with
 649 updated information, as applicable, including:

650 1. The location and a detailed description of any new or
 651 proposed facilities.

652 2. The updated contact information, including electronic
 653 and voice communication, for all dispensing organization
 654 facilities.

655 3. The registration information for any vehicles used for
 656 the transportation of low-THC cannabis and low-THC cannabis
 657 product, including confirmation that all such vehicles have
 658 tracking and security systems.

659 4. A plan for the recall of any or all low-THC cannabis or
 660 low-THC cannabis product.

661 (f)1. A dispensing organization may transport low-THC
 662 cannabis or low-THC cannabis products in vehicles departing from
 663 their places of business only in vehicles that are owned or
 664 leased by the licensee or by a person designated by the
 665 dispensing organization, and for which a valid vehicle permit
 666 has been issued for such vehicle by the department.

667 2. A vehicle owned or leased by the dispensing organization

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668 or a person designated by the dispensing organization and
 669 approved by the department must be operated by such person when
 670 transporting low-THC cannabis or low-THC products from the
 671 licensee's place of business.

672 3. A vehicle permit may be obtained by a dispensing
 673 organization upon application and payment of a fee of \$5 per
 674 vehicle to the department. The signature of the person
 675 designated by the dispensing organization to drive the vehicle
 676 must be included on the vehicle permit application. Such permit
 677 remains valid and does not expire unless the licensee or any
 678 person designated by the dispensing organization disposes of his
 679 or her vehicle, or the licensee's license is transferred,
 680 canceled, not renewed, or is revoked by the department,
 681 whichever occurs first. The department shall cancel a vehicle
 682 permit upon request of the licensee or owner of the vehicle.

683 4. By acceptance of a license issued under this section,
 684 the licensee agrees that the licensed vehicle is, at all times
 685 it is being used to transport low-THC cannabis or low-THC
 686 cannabis products, subject to inspection and search without a
 687 search warrant by authorized employees of the department,
 688 sheriffs, deputy sheriffs, police officers, or other law
 689 enforcement officers to determine that the licensee is
 690 transporting such products in compliance with this section.

691 (7) TESTING AND LABELING OF LOW-THC CANNABIS.—

692 (a) All low-THC cannabis and low-THC cannabis products must
 693 be tested by an independent testing laboratory before the
 694 dispensing organization may dispense them. The independent
 695 testing laboratory shall provide the dispensing organization
 696 with lab results. Before dispensing, the dispensing organization

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697 must determine that the lab results indicate that the low-THC
 698 cannabis or low-THC cannabis product meets the definition of
 699 low-THC cannabis or low-THC cannabis product, is safe for human
 700 consumption, and is free from harmful contaminants.
 701 (b) All low-THC cannabis and low-THC cannabis products must
 702 be labeled before dispensing. The label must include, at a
 703 minimum:
 704 1. A statement that the low-THC cannabis or low-THC
 705 cannabis product meets the requirements in paragraph (a);
 706 2. The name of the independent testing laboratory that
 707 tested the low-THC cannabis or low-THC cannabis product;
 708 3. The name of the cultivation and processing facility
 709 where the low-THC cannabis or low-THC cannabis product
 710 originates; and
 711 4. The batch number and harvest number from which the low-
 712 THC cannabis or low-THC cannabis product originates.
 713 (8) SAFETY AND EFFICACY RESEARCH FOR LOW-THC CANNABIS.—The
 714 University of Florida College of Pharmacy must establish and
 715 maintain a safety and efficacy research program for the use of
 716 low-THC cannabis or low-THC cannabis products to treat
 717 qualifying conditions and symptoms. The program must include a
 718 fully integrated electronic information system for the broad
 719 monitoring of health outcomes and safety signal detection. The
 720 electronic information system must include information from the
 721 compassionate use registry; provider reports, including
 722 treatment plans, adverse event reports, and treatment
 723 discontinuation reports; patient reports of adverse impacts;
 724 event-triggered interviews and medical chart reviews performed
 725 by University of Florida clinical research staff; information

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726 from external databases, including Medicaid billing reports and
 727 information in the prescription drug monitoring database for
 728 registered patients; and all other medical reports required by
 729 the University of Florida to conduct the research required by
 730 this subsection. The department must provide access to
 731 information from the compassionate use registry and the
 732 prescription drug monitoring database, established in s.
 733 893.055, as needed by the University of Florida to conduct
 734 research under this subsection. The Agency for Health Care
 735 Administration must provide access to registered patient
 736 Medicaid records, to the extent allowed under federal law, as
 737 needed by the University of Florida to conduct research under
 738 this subsection.
 739 (9) ~~(7)~~ EXCEPTIONS TO OTHER LAWS.—
 740 (a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 741 any other ~~provision of~~ law, but subject to the requirements of
 742 this section, a qualified patient and the qualified patient's
 743 legal representative who is registered with the department on
 744 the compassionate use registry may purchase and possess for the
 745 patient's medical use up to the amount of low-THC cannabis
 746 ordered for the patient. Nothing in this section exempts any
 747 person from the prohibition against driving under the influence
 748 provided in s. 316.193.
 749 (b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 750 any other provision of law, but subject to the requirements of
 751 this section, an approved dispensing organization and its
 752 owners, managers, ~~and~~ employees and the owners, managers, and
 753 employees of contractors who have direct contact with low-THC
 754 cannabis or low-THC cannabis product may manufacture, possess,

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755 sell, deliver, distribute, dispense, and lawfully dispose of
 756 reasonable quantities, as established by department rule, of
 757 low-THC cannabis. For purposes of this subsection, the terms
 758 "manufacture," "possession," "deliver," "distribute," and
 759 "dispense" have the same meanings as provided in s. 893.02.

760 (c) An approved dispensing organization and its owners,
 761 managers, and employees are not subject to licensure or
 762 regulation under chapter 465 or chapter 499 for manufacturing,
 763 possessing, selling, delivering, distributing, dispensing, or
 764 lawfully disposing of reasonable quantities, as established by
 765 department rule, of low-THC cannabis.

766 (d) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or
 767 any other law, but subject to the requirements of this section,
 768 a licensed laboratory and its employees may receive and possess
 769 low-THC cannabis for the sole purpose of testing the low-THC
 770 cannabis to ensure compliance with this section.

771 (10) Rules adopted by the department under this section are
 772 exempt from the requirement that they be ratified by the
 773 Legislature pursuant to s. 120.541(3).

774 Section 2. Paragraph (g) is added to subsection (3) of
 775 section 381.987, Florida Statutes, to read:

776 381.987 Public records exemption for personal identifying
 777 information in the compassionate use registry.—

778 (3) The department shall allow access to the registry,
 779 including access to confidential and exempt information, to:

780 (g) Persons engaged in research at the University of
 781 Florida pursuant to s. 381.986(8).

782 Section 3. Paragraph (b) of subsection (7) of section
 783 893.055, Florida Statutes, is amended to read:

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784 893.055 Prescription drug monitoring program.—

785 (7)

786 (b) A pharmacy, prescriber, or dispenser shall have access
 787 to information in the prescription drug monitoring program's
 788 database which relates to a patient of that pharmacy,
 789 prescriber, or dispenser in a manner established by the
 790 department as needed for the purpose of reviewing the patient's
 791 controlled substance prescription history. Persons engaged in
 792 research at the University of Florida pursuant to s. 381.986(8)
 793 shall have access to information in the prescription drug
 794 monitoring program's database which relates to qualified
 795 patients as defined in s. 381.986(1) for the purpose of
 796 conducting such research. Other access to the program's database
 797 shall be limited to the program's manager and to the designated
 798 program and support staff, who may act only at the direction of
 799 the program manager or, in the absence of the program manager,
 800 as authorized. Access by the program manager or such designated
 801 staff is for prescription drug program management only or for
 802 management of the program's database and its system in support
 803 of the requirements of this section and in furtherance of the
 804 prescription drug monitoring program. Confidential and exempt
 805 information in the database shall be released only as provided
 806 in paragraph (c) and s. 893.0551. The program manager,
 807 designated program and support staff who act at the direction of
 808 or in the absence of the program manager, and any individual who
 809 has similar access regarding the management of the database from
 810 the prescription drug monitoring program shall submit
 811 fingerprints to the department for background screening. The
 812 department shall follow the procedure established by the

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813 Department of Law Enforcement to request a statewide criminal
814 history record check and to request that the Department of Law
815 Enforcement forward the fingerprints to the Federal Bureau of
816 Investigation for a national criminal history record check.

817 Section 4. Paragraph (h) is added to subsection (3) of
818 section 893.0551, Florida Statutes, to read:

819 893.0551 Public records exemption for the prescription drug
820 monitoring program.—

821 (3) The department shall disclose such confidential and
822 exempt information to the following persons or entities upon
823 request and after using a verification process to ensure the
824 legitimacy of the request as provided in s. 893.055:

825 (h) Persons engaged in research at the University of
826 Florida pursuant to s. 381.986(8).

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/9/15

Meeting Date

7066

Bill Number (if applicable)

Ⓢ 481462
Amendment Barcode (if applicable)

Topic low THC Cannabis

Name Ron Watson

Job Title Lobbyist

Address 3738 Murdon Way

Street

Tallahassee

City

FL

State

32309

Zip

Phone (850) 567-1202

Email Watson.strategies@comcast.net

Speaking: For Against Information

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

Representing FLMCA, AltMed + Marys Medicinals

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

7066

*~~781462~~

Bill Number (if applicable)

481462

Amendment Barcode (if applicable)

Meeting Date _____

Topic _____

Name LOUIS ROTUNDO

Job Title _____

Address 302 Pinestraw Circle
Street

Phone 407-699-9361

Altamonte Springs FL 32714
City State Zip

Email LCR5002@AOL.com

Speaking: For Against Information

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

Representing FLORIDA MEDICAL CANNABIS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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9 APR 15
Meeting Date

SB 7066
Bill Number (if applicable)
481462
Amendment Barcode (if applicable)

Topic Low THC - Cannabis

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St.
Street

Phone 577-3032

Tall FL 32301
City State Zip

Email barney@smartjusticealliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Apr. 9, 2015

Meeting Date

7066

Bill Number (if applicable)

906436

Amendment Barcode (if applicable)

Topic MEDICAL MARIJUANA

Name HOWARD GUNN JR.

Job Title DISC. BLACK FARMER

Address 2801 S.W. 15TH ST

Street

Phone 352-572-1063

Ocala

City

FL

State

34474

Zip

Email _____

Speaking: For Against Information

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

Representing BLACK FARMER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

04/9/15
Meeting Date

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

SB7066
Bill Number (if applicable)

906436
Amendment Barcode (if applicable)

Topic Amendment

Name Sam Harris III

Job Title CEO - UGrow / Black Farmer

Address 10006 Cross Cross Blvd
Street

Phone 813-510-0982

Tampa
City

FL
State

33647
Zip

Email Sam@UgrowFlorida.ca

Speaking: For Against Information

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

Representing Changos to Amendment

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-15

Meeting Date

7066

Bill Number (if applicable)

159158

Amendment Barcode (if applicable)

Topic Low THC

Name Jodi James

Job Title Executive Director

Address 1375 Cypress Ave

Street

Phone 321 253 3673

Melbourne FL 32935

City

State

Zip

Email jodi@FLCAN.ORG

Speaking: For Against Information

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

Representing FLORIDA CANNABIS ACTION NETWORK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4-9-15

Meeting Date

7066

Bill Number (if applicable)

479744

Amendment Barcode (if applicable)

Topic Use in Public

Name Jodi James

Job Title Executive Director

Address 1375 Cypress Ave
Street

Phone 321 253 3673

Melbourne FL 32935
City State Zip

Email jodi@flcan.org

Speaking: For Against Information

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

Representing FLORIDA Cannabis Action Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9 APR 2015
Meeting Date

7066
Bill Number (if applicable)

906436
Amendment Barcode (if applicable)

Topic _____

Name DONALD R. GILLUM

Job Title _____

Address 574 SE 100TH PLACE

Phone 352 895 8496

Street
BELLEVUE City
FLA State
34920 Zip

Email _____

Speaking: For Against Information

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

Representing BLACK FARMER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4-9-15

Meeting Date

7066

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jodi James

Job Title Executive Director

Address 1375 Cypress Ave

Phone 321 253 3673

Street

Melbourne FL 32935

Email jodi@FICAN.org

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA Cannabis Action Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9 Apr 15
Meeting Date

SB 7066
Bill Number (if applicable)

Topic Low-Dose Cannabis

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title Pres & CEO

Address 204 S. Monroe St.

Phone 577.3032

Street

Ball

City

FL

State

32301

Zip

Email barney@smartjustice

alliance.org

Speaking: For Against Information

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

Representing Fla. Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/9/15

Meeting Date

7066
Bill Number (if applicable)

Topic Low THC Cannabis

Amendment Barcode (if applicable)

Name Ron Watson

Job Title Lobbyist

Address 3738 Munden Way

Phone (850) 567-1202

Street Tallahassee State FL Zip 32309

Email _____

Speaking: For Against Information

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

Representing FL Medical Cannabis Assoc, AltMed + Mary's Medicinals

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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4/9/15

Meeting Date

7066

Bill Number (if applicable)

Topic CANNABIS

Amendment Barcode (if applicable)

Name LOUIS ROTUNDO

Job Title _____

Address 302 Pinestraw Circle

Street

Phone 407-699-9361

Altamonte Springs FL

City

State

32714

Zip

Email LCR5002@aol.com

Speaking: For Against Information

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

Representing Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

4-9-15

Meeting Date

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

CS/SB 7066

Bill Number (if applicable)

Topic MEDICAL MARIJUANA

Amendment Barcode (if applicable)

Name TAYLOR BIEHL

Job Title LOBBYIST

Address 106 E. COLLEGE AVE. SUITE 640

Phone 850-224-1660

TAMMAYASSEL FL

Email TAYLORBIEHL@GMAIL.COM

Speaking: For Against Information

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

Representing MEDICAL MARIJUANA BUSINESS ASSOC. OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

419 12015

Meeting Date

Topic _____

Bill Number 7066
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 706L
Bill Number (if applicable)

Meeting Date _____

Topic Black Farmers / BUSINESS Law

Amendment Barcode (if applicable) _____

Name SAM HARRIS III

Job Title CEO - UGROW, INC

Address 10006 CROSS CREEK Blvd #462
Street

Phone 813-510-0982

Tampa FL 33647
City State Zip

Email sam@ugrowfinancial.com

Speaking: For Against Information

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

Representing UGrow, INC / Black Farmers / Nurseyman Group of FL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

Case:
Judge:

Type:

Started: 4/9/2015 9:01:45 AM

Ends: 4/9/2015 11:01:12 AM

Length: 01:59:28

9:01:47 AM Senator Simmons calls the meeting to order
9:01:58 AM Roll call
9:02:23 AM Quorum present
9:03:58 AM SB 982
9:04:09 AM Senator Thompson explains the bill
9:05:02 AM Stephanie Kunkel, Florida Federation of Business and Professional Women, waives in support
9:05:15 AM Barbara Devane, FL NOW, waives in support
9:05:37 AM Kim Hanley, Custodial Coordinator, speaks for the bill
9:07:30 AM Senator Thompson waives close
9:07:42 AM Roll call
9:08:06 AM SB 982 reported favorably
9:08:25 AM CS/CS/SB 656
9:08:41 AM Senator Latvala explains the bill
9:10:10 AM Sarrah Carroll, Florida Sheriff's Association, waives in support
9:10:35 AM Senator Latvala waives close
9:10:41 AM Roll call
9:11:06 AM CS/CS/SB 656 is reported favorably
9:11:46 AM CS/CS/SB 252
9:11:57 AM Senator Smith explains the bill
9:12:35 AM Amendment 798780
9:12:48 AM Senator Smith explains the amendment
9:13:16 AM Senator Montford waives close
9:13:27 AM Amendment is adopted without objection
9:13:33 AM Back on bill as amended
9:13:40 AM Monte Stevens, Deputy Chief of Staff, OIR, waives in support
9:13:57 AM Senator Smith closes on the bill
9:14:57 AM Roll call
9:15:30 AM CS/CS/CS/SB 252 is reported favorably
9:15:44 AM SB 404
9:15:50 AM Senator Simpson explains the bill
9:16:52 AM Kenneth Pratt, Senior VP of Governmental Affairs, Florida Bankers Association, speaks against the bill
9:18:02 AM Brian Pitts, Justice-2-Jesus, speaks on the bill
9:19:58 AM Senator Joyner with a question
9:20:56 AM Senator Simpson responds
9:21:49 AM Senator Gibson with a question
9:22:26 AM Senator Simpson responds
9:25:38 AM Senator Gibson with a follow up
9:26:11 AM Senator Simpson responds
9:27:20 AM Senator Latvala speaks in debate
9:27:58 AM Senator Richter speaks in debate
9:30:50 AM Senator Lee speaks on the bill
9:32:32 AM Senator Simpson waives close on the bill
9:32:44 AM Roll call
9:33:05 AM SB 404 is reported favorably
9:33:31 AM SM 1422
9:33:37 AM Senator Abruzzo explains the bill
9:34:19 AM Derek Silver, Chabad of the Panhandle Tallahassee, speaks in support of the bill
9:35:22 AM Jordon Moran, FSU College Republicans, speaks in support of the bill
9:36:44 AM Brian Pitts, speaks on the bill
9:37:47 AM Senator Gaetz speaks in debate
9:38:51 AM Senator Abruzzo closes on the bill
9:39:56 AM Roll call

9:40:27 AM SM 1422 is reported favorably
9:40:44 AM CS/CS/SB 998
9:40:57 AM Senator Margolis explains the bill
9:42:26 AM Senator Lee with a question
9:42:39 AM Senator Margolis responds
9:43:24 AM Senator Lee with a follow up
9:43:49 AM Senator Margolis responds
9:44:21 AM Senator Lee with a follow up
9:44:38 AM Senator Margolis responds
9:44:56 AM Brian Pitts speaks on the bill
9:47:04 AM Senator Soto speaks in debate
9:47:38 AM Senator Lee speaks in debate
9:48:13 AM Senator Richter speaks in debate
9:49:24 AM Senator Diaz de la Portilla speaks in debate
9:49:39 AM Senator Margolis closes on the bill
9:50:27 AM Roll call
9:50:51 AM CS/CS/SB 998 is reported favorably
9:51:11 AM CS/CS/SB 872
9:51:22 AM Senator Hukill explains the bill
9:52:29 AM Cari Roth, Real Property Section of the Florida Bar, waives in support
9:52:50 AM Brian Pitts speaks on the bill
9:55:13 AM Senator Hukill waives close on the bill
9:55:23 AM Roll call
9:55:45 AM CS/CS/SB 872 is reported favorably
9:56:08 AM CS/SB 916
9:56:15 AM Senator Montford explains the bill
9:57:15 AM Gerald Wester, American Insurance Association, waives in support
9:57:33 AM Ashley Kalifen, Associated Industries of FL (AIF), waives in support
9:57:43 AM Brian Pitts waives in support
9:58:02 AM Senator Montford waives close on the bill
9:58:11 AM Roll call
9:58:24 AM CS/SB 916 is reported favorably
9:58:47 AM CS/CS/SB 674
9:58:59 AM Senator Evers explains the bill
9:59:23 AM Brian Pitts waives in support
9:59:39 AM Senator Gaetz speaks in debate
10:00:42 AM Senator Evers waives close on the bill
10:00:52 AM Roll call
10:01:11 AM CS/CS/SB 674 is reported favorably
10:01:28 AM CS/CS/SB 716
10:01:38 AM Jessica Crawford explains the bill
10:02:13 AM Brian Pitts waives in opposition
10:02:25 AM Jessica Crawford waives close on the bill
10:02:35 AM Roll call
10:02:50 AM CS/CS/SB 716 is reported favorably
10:04:02 AM CS/SB 7066
10:04:11 AM Senator Bradley explains the bill
10:08:11 AM Amendment 481462
10:08:39 AM Senator Bradley explains the amendment
10:10:31 AM Senator Soto with a question
10:10:40 AM Senator Bradley responds
10:11:05 AM Senator Soto with a follow up
10:11:18 AM Senator Bradley responds
10:12:11 AM Senator Soto with a follow up
10:12:28 AM Senator Bradley responds
10:12:42 AM Senator Lee with a question
10:13:52 AM Senator Bradley responds
10:16:18 AM Senator Lee with a follow up
10:17:13 AM Senator Bradley responds
10:17:38 AM Senator Gaetz with a question
10:20:12 AM Senator Bradley responds
10:21:31 AM Senator Montford with a question

10:22:06 AM Senator Bradley responds
10:22:30 AM Senator Gibson with a question
10:23:12 AM Senator Bradley responds
10:23:55 AM Senator Gibson with a follow up
10:24:16 AM Senator Bradley responds
10:25:20 AM Ron Watson, FLMCA, Alt. Med. & Mary's Medicinals, speaks for the amendment
10:26:17 AM Louis Rotundo, Florida Medical Cannabis Association, speaks for the amendment
10:27:30 AM Barney Bishop III, Fla. Smart Justice Alliance, speaks for the amendment
10:29:21 AM Amendment 481462 adopted without objection
10:29:40 AM Back on bill as amended
10:29:59 AM Senator Simmons discusses amendments out of order (159158, 341214, 895340, 906436)
10:31:11 AM Amendment 429168
10:31:27 AM Senator Soto explains the amendment
10:33:02 AM Amendment to the amendment 599394
10:33:30 AM Senator Joyner explains the amendment to the amendment
10:34:39 AM Senator Bradley speaks to the amendment and the amendment to the amendment
10:35:10 AM Senator Lee makes a motion for a time certain vote on the bill at 10:45 am - without objection
10:35:57 AM Sam Harris III, CEO, UGrow/Black Farmers, speaks on the amendment and bill
10:37:21 AM Howard Gunn, representing Black Farmers, speaks on the amendment
10:38:38 AM Jodi James, Executive Director, Florida Cannabis Action Network, waives in support of the amendment to the amendment
10:38:56 AM Donald Gillum, representing Black Farmers, waives in support of the amendment to the amendment
10:39:14 AM Senator Gibson speaks in debate
10:40:18 AM Senator Joyner closes on the amendment to the amendment
10:41:27 AM Roll call
10:42:20 AM Amendment to the amendment 599394
10:42:30 AM Amendment fails
10:42:50 AM Back on Senator Soto's Amendment 429168
10:43:25 AM Senator Soto closes on Amendment
10:44:47 AM Roll call
10:45:23 AM Amendment 429168 fails
10:45:25 AM Back on the bill as amended
10:46:00 AM All other amendments withdrawn
10:46:10 AM Roll call
10:46:51 AM CS/CS/SB 7066 is reported favorably
10:47:15 AM CS/SB 806
10:47:22 AM Senator Richter explains the bill
10:47:41 AM Amendment 795412
10:47:59 AM Senator Diaz de la Portilla explains the amendment
10:48:24 AM Kenneth Pratt, Senior VP of Governmental Affairs, Florida Bankers Association, waives in support
10:48:30 AM David Schwartz, CEO, Florida International Bankers Association, waives in support
10:48:42 AM Linda Charity, Policy Advisor, Akerman, LLP, representing Florida International Bankers Association, waives in support
10:48:57 AM Senator Gaetz with a question
10:49:40 AM Senator Richter responds
10:49:52 AM Senator Gaetz with a follow up
10:50:01 AM Senator Richter responds
10:50:14 AM Senator Diaz de la Portilla responds
10:50:50 AM David Schwartz, CEO, Florida International Bankers Association, responds
10:51:38 AM Senator Richter speaks on the amendment
10:52:01 AM Senator Diaz de la Portilla waives close on amendment
10:52:14 AM Voice vote - Amendment is adopted
10:52:19 AM Back on bill as amended
10:52:26 AM Ross Nobles, Chief Financial Officer, Fla. OFR, waives in support
10:52:46 AM Senator Richter waives close on the bill
10:52:54 AM Roll call
10:53:12 AM CS/CS/SB 806 is reported favorably
10:53:34 AM CS/SB 542
10:53:39 AM Senator Benacquisto explains the bill
10:54:11 AM Barney Bishop III, Fla. Smart Justice Alliance, waives in support
10:54:19 AM Sarrah Carroll, Florida Sheriff's Association, waives in support
10:54:28 AM Jennifer Drift, Executive Director, FL Council Against Sexual Violence, waives in support

10:54:41 AM Senator Benacquisto waives close on the bill
10:54:54 AM Roll call
10:55:11 AM CS/SB 542 is reported favorably
10:55:17 AM SB 944
10:55:23 AM Senator Soto explains the bill
10:55:57 AM No questions or appearance cards
10:55:59 AM Senator Soto waives close on the bill
10:55:59 AM Senator Soto waives close on the bill
10:56:04 AM Roll call
10:56:28 AM SB 944 is reported favorably
10:56:49 AM Chair turned over to Senator Soto
10:57:00 AM CS/SB 538
10:57:06 AM Senator Simmons explains the bill
10:57:48 AM Amendment 194958
10:57:54 AM Senator Simmons explains the amendment
10:58:16 AM Senator Gibson with a question
10:58:33 AM Senator Simmons responds
10:58:44 AM Amendment is adopted without objection
10:59:04 AM Back on bill as amended
10:59:15 AM Barney Bishop III, Fla. Smart Justice Alliance, waives in support
10:59:28 AM Senator Simmons waives close on the bill
10:59:37 AM Roll call
10:59:51 AM CS/CS/SB 538 is reported favorably
11:00:04 AM CS/SB 1314
11:00:07 AM Senator Bradley explains the bill
11:00:22 AM Roll call
11:00:40 AM CS/SB 1314 is reported favorably
11:00:47 AM Senator Gaetz moves we adjourn with no objection