

Tab 1 SB 668 by Stargel; (Compare to CS/H 0455) Family Law

306652	D	S	UNFAV	JU, Soto	Delete everything after	02/16 08:11 PM
399458	A	S	FAV	JU, Diaz de la Portilla	Delete L.242 - 257:	02/16 08:11 PM

Tab 2 SB 1034 by Simmons; (Similar to CS/H 1431) Health Care Providers

582748	A	S	RCS	JU, Bean	Delete L.85:	02/16 08:12 PM
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Tab 3 SB 1298 by Brandes; (Similar to CS/H 1181) Bad Faith Assertions of Patent Infringement

618428	D	S	RCS	JU, Brandes	Delete everything after	02/16 08:12 PM
632174	AA	S	RCS	JU, Brandes	Delete L.173.	02/16 08:12 PM

Tab 4 SB 64 by Negron; (Identical to H 3535) Relief of the Estate of Danielle Maudsley by the Department of Highway Safety and Motor Vehicles

511738	D	S	RCS	JU, Simpson	Delete everything after	02/16 08:12 PM
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Tab 5 SB 572 by Altman; (Similar to CS/H 0325) Involuntary Examinations Under the Baker Act

Tab 6 CS/SB 670 by CF, Gaetz; (Similar to H 0715) Child Protection Teams

Tab 7 CS/SB 970 by BI, Richter; (Similar to CS/CS/H 0783) Unclaimed Property

Tab 8 SB 32 by Flores; (Identical to H 3527) Relief of O'Brien and Stephenson by Department of Transportation

Tab 9 CS/SB 1104 by BI, Flores; (Compare to CS/H 0897) Service of Process on Financial Institutions

Tab 10 SB 1294 by Grimsley; (Identical to H 1367) Offenses Involving Minors and Vulnerable Persons

Tab 11 SB 1432 by Stargel; (Compare to CS/H 1231) Service of Process

800506	A	S	RCS	JU, Stargel	Delete L.47 - 252.	02/16 07:22 PM
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Tab 12 CS/SB 596 by BI, Hukill; (Compare to CS/H 1097) Assignment or Transfer of Property Insurance Rights

646050	D	S	L	JU, Simmons	Delete everything after	02/16 01:52 PM
857012	A	S	L	JU, Ring	Delete L.18 - 23:	02/16 12:33 PM
210256	A	S	L	JU, Soto	Delete L.70 - 74:	02/16 02:33 PM
526662	A	S	L	JU, Soto	Delete L.33:	02/16 02:33 PM
166970	A	S	L	JU, Soto	Delete L.47 - 61:	02/16 02:34 PM
655334	A	S	L	JU, Soto	Delete L.67:	02/16 02:34 PM
114966	A	S	L	JU, Soto	Delete L.73:	02/16 02:34 PM
444578	A	S	L	JU, Ring	Delete L.85 - 88:	02/16 03:14 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Tuesday, February 16, 2016
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 668 Stargel (Compare CS/H 455, H 553, CS/S 250)	Family Law; Requiring a court to consider certain alimony factors and make specific written findings of fact under certain circumstances; requiring a court to make specified findings before ruling on a request for alimony; revising the factors that are used to determine the best interests of a child; prohibiting a court from changing the duration of alimony; requiring that a child support award be adjusted to reduce the combined alimony and child support award under certain circumstances, etc. JU 02/09/2016 Not Considered JU 02/16/2016 Fav/CS ACJ AP	Fav/CS Yeas 6 Nays 4
2	SB 1034 Simmons (Similar CS/H 1431, Compare CS/S 178)	Health Care Providers; Revising the definitions of the terms "contract" and "health care provider"; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; revising the definition of the term "officer, employee, or agent" to include employees or agents of a health care provider, etc. HP 01/19/2016 Favorable JU 02/09/2016 Not Considered JU 02/16/2016 Fav/CS RC	Fav/CS Yeas 10 Nays 0
3	SB 1298 Brandes (Similar CS/H 1181)	Bad Faith Assertions of Patent Infringement; Prohibiting a person from sending a demand letter to a target which makes a bad faith assertion of patent infringement; specifying that the Patent Troll Prevention Act does not create a private right of action; deleting a provision stating that a violation is an unfair or deceptive trade practice under ch. 501, F.S., etc. JU 02/09/2016 Not Considered JU 02/16/2016 Fav/CS ACJ AP	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 16, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 64 Negrón (Identical H 3535)	Relief of the Estate of Danielle Maudsley by the Department of Highway Safety and Motor Vehicles; Providing for the relief of the Estate of Danielle Maudsley; providing for an appropriation to compensate the Estate of Danielle Maudsley for Ms. Maudsley's death, sustained as a result of the negligence of Trooper Daniel Cole and the Florida Highway Patrol, a division of the Department of Highway Safety and Motor Vehicles; providing that certain payments and the appropriation satisfy all present and future claims related to the alleged acts; providing a limitation on the payment of compensation, fees, and costs, etc. SM JU 02/16/2016 Fav/CS ATD AP	Fav/CS Yeas 9 Nays 1
5	SB 572 Altman (Similar CS/H 325)	Involuntary Examinations Under the Baker Act; Authorizing physician assistants and advanced registered nurse practitioners to execute a certificate that finds that a person appears to meet the criteria for involuntary examination under the Baker Act of persons believed to have mental illness, etc. HP 11/17/2015 Favorable JU 02/16/2016 Favorable AP	Favorable Yeas 10 Nays 0
6	CS/SB 670 Children, Families, and Elder Affairs / Gaetz (Similar H 715)	Child Protection Teams; Revising the definition of the term "officer, employee, or agent," as it applies to immunity from personal liability in certain actions, to include licensed physicians who are medical directors for or members of a child protection team, in certain circumstances, etc. CF 01/14/2016 Fav/CS JU 02/16/2016 Favorable AP	Favorable Yeas 6 Nays 4
7	CS/SB 970 Banking and Insurance / Richter (Similar CS/CS/H 783)	Unclaimed Property; Requiring unclaimed funds reported in the name of specified campaigns for public office to be deposited with the Chief Financial Officer to the credit of the State School Trust Fund; requiring certain persons claiming entitlement to unclaimed property to file certified copies of specified pleadings with the Department of Financial Services; revising requirements and conditions for contracts to acquire ownership of or entitlement to property, etc. BI 02/09/2016 Fav/CS JU 02/16/2016 Favorable AP	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 16, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 32 Flores (Identical H 3527)	Relief of O'Brien and Stephenson by Department of Transportation; Providing relief of Amie Draiemann O'Brien, individually and as personal representative of the Estate of Christian Darby Stephenson, deceased, and for the relief of Hailey Morgan Stephenson and Christian Darby Stephenson II, as surviving minor children of the decedent; providing an appropriation to compensate them for the wrongful death of Christian Darby Stephenson, which was due in part to the negligence of the Department of Transportation; providing a limitation on the payment of fees and costs, etc. SM JU 02/16/2016 Favorable ATD AP	Favorable Yeas 8 Nays 1
9	CS/SB 1104 Banking and Insurance / Flores (Compare CS/H 897)	Service of Process on Financial Institutions; Requiring service on financial institutions to be made in accordance with s. 655.0201, F.S.; revising applicability of provisions of law governing service of process on financial institutions; authorizing certain financial institutions to designate with the Department of State a place or registered agent within the state as the sole location or agent for service of process, notice, levy, or demand, etc. BI 02/09/2016 Fav/CS JU 02/16/2016 Favorable RC	Favorable Yeas 10 Nays 0
10	SB 1294 Grimsley (Identical H 1367, Compare CS/CS/H 545, H 7075, CS/S 784, S 1382)	Offenses Involving Minors and Vulnerable Persons; Increasing the maximum age at which a victim or witness may be allowed to testify via closed circuit television rather than in a courtroom in certain circumstances; including human trafficking as an underlying felony offense to support a felony murder conviction; providing increased criminal penalties for human trafficking offenses if the victim suffers great bodily harm, permanent disability, or permanent disfigurement, etc. CJ 02/01/2016 Favorable JU 02/16/2016 Favorable FP	Favorable Yeas 10 Nays 0
11	SB 1432 Stargel (Compare CS/H 1231)	Service of Process; Expanding the locations at which substitute service of process may be made when such location is the only discoverable address for the person to be served; revising the information that must be included in a sworn statement for certain service of process, etc. JU 02/16/2016 Fav/CS RC	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

Tuesday, February 16, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 596 Banking and Insurance / Hukill (Compare CS/H 1097)	Assignment or Transfer of Property Insurance Rights; Providing requirements under a property insurance policy for the post-loss assignment or transfer of rights, benefits, or policy provisions not related to liability coverage; providing requirements for an agreement to assign or transfer such rights, benefits, or policy provisions; providing prohibitions and conditions that void such an agreement; providing applicability, etc. BI 01/26/2016 Temporarily Postponed BI 02/01/2016 Fav/CS JU 02/16/2016 Not Considered RC	Not Considered

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 668

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Family Law

DATE: February 18, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 668 makes various changes to laws relating to the amount and duration of alimony awards, grounds, and procedures for modifying an alimony award due to a substantial change in circumstances, and timesharing with children.

Alimony

Regarding alimony awarded to assist a party with legal fees and costs in a dissolution of marriage case, this bill requires the court to consider need and ability to pay, and the same bases for alimony required of all alimony determinations in dissolution cases.

With respect to alimony amounts, the bill establishes presumptive alimony ranges, for courts to use in determining the amount and duration of alimony awards. The presumptive amounts are determined by formulas based in part on the difference between the parties' gross incomes and the duration of their marriage. However, the combination of alimony and child support may not exceed 55 percent of the obligor's income. The bill also generally limits the duration of an alimony award to 25 to 75 percent of the duration of the parties' marriage. However, the bill provides exceptions to alimony guidelines to authorize the court to consider the contributions to the marriage of a long-term homemaker.

The bill specifies events that constitute a substantial change in circumstances which are grounds for modifying or terminating an alimony award. These grounds include increases in the

recipient's income, the involuntary underemployment or unemployment of the obligor, and the obligor's retirement. This bill authorizes an obligor to request that the court preapprove the customary retirement date for the obligor's profession 1 year in advance of retirement. The bill also lessens the proof required to show the existence of a supportive relationship between an alimony recipient and another person.

To protect an award of alimony, the court may order an obligor to purchase a security, such as a life insurance policy or a bond. Security is modifiable if the underlying alimony award is modified.

Time-sharing

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. The bill provides instead that the public policy of the state is that absent good cause, substantially equal time-sharing with both parents is in the best interest of the child. A court must include written findings in an order that establishes an initial permanent time-sharing schedule that provides other than substantially equal time-sharing.

Current law provides a list of factors for the court to apply in determining or modifying time-sharing, based on the best interests of the child. The bill requires a court to use these factors, which are slightly modified, along with two new ones in determining whether a party has overcome the presumption favoring equal time-sharing. The new factors are:

- The amount of time-sharing requested by each parent; and
- The frequency with which a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would otherwise provide care.

II. Present Situation:

Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The right to temporary alimony ends when the divorce becomes final, which is after the appeal process has run.¹ Florida law stipulates that a party may request alimony pendente lite through petition or motion, and if well-founded, the court must order a reasonable amount.²

Bases for Alimony

Chapter 61, F.S., addresses dissolution of marriage proceedings. Alimony is based on both financial need and the ability to pay.³ After making an initial determination to award alimony, the court must consider:

- The standard of living established during the marriage.
- The length of marriage.
- Ages and physical and emotional condition of the parties.

¹ 24A AM. JR. 2D *Divorce and Separation* §615.

² Section 61.071, F.S.

³ Section 61.08(2), F.S.

- Financial resources of the parties.
- Earning capacity, education level, vocational skill, and employability of the parties.
- Marital contributions, including homemaking, child care, and education and career building of the other party.
- Responsibilities of each party towards minor children.
- Tax treatment and consequences of alimony awards.
- All sources of income.
- Any other factor that advances equity and justice.⁴

The court may consider adultery by either spouse in a decision to award alimony.⁵

To protect an alimony award, the court may order an obligor to maintain a life insurance policy.⁶

Determination of Alimony Based on Length of Marriage

Limitations on Alimony in Florida

In determining the duration or form of an alimony award, the court applies presumptions based on the duration of the marriage. The length of marriage runs from the date of marriage until the date of the filing for dissolution of marriage.⁷

Florida law categorizes marriage lengths as follows:

- A short-term marriage is a marriage of less than 7 years.
- A moderate-term marriage is a marriage of more than 7 but less than 17 years.
- A long-term marriage is a marriage of 17 years or more.⁸

Florida law appears to create a presumption in favor of permanent periodic alimony following a long-term marriage.⁹ A similar presumption appears to exist in favor of durational alimony following a moderate-term marriage or following a long-term marriage if permanent alimony is not appropriate. Durational alimony generally may not exceed the length of the marriage.¹⁰

The law appears to disfavor permanent alimony following a moderate-term marriage by requiring clear and convincing evidence for an award of permanent alimony. Permanent alimony for a short-term marriage is reserved for exceptional circumstances.

Limitations on Alimony Based on Duration of Marriage in Other States

Some states have limited alimony based on the duration of the marriage:

⁴ Section 61.08(2)(a) through (j), F.S.

⁵ Section 61.08(1), F.S.

⁶ Section 61.08(3), F.S.

⁷ *Id.*

⁸ Section 61.08(4), F.S.

⁹ Section 61.08(8), F.S.

¹⁰ Section 61.08(4), F.S.

- Colorado: Provides a table that calculates the term of support for marriages of at least 3 years and up to 20 years in length. After 20 years of marriage, the court may award an indefinite term of alimony.¹¹
- Delaware: Permits alimony for a period of up to 50 percent of the length of marriage, except that if a party is married for 20 years or longer, alimony may be indefinite.¹²
- Maine: Provides a rebuttable presumption that general support may not be awarded if the parties were married for less than 10 years as of the date of the filing of the petition.¹³
- New York: Establishes an advisory schedule for alimony maintenance, expressed as a percentage of the length of marriage for which alimony is payable. Length of marriage of up to and including 15 years of marriage, 15 to 30 percent; more than 15 and up to and including 20 years of marriage, 30 to 40 percent; more than 20 years, 35 to 50 percent.¹⁴
- Texas: Disfavors alimony for marriages of less than 10 years unless the obligee meets certain conditions and if so, caps the duration of alimony at 5 years. Alimony is capped at 20 percent of the payor's gross income, or \$2,500 a month, whichever is less.¹⁵
- Massachusetts: No longer authorizes permanent alimony in most dissolution of marriage cases. Limits permanent alimony awards to marriages of 20 years or longer if the award is otherwise appropriate. Reserves the possibility of permanent alimony for shorter marriages if an award is in the interests of justice.¹⁶
- Utah: Prohibits alimony awards for a duration longer than the length of the marriage, unless the court finds extenuating circumstances.¹⁷

Forms of Alimony

Florida law recognizes various forms of alimony, including bridge-the-gap, rehabilitative, durational, and permanent periodic alimony.¹⁸ See the table on the next page for additional information on the various types of alimony authorized under current law.

¹¹ Colo. Rev. Stat. Ann. s. 14-10-114.

¹² Del. Code Ann. title 14, s. 1512

¹³ Me. Rev. Stat. Ann. title 19-A, s. 951A.

¹⁴ N.Y. Dom. Rel. Law s. 236.

¹⁵ Tex. Fam. Code Ann. Sections 8.054 and 8.055.

¹⁶ Mass. Gen. Laws Chapter 208, Section 49.

¹⁷ Utah Code Ann. s. 30-3-5.

¹⁸ Section 61.08(1), F.S.

Forms of Alimony				
	<i>Bridge-the-gap</i>	<i>Rehabilitative</i>	<i>Durational</i>	<i>Permanent</i>
<i>Purpose</i>	Allows a party to transition from being married to being single upon showing legitimate short-term need.	Assists a party in becoming self-sufficient through skills training, education, or work experience.	Provides a party with economic assistance for a set period of time after a marriage of short or moderate duration, or a marriage of long duration if no need exists for a permanent award.	Provides for the needs and necessities of life as established during the marriage for a party who lacks the financial ability to maintain needs.
<i>Length of Time</i>	Up to 2 years.	Temporary.	Set period of time but not to exceed length of marriage.	Permanent.
<i>Modifiable/ Termination</i>	Not modifiable in amount or duration. Can terminate upon death or remarriage of recipient.	Modifiable upon a showing of a substantial change in circumstances, including cohabitation. Can be terminated upon noncompliance or completion of the rehabilitative plan.	Modifiable or terminated based on a substantial change in circumstances, including cohabitation. Length of award may not change unless exceptional circumstances are shown. Terminates upon death or remarriage of recipient.	Modifiable upon a substantial change in circumstances, including cohabitation. Terminates upon death or remarriage of recipient.
<i>How Established</i>		Requires inclusion of a specific and defined rehabilitative plan.		Awardable if appropriate for a marriage of long duration, upon a showing of clear and convincing evidence for a marriage of moderate duration, and with written findings of exceptional circumstances for a marriage of short duration.

Modification and Termination of Alimony

Four bases exist for a court to reconsider an alimony award, including whether to terminate alimony:

- A substantial change in circumstances of either party;
- Cohabitation by the obligee;
- Remarriage by the obligee; or
- Death of either party.¹⁹

Substantial Change of Circumstance

A motion for modification may be made by either party for the court to consider a substantial change in circumstances.²⁰ If the court modifies support on this basis, the court may modify support retroactively to the date of the filing of the action.²¹

Cohabitation

To modify alimony on an assertion of cohabitation between the alimony obligee and a third party, the court must find:

- The existence of a supportive relationship between the recipient and a third party; and
- That the recipient lives with the third party.

To determine whether a relationship is supportive, the court will examine:

- The extent to which the obligee and the third party hold themselves out as a married couple;
- The length of time that the third party has resided with the obligee;
- Whether the obligee and the third party have jointly purchased property;
- The extent to which the obligee and third party commingle financial assets; and
- The extent to which one of the parties supports the other party.²²

The burden is on the obligor to show by a preponderance of evidence that a supportive relationship exists.²³

¹⁹ Section 61.08(8), F.S.

²⁰ Section 61.14(1)(a), F.S. Courts have found a substantial change in circumstance where an obligor's health deteriorated due to two heart attacks. He was unable to continue gainful employment and received social security disability income as his full income (*Scott v. Scott*, 2012 WL 5621672, 1 (Fla. 5th DCA 2012)). An obligor demonstrated a showing of a substantial change in circumstance through a detrimental impact on his business in manufacturing cathode ray television tubes due to advancing technology that made his product obsolete. The court also noted that the obligor was forced to remove money from family trust accounts to meet his alimony obligation. (*Shawfrank v. Shawfrank*, 97 So. 3d 934, 937 (Fla. 1st DCA 2012)). The court found a substantial change in circumstance where financial affidavits showed that the obligee's income jumped from \$1,710 to \$4,867 a month, making her income higher than the obligor's income of \$3,418 a month. (*Koski v. Koski*, 98 So. 3d 93, 94 (Fla. 4th DCA 2012)).

²¹ Section 61.14(1)(a), F.S.

²² Section 61.14(b), F.S.

²³ Section 61.14(1)(b)1., F.S.

Child Support Enforcement

Congress passed into law Title IV-D of the Social Security Act²⁴ to require states to provide specific child support enforcement services to receive federal funding under the Aid for Dependent Children (AFDC) Program.²⁵ Services are available to single-parent families on public assistance who are entitled to child support from the other parent.

Florida established the Child Support Enforcement Application and Program Revenue Trust Fund to provide a trust fund for deposits of Title IV-D program income.²⁶ The trust fund is administered by the state Department of Revenue.²⁷ The clerk of the court of each circuit operates a depository for alimony transactions, support, maintenance, and support payments.²⁸ A fee is collected for payments made in non-Title IV-D cases to fund the depository.²⁹

privileged against use in any subsequent litigation. ... Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethics opinions. The Uniform Collaborative Law Rules/Act (UCLR/A) is intended to create a uniform national framework for the use of Collaborative Law; one which includes important consumer protections and enforceable privilege provisions.³⁰

Parenting and Time-sharing

Florida Law

The public policy of the state is for each minor child to have “frequent and continuing contact with both parents.”³¹ Additionally, a court must order shared parental responsibility for a minor child unless the court finds that shared responsibility would be detrimental to the child.³² In determining timesharing with each parent, a court must consider the best interests of the child based on a specific list of statutory factors. These factors include:

- The demonstrated capacity of each parent to have a close and continuing parent-child relationship, honor the time-sharing schedule, and be reasonable when changes are required.
- The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child, including developmental needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

²⁴ 42 USC §§ 651-669 (1988).

²⁵ Ashish Prasad, *Rights Without Remedies: Section 1983 Enforcement of Title IV-D of the Social Security Act*, 60 U.CHI. L. REV. 197, 197 (1993).

²⁶ Section 61.1814(1), F.S.

²⁷ *Id.*

²⁸ Section 61.181(1)(a), F.S.

²⁹ Section 61.181(2)(a) and (b), F.S.

³⁰ Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary* (on file with the Senate Judiciary Committee).

³¹ Section 61.13(2)(c)1., F.S.

³² Section 61.13 (2)(c)2., F.S.

- The geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- The moral fitness and the mental and physical health of the parents.
- The reasonable preference of the child, if the child is of sufficient intelligence, understanding, and experience to express a preference.
- The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime, and to be involved in the child's school and extracurricular activities.
- The demonstrated capacity of each parent to keep the other parent informed about the minor child, and the willingness of each parent to adopt a unified front on major issues.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has knowingly provided false information about these issues. If the court accepts evidence of prior or pending actions on these issues, the court must acknowledge in writing that the evidence was considered in evaluating best interests.
- The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before and during litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.³³

A final factor provides the court with flexibility to consider any other factor relevant in establishing a parenting plan, including a time-sharing schedule.³⁴

Time-sharing in other States

No state statutes require a court to order equal time-sharing or joint custody of minor children. However, a number of states, in addition to Florida, provide in law a presumption that joint custody is in the best interest of the child. These states are the District of Columbia, Idaho, Minnesota, New Mexico, South Dakota, Texas, Utah, Virginia, West Virginia, and Wisconsin. Other states provide the presumption only if the parents agree. These states are Alabama, California, Connecticut, Maine, Michigan, Mississippi, Nevada, New Hampshire, and Vermont.³⁵

Several state legislatures recently amended laws on child custody to encourage equal time-sharing. Arkansas codified a preference for joint custody.³⁶ The South Dakota Legislature passed a law that permits the court to order joint physical custody when the court has awarded joint legal custody if it is in the best interest of the child.³⁷ The Utah Legislature enacted a rebuttable presumption for joint legal custody. Grounds for rebutting the presumption include domestic violence and physical or mental needs of a parent or child.³⁸

³³ Section 61.13(3), F.S.

³⁴ Section 61.13(3)(t), F.S.

³⁵ National Conference of State Legislatures, *Shared/Joint Custody Enactments 2012* (Feb. 2015).

³⁶ AR s. 901.

³⁷ South Dakota House Bill 1055 (Chapter 141).

³⁸ Utah HB 88 (Chapter 269); HB 107 (Chapter 271).

III. Effect of Proposed Changes:

This bill makes various changes to laws applicable to dissolution of marriage cases in the areas of alimony, support, and time-sharing.

Alimony Awarded During a Pending Suit—Alimony Pendente Lite

Alimony pendente lite is temporary alimony awarded after a marital party files for dissolution of marriage. The bill requires the court to consider the bases for alimony (without the formula) after determining a need for alimony pendente lite and an ability to pay.

Alimony Awarded through a Final Court Order

Under the bill, a court must determine the amount of an alimony award in a multi-step process, from making initial findings, applying guidelines, and considering other factors, including factors which might justify a deviation from guidelines. The bill also establishes presumptive alimony duration ranges which range from 25 to 75 percent of the length of the marriage. The bill does not maintain the distinctions in current law relating to the duration or purposes of bridge-the-gap, rehabilitative, durational, or permanent alimony.

Initial Findings

In determining alimony, a court must make initial written findings based on:

- The amount of each party's monthly gross income, including potential income and actual or potential income from nonmarital property distributed to each party; and
- The years of marriage.

The courts must look at net income, rather than gross income, in calculating alimony and support. In instances in which trial courts have erroneously used a party's gross income, the appellate courts have routinely reversed those decisions.³⁹ In instances in which an obligor is self-employed, the court may start with gross income and subtract from it ordinary business expenses to arrive at net income.

This bill specifies that income considered in alimony calculations is gross income. Gross income is recurring income from any source and includes:

- Income from salaries, overtime pay, and wages, including tips declared to the IRS or tips imputed to bring the employee's gross earnings to the minimum wage for the number of hours worked, whichever is greater, commissions, bonuses; and dividends, and severance pay;
- Pension pay and retirement benefits actually received;
- Spousal support received from a previous marriage;
- Trust income and distributions regularly received, relied upon, or readily available to the beneficiary, royalties, income from estates, annuity payments, capital gains, recurring gains derived from dealings in property, rental income (gross receipts minus ordinary and necessary expenses required to produce the income), interest, and continuing monetary gifts;

³⁹ *Kingsbury v. Kingsbury*, 116 So. 3d 473, 474 (Fla. 1st DCA 2013); *Vanzant v. Vanzant*, 82 So. 3d 991, 993 (Fla. 1st DCA 2011); *Vega v. Vega*, 877 So. 2d 882, 883 (Fla. 3d DCA 2004).

- Payments received as an independent contractor for labor or services, which must be considered income from self-employment; money drawn by a self-employed person for personal use that is deducted as a business expense, and expense reimbursements or in-kind payments or benefits received by a party in the course of employment, self-employment, or operation of a business which reduces personal living expenses;
- Workers' compensation; unemployment benefits, social security benefits, including those actually received based on disability, disability insurance benefits and funds paid from health, accident, disability, or casualty insurance if the insurance replaces wages; and
- Income from general partnerships, limited partnerships, closely held corporations, or limited liability companies, except that if the party is a passive investor with a minority interest in the company, income is limited to actual cash distributions received.

Gross income does not include:

- Child support payments received;
- Public assistance benefits;
- Social security benefits received by a parent on behalf of a minor child due to death or disability of a parent or stepparent; and
- Earnings or gains on retirement accounts, including individual retirement accounts, except that the earnings or gains are income if a party takes a distribution from the account, and if a party is able to take a distribution tax-free and chooses not to, the court may consider as income the distribution that could have been taken.

For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income equals gross receipts minus ordinary and necessary expenses. Ordinary and necessary expenses do not include amounts allowable by the IRS for the accelerated component of depreciation expenses or investment tax credits or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating alimony.

The bill defines "potential income" as income which could be earned by a party using best efforts, and includes potential income from employment, investment of assets, or use of property in a financially prudent manner. Potential income from employment is income a party could reasonably expect to earn working at a locally available, full-time job based on the person's education, training, and experience. A person is considered to be underemployed if he or she is not working full-time in a position which is appropriate based on his or her education, training, and experience, and which is available in the local area. A person is not underemployed if he or she is enrolled in an educational program that can reasonably expect to result in a degree or certification and higher income within the foreseeable future. A court generally must impute income to a party who is voluntarily unemployed or underemployed.

The court must consider years of marriage based on whole years, calculated from the date of marriage until the date of the filing for dissolution.

This bill creates a rebuttable presumption against alimony for marriages of 2 years or less. The party seeking alimony may rebut the presumption by showing:

- The party seeking alimony has a clear and convincing need for alimony;

The formula bases the years of marriage at 20 for both the low and the high end of the range. However, if a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court is required to use the actual years of marriage, up to 25 years to calculate the high end of a presumptive alimony amount range.

The court retains flexibility to determine alimony within the presumptive alimony ranges.

Bases for Alimony (Considered by the Court after Presumptive Alimony is Calculated):

Presumptive alimony may then be established by the court within the presumptive ranges, based on the following:

- The financial resources of the obligee and the obligor, including the actual or potential income from nonmarital or marital property or any other source and the ability of each spouse to meet his or her reasonable needs;
- The standard of living of the parties during the marriage considering that there will be two households to maintain after the dissolution of marriage and that neither party may be able to maintain the same standard of living they had while married;
- The equitable distribution of marital property, including whether an unequal distribution of marital property was made to reduce or alleviate the need for alimony;
- Both parties' income, employment, and employability, obtainable through reasonable diligence and additional training or education, and any necessary reduction in employment due to parenting or circumstances of the parties;
- Whether a party could reduce the need for alimony by pursuing additional educational or vocational training, including the length of time required and anticipated costs of training;
- Whether one party has historically earned higher or lower income than that at the time of trial;
- Whether a party has foregone or postponed economic, educational, or employment opportunities during the course of the marriage;
- Whether either party has caused the unreasonable depletion or dissipation of marital assets;
- The amount of temporary alimony and the number of months temporary alimony was paid to the recipient spouse;
- The age, health, and physical and mental condition of the parties, including health care needs and costs;
- Significant economic or noneconomic contributions to the marriage or to the economic, educational, or occupational advancement of a party, including services rendered in homemaking, child care, education, and career building of the other party, payment by one spouse of the other spouse's separate debts, or enhancement of the other spouse's personal or real property;
- The tax consequence of the alimony award; and
- Any other factor necessary to provide equity and justice between the parties.

If the court awards alimony, the court must include in written findings that the obligor has the financial ability to pay alimony.

Under no circumstance may a court order alimony and child support that, when combined, constitutes more than 55 percent of the obligor's net income. This change appears to codify case law, as appellate courts have reversed awards of trial courts where the percent of income

awarded as support is considered unreasonable. The Fourth District Court of Appeal found that the trial court committed an abuse of discretion in awarding combined alimony and child support totaling 58 percent of the obligor's net income.⁴⁰ The appellate court noted that the trial court had legitimate grounds on which to order permanent alimony. The former wife earned only a two-year college degree and supported her husband as a teacher's aide while he secured a law school education. She then became a homemaker. However, the court noted that the excessive award left the obligor with just \$330 a month on which to live after paying for rent and a car loan.⁴¹

In *Casella v. Casella*, the same appellate court ruled clearly excessive an award of combined alimony and child support that approached 70 percent of the husband's net income.⁴² A 1990 case, the court reversed the trial court on the basis that the award left the obligor with just \$800 a month on which to live.

To protect an award of alimony, the court may require an obligor to purchase or maintain a decreasing term life insurance policy or a bond, or provide other security to protect the alimony award. To award security, a court must find the existence of special circumstances and make specific evidentiary findings about the availability, cost, and financial impact on the obligor. Security is modifiable if the underlying alimony award is reduced.

Deviation from Guidelines

The court may determine an award of alimony that is outside the presumptive alimony amount or alimony duration ranges only if the court makes specific written findings that the application of the ranges is inappropriate or inequitable after considering all the factors used as the bases of alimony.

In addition to generally authorizing the court to award alimony outside the presumptive alimony amount, the bill establishes a specific basis for the court to do so. The bill authorizes a deviation from guidelines for a long-term homemaker spouse who forewent education and career opportunities if:

- The duration of the marriage was at least 20 years;
- Pursuant to agreement, one spouse substantially refrained from economic, educational, or employment opportunities primarily to contribute to the marriage as a homemaker or child care provider; and
- Even with additional education, the spouse seeking alimony faces dramatically reduced opportunities to advance a career.

If the court orders a departure from guidelines on this basis, the court may order alimony in an amount that equalizes the income of the parties until the obligor either retires upon reaching:

- The age for eligibility for full retirement benefits; or
- The customary retirement age for his or her occupation.

⁴⁰ *Thomas v. Thomas*, 418 So. 2d 316, (Fla. 4th DCA 1982).

⁴¹ *Id.* at 316-317.

⁴² *Casella v. Casella*, 569 So. 2d 848, 849 (Fla. 4th DCA 1990). The court stopped short of ruling that a particular percentage constitutes a bright-line rule, and instead, ruled that each case must be determined individually.

Nominal Alimony

Even if the court does not intend to award alimony at the time, the court may reserve the issue of alimony by awarding alimony of \$1.00 a year under the durational guidelines if:

- A party who has traditionally been the breadwinner temporarily lacks the ability to pay support but is reasonably anticipated to have the ability to pay in the future; or
- A party is presently able to work but for whom a medical condition with a reasonable degree of medical certainty may inhibit the ability to pay in the future.

The courts routinely award nominal alimony to reserve the issue of alimony at a later date.⁴³

Tax and Alimony

Unless otherwise stated in the agreement between the parties or by the court through judgment or order, alimony is deductible from income by the obligor and included in the income of the obligee for tax purposes.

The agreement between the parties may provide or the court, after considering equities and tax efficiencies, may order alimony to be nondeductible from income by the obligor and not includable in the income of the obligee.

Payment of Alimony in Depository

Under the bill, for orders on alimony entered into on or after January 1, 1985, the court must order that payments of alimony be made through a depository. For orders on alimony entered before January 1, 1985, upon appearance by one or both parties before the court to modify or enforce the order, the court must modify the order require that alimony payments to be made through the depository.

Alimony payments do not need to be directed through the depository:

- If there is no minor child; or
- If there is a minor child and both parties agree to payment without the depository.

However, a payee may subsequently file an affidavit with the clerk of the court a verified motion that an obligor has been in default or arrearages in payment. No later than 15 days after receiving the motion, the court must:

- Hold an evidentiary hearing establishing the default and arrearages;
- Issue an order that the clerk establish or amend an existing family law case history account; and
- Advise the parties that future payments must be directed through the depository.

A Title IV-D agency, currently the Department of Revenue, can also request payments to be made through the depository.

⁴³ *Lightcap v. Lightcap*, 14 So. 3d 259, 260 (Fla. 3d DCA 2009). “Here the trial court did not abuse its discretion when it granted the former wife nominal alimony. Nominal alimony would permit her to apply for modification upon a proper showing if and when the former husband achieves his full earning potential in the future.”

Substantial Change in Circumstance Justifying the Modification of Alimony

Existing law authorizes the court to modify alimony upon a showing of a substantial change in circumstances. However, a court may not decrease or increase the duration of alimony provided for in the agreement or order.

Under the bill, upon the filing of a petition by the obligor, the court may temporarily reduce or suspend the obligor's payment of alimony while the petition is pending. However, if either party unreasonably pursues or defends an action, the other party is entitled to pay reasonable attorney fees and costs of the prevailing party.

Rebuttable Presumption

This bill creates a rebuttable presumption that alimony must be modified or terminated if the courts finds that the obligor's retirement is a substantial change in circumstance.

The presumption can be rebutted by the following factors:

- The age of the parties;
- The health of the parties;
- Assets and liabilities of the parties;
- Earned or imputed income of the parties;
- The ability of the parties to maintain part-time or full-time employment; and
- Any other factor deemed relevant by the court.

New Grounds for a Substantial Change in Circumstance

This bill establishes new substantial changes in circumstance:

- If the actual income of a party exceeds by at least 10 percent the amount the court imputed to the party when the court initially determined alimony, the other party may seek an immediate modification of alimony. An increase in an obligor's income alone does not constitute a basis for modification unless at the time the court established alimony, the court determined that the obligor was underemployed or unemployed but did not impute income at his or her maximum potential income.
- If an obligor becomes involuntarily underemployed or unemployed for 6 months after the court enters its final order for alimony, the obligor is entitled to pursue an immediate modification of alimony.
- Retirement is a substantial change in circumstance if:
 - The obligor has reached the age for eligibility to receive full retirement benefits under the Social Security Act and has retired;
 - The obligor has reached the customary retirement age for his or her occupation and has retired from that occupation; or
 - The obligor retires early and the court determines that the retirement is reasonable based upon the obligor's age, health, motivation for retirement, and impact on the obligee.

At least one court has refused modification of alimony on the basis that an obligor voluntarily retired early. Here the court held that the obligor did not establish voluntary retirement as a

circumstance beyond his control.⁴⁴ In this case, the obligor retired early at the age of 63, after 40 years of steady employment.⁴⁵

An obligor may file an action within a year of his or her anticipated retirement date for the court to determine the customary retirement date for the obligor's profession. Allowing the obligor to file in advance of retirement helps the obligor to plan.

Remarriage of Obligor is not a Substantial Change in Circumstance

The bill clarifies that remarriage of the obligor is not a substantial change in circumstance.

Financial information of a subsequent spouse of a party paying or receiving alimony is inadmissible and may not be considered as part of any modification action unless a party is claiming that his or her income has decreased since the marriage. If the party makes this claim, financial information is admissible for a limited purpose.

Supportive Relationship

Regarding the change in circumstance that is the presence of a supportive relationship between an obligee and another person, this bill expands the requirement that the relationship currently exist, to one which existed within the previous year before the date of the filing of the petition for modification or termination of alimony.

The bill adds as a factor for the court to use in determining to modify alimony based on a supportive relationship whether the obligor's failure, in whole or in part, to comply with all court-ordered financial obligations contributed to the obligee's need to have a supportive relationship.

This bill requires the obligor to demonstrate by a preponderance of the evidence that a supportive relationship exists or has existed within the previous year before the filing date of the petition for modification. The obligor is not required to prove the cohabitation of the obligee. These changes reduce the burden on an obligor to show a supportive relationship.

If an obligor prevails in a showing of a supportive relationship, reduction or termination of alimony is retroactive to the date of the filing of the petition.

Advancing Trial

The court must give priority to cases that have remained pending for more than 2 years from the initial date a party files a petition if a party requests that the case advance to trial.

Time-sharing

The bill provides additional guidelines for the court to use in determining a time-sharing schedule of a minor child.

⁴⁴ *Ward v. Ward*, 502 So. 2d 477, 478 (FLA. 3D DCA 1987).

⁴⁵ *Id.*

Current law provides that the public policy of the state is for each minor to have frequent and continuing contact with both parents after the parents separate or divorce. The bill provides instead that the public policy of the state is that absent good cause, substantially equal time-sharing with both parents is in the best interest of the child. A court must include written findings in an order that establishes an initial permanent time-sharing schedule that provides other than substantially equal time-sharing.

Current law provides a list of factors for the court to consider in establishing or modifying time-sharing schedule, based on the best interests of the child. In addition to the factors presently provided in law, this bill adds the following:

- The amount of timesharing requested by each parent; and
- The frequency that a parent would likely leave the child in the care of a nonrelative on evenings and weekends when the other parent would be available and willing to provide care.

The bill also revises several existing factors. Under existing law, a court must consider and favor the parent having the “demonstrated capacity” of performing various parenting duties. The bill requires a court to also consider the disposition of a parent to perform new parenting roles after a divorce.

Under the bill, if the initial permanent time-sharing schedule does not provide for substantially equal time-sharing, the court order must include written findings of fact justifying the departure.

Application of the Bill to Alimony Awards

The provisions of the bill apply to:

- All initial alimony determinations and all alimony modification actions pending as of October 1, 2016; and
- All future initial determinations of alimony and alimony modification actions.

The enactment of the bill may not serve as the sole basis for a party to seek modification of an alimony award which existed prior to October 1, 2016.⁴⁶

The bill takes effect October 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not affect cities or counties.

B. Public Records/Open Meetings Issues:

None.

⁴⁶ The application of the bill to existing alimony awards is substantially different than the application of CS/CS/SB 718, 2nd Engrossed (2013), an alimony reform bill that was vetoed by Governor Scott. The prior alimony reform bill provided that the bill itself constituted a “substantial change in circumstances for which an obligor may seek . . . a modification of the amount or duration of alimony.” CS/CS/SB 718, 2nd Engrossed (2013), lines 936-939.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Most alimony awards are based on marital settlement agreements (MSAs), which are incorporated into final judgments in dissolution of marriage cases. Courts consider these MSAs as contracts. Courts interpret challenges to MSAs on the same basis as other forms of contract.⁴⁷

Nonetheless, existing s. 61.14, F.S., purports to give courts broad authority to modify marital settlement agreements. Courts interpreting these agreements have also found that the parties to a marital settlement agreement may waive their statutory rights to seek modification of alimony by providing that the agreement is nonmodifiable.⁴⁸

Any interpretation of the bill which would allow the modification of a non-modifiable marital settlement agreement would likely be constrained by Article I, s. 10, of the Florida Constitution which provides, in part: “No ... ex post facto law or law impairing the obligation of contracts shall be passed.” Moreover, courts have “refused to apply a statute retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.”⁴⁹

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

None.

B. Private Sector Impact:

The bill more clearly defines gross income, provides guidelines for alimony, and establishes new bases for a substantial change in circumstance justifying a modification of alimony. In addition to the changes in alimony law, the bill revises public policy on time-sharing to provide for substantially equal time-sharing. These changes may reduce litigation time and costs.

⁴⁷ The First District Court of Appeal applied contract law in determining whether to admit parol evidence, or evidence outside the contract (MSA), on the basis that the contract language contains a latent ambiguity (*Toussaint v. Toussaint*, 107 So. 3d 474, 477-478 (Fla. 1st DCA 2013)). A latent ambiguity, requiring extrinsic evidence, existed where an MSA failed to address financing of college education and the contract otherwise provided for equal payments for education costs (*Riera v. Riera*, 86 So. 3d 1163, 1166—67 (Fla. 3d DCA 2012)). The court found no breach of contract from the plain language of the MSA. (*McCord v. McCord*, 94 So. 3d 719 (Fla. 2nd DCA 2012)).

⁴⁸ *Elbaum v. Elbaum*, 141 So. 3d 658, 661 (Fla. 4th DCA 2014) (quoting *Hahamovitch v. Hahamovitch*, 133 So. 3d 1008, 1016 (Fla. 4th DCA 2014), rev. granted, No. SC14-277, 2014 WL 1682898 (Fla. Apr. 22, 2014) (citing *Tapp v. Tapp*, 887 So.2d 442, 444 (Fla. 2d DCA 2004)); *Cook v. Cook*, 94 So. 3d 683, 685 (Fla. 4th DCA 2012)).

⁴⁹ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla.1994); *State v. Lavazzoli*, 434 So.2d 321, 323 (Fla.1983); *Seaboard Sys. R.R. v. Clemente*, 467 So.2d 348, 357 (Fla. 3d DCA 1985)).

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) expects an increase in judicial workload from various provisions of the bill. Specifically, this bill requires a court to calculate alimony based upon a formula. Additionally, the bill imposes attorney fees and costs on a party who unreasonably pursues or defends an action for modification of alimony, if the party prevails. This requirement may necessitate additional hearings for a court to determine the reasonableness of a modification request. OSCA, however, cannot accurately determine the fiscal impact of the bill at this time.⁵⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 61.071, 61.08, 61.13, 61.14, 61.1827, 61.30, and 409.2579.

This bill creates section 61.192 of the Florida Statutes.

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

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

CS by Judiciary on February 16, 2016:

The CS authorizes the court to deviate from the alimony guidelines of the bill:

- For a spouse who forewent education and career opportunities to contribute to the family through providing homemaking or child care if:
 - The duration of the marriage was at least 20 years;
 - Pursuant to agreement, one spouse substantially refrained from economic, educational, or employment opportunities primarily to contribute to the marriage as a homemaker or child care provider; and
 - Even with additional education, the spouse seeking alimony faces dramatically reduced opportunities to advance a career.
- In an amount that equalizes the income of the parties until the obligor either retires upon reaching:
 - The age for eligibility for full retirement benefits; or
 - The customary retirement age for his or her occupation.

⁵⁰ Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Dec. 21, 2015).

B. Amendments:

None.

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



306652

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
02/16/2016	.	
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The Committee on Judiciary (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Blue Ribbon Task Force.—The Blue Ribbon Task Force, a task force as defined in s. 20.03, Florida Statutes, is created within the Department of Children and Families for a duration of 1 year. The task force is created for the express purpose of comprehensively reviewing the alimony laws in this state as compared with all other states, reviewing historical trends in alimony, reviewing the conditions that affect alimony



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12 awards, and providing findings and recommendations.

13 (1) The task force is composed of 12 members, as follows:

14 (a) The Chief Justice of the Florida Supreme Court or his
15 or her designee, who shall serve as chair of the task force.

16 (b) The Attorney General or his or her designee.

17 (c) The Secretary of the Department of Children and
18 Families or his or her designee.

19 (d) Five members of the general public, two of whom must be
20 attorneys licensed in this state with a specialization in family
21 law, all five appointed by the Governor.

22 (e) Four members from the Legislature, one each appointed
23 by the President of the Senate, the Senate Minority Leader, the
24 Speaker of the House of Representatives, and the House of
25 Representatives Minority Leader.

26
27 To the extent that it is possible, the commission should consist
28 of an equal number of male and female members.

29 (2) Members of the task force shall serve without
30 compensation, but are entitled to reimbursement for per diem and
31 travel expenses pursuant to s. 112.061, Florida Statutes.

32 (3) The task force, at a minimum, shall study and report on
33 the following issues:

34 (a) The scope of alimony laws in this state as compared
35 with those in other states.

36 (b) The historical trends in alimony awards.

37 (c) The current economic conditions that have affected
38 trends in state alimony awards.

39 (4) The Chief Justice of the Florida Supreme Court or his
40 or her designee shall submit a report to the Governor, the



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41 President of the Senate, and the Speaker of the House of
42 Representatives by July 1, 2017, containing the task force's
43 recommendations regarding the comprehensive reviews it must
44 conduct. If the task force recommends revisions to state law,
45 the report must include proposed language and policy reasons.
46 Upon submission of the report, the task force shall expire.

47 Section 2. This act shall take effect July 1, 2016.

48
49 ===== T I T L E A M E N D M E N T =====

50 And the title is amended as follows:

51 Delete everything before the enacting clause
52 and insert:

53 A bill to be entitled

54 An act relating to alimony; creating the Blue Ribbon
55 Task Force within the Department of Children and
56 Families; specifying membership of the task force;
57 authorizing reimbursement for per diem and travel
58 expenses; prescribing duties of the task force;
59 requiring submission of a report to the Governor and
60 the Legislature by a specified date; providing for
61 expiration of the task force; providing an effective
62 date.



399458

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2016	.	
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The Committee on Judiciary (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 242 - 257
and insert:
shall be \$0.

(b) Presumptive alimony duration range.—The low end of the
presumptive alimony duration range shall be calculated by using
the following formula:

0.25 x the years of marriage



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The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage

(c) Exceptions to alimony guidelines.-

1. If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court shall use the actual years of the marriage, up to a maximum of 25 years, to calculate the high end of the presumptive alimony amount range.

2. A court may award alimony in an amount that equalizes the income of the parties until the obligor retires upon reaching the age for eligibility for full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, or upon reaching the customary retirement age for his or her occupation if:

a. The duration of the marriage was at least 20 years;

b. Pursuant to the mutual agreement or consent of the parties to the marriage, one spouse substantially refrained from economic, educational, or employment opportunities primarily for the purpose of contributing to the marriage through homemaking or child care activities; and

c. The spouse seeking alimony even with additional education faces dramatically reduced opportunities to advance in a career.

This subparagraph should not be applied in a manner that



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40 discourages a spouse from seeking additional education or
41 employment opportunities.

42

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

44 And the title is amended as follows:

45 Delete line 17

46 and insert:

47 circumstances; specifying exceptions to the guidelines
48 for the amount and duration of alimony awards;
49 providing for awards of nominal alimony

By Senator Stargel

15-00669A-16

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1 A bill to be entitled
 2 An act relating to family law; amending s. 61.071,
 3 F.S.; requiring a court to consider certain alimony
 4 factors and make specific written findings of fact
 5 under certain circumstances; prohibiting a court from
 6 using certain presumptive alimony guidelines in
 7 calculating alimony pendente lite; amending s. 61.08,
 8 F.S.; defining terms; requiring a court to make
 9 specified initial written findings in a dissolution of
 10 marriage proceeding where a party has requested
 11 alimony; requiring a court to make specified findings
 12 before ruling on a request for alimony; providing for
 13 determinations of presumptive alimony amount range and
 14 duration range; providing presumptions concerning
 15 alimony awards depending on the duration of marriages;
 16 providing for imputation of income in certain
 17 circumstances; providing for awards of nominal alimony
 18 in certain circumstances; providing for taxability and
 19 deductibility of alimony awards; prohibiting a
 20 combined award of alimony and child support from
 21 constituting more than a specified percentage of a
 22 payor's net income; authorizing the court to order a
 23 party to protect an alimony award by specified means;
 24 providing for termination of an award; authorizing a
 25 court to modify or terminate the amount of an initial
 26 alimony award; prohibiting a court from modifying the
 27 duration of an alimony award; providing for payment of
 28 awards; amending s. 61.13, F.S.; revising public
 29 policy; revising the factors that are used to

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

15-00669A-16

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30 determine the best interests of a child; requiring a
 31 court order to be supported by written findings of
 32 fact for a specified initial permanent time-sharing
 33 schedule; amending s. 61.14, F.S.; prohibiting a court
 34 from changing the duration of alimony; authorizing a
 35 party to pursue an immediate modification of alimony
 36 in certain circumstances; revising factors to be
 37 considered in determining whether an existing award of
 38 alimony should be reduced or terminated because of an
 39 alleged supportive relationship; providing for burden
 40 of proof for claims concerning the existence of
 41 supportive relationships; providing for the effective
 42 date of a reduction or termination of an alimony
 43 award; providing that the remarriage of an alimony
 44 obligor is not a substantial change in circumstance;
 45 providing that the financial information of a spouse
 46 of a party paying or receiving alimony is inadmissible
 47 and undiscoverable; providing an exception; providing
 48 for modification or termination of an award based on a
 49 party's retirement; providing a presumption upon a
 50 finding of a substantial change in circumstance;
 51 specifying factors to be considered in determining
 52 whether to modify or terminate an award based on a
 53 substantial change in circumstance; providing for a
 54 temporary suspension of an obligor's payment of
 55 alimony while his or her petition for modification or
 56 termination is pending; providing for an award of
 57 attorney fees and costs for unreasonably pursuing or
 58 defending a modification of an award; providing for an

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

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59 effective date of a modification or termination of an
60 award; amending s. 61.30, F.S.; requiring that a child
61 support award be adjusted to reduce the combined
62 alimony and child support award under certain
63 circumstances; creating s. 61.192, F.S.; providing for
64 motions to advance the trial of certain actions if a
65 specified period has passed since the initial service
66 on the respondent; amending ss. 61.1827 and 409.2579,
67 F.S.; conforming cross-references; providing
68 applicability; providing an effective date.

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

71
72 Section 1. Section 61.071, Florida Statutes, is amended to
73 read:

74 61.071 Alimony pendente lite; suit money.—In every
75 proceeding for dissolution of the marriage, a party may claim
76 alimony and suit money in the petition or by motion, and if the
77 petition is well founded, the court shall allow a reasonable sum
78 therefor. If a party in any proceeding for dissolution of
79 marriage claims alimony or suit money in his or her answer or by
80 motion, and the answer or motion is well founded, the court
81 shall allow a reasonable sum therefor. After determining there
82 is a need for alimony and that there is an ability to pay
83 alimony, the court shall consider the alimony factors in s.
84 61.08(4)(b)1.-14. and make specific written findings of fact
85 regarding the relevant factors that justify an award of alimony
86 under this section. The court may not use the presumptive
87 alimony guidelines in s. 61.08 to calculate alimony under this

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88 section.

89 Section 2. Section 61.08, Florida Statutes, is amended to
90 read:

91 (Substantial rewording of section. See
92 s. 61.08, F.S., for present text.)

93 61.08 Alimony.—

94 (1) DEFINITIONS.—As used in this section, unless the
95 context otherwise requires, the term:

96 (a)1. "Gross income" means recurring income from any source
97 and includes, but is not limited to:

98 a. Income from salaries.

99 b. Wages, including tips declared by the individual for
100 purposes of reporting to the Internal Revenue Service or tips
101 imputed to bring the employee's gross earnings to the minimum
102 wage for the number of hours worked, whichever is greater.

103 c. Commissions.

104 d. Payments received as an independent contractor for labor
105 or services, which payments must be considered income from self-
106 employment.

107 e. Bonuses.

108 f. Dividends.

109 g. Severance pay.

110 h. Pension payments and retirement benefits actually
111 received.

112 i. Royalties.

113 j. Rental income, which is gross receipts minus ordinary
114 and necessary expenses required to produce the income.

115 k. Interest.

116 l. Trust income and distributions which are regularly

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117 received, relied upon, or readily available to the beneficiary.

118 m. Annuity payments.

119 n. Capital gains.

120 o. Any money drawn by a self-employed individual for

121 personal use that is deducted as a business expense, which

122 moneys must be considered income from self-employment.

123 p. Social security benefits, including social security

124 benefits actually received by a party as a result of the

125 disability of that party.

126 q. Workers' compensation benefits.

127 r. Unemployment insurance benefits.

128 s. Disability insurance benefits.

129 t. Funds payable from any health, accident, disability, or

130 casualty insurance to the extent that such insurance replaces

131 wages or provides income in lieu of wages.

132 u. Continuing monetary gifts.

133 v. Income from general partnerships, limited partnerships,

134 closely held corporations, or limited liability companies;

135 except that if a party is a passive investor, has a minority

136 interest in the company, and does not have any managerial duties

137 or input, the income to be recognized may be limited to actual

138 cash distributions received.

139 w. Expense reimbursements or in-kind payments or benefits

140 received by a party in the course of employment, self-

141 employment, or operation of a business which reduces personal

142 living expenses.

143 x. Overtime pay.

144 y. Income from royalties, trusts, or estates.

145 z. Spousal support received from a previous marriage.

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146 aa. Gains derived from dealings in property, unless the

147 gain is nonrecurring.

148 2. "Gross income" does not include:

149 a. Child support payments received.

150 b. Benefits received from public assistance programs.

151 c. Social security benefits received by a parent on behalf

152 of a minor child as a result of the death or disability of a

153 parent or stepparent.

154 d. Earnings or gains on retirement accounts, including

155 individual retirement accounts; except that such earnings or

156 gains shall be included as income if a party takes a

157 distribution from the account. If a party is able to take a

158 distribution from the account without being subject to a federal

159 tax penalty for early distribution and the party chooses not to

160 take such a distribution, the court may consider the

161 distribution that could have been taken in determining the

162 party's gross income.

163 3.a. For income from self-employment, rent, royalties,

164 proprietorship of a business, or joint ownership of a

165 partnership or closely held corporation, the term "gross income"

166 equals gross receipts minus ordinary and necessary expenses, as

167 defined in sub-subparagraph b., which are required to produce

168 such income.

169 b. "Ordinary and necessary expenses," as used in sub-

170 subparagraph a., does not include amounts allowable by the

171 Internal Revenue Service for the accelerated component of

172 depreciation expenses or investment tax credits or any other

173 business expenses determined by the court to be inappropriate

174 for determining gross income for purposes of calculating

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175 alimony.

176 (b) "Potential income" means income which could be earned
 177 by a party using his or her best efforts and includes potential
 178 income from employment and potential income from the investment
 179 of assets or use of property. Potential income from employment
 180 is the income which a party could reasonably expect to earn by
 181 working at a locally available, full-time job commensurate with
 182 his or her education, training, and experience. Potential income
 183 from the investment of assets or use of property is the income
 184 which a party could reasonably expect to earn from the
 185 investment of his or her assets or the use of his or her
 186 property in a financially prudent manner.

187 (c)1. "Underemployed" means a party is not working full-
 188 time in a position which is appropriate, based upon his or her
 189 educational training and experience, and available in the
 190 geographical area of his or her residence.

191 2. A party is not considered "underemployed" if he or she
 192 is enrolled in an educational program that can be reasonably
 193 expected to result in a degree or certification within a
 194 reasonable period, so long as the educational program is:

195 a. Expected to result in higher income within the
 196 foreseeable future.

197 b. A good faith educational choice based upon the previous
 198 education, training, skills, and experience of the party and the
 199 availability of immediate employment based upon the educational
 200 program being pursued.

201 (d) "Years of marriage" means the number of whole years,
 202 beginning from the date of the parties' marriage until the date
 203 of the filing of the action for dissolution of marriage.

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204 (2) INITIAL FINDINGS.—When a party has requested alimony in
 205 a dissolution of marriage proceeding, before granting or denying
 206 an award of alimony, the court shall make initial written
 207 findings as to:

208 (a) The amount of each party's monthly gross income,
 209 including, but not limited to, the actual or potential income,
 210 and also including actual or potential income from nonmarital or
 211 marital property distributed to each party.

212 (b) The years of marriage as determined from the date of
 213 marriage through the date of the filing of the action for
 214 dissolution of marriage.

215 (3) ALIMONY GUIDELINES.—After making the initial findings
 216 described in subsection (2), the court shall calculate the
 217 presumptive alimony amount range and the presumptive alimony
 218 duration range. The court shall make written findings as to the
 219 presumptive alimony amount range and presumptive alimony
 220 duration range.

221 (a) Presumptive alimony amount range.—The low end of the
 222 presumptive alimony amount range shall be calculated by using
 223 the following formula:

224 (0.015 x the years of marriage) x the difference between the
 225 monthly gross incomes of the parties

226 The high end of the presumptive alimony amount range shall be
 227 calculated by using the following formula:

228 (0.020 x the years of marriage) x the difference between the
 229 monthly gross incomes of the parties

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233
 234 For purposes of calculating the presumptive alimony amount
 235 range, 20 years of marriage shall be used in calculating the low
 236 end and high end for marriages of 20 years or more. In
 237 calculating the difference between the parties' monthly gross
 238 income, the income of the party seeking alimony shall be
 239 subtracted from the income of the other party. If the
 240 application of the formulas to establish a guideline range
 241 results in a negative number, the presumptive alimony amount
 242 shall be \$0. If a court establishes the duration of the alimony
 243 award at 50 percent or less of the length of the marriage, the
 244 court shall use the actual years of the marriage, up to a
 245 maximum of 25 years, to calculate the high end of the
 246 presumptive alimony amount range.

247 (b) Presumptive alimony duration range.—The low end of the
 248 presumptive alimony duration range shall be calculated by using
 249 the following formula:

250
 251 0.25 x the years of marriage

252
 253 The high end of the presumptive alimony duration range shall be
 254 calculated by using the following formula:

255
 256 0.75 x the years of marriage

257
 258 (4) ALIMONY AWARD.—

259 (a) Marriages of 2 years or less.—For marriages of 2 years
 260 or less, there is a rebuttable presumption that no alimony shall
 261 be awarded. The court may award alimony for a marriage with a

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262 duration of 2 years or less only if the court makes written
 263 findings that there is a clear and convincing need for alimony,
 264 there is an ability to pay alimony, and that the failure to
 265 award alimony would be inequitable. The court shall then
 266 establish the alimony award in accordance with paragraph (b).

267 (b) Marriages of more than 2 years.—Absent an agreement of
 268 the parties, alimony shall presumptively be awarded in an amount
 269 within the alimony amount range calculated in paragraph (3) (a).
 270 Absent an agreement of the parties, alimony shall presumptively
 271 be awarded for a duration within the alimony duration range
 272 calculated in paragraph (3) (b). In determining the amount and
 273 duration of the alimony award, the court shall consider all of
 274 the following factors upon which evidence was presented:

275 1. The financial resources of the recipient spouse,
 276 including the actual or potential income from nonmarital or
 277 marital property or any other source and the ability of the
 278 recipient spouse to meet his or her reasonable needs
 279 independently.

280 2. The financial resources of the payor spouse, including
 281 the actual or potential income from nonmarital or marital
 282 property or any other source and the ability of the payor spouse
 283 to meet his or her reasonable needs while paying alimony.

284 3. The standard of living of the parties during the
 285 marriage with consideration that there will be two households to
 286 maintain after the dissolution of the marriage and that neither
 287 party may be able to maintain the same standard of living after
 288 the dissolution of the marriage.

289 4. The equitable distribution of marital property,
 290 including whether an unequal distribution of marital property

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291 was made to reduce or alleviate the need for alimony.

292 5. Both parties' income, employment, and employability,
 293 obtainable through reasonable diligence and additional training
 294 or education, if necessary, and any necessary reduction in
 295 employment due to the needs of an unemancipated child of the
 296 marriage or the circumstances of the parties.

297 6. Whether a party could become better able to support
 298 himself or herself and reduce the need for ongoing alimony by
 299 pursuing additional educational or vocational training along
 300 with all of the details of such educational or vocational plan,
 301 including, but not limited to, the length of time required and
 302 the anticipated costs of such educational or vocational
 303 training.

304 7. Whether one party has historically earned higher or
 305 lower income than the income reflected at the time of trial and
 306 the duration and consistency of income from overtime or
 307 secondary employment.

308 8. Whether either party has foregone or postponed economic,
 309 educational, or employment opportunities during the course of
 310 the marriage.

311 9. Whether either party has caused the unreasonable
 312 depletion or dissipation of marital assets.

313 10. The amount of temporary alimony and the number of
 314 months that temporary alimony was paid to the recipient spouse.

315 11. The age, health, and physical and mental condition of
 316 the parties, including consideration of significant health care
 317 needs or uninsured or unreimbursed health care expenses.

318 12. Significant economic or noneconomic contributions to
 319 the marriage or to the economic, educational, or occupational

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320 advancement of a party, including, but not limited to, services
 321 rendered in homemaking, child care, education, and career
 322 building of the other party, payment by one spouse of the other
 323 spouse's separate debts, or enhancement of the other spouse's
 324 personal or real property.

325 13. The tax consequence of the alimony award.

326 14. Any other factor necessary to do equity and justice
 327 between the parties.

328 (c) Deviation from guidelines.—The court may establish an
 329 award of alimony that is outside the presumptive alimony amount
 330 or alimony duration ranges only if the court considers all of
 331 the factors in paragraph (b) and makes specific written findings
 332 concerning the relevant factors justifying that the application
 333 of the presumptive alimony amount or alimony duration ranges, as
 334 applicable, is inappropriate or inequitable.

335 (d) Order establishing alimony award.—After consideration
 336 of the presumptive alimony amount and duration ranges in
 337 accordance with paragraphs (3) (a) and (b) and the factors upon
 338 which evidence was presented in accordance with paragraph (b),
 339 the court may establish an alimony award. An order establishing
 340 an alimony award must clearly set forth both the amount and the
 341 duration of the award. The court shall also make a written
 342 finding that the payor has the financial ability to pay the
 343 award.

344 (5) IMPUTATION OF INCOME.—If a party is voluntarily
 345 unemployed or underemployed, alimony shall be calculated based
 346 on a determination of potential income unless the court makes
 347 specific written findings regarding the circumstances that make
 348 it inequitable to impute income.

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349 (6) NOMINAL ALIMONY.—Notwithstanding subsections (1), (3),
 350 and (4), the court may make an award of nominal alimony in the
 351 amount of \$1 per year if, at the time of trial, a party who has
 352 traditionally provided the primary source of financial support
 353 to the family temporarily lacks the ability to pay support but
 354 is reasonably anticipated to have the ability to pay support in
 355 the future. The court may also award nominal alimony for an
 356 alimony recipient who is presently able to work but for whom a
 357 medical condition with a reasonable degree of medical certainty
 358 may inhibit or prevent his or her ability to work during the
 359 duration of the alimony period. The duration of the nominal
 360 alimony shall be established within the presumptive durational
 361 range based upon the length of the marriage subject to the
 362 alimony factors in paragraph (4)(b). Before the expiration of
 363 the durational period, nominal alimony may be modified in
 364 accordance with s. 61.14 as to amount to a full alimony award
 365 using the alimony guidelines and factors in accordance with s.
 366 61.08.

367 (7) TAXABILITY AND DEDUCTIBILITY OF ALIMONY.—

368 (a) Unless otherwise stated in the judgment or order for
 369 alimony or in an agreement incorporated thereby, alimony shall
 370 be deductible from income by the payor under s. 215 of the
 371 Internal Revenue Code and includable in the income of the payee
 372 under s. 71 of the Internal Revenue Code.

373 (b) When making a judgment or order for alimony, the court
 374 may, in its discretion after weighing the equities and tax
 375 efficiencies, order alimony be nondeductible from income by the
 376 payor and nonincludable in the income of the payee.

377 (c) The parties may, in a marital settlement agreement,

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378 separation agreement, or related agreement, specifically agree
 379 in writing that alimony be nondeductible from income by the
 380 payor and nonincludable in the income of the payee.

381 (8) MAXIMUM COMBINED AWARD.—In no event shall a combined
 382 award of alimony and child support constitute more than 55
 383 percent of the payor's net income, calculated without any
 384 consideration of alimony or child support obligations.

385 (9) SECURITY OF AWARD.—To the extent necessary to protect
 386 an award of alimony, the court may order any party who is
 387 ordered to pay alimony to purchase or maintain a decreasing term
 388 life insurance policy or a bond, or to otherwise secure such
 389 alimony award with any other assets that may be suitable for
 390 that purpose, in an amount adequate to secure the alimony award.
 391 Any such security may be awarded only upon a showing of special
 392 circumstances. If the court finds special circumstances and
 393 awards such security, the court must make specific evidentiary
 394 findings regarding the availability, cost, and financial impact
 395 on the obligated party. Any security may be modifiable in the
 396 event the underlying alimony award is modified and shall be
 397 reduced in an amount commensurate with any reduction in the
 398 alimony award.

399 (10) TERMINATION OF AWARD.—An alimony award shall terminate
 400 upon the death of either party or the remarriage of the obligee.

401 (11) MODIFICATION OF AWARD.—A court may subsequently modify
 402 or terminate the amount of an award of alimony initially
 403 established under this section in accordance with s. 61.14.
 404 However, a court may not modify the duration of an award of
 405 alimony initially established under this section.

406 (12) PAYMENT OF AWARD.—

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407 (a) With respect to an order requiring the payment of
 408 alimony entered on or after January 1, 1985, unless paragraph
 409 (c) or paragraph (d) applies, the court shall direct in the
 410 order that the payments of alimony be made through the
 411 appropriate depository as provided in s. 61.181.

412 (b) With respect to an order requiring the payment of
 413 alimony entered before January 1, 1985, upon the subsequent
 414 appearance, on or after that date, of one or both parties before
 415 the court having jurisdiction for the purpose of modifying or
 416 enforcing the order or in any other proceeding related to the
 417 order, or upon the application of either party, unless paragraph
 418 (c) or paragraph (d) applies, the court shall modify the terms
 419 of the order as necessary to direct that payments of alimony be
 420 made through the appropriate depository as provided in s.
 421 61.181.

422 (c) If there is no minor child, alimony payments do not
 423 need to be directed through the depository.

424 (d)1. If there is a minor child of the parties and both
 425 parties so request, the court may order that alimony payments do
 426 not need to be directed through the depository. In this case,
 427 the order of support shall provide, or be deemed to provide,
 428 that either party may subsequently apply to the depository to
 429 require that payments be made through the depository. The court
 430 shall provide a copy of the order to the depository.

431 2. If subparagraph 1. applies, either party may
 432 subsequently file with the clerk of the court a verified motion
 433 alleging a default or arrearages in payment stating that the
 434 party wishes to initiate participation in the depository
 435 program. The moving party shall copy the other party with the

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436 motion. No later than 15 days after filing the motion, the court
 437 shall conduct an evidentiary hearing establishing the default
 438 and arrearages, if any, and issue an order directing the clerk
 439 of the circuit court to establish, or amend an existing, family
 440 law case history account, and further advising the parties that
 441 future payments must thereafter be directed through the
 442 depository.

443 3. In IV-D cases, the Title IV-D agency shall have the same
 444 rights as the obligee in requesting that payments be made
 445 through the depository.

446 Section 3. Paragraph (c) of subsection (2) and subsection
 447 (3) of section 61.13, Florida Statutes, are amended, present
 448 subsections (4) through (8) of that section are redesignated as
 449 subsections (5) through (9), respectively, and a new subsection
 450 (4) is added to that section, to read:

451 61.13 Support of children; parenting and time-sharing;
 452 powers of court.—

453 (2)

454 (c) The court shall determine all matters relating to
 455 parenting and time-sharing of each minor child of the parties in
 456 accordance with the best interests of the child and in
 457 accordance with the Uniform Child Custody Jurisdiction and
 458 Enforcement Act, except that modification of a parenting plan
 459 and time-sharing schedule requires a showing of a substantial,
 460 material, and unanticipated change of circumstances.

461 1. Absent good cause, it is the public policy of this state
 462 that the best interest of each minor child is served by a time-
 463 sharing schedule that provides for substantially equal time-
 464 sharing with both parents. It is the public policy of this state

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465 ~~that each minor child has frequent and continuing contact with~~
 466 ~~both parents after the parents separate or the marriage of the~~
 467 ~~parties is dissolved and~~ to encourage parents to share the
 468 rights and responsibilities, and joys, of childrearing. There is
 469 no presumption for or against the father or mother of the child
 470 or for or against any specific time-sharing schedule when
 471 creating or modifying the parenting plan of the child.

472 2. The court shall order that the parental responsibility
 473 for a minor child be shared by both parents unless the court
 474 finds that shared parental responsibility would be detrimental
 475 to the child. Evidence that a parent has been convicted of a
 476 misdemeanor of the first degree or higher involving domestic
 477 violence, as defined in s. 741.28 and chapter 775, or meets the
 478 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
 479 detriment to the child. If the presumption is not rebutted after
 480 the convicted parent is advised by the court that the
 481 presumption exists, shared parental responsibility, including
 482 time-sharing with the child, and decisions made regarding the
 483 child, may not be granted to the convicted parent. However, the
 484 convicted parent is not relieved of any obligation to provide
 485 financial support. If the court determines that shared parental
 486 responsibility would be detrimental to the child, it may order
 487 sole parental responsibility and make such arrangements for
 488 time-sharing as specified in the parenting plan as will best
 489 protect the child or abused spouse from further harm. Whether or
 490 not there is a conviction of any offense of domestic violence or
 491 child abuse or the existence of an injunction for protection
 492 against domestic violence, the court shall consider evidence of
 493 domestic violence or child abuse as evidence of detriment to the

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494 child.

495 a. In ordering shared parental responsibility, the court
 496 may consider the expressed desires of the parents and may grant
 497 to one party the ultimate responsibility over specific aspects
 498 of the child's welfare or may divide those responsibilities
 499 between the parties based on the best interests of the child.
 500 Areas of responsibility may include education, health care, and
 501 any other responsibilities that the court finds unique to a
 502 particular family.

503 b. The court shall order sole parental responsibility for a
 504 minor child to one parent, with or without time-sharing with the
 505 other parent if it is in the best interests of the minor child.

506 3. Access to records and information pertaining to a minor
 507 child, including, but not limited to, medical, dental, and
 508 school records, may not be denied to either parent. Full rights
 509 under this subparagraph apply to either parent unless a court
 510 order specifically revokes these rights, including any
 511 restrictions on these rights as provided in a domestic violence
 512 injunction. A parent having rights under this subparagraph has
 513 the same rights upon request as to form, substance, and manner
 514 of access as are available to the other parent of a child,
 515 including, without limitation, the right to in-person
 516 communication with medical, dental, and education providers.

517 (3) For purposes of establishing or modifying parental
 518 responsibility and creating, developing, approving, or modifying
 519 a parenting plan, including a time-sharing schedule, which
 520 governs each parent's relationship with his or her minor child
 521 and the relationship between each parent with regard to his or
 522 her minor child, the best interest of the child shall be the

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523 primary consideration. A determination of parental
 524 responsibility, a parenting plan, or a time-sharing schedule may
 525 not be modified without a showing of a substantial, material,
 526 and unanticipated change in circumstances and a determination
 527 that the modification is in the best interests of the child.
 528 Determination of the best interests of the child shall be made
 529 by evaluating all of the factors affecting the welfare and
 530 interests of the particular minor child and the circumstances of
 531 that family, including, ~~but not limited to:~~

532 (a) The demonstrated capacity or ~~and~~ disposition of each
 533 parent to facilitate and encourage a close and continuing
 534 parent-child relationship, to honor the time-sharing schedule,
 535 and to be reasonable when changes are required.

536 (b) The anticipated division of parental responsibilities
 537 after the litigation, including the extent to which parental
 538 responsibilities will be delegated to third parties.

539 (c) The demonstrated capacity and disposition of each
 540 parent to determine, consider, and act upon the needs of the
 541 child as opposed to the needs or desires of the parent.

542 (d) The length of time the child has lived in a stable,
 543 satisfactory environment and the desirability of maintaining
 544 continuity.

545 (e) The geographic viability of the parenting plan, with
 546 special attention paid to the needs of school-age children and
 547 the amount of time to be spent traveling to carry out ~~effectuate~~
 548 the parenting plan. This factor does not create a presumption
 549 for or against relocation of either parent with a child.

550 (f) The moral fitness of the parents.

551 (g) The mental and physical health of the parents.

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552 (h) The home, school, and community record of the child.

553 (i) The reasonable preference of the child, if the court
 554 deems the child to be of sufficient intelligence, understanding,
 555 and experience to express a preference.

556 (j) The demonstrated knowledge, capacity, or ~~and~~
 557 disposition of each parent to be informed of the circumstances
 558 of the minor child, including, but not limited to, the child's
 559 friends, teachers, medical care providers, daily activities, and
 560 favorite things.

561 (k) The demonstrated capacity or ~~and~~ disposition of each
 562 parent to provide a consistent routine for the child, such as
 563 discipline, and daily schedules for homework, meals, and
 564 bedtime.

565 (l) The demonstrated capacity of each parent to communicate
 566 with the other parent and keep the other parent informed of
 567 issues and activities regarding the minor child, and the
 568 willingness of each parent to adopt a unified front on all major
 569 issues when dealing with the child.

570 (m) Evidence of domestic violence, sexual violence, child
 571 abuse, child abandonment, or child neglect, regardless of
 572 whether a prior or pending action relating to those issues has
 573 been brought. If the court accepts evidence of prior or pending
 574 actions regarding domestic violence, sexual violence, child
 575 abuse, child abandonment, or child neglect, the court must
 576 specifically acknowledge in writing that such evidence was
 577 considered when evaluating the best interests of the child.

578 (n) Evidence that either parent has knowingly provided
 579 false information to the court regarding any prior or pending
 580 action regarding domestic violence, sexual violence, child

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581 abuse, child abandonment, or child neglect.

582 (o) The demonstrated capacity or disposition of each parent
 583 to perform or ensure the performance of particular parenting
 584 tasks customarily performed by the other each parent and the
 585 division of parental responsibilities before the institution of
 586 litigation and during the pending litigation, including the
 587 extent to which parenting responsibilities were undertaken by
 588 third parties.

589 (p) The demonstrated capacity and disposition of each
 590 parent to participate and be involved in the child's school and
 591 extracurricular activities.

592 (q) The demonstrated capacity and disposition of each
 593 parent to maintain an environment for the child which is free
 594 from substance abuse.

595 (r) The capacity and disposition of each parent to protect
 596 the child from the ongoing litigation as demonstrated by not
 597 discussing the litigation with the child, not sharing documents
 598 or electronic media related to the litigation with the child,
 599 and refraining from disparaging comments about the other parent
 600 to the child.

601 (s) The developmental stages and needs of the child and the
 602 demonstrated capacity and disposition of each parent to meet the
 603 child's developmental needs.

604 (t) The amount of time-sharing requested by each parent.

605 (u) The frequency that a parent would likely leave the
 606 child in the care of a nonrelative on evenings and weekends when
 607 the other parent would be available and willing to provide care.

608 (v) ~~(t)~~ Any other factor that is relevant to the
 609 determination of a specific parenting plan, including the time-

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610 sharing schedule.

611 (4) A court order must be supported by written findings of
 612 fact if the order establishes an initial permanent time-sharing
 613 schedule that does not provide for substantially equal time-
 614 sharing.

615 Section 4. Subsection (1) of section 61.14, Florida
 616 Statutes, is amended to read:

617 61.14 Enforcement and modification of support, maintenance,
 618 or alimony agreements or orders.—

619 (1) (a) When the parties enter into an agreement for
 620 payments for, or instead of, support, maintenance, or alimony,
 621 whether in connection with a proceeding for dissolution or
 622 separate maintenance or with any voluntary property settlement,
 623 or when a party is required by court order to make any payments,
 624 and the circumstances or the financial ability of either party
 625 changes or the child who is a beneficiary of an agreement or
 626 court order as described herein reaches majority after the
 627 execution of the agreement or the rendition of the order, either
 628 party may apply to the circuit court of the circuit in which the
 629 parties, or either of them, resided at the date of the execution
 630 of the agreement or reside at the date of the application, or in
 631 which the agreement was executed or in which the order was
 632 rendered, for an order decreasing or increasing the amount of
 633 support, maintenance, or alimony, and the court has jurisdiction
 634 to make orders as equity requires, with due regard to the
 635 changed circumstances or the financial ability of the parties or
 636 the child, decreasing, increasing, or confirming the amount of
 637 separate support, maintenance, or alimony provided for in the
 638 agreement or order. However, a court may not decrease or

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639 increase the duration of alimony provided for in the agreement
640 or order. A party is entitled to pursue an immediate
641 modification of alimony if the actual income earned by the other
642 party exceeds by at least 10 percent the amount imputed to that
643 party at the time the existing alimony award was determined and
644 such circumstance shall constitute a substantial change in
645 circumstances sufficient to support a modification of alimony.
646 However, an increase in an alimony obligor's income alone does
647 not constitute a basis for a modification to increase alimony
648 unless at the time the alimony award was established it was
649 determined that the obligor was underemployed or unemployed and
650 the court did not impute income to that party at his or her
651 maximum potential income. If an alimony obligor becomes
652 involuntarily underemployed or unemployed for a period of 6
653 months following the entry of the last order requiring the
654 payment of alimony, the obligor is entitled to pursue an
655 immediate modification of his or her existing alimony
656 obligations and such circumstance shall constitute a substantial
657 change in circumstance sufficient to support a modification of
658 alimony. A finding that medical insurance is reasonably
659 available or the child support guidelines schedule in s. 61.30
660 may constitute changed circumstances. Except as otherwise
661 provided in s. 61.30(11)(c), the court may modify an order of
662 support, maintenance, or alimony by increasing or decreasing the
663 support, maintenance, or alimony retroactively to the date of
664 the filing of the action or supplemental action for modification
665 as equity requires, giving due regard to the changed
666 circumstances or the financial ability of the parties or the
667 child.

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668 (b)1. The court may reduce or terminate an award of alimony
669 upon specific written findings by the court that since the
670 granting of a divorce and the award of alimony a supportive
671 relationship exists or has existed within the previous year
672 before the date of the filing of the petition for modification
673 or termination between the obligee and another a person with
674 whom the obligee resides. On the issue of whether alimony should
675 be reduced or terminated under this paragraph, the burden is on
676 the obligor to prove by a preponderance of the evidence that a
677 supportive relationship exists.

678 2. In determining whether an existing award of alimony
679 should be reduced or terminated because of an alleged supportive
680 relationship between an obligee and a person who is not related
681 by consanguinity or affinity and with whom the obligee resides,
682 the court shall elicit the nature and extent of the relationship
683 in question. The court shall give consideration, without
684 limitation, to circumstances, including, but not limited to, the
685 following, in determining the relationship of an obligee to
686 another person:

687 a. The extent to which the obligee and the other person
688 have held themselves out as a married couple by engaging in
689 conduct such as using the same last name, using a common mailing
690 address, referring to each other ~~in terms such as "my husband"~~
691 or "my wife," "my spouse" or otherwise conducting themselves in
692 a manner that evidences a permanent supportive relationship.

693 b. The period of time that the obligee has resided with the
694 other person in a permanent place of abode.

695 c. The extent to which the obligee and the other person
696 have pooled their assets or income or otherwise exhibited

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2016668__

697 financial interdependence.

698 d. The extent to which the obligee or the other person has
699 supported the other, in whole or in part.

700 e. The extent to which the obligee or the other person has
701 performed valuable services for the other.

702 f. The extent to which the obligee or the other person has
703 performed valuable services for the other's company or employer.

704 g. Whether the obligee and the other person have worked
705 together to create or enhance anything of value.

706 h. Whether the obligee and the other person have jointly
707 contributed to the purchase of any real or personal property.

708 i. Evidence in support of a claim that the obligee and the
709 other person have an express agreement regarding property
710 sharing or support.

711 j. Evidence in support of a claim that the obligee and the
712 other person have an implied agreement regarding property
713 sharing or support.

714 k. Whether the obligee and the other person have provided
715 support to the children of one another, regardless of any legal
716 duty to do so.

717 1. Whether the obligor's failure, in whole or in part, to
718 comply with all court-ordered financial obligations to the
719 obligee constituted a significant factor in the establishment of
720 the supportive relationship.

721 3. In any proceeding to modify an alimony award based upon
722 a supportive relationship, the obligor has the burden of proof
723 to establish, by a preponderance of the evidence, that a
724 supportive relationship exists or has existed within the
725 previous year before the date of the filing of the petition for

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726 modification or termination. The obligor is not required to
727 prove cohabitation of the obligee and the third party.

728 4. Notwithstanding paragraph (f), if a reduction or
729 termination is granted under this paragraph, the reduction or
730 termination is retroactive to the date of filing of the petition
731 for reduction or termination.

732 ~~5.3-~~ This paragraph does not abrogate the requirement that
733 every marriage in this state be solemnized under a license, does
734 not recognize a common law marriage as valid, and does not
735 recognize a de facto marriage. This paragraph recognizes only
736 that relationships do exist that provide economic support
737 equivalent to a marriage and that alimony terminable on
738 remarriage may be reduced or terminated upon the establishment
739 of equitable circumstances as described in this
740 paragraph. The existence of a conjugal relationship, though it
741 may be relevant to the nature and extent of the relationship, is
742 not necessary for the application of the provisions of this
743 paragraph.

744 (c)1. For purposes of this section, the remarriage of an
745 alimony obligor does not constitute a substantial change in
746 circumstance or a basis for a modification of alimony.

747 2. The financial information, including, but not limited
748 to, information related to assets and income, of a subsequent
749 spouse of a party paying or receiving alimony is inadmissible
750 and may not be considered as a part of any modification action
751 unless a party is claiming that his or her income has decreased
752 since the marriage. If a party makes such a claim, the financial
753 information of the subsequent spouse is discoverable and
754 admissible only to the extent necessary to establish whether the

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755 party claiming that his or her income has decreased is diverting
 756 income or assets to the subsequent spouse that might otherwise
 757 be available for the payment of alimony. However, this
 758 subparagraph may not be used to prevent the discovery of or
 759 admissibility in evidence of the income or assets of a party
 760 when those assets are held jointly with a subsequent spouse.
 761 This subparagraph is not intended to prohibit the discovery or
 762 admissibility of a joint tax return filed by a party and his or
 763 her subsequent spouse in connection with a modification of
 764 alimony.

765 (d)1. An obligor may file a petition for modification or
 766 termination of an alimony award based upon his or her actual
 767 retirement.

768 a. A substantial change in circumstance is deemed to exist
 769 if:

770 (I) The obligor has reached the age for eligibility to
 771 receive full retirement benefits under s. 216 of the Social
 772 Security Act, 42 U.S.C. s. 416, and has retired; or

773 (II) The obligor has reached the customary retirement age
 774 for his or her occupation and has retired from that occupation.
 775 An obligor may file an action within 1 year of his or her
 776 anticipated retirement date and the court shall determine the
 777 customary retirement date for the obligor's profession. However,
 778 a determination of the customary retirement age is not an
 779 adjudication of a petition for a modification of an alimony
 780 award.

781 b. If an obligor voluntarily retires before reaching any of
 782 the ages described in sub-subparagraph a., the court shall
 783 determine whether the obligor's retirement is reasonable upon

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784 consideration of the obligor's age, health, and motivation for
 785 retirement and the financial impact on the obligee. A finding of
 786 reasonableness by the court shall constitute a substantial
 787 change in circumstance.

788 2. Upon a finding of a substantial change in circumstance,
 789 there is a rebuttable presumption that an obligor's existing
 790 alimony obligation shall be modified or terminated. The court
 791 shall modify or terminate the alimony obligation, or make a
 792 determination regarding whether the rebuttable presumption has
 793 been overcome, based upon the following factors applied to the
 794 current circumstances of the obligor and obligee:

795 a. The age of the parties.

796 b. The health of the parties.

797 c. The assets and liabilities of the parties.

798 d. The earned or imputed income of the parties as provided
 799 in s. 61.08(1)(a) and (5).

800 e. The ability of the parties to maintain part-time or
 801 full-time employment.

802 f. Any other factor deemed relevant by the court.

803 3. The court may temporarily reduce or suspend the
 804 obligor's payment of alimony while his or her petition for
 805 modification or termination under this paragraph is pending.

806 (e) A party who unreasonably pursues or defends an action
 807 for modification of alimony shall be required to pay the
 808 reasonable attorney fees and costs of the prevailing party.
 809 Further, a party obligated to pay prevailing party attorney fees
 810 and costs in connection with unreasonably pursuing or defending
 811 an action for modification is not entitled to an award of
 812 attorney fees and costs in accordance with s. 61.16.

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813 (f) There is a rebuttable presumption that a modification
 814 or termination of an alimony award is retroactive to the date of
 815 the filing of the petition, unless the obligee demonstrates that
 816 the result is inequitable.

817 (g)(e) For each support order reviewed by the department as
 818 required by s. 409.2564(11), if the amount of the child support
 819 award under the order differs by at least 10 percent but not
 820 less than \$25 from the amount that would be awarded under s.
 821 61.30, the department shall seek to have the order modified and
 822 any modification shall be made without a requirement for proof
 823 or showing of a change in circumstances.

824 (h)(d) The department may ~~shall~~ have authority to adopt
 825 rules to implement this section.

826 Section 5. Paragraph (d) is added to subsection (11) of
 827 section 61.30, Florida Statutes, to read:

828 61.30 Child support guidelines; retroactive child support.-
 829 (11)

830 (d) Whenever a combined alimony and child support award
 831 constitutes more than 55 percent of the payor's net income,
 832 calculated without any consideration of alimony or child support
 833 obligations, the court shall adjust the award of child support
 834 to ensure that the 55 percent cap is not exceeded.

835 Section 6. Section 61.192, Florida Statutes, is created to
 836 read:

837 61.192 Advancing trial.-In an action brought pursuant to
 838 this chapter, if more than 2 years have passed since the initial
 839 petition was served on the respondent, either party may move the
 840 court to advance the trial of their action on the docket. This
 841 motion may be made at any time after 2 years have passed since

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

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842 the petition was served, and once made the court must give the
 843 case priority on the court's calendar.

844 Section 7. Subsection (1) of section 61.1827, Florida
 845 Statutes, is amended to read:

846 61.1827 Identifying information concerning applicants for
 847 and recipients of child support services.-

848 (1) Any information that reveals the identity of applicants
 849 for or recipients of child support services, including the name,
 850 address, and telephone number of such persons, held by a non-
 851 Title IV-D county child support enforcement agency is
 852 confidential and exempt from s. 119.07(1) and s. 24(a) of Art. I
 853 of the State Constitution. The use or disclosure of such
 854 information by the non-Title IV-D county child support
 855 enforcement agency is limited to the purposes directly connected
 856 with:

857 (a) Any investigation, prosecution, or criminal or civil
 858 proceeding connected with the administration of any non-Title
 859 IV-D county child support enforcement program;

860 (b) Mandatory disclosure of identifying and location
 861 information as provided in s. 61.13(8) ~~s. 61.13(7)~~ by the non-
 862 Title IV-D county child support enforcement agency when
 863 providing non-Title IV-D services;

864 (c) Mandatory disclosure of information as required by ss.
 865 409.2577, 61.181, 61.1825, and 61.1826 and Title IV-D of the
 866 Social Security Act; or

867 (d) Disclosure to an authorized person, as defined in 45
 868 C.F.R. s. 303.15, for purposes of enforcing any state or federal
 869 law with respect to the unlawful taking or restraint of a child
 870 or making or enforcing a parenting plan. As used in this

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871 paragraph, the term "authorized person" includes a parent with
872 whom the child does not currently reside, unless a court has
873 entered an order under s. 741.30, s. 741.31, or s. 784.046.

874 Section 8. Subsection (1) of section 409.2579, Florida
875 Statutes, is amended to read:

876 409.2579 Safeguarding Title IV-D case file information.—

877 (1) Information concerning applicants for or recipients of
878 Title IV-D child support services is confidential and exempt
879 from the provisions of s. 119.07(1). The use or disclosure of
880 such information by the IV-D program is limited to purposes
881 directly connected with:

882 (a) The administration of the plan or program approved
883 under part A, part B, part D, part E, or part F of Title IV;
884 under Title II, Title X, Title XIV, Title XVI, Title XIX, or
885 Title XX; or under the supplemental security income program
886 established under Title XVI of the Social Security Act;

887 (b) Any investigation, prosecution, or criminal or civil
888 proceeding connected with the administration of any such plan or
889 program;

890 (c) The administration of any other federal or federally
891 assisted program which provides service or assistance, in cash
892 or in kind, directly to individuals on the basis of need;

893 (d) Reporting to an appropriate agency or official,
894 information on known or suspected instances of physical or
895 mental injury, child abuse, sexual abuse or exploitation, or
896 negligent treatment or maltreatment of a child who is the
897 subject of a support enforcement activity under circumstances
898 which indicate that the child's health or welfare is threatened
899 thereby; and

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900 (e) Mandatory disclosure of identifying and location
901 information as provided in s. 61.13(8) ~~s. 61.13(7)~~ by the IV-D
902 program when providing Title IV-D services.

903 Section 9. The amendments made by this act to chapter 61,
904 Florida Statutes, apply to all initial determinations of alimony
905 and all alimony modification actions that are pending as of the
906 effective date of this act, and to all initial determinations of
907 alimony and all alimony modification actions brought on or after
908 the effective date of this act. The enacting of this act may not
909 serve as the sole basis for a party to seek a modification of an
910 alimony award existing before the effective date of this act.

911 Section 10. This act shall take effect October 1, 2016.



399458

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete lines 242 - 257
and insert:
shall be \$0.

(b) Presumptive alimony duration range.—The low end of the
presumptive alimony duration range shall be calculated by using
the following formula:

0.25 x the years of marriage



399458

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The high end of the presumptive alimony duration range shall be calculated by using the following formula:

0.75 x the years of marriage

(c) Exceptions to alimony guidelines.-

1. If a court establishes the duration of the alimony award at 50 percent or less of the length of the marriage, the court shall use the actual years of the marriage, up to a maximum of 25 years, to calculate the high end of the presumptive alimony amount range.

2. A court may award alimony in an amount that equalizes the income of the parties until the obligor retires upon reaching the age for eligibility for full retirement benefits under s. 216 of the Social Security Act, 42 U.S.C. s. 416, or upon reaching the customary retirement age for his or her occupation if:

a. The duration of the marriage was at least 20 years;

b. Pursuant to the mutual agreement or consent of the parties to the marriage, one spouse substantially refrained from economic, educational, or employment opportunities primarily for the purpose of contributing to the marriage through homemaking or child care activities; and

c. The spouse seeking alimony even with additional education faces dramatically reduced opportunities to advance in a career.

This subparagraph should not be applied in a manner that



399458

40 discourages a spouse from seeking additional education or
41 employment opportunities.

42

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

44 And the title is amended as follows:

45 Delete line 17

46 and insert:

47 circumstances; specifying exceptions to the guidelines
48 for the amount and duration of alimony awards;
49 providing for awards of nominal alimony



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

November 4, 2015

The Honorable Miguel Diaz de la Portilla
Senate Judiciary Committee, Chair
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

I respectfully request that SB 668, related to *Family Law*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Tom Cibula/ Staff Director
Joyce Butler/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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)

2/15/16
Meeting Date

668
Bill Number (if applicable)

306652 by Sen
Amendment Barcode (if applicable)
Soto

Topic alimony

Name Elizabeth Willis

Job Title lawyer

Address 3160 Blaustone Court

Street

City

Tallahassee, Fla

State

Zip

Phone 850 877 0082

Email BIBWILLIS@comcast.net

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2-16-16

Meeting Date

668

Bill Number (if applicable)

Topic

Abortion

306652

Amendment Barcode (if applicable)

Name

Barbara D Deane

Soto

Job Title

Ms

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625 E. Broadway St

Phone

282-3969

Street

City

Jacksonville

State

Zip

FL 32308

Email

barbadeane@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.

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THE FLORIDA SENATE

APPEARANCE RECORD

50668

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~~50668~~

2/10/2014
Meeting Date

Just amendment: 306652
Bill Number (if applicable)
Amendment Barcode (if applicable)

Topic Family Law

Name AZAN FOSKE

Job Title President Family Law Reform

Address 6550 N. Wickham Rd

Phone 321-242-7526

Melbourn FL 32940
City State Zip

Email azan.foske@gmail.com

Speaking: For Against Information

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

Representing Family Law Reform

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

SB668

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2/16/2016
Meeting Date

Soto
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Alimony Reform

Name Karen Librizzi

Job Title Victim of Domestic Violence

Address 551 Fore Drive
Street

Phone 941-726-8559

Bradenton FL 34208
City State Zip

Email KarenLibrizzi@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2/16/16
Meeting Date

668
Bill Number (if applicable)
3D1652
Amendment Barcode (if applicable)

Topic Alimony

Name Cynthia Wheeler

Job Title AN

Address P.O. Box 82

Street
City South Bay State _____ Zip _____

Phone _____

Email Cjwheeler@aol.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/14/14
Meeting Date

668
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Family Law

Name Carrey Hoffman

Job Title Domestic Abuse Advocate

Address 8053 Kaliko Lane
Street

Phone 561-693-8734

Wellington, FL
City State

33414
Zip

Email carreyhoffman7@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 16, 2016
Meeting Date

Senator Soto
668 amendment
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Alimony Reform / 50/50 Timeshare

Name Lisa Rawson, CDR USN (Ret)

Job Title Survivor of Domestic Violence / Swim instructor / reading tutor

Address ~~301 Andrew Jackson Trail~~
Street

Phone ~~(561) 702-8756~~

~~Gulf Breeze, FL 32561~~
City State Zip

Email ~~mandydakota2016@gmail.com~~

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

30605

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

2-16-16
Meeting Date

6608
Bill Number (if applicable)

30605 306052
Amendment Barcode (if applicable)

Topic Alimony Reform

Name Camille Fivash

Job Title Victim + survivor of domestic violence

Address ~~5790 PINEHURST AVE~~
Street

Phone ~~7086 1752~~

~~Milton FL 32570~~
City State Zip

Email ~~CamilleFivash@me.com~~

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

Senator Soto

2-16-16

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

Meeting Date

668 amendment
Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform / 50-50

Name Jordan Miles

Job Title Home renovator

Address 1498 Stafford Avenue

Phone 321-750-8287

Street

Merritt Island

City

FL

State

32952

Zip

Email jordan miles 23 @yahoo.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16
Meeting Date

668 - amended ^{Soto}
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Alimony Reform / 50,50 Timesharing

Name Suzanne Przytycki

Job Title Attorney

Address 33300 Tentsbury Dr.
Street

Phone 352-409-3575

Leesburg FL 34788
City State Zip

Email przytycki@hotmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

Senator Soto

2-16-16

Meeting Date

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

668 amendment

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform / 50-50

Name Elizabeth Newmeyer

Job Title Veterinary Technician

Address 5380 Fishtail palm

Street

Phone (321) 652-4899

Cocoa

City

FL

State

32927

Zip

Email rockintwig32194@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

Senator Soto

668 amendment

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform/50-50

Name KATHERINE

Job Title student

Address 1498 Stafford Ave

Street

Phone 321-453-7633

Merritt Isl FL 32952

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

Senator Soto

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

2-16-16

Meeting Date

668 Amendment

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform/50-50

Name Theresa Miles

Job Title mom

Address 1498 Stafford Ave

Street

Phone 321-795-7840

M.I.

City

FL

State

32952

Zip

Email theresamileslogmail@gmail.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16

Meeting Date

Senator Soto
668 amendment

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform, 50/50 timeshare

Name Vicki Stoughton

Job Title Physical Therapist Assistant

Address 1540 Coral St.
Street

Phone 321-543-8751

Merritt Island FL 32952
City State Zip

Email stovicki@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S2105

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-16

Meeting Date

668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform

Name Robin Pastrowicz

Job Title Attorney / Senior Advisor

Address 405 Sassafras Lane

Street

Phone 954-644-2323

Mount Dora FL 32757

City

State

Zip

Email robin.pastrowicz@

gmail.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

668 ^{Sets}
Amendment
Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic Alimony Reform 50/50 Timetony

Name Jennifer Paton

Job Title Cashier

Address PO Box 7297

Street

Tallahassee FL 32314

City

State

Zip

Phone 386-232-8382

Email _____

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)

2-16-16
Meeting Date

Soto
668
Bill Number (if applicable)

Topic Alimony Reform / 50/50 timesharing

306652
Amendment Barcode (if applicable)

Name Rhianna Datsen

Job Title Student

Address P O Box 7297
Street

Phone 386-232-8382

Tallahassee FL 32314
City State Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 16, 2016
Meeting Date

Sen Soto
668 Amend.
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Alimony Reform / 50/50 timeshare

Name Deborah Gray

Job Title RN, BSN - Patient, child & Disability Advocate

Address ~~XXXXXXXXXXXXXXXXXXXX~~
Street

Phone _____

Pensacola FL 32503
City State Zip

Email ↓

Speaking: For Against Information

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

Representing National League of Women Voters 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16
Meeting Date

668
Bill Number (if applicable)

306652
Amendment Barcode (if applicable)

Topic Alimony

Name James Horrisberger

Job Title Commercial Pilot

Address 8803 Bay Pointe Dr
Street

Phone 863-528-1075

Tampa FL 33615
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/16

Meeting Date

668

Bill Number (if applicable)

306652

Amendment Barcode (if applicable)

Topic

Alimony Reform

Name

Terrance Power

Job Title

Address

1608 SHADY OAKS DR

Street

OLDSMAR, FL 34677

City

State

Zip

Phone

813-781-3266

Email

Speaking: For Against Information

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

Representing

FAMILY LAW REFORM

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)

February 16, 2016

Meeting Date

SB 668

Bill Number (if applicable)

Topic Family Law; Requiring a court to consider certain alimony factors

Amendment Barcode (if applicable)

Name Steven Schang MD, FACP, FACC

Job Title Retired Cardiologist permanent alimony payor

Address 707 E Cervantes St Suite B123

Phone 850-324-6915

Street

Pensacola

FL

32501

City

State

Zip

Email steven@schang.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.

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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)

2/16/16

Meeting Date

SB 668

Bill Number (if applicable)

Topic Hearing 4pm-6pm on SB 668

Amendment Barcode (if applicable)

Name Robert Showers

Job Title President/Owner of "Any Lab Test Now"

Address 10622 Brompton Dr. Apt 203

Phone _____

Street

TAMPA

FL.

33626

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Myself - I wish to speak -

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

FEB. 16, 2016
Meeting Date

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

SB 668
SB 688
Bill Number (if applicable)

Topic FAMILY LAW

Amendment Barcode (if applicable)

Name LARRY BUTAN

Job Title _____

Address 11215-3RD ST E.

Phone 813-299-0665

TREASURE ISLAND FL. 33706
City State Zip

Email LARRY.BUTAN@VERIZON.

Speaking: For Against Information

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

HET

Representing FLORIDA FAMILY LAW REFORM

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)

2-16-16
Meeting Date

668
Bill Number (if applicable)

Topic Alumonia

Amendment Barcode (if applicable)

Name Barbara DeVane

Job Title Ms.

Address 1025 E. Brevard St

Phone 222-3969

Street

City

State

Zip

Tallahassee FL 32308

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.

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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)

2/16/2016
Meeting Date

668
Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Karen Librizzi

Job Title Victim of Domestic Violence

Address 551 Fore Drive

Phone 941-726-8559

Street

Bradenton FL

34208

Email KarenLibrizzi@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 16, 2016
Meeting Date

668
Bill Number (if applicable)

Topic Alimony Reform / 50/50 timeshare

~~36~~
Amendment Barcode (if applicable)

Name Lisa Rawson, CD R USN (Ret)

Job Title Survivor of Domestic Violence / swim instructor / reading tutor

Address 306 Andrew Jackson Trail
Street

Phone ~~850 982 8734~~

Gulf Breeze, FL 32561
City State Zip

Email ~~wandy.dake@fla2015@gmail.com~~

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2/16/16
Meeting Date

SB 1068
Bill Number (if applicable)

~~XXXXXXXXXX~~
Amendment Barcode (if applicable)

Topic Alimony Reform

Name Camille Fireash

Job Title Domestic violence, survivor "Disabled"

Address ~~5777 KENNEDY~~
Street

Phone ~~850 606 1152~~

~~MILWAUKEE~~ FL ~~33156~~
City State Zip

Email camillefireash@gmail.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name Jordan Miles

Job Title Home renovator

Address 1498 Stafford Avenue

Phone 321-750-8287

Street

Merritt Island FL 32952

City

State

Zip

Email jordanmiles23@yahoo.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16
Meeting Date

668
Bill Number (if applicable)

Topic Alimony Refers / 50/50 Time Sharing

Amendment Barcode (if applicable)

Name Suzanne Przykowski

Job Title Attorney

Address 3330 Tewksbury Dr.
Street

Phone 352-409-3575

Leesburg FL 34788
City State Zip

Email przy@stanchothman.com

Speaking: For Against Information

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

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name Elizabeth Newmeyer

Job Title Veterinary Technician

Address 5380 Fishtail palm
Street

Phone (321) 652-4899

Cocoa
City

FL
State

32927
Zip

Email rockintwig32194@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16

Meeting Date

SB 668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name BONNIE WILLES

Job Title student

Address 1498 Stafford Ave
Street

Phone 321-453-7633

Meritt Isl FL 32952
City State Zip

Email _____

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)

2-16-16

Meeting Date

SB668

Bill Number (if applicable)

Topic SB-668

Amendment Barcode (if applicable)

Name Theresa Miles

Job Title mom

Address 1498 Stafford Ave
Street

Phone 321-795-7840

M.I. FL 32952
City State Zip

Email theresamiles@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16
Meeting Date

SB 668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Vicki Staughton

Job Title Physical Therapist Assistant

Address 1540 Coral St.
Street

Phone 321-543-8751

Merritt Island FL 32952
City State Zip

Email StoVicki@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

668

Bill Number (if applicable)

Topic Alimony Reform

Amendment Barcode (if applicable)

Name Robin Patrowicz

Job Title Attorney / Senior Advisor

Address 405 Sassafras Lane

Phone 954-644-2323

Street

Mount Dora FL

32757

Email robin.patrowicz@

City

State

Zip

gmail.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-16

Meeting Date

668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name Jennifer Dotson

Job Title Cashier

Address P.O. Box 7297

Phone 386-232-8382

Street

Tallahassee FL 32314

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

2-16-16

Meeting Date

668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name Rhiannon Dotson

Job Title Student

Address P.O. Box 7297
Street

Phone 386-232-8382

Tallahassee FL 32314
City State Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 16, 2016
Meeting Date

668
Bill Number (if applicable)

Topic Alimony Reform / 50/50 time share

Amendment Barcode (if applicable)

Name Deborah Gray

Job Title RN, BSN - Patient, Child & Disability Advocate

Address ~~1000 W. ...~~

Phone _____

Pensacola Fl 92503
City State Zip

Email _____

Speaking: For Against Information

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

Representing League of Women Voters - 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16
Meeting Date

668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name James Horrisberger

Job Title Commercial Pilot

Address 8803 Bay Pointe Dr
Street

Phone 863-528-1075

Tampa FL 33615
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

2/16/16

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

668

Meeting Date

Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name TERRANCE Power

Job Title _____

Address 1608 SHADY CREEK DR

Phone 813-781-3266

Street

OLDSMAR FL 33608

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FAMILY LAW Reform

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)

2-16-14
Meeting Date

668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Cynthia Wheeler

Job Title Advocate

Address P.O. Box 82

Phone 561-667-9154

Street

City

South Bay FL 33493

State

Zip

Email cogemalike@aol.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 668

Bill Number (if applicable)

399438

Amendment Barcode (if applicable)

Meeting Date _____

Topic FAMILY LAW REFORM

Name KEITH JOHNSON

Job Title PRIVATE CITIZEN

Address 165 CRISPIN ST

Street

MERRITT ISLAND, FL. 32952

City

State

Zip

Phone 321-431-6800

Email KRJOHNSON@YAHOO.COM

Speaking: For Against Information

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

Representing DEAN FUSHER KEITH

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)

2/16/2016

Meeting Date

668

Bill Number (if applicable)

399458 - De la Botz

Amendment Barcode (if applicable)

Topic Family Law

Name ALAN FRISHER

Job Title President - Family Law Reform

Address 6550 N. Wickham Rd

Street

Melbourne FL

City

State

Zip

Phone 321-242-7526

Email ALAN.FRISHER@gwed.com

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

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

Representing Family Law Reform INC

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.

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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)

2/16/16
Meeting Date

668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Greg Bond

Job Title _____

Address 9166 Sunrise Dr

Phone _____

City Largo State Fla Zip 33773

Email _____

Speaking: For Against Information

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

Representing Duval County Florida Government Corruption

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

Diaz

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

2.16.16

Meeting Date

6689 med wt

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony Reform/50-50

Name Elizabeth Newmeyer

Job Title Veterinary Technician

Address 5380 Fishtail palm
Street

Phone (321) 652-4899

Cocoa

City

FL

State

32927

Zip

Email rockintwig32194@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

DIAZ

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

2-16-16

Meeting Date

668 Amend.

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Army Reform / 50, 50 Timsham

Name Rhiann Datsa

Job Title Student

Address P.O. Box 7297
Street

Phone 386-232-8382

Tallahassee FL 32314
City State Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

DIAZ

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

2-16-16

Meeting Date

668 Amendment

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony Reform 50/50 Trusting

Name Jennifer Baker

Job Title Cashier

Address PO Box 7297

Street

Phone 386-232-8382

Tallahassee FL

City

State

32314

Zip

Email _____

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 16, 16
Meeting Date

Diaz
668 amendment
Bill Number (if applicable)

399458
Amendment Barcode (if applicable)

Topic Alimony Reform/50-50

Name Theresa Miles

Job Title mom

Address 1498 Stafford Ave
Street

Phone 321-795-7810

Meritt Isl 71 32952
City State Zip

Email TheresaMiles1@gmail.com

Speaking: For Against Information

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

Representing self good try - need impact study 1st c

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)

2/16/16
Meeting Date

SB668
Bill Number (if applicable)

Topic Florida Alimony Reform

Amendment Barcode (if applicable)

Name Deborah Shultz

Job Title Medical Doctor

Address 27205 Hawks Nest Circle
Street

Phone 813-431-3231

Wesley Chapel Fla 33544
City State Zip

Email dshultzmd@aol.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/2016
Meeting Date

668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Lori Barkus

Job Title Attorney

Address 2863 Executive Park Dr Ste 104
Street

Phone 954 349 7988

Weston FL 33331
City State Zip

Email lbarkus@barkuslaw.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16
Meeting Date

SB 668
Bill Number (if applicable)

Topic Alimony

Amendment Barcode (if applicable)

Name Caren Rose

Job Title Speech Language Pathologist

Address 2010 N. 50th Ave
Street

Phone 754-581-2904

Hollywood, FL 33021
City State Zip

Email Carenarose@yahoo.com

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10 / 2016

Meeting Date

668

Bill Number (if applicable)

Topic A LIMONY REFORM Bill

Amendment Barcode (if applicable)

Name NATALIE JOHN

Job Title _____

Address 8714 THOUSAND PINES Circle
Street

Phone 561 346-4268

WPA FL 33411
City State Zip

Email nsobgyu@aol.com

Speaking: For Against Information

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

Representing MYSELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

668

Bill Number (if applicable)

Topic Family Law

Amendment Barcode (if applicable)

Name Carey Hoffman

Job Title Domestic Abuse Advocate

Address 8053 Keeliko Lane

Phone 561-693-8734

Street

Wellington FL 33414

City

State

Zip

Email careyhoffman7@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

2-16-16

Meeting Date

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

SB 668

Bill Number (if applicable)

Topic ALIMONY REFORM

Amendment Barcode (if applicable)

Name BOBBY KOVALH

Job Title SALES

Address 7375 VETERANS MEMORIAL

Street

Phone 850 465 6830

TALLAHASSEE FL 32309

City

State

Zip

Email BOBBY KOVALH 1 @ GMAIL.COM

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

Meeting Date

SP 668
Bill Number (if applicable)

Topic SP 668 timesharing + Attorney

Amendment Barcode (if applicable)

Name Linda Miklowitz, J.D.

Job Title

Address 2542 Arthur's Court

Phone 850.559.1312

Street Tallahassee FL 32301
City State Zip

Email LMiklowitz@aol.com

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/16

Meeting Date

668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name Rhiannon Dotson

Job Title Student

Address PO Box 7297

Phone _____

Street

Tallahassee

FL

32314

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/16

Meeting Date

668

Bill Number (if applicable)

Topic SB 668

Amendment Barcode (if applicable)

Name Jennifer Dotson

Job Title

Address PO Box 7297

Phone

Street

Tallahassee

FL

32304

Email

City

State

Zip

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16
Meeting Date

6608
Bill Number (if applicable)

399458
Amendment Barcode (if applicable)

Topic Family Law

Name Cary Hoffman

Job Title Domestic Abuse Advocate

Address 8053 Keiliko Lane
Street

Phone 561-693-8731

Wellington FL 33414
City State Zip

Email Caryhoffman7a@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16
Meeting Date

668
Bill Number (if applicable)

Topic Alimony

399458
Amendment Barcode (if applicable)

Name Barbara J. Doherty

Margaret Portilla

Job Title MS

Address 625 E. Brevard St

Phone 222-3969

Tallahassee FL 32308
City State Zip

Email barbadoherty@icloud.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.

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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)

2/16/14
Meeting Date

668
Bill Number (if applicable)

B 399458
Amendment Barcode (if applicable)

Topic Alimony / 50-50

Name Cynthia Wheeler

Job Title HN

Address P.O. Box 82

Street South Bay

City State Zip

Phone 561-667-9954

Email Cowmalk@comcast.net

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

668

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony

Name James Morrisberger

Job Title Commercial Pilot

Address 2803 Bay Pointe Dr

Street

Phone 863-528-1075

Tampa FL 33615

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/16

Meeting Date

668

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic ACIMONY

Name TERRANCE POWER

Job Title

Address 1608 SHADY OAKS DR

Phone 813-781-3266

Street

OLDSMAR

City

FL

State

34677

Zip

Email

Speaking: For Against Information

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

Representing Family Law Reform

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)

Feb 16, 2016
Meeting Date

Sen Diaz
668 Amend
Bill Number (if applicable)

399458
Amendment Barcode (if applicable)

Topic Alimony Reform / 50/50 timeshare

Name Deborah Gray

Job Title RN,BSN - Patient, Child's Disability Advocate

Address ~~XXXXXXXXXXXXXXXXXXXX~~
Street

Phone _____

Pensacola FL 32503
City State Zip

Email _____

Speaking: For Against Information
N/A

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

Representing League of Women Voters 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.

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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)

2-16-16

Meeting Date

Dtaz

668 amendment
Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony Reform / 50 / 50 times sharing

Name Suzanne Przystowski

Job Title Attorney

Address 33300 Tewksbury Dr.
Street

Phone 352-409-3575

Leesburg FL 34788
City State Zip

Email przysto@hitman1.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

Diaz

APPEARANCE RECORD

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

2-16-16

Meeting Date

668

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony Reform

Name Robin Patrowicz

Job Title attorney / senior advisor

Address 405 Sassafras Lane

Street

Phone 854-644-2323

City

Mount Dora FL.

State

32757

Zip

Email robin.patrowicz@

gmail.com.

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-16
Meeting Date

Diaz
668 amendment
Bill Number (if applicable)

399458
Amendment Barcode (if applicable)

Topic Alimony Reform 50/50 timeshare

Name Vicki Stoughton

Job Title Physical Therapist Assistant

Address 1540 Coral St.
Street

Phone 321-543-8751

Merrett Island FL 32952
City State Zip

Email stovicki@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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

2-16-16

Meeting Date

SB 668

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony Reform

Name Camille Fiveash

Job Title Domestic violence survivor "Disabled"

Address 5789 TRULUCK AV

Phone 850 686-1452

Milton FL 32570

City State Zip

Email CamilleFiveash@gmail.com

Speaking: For Against Information

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

Representing myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

Diaz

2-16-16

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

668 amendment

Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Meeting Date

Topic Alimony Reform/50-50

Name Jordan Miles

Job Title home renovator

Address 1498 Stafford Avenue

Phone 321-750-8287

Street

Merritt Island FL 32952

Email jordanmiles23@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Feb 16, 16
Meeting Date

Diaz
668 amendment
Bill Number (if applicable)

399458
Amendment Barcode (if applicable)

Topic Alimony Reform / 50-50

Name KONNOR MILES

Job Title student

Address 1498 Stafford Ave
Street

Phone 321-453-7633

MI FL 32952
City State Zip

Email _____

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

Feb 16, 2016

Meeting Date

Diaz

668 amendment
Bill Number (if applicable)

399458

Amendment Barcode (if applicable)

Topic Alimony Reform / 50/50 timeshare

Name Lisa Rawson, CDRESN (ret)

Job Title Survivor of Domestic Violence / reading tutor / swim instructor

Address 306 Andrew Jackson Trail

Phone 850 982-8736

Street

Gulf Breeze, FL 32561

Email mandydakota.2015@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/2016
Meeting Date

Diaz
Bill Number (if applicable)

399458
Amendment Barcode (if applicable)

Topic Alimony Reform

Name Karen Librizzi

Job Title Victim of Domestic Violence

Address 551 Fore Drive
Street

Phone 941-726-8559

Bradenton FL 34208
City State Zip

Email KarenLibrizzi@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1034

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Health Care Providers

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Favorable
2.	Davis	Cibula	JU	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1034 allows a free clinic using volunteer health care providers to receive a grant or legislative appropriation to support the delivery of services while retaining the sovereign immunity protections under existing law. This financial support may be used to employ providers to supplement, coordinate, or otherwise support the volunteers.

The definition of a health care provider or provider in the Access to Health Care Act is expanded to include a pharmacy or licensed pharmacist. Accordingly, a pharmacy or pharmacy providing services under the act is given sovereign immunity as an agent of the state.

The bill also provides that employees and agents of the free clinics are protected from lawsuits under the state's sovereign immunity protections.

II. Present Situation:

Access to Health Care Act

Section 766.1115, F.S., is entitled "The Access to Health Care Act" (the act). It was enacted in 1992 to encourage health care providers to provide care to low-income persons.¹ The act is

¹ Low-income persons are defined in the act as a person who is Medicaid-eligible, a person who is without health insurance and whose family income does not exceed 200 percent of the federal poverty level, or any eligible client of the Department of Health who voluntarily chooses to participate in a program offered or approved by the department. Section 766.1115(3)(e),

administered by the Department of Health (department) through the Volunteer Health Services Program.² Volunteers complete an enrollment application with the department which requires a personal reference and background checks.³

The act extends sovereign immunity to health care providers who execute a contract with a governmental contractor and who, as agents of the state, provide volunteer, uncompensated health care services to low-income individuals. These health care providers are considered agents of the state under s. 768.28(9), F.S., for purposes of extending sovereign immunity while acting within the scope of duties required under the act.

A contract under the act must pertain to volunteer, uncompensated services. For services to qualify as volunteer, uncompensated services, the health care provider must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient or any public or private third-party payor for the specific services provided to the low-income recipients covered by the contract.⁴

Health care providers under the act include:⁵

- A birth center licensed under ch. 383, F.S.⁶
- An ambulatory surgical center licensed under ch. 395, F.S.⁷
- A hospital licensed under ch. 395, F.S.⁸
- A physician or physician assistant licensed under ch. 458, F.S.⁹
- An osteopathic physician or osteopathic physician assistant licensed under ch. 459, F.S.¹⁰
- A chiropractic physician licensed under ch. 460, F.S.¹¹
- A podiatric physician licensed under ch. 461, F.S.¹²
- A registered nurse, nurse midwife, licensed practical nurse, or advanced registered nurse practitioner licensed or registered under part I of ch. 464, F.S., or any facility that employs nurses licensed or registered under part I of ch. 464, F.S., to supply all or part of the care delivered under the act.¹³
- A dentist or dental hygienist licensed under ch. 466, F.S.¹⁴

F.S. A single individual whose annual income does not exceed \$23,540 is at 200 percent of the federal poverty level using Medicaid data. See *2015 Poverty Guidelines, Annual Guidelines* (September 3, 2015), available at <http://aspe.hhs.gov/poverty/15poverty.cfm>.

² See Florida Dep't of Health, Division of Public Health Statistics and Performance Management, *Volunteer Health Services*, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteerism-volunteer-opportunities/index.html> (last visited Jan. 8, 2016); and Rule Chapter 64I-2, F.A.C.

³ Florida Dep't of Health, Division of Public Health Statistics and Performance Management, *Volunteer Services Policy*, pp. 12-13, available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS2PolicyDOHP380-7-14.pdf> (last visited Feb. 5, 2016).

⁴ Section 766.1115(3)(a), F.S.

⁵ Section 766.1115(3)(d), F.S.

⁶ Section 766.1115(3)(d)1., F.S.

⁷ Section 766.1115(3)(d)2., F.S.

⁸ Section 766.1115(3)(d)3., F.S.

⁹ Section 766.1115(3)(d)4., F.S.

¹⁰ Section 766.1115(3)(d)5., F.S.

¹¹ Section 766.1115(3)(d)6., F.S.

¹² Section 766.1115(3)(d)7., F.S.

¹³ Section 766.1115(3)(d)8., F.S.

¹⁴ Section 766.1115(3)(d)13., F.S.

- A midwife licensed under ch. 467, F.S.¹⁵
- A health maintenance organization certificated under part I of ch. 641, F.S.¹⁶
- A health care professional association and its employees or a corporate medical group and its employees.¹⁷
- Any other medical facility the primary purpose of which is to deliver human medical diagnostic services or which delivers nonsurgical human medical treatment, and which includes an office maintained by a provider.¹⁸
- A free clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.¹⁹
- Any other health care professional, practitioner, provider, or facility under contract with a governmental contractor, including a student enrolled in an accredited program that prepares the student for licensure as a physician, physician assistant, nurse, or midwife.²⁰
- Any nonprofit corporation qualified as exempt from federal income taxation under s. 501(a) of the Internal Revenue Code, and described in s. 501(c) of the Internal Revenue Code, that delivers health care services provided by the listed licensed professionals, any federally funded community health center, and any volunteer corporation or volunteer health care provider that delivers health care services.

A governmental contractor is defined in the act as the department, a county health department, a special taxing district having health care responsibilities, or a hospital owned and operated by a governmental entity.²¹

The act further specifies additional contract requirements. The contract must provide that:

- The governmental contractor retains the right of dismissal or termination of any health care provider delivering services under the contract.
- The governmental contractor has access to the patient records of any health care provider delivering services under the contract.
- The health care provider must report adverse incidents and information on treatment outcomes.
- The governmental contractor or the health care provider must make patient selection and initial referrals.
- The health care provider is subject to supervision and regular inspection by the governmental contractor.²²
- The health care provider must accept all referred patients; however, the contract may specify limits on the number of patients to be referred.²³

¹⁵ Section 766.1115(3)(d)9., F.S.

¹⁶ Section 766.1115(3)(d)10., F.S.

¹⁷ Section 766.1115(3)(d)11., F.S.

¹⁸ Section 766.1115(3)(d)12., F.S.

¹⁹ Section 766.1115(3)(d)14., F.S.

²⁰ Section 766.1115(3)(d)15., F.S.

²¹ Section 766.1115(3)(c), F.S.

²² Section 766.1115(4), F.S.

²³ Rule 64I-2.003(2), F.A.C.

The governmental contractor must provide written notice to each patient, or the patient's legal representative, receipt of which must be acknowledged in writing, that the provider is covered under s. 768.28, F.S., for purposes of legal actions alleging medical negligence.²⁴

According to the department, from July 1, 2014, through June 30, 2015, 12,569 licensed health care volunteers (plus an additional 9,938 clinic staff volunteers) provided 373,588 health care patient visits with a total value of donated goods and services of more than \$271 million, under the act.²⁵ The Florida Department of Financial Services, Division of Risk Management, reported that as of January 7, 2015, that 10 claims had been filed against the Volunteer Health Care Provider Program under s. 766.1115, F.S., since February 15, 2000.²⁶

Legislative Appropriation to Free and Charitable Clinics

The use of prior fiscal year appropriations by the Florida Association of Free and Charitable Clinics under the act had been restricted to clinic capacity building purposes via the contract with the department which distributed the appropriations. Clinic capacity building was limited to products or processes that increase skills, infrastructure, and resources of clinics. The department did not authorize these funds to be used to build capacity through the employment of clinical personnel.

The department cautiously interpreted the provision in the act relating to volunteer, uncompensated services, which states that a health care provider must receive no compensation from the governmental contractor for any services provided under the contract. Accordingly, the department's interpretation precluded the use of the appropriation for this purpose.

The Florida Association of Free and Charitable Clinics received a \$9.5 million appropriation in the 2015-2016 General Appropriations Act through the department.²⁷ However, this fiscal year's appropriation was vetoed by the Governor "because the funds could not be used for services, and therefore it is not a statewide priority for improving cost, quality, and access in healthcare."²⁸

Sovereign Immunity

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of those governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law.

²⁴ Section 766.1115(5), F.S.

²⁵ Florida Dep't of Health, *Volunteer Health Services 2014-2015 Annual Report* (December 1, 2015), available at <http://www.floridahealth.gov/provider-and-partner-resources/getting-involved-in-public-health/volunteer-health-services-opportunities/VHS1415annualreport.pdf> (last visited Jan. 7, 2016).

²⁶ Id at A-1.

²⁷ Chapter 2015-232, Laws of Fla., line item 441.

²⁸ Governor Rick Scott, *Veto Message to Secretary of State Ken Detzner* (June 23, 2015), p. 35, available at <http://www.flgov.com/wp-content/uploads/2015/06/Transmittal%20Letter%206.23.15%20-%20SB%202500-A.pdf> (last visited Jan. 7, 2016).

Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Under this statute, officers, employees, and agents of the state will not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.²⁹ The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff cannot recover the excess damages without action by the Legislature.³⁰

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.³¹ In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.³²

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.³³ The court explained:

Whether CMS [Children's Medical Services] physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. . . . CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS³⁴ Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment

²⁹ Section 768.28(5), F.S.

³⁰ *Id.*

³¹ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

³² *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

³³ *Id.* at 703.

³⁴ Florida Department of Health and Rehabilitative Services.

provided to CMS patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.³⁵

III. Effect of Proposed Changes:

Access to Health Care Act (Section 1)

The bill authorizes a free clinic³⁶ to receive and use appropriations or grants from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers under the Access to Health Care Act without those funds being deemed compensation which might jeopardize the sovereign immunity protections afforded in the act. The bill authorizes these appropriations or grants to be used for the employment of health care providers to supplement, coordinate, or support the delivery of services by volunteer health care providers. The receipt and use of the appropriation or grant, according to the bill, does not constitute the acceptance of compensation for the specific services provided to the low-income recipients covered by the contract.

The bill inserts the phrase "employees or agents" in several provisions in the act to clarify that employees and agents of a health care provider, which typically are paid by a health care provider, fall within the sovereign immunity protections of the contracted health care provider when acting pursuant to the contract.

Additionally, a pharmacy or pharmacist licensed under chapter 465, the pharmacy act, is granted sovereign immunity under the bill. This is done by including a pharmacy or pharmacist in the definition of a "health care provider" or "provider."

Subsection (5) requires the governmental contractor to provide written notice to each patient, or the patient's legal representative, that the provider is an agent of the governmental contractor and that the exclusive remedy for injury or damage suffered as the result of any act or omission of the provider *or of any employee or agent thereof* acting within the scope of duties pursuant to the contract is by commencement of an action pursuant to the provisions of s. 768.28, F.S.

The bill provides for efficiencies in health care delivery under the contract by requiring the patient, or the patient's legal representative, to acknowledge in writing receipt of the notice of agency relationship between the government contractor and the health care provider at the initial visit only. Thereafter, the notice requirement is met by posting the notice in a place conspicuous

³⁵ *Stoll*, 694 So. 2d at 703 (Fla. 1997) (internal citations omitted).

³⁶ A free clinic for purposes of this provision is a clinic that delivers only medical diagnostic services or nonsurgical medical treatment free of charge to all low-income recipients.

to all persons. According to a Department of Health analysis of the bill, patients are currently informed that the provider is an agent of a governmental contractor at each visit.³⁷

Sovereign Immunity (Section 2)

Section 768.28, F.S., which pertains to the waiver of sovereign immunity in tort actions, is amended to specifically include a health care provider's employees or agents in the definition of an "officer, employee, or agent." This is done to avoid any potential ambiguity between the provisions in that section of law and the Access to Health Care Act.

Additional Provisions and Effective Date

The bill removes obsolete language and makes technical and grammatical changes.

The effective date of the bill is July 1, 2016.

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:

Contracted free clinics may receive governmental funding in the form of an appropriation or grant without the concern of restrictions on such funding for certain uses that might be imposed by the act. The receipt of any such funding is speculative at this point, and therefore, the amount is indeterminate.

Private health care providers currently delivering services to uninsured individuals may see a reduction in their uncompensated care costs as these individuals seek care in these clinics with expanded resources.

³⁷ Florida Department of Health, *Senate Bill 1034 Legislative Bill Analysis* (Dec. 7, 2015) (on file with the Senate Committee on Judiciary).

C. **Government Sector Impact:**

The department will be responsible for management of the contracts with the clinics.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 766.1115 and 768.28.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

CS by Judiciary on February 16, 2016:

The definition of “health care provider” or “provider” in the Access to Health Care Act is expanded to include a pharmacy or pharmacist. With this addition, a pharmacy or pharmacist is added to the list of those entities or individuals for whom sovereign immunity applies for purposes of protection from lawsuits under the act.

B. **Amendments:**

None.



582748

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete line 85

and insert:

15. A pharmacy or pharmacist licensed under chapter 465.

16.15. Any other health care professional, practitioner,

By Senator Simmons

10-01528-16

20161034__

A bill to be entitled

An act relating to health care providers; amending s. 766.1115, F.S.; revising the definitions of the terms "contract" and "health care provider"; deleting an obsolete date; extending sovereign immunity to employees or agents of a health care provider that executes a contract with a governmental contractor; clarifying that a receipt of specified notice must be acknowledged by a patient or the patient's representative at the initial visit; requiring the posting of notice that a specified health care provider is an agent of a governmental contractor; amending s. 768.28, F.S.; revising the definition of the term "officer, employee, or agent" to include employees or agents of a health care provider; providing an effective date.

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

Section 1. Paragraphs (a) and (d) of subsection (3) and subsections (4) and (5) of section 766.1115, Florida Statutes, are amended to read:

766.1115 Health care providers; creation of agency relationship with governmental contractors.—

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

(a) "Contract" means an agreement executed in compliance with this section between a health care provider and a governmental contractor for volunteer, uncompensated services which allows the health care provider to deliver health care

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services to low-income recipients as an agent of the governmental contractor. ~~The contract must be for volunteer, uncompensated services, except as provided in paragraph (4)(g).~~ For services to qualify as volunteer, uncompensated services under this section, the health care provider, or any employee or agent of the health care provider, must receive no compensation from the governmental contractor for any services provided under the contract and must not bill or accept compensation from the recipient, or a public or private third-party payor, for the specific services provided to the low-income recipients covered by the contract, except as provided in paragraph (4)(g). A free clinic as described in subparagraph (d)14. may receive a legislative appropriation, a grant through a legislative appropriation, or a grant from a governmental entity or nonprofit corporation to support the delivery of contracted services by volunteer health care providers, including the employment of health care providers to supplement, coordinate, or support the delivery of such services. The appropriation or grant for the free clinic does not constitute compensation under this paragraph from the governmental contractor for services provided under the contract, nor does receipt or use of the appropriation or grant constitute the acceptance of compensation under this paragraph for the specific services provided to the low-income recipients covered by the contract.

(d) "Health care provider" or "provider" means:

1. A birth center licensed under chapter 383.
2. An ambulatory surgical center licensed under chapter 395.
3. A hospital licensed under chapter 395.

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- 59 4. A physician or physician assistant licensed under
60 chapter 458.
- 61 5. An osteopathic physician or osteopathic physician
62 assistant licensed under chapter 459.
- 63 6. A chiropractic physician licensed under chapter 460.
- 64 7. A podiatric physician licensed under chapter 461.
- 65 8. A registered nurse, nurse midwife, licensed practical
66 nurse, or advanced registered nurse practitioner licensed or
67 registered under part I of chapter 464 or any facility which
68 employs nurses licensed or registered under part I of chapter
69 464 to supply all or part of the care delivered under this
70 section.
- 71 9. A midwife licensed under chapter 467.
- 72 10. A health maintenance organization certificated under
73 part I of chapter 641.
- 74 11. A health care professional association ~~and its~~
75 ~~employees~~ or a corporate medical group ~~and its employees~~.
- 76 12. Any other medical facility the primary purpose of which
77 is to deliver human medical diagnostic services or which
78 delivers nonsurgical human medical treatment, and which includes
79 an office maintained by a provider.
- 80 13. A dentist or dental hygienist licensed under chapter
81 466.
- 82 14. A free clinic that delivers only medical diagnostic
83 services or nonsurgical medical treatment free of charge to all
84 low-income recipients.
- 85 15. Any other health care professional, practitioner,
86 provider, or facility under contract with a governmental
87 contractor, including a student enrolled in an accredited

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- 88 program that prepares the student for licensure as any one of
89 the professionals listed in subparagraphs 4.-9.
- 90
- 91 The term includes any nonprofit corporation qualified as exempt
92 from federal income taxation under s. 501(a) of the Internal
93 Revenue Code, and described in s. 501(c) of the Internal Revenue
94 Code, which delivers health care services provided by licensed
95 professionals listed in this paragraph, any federally funded
96 community health center, and any volunteer corporation or
97 volunteer health care provider that delivers health care
98 services.
- 99 (4) CONTRACT REQUIREMENTS.—A health care provider that
100 executes a contract with a governmental contractor to deliver
101 health care services ~~on or after April 17, 1992~~, as an agent of
102 the governmental contractor, or any employee or agent of such
103 health care provider, is an agent for purposes of s. 768.28(9),
104 while acting within the scope of duties under the contract, if
105 the contract complies with the requirements of this section and
106 regardless of whether the individual treated is later found to
107 be ineligible. A health care provider, or any employee or agent
108 of such health care provider, shall continue to be an agent for
109 purposes of s. 768.28(9) for 30 days after a determination of
110 ineligibility to allow for treatment until the individual
111 transitions to treatment by another health care provider. A
112 health care provider, or any employee or agent of such health
113 care provider, under contract with the state may not be named as
114 a defendant in any action arising out of medical care or
115 treatment ~~provided on or after April 17, 1992~~, under contracts
116 entered into under this section. The contract must provide that:

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117 (a) The right of dismissal or termination of any health
118 care provider delivering services under the contract is retained
119 by the governmental contractor.

120 (b) The governmental contractor has access to the patient
121 records of any health care provider delivering services under
122 the contract.

123 (c) Adverse incidents and information on treatment outcomes
124 must be reported by any health care provider to the governmental
125 contractor if the incidents and information pertain to a patient
126 treated under the contract. The health care provider shall
127 submit the reports required by s. 395.0197. If an incident
128 involves a professional licensed by the Department of Health or
129 a facility licensed by the Agency for Health Care
130 Administration, the governmental contractor shall submit such
131 incident reports to the appropriate department or agency, which
132 shall review each incident and determine whether it involves
133 conduct by the licensee that is subject to disciplinary action.
134 All patient medical records and any identifying information
135 contained in adverse incident reports and treatment outcomes
136 which are obtained by governmental entities under this paragraph
137 are confidential and exempt from the provisions of s. 119.07(1)
138 and s. 24(a), Art. I of the State Constitution.

139 (d) Patient selection and initial referral must be made by
140 the governmental contractor or the provider. Patients may not be
141 transferred to the provider based on a violation of the
142 antidumping provisions of the Omnibus Budget Reconciliation Act
143 of 1989, the Omnibus Budget Reconciliation Act of 1990, or
144 chapter 395.

145 (e) If emergency care is required, the patient need not be

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146 referred before receiving treatment, but must be referred within
147 48 hours after treatment is commenced or within 48 hours after
148 the patient has the mental capacity to consent to treatment,
149 whichever occurs later.

150 (f) The provider is subject to supervision and regular
151 inspection by the governmental contractor.

152 (g) ~~As an agent of the governmental contractor for purposes~~
153 ~~of s. 768.28(9), while acting within the scope of duties under~~
154 ~~the contract,~~ A health care provider licensed under chapter 466,
155 as an agent of the governmental contractor for purposes of s.
156 768.28(9), may allow a patient, or a parent or guardian of the
157 patient, to voluntarily contribute a monetary amount to cover
158 costs of dental laboratory work related to the services provided
159 to the patient within the scope of duties under the contract.
160 This contribution may not exceed the actual cost of the dental
161 laboratory charges.

162
163 A governmental contractor that is also a health care provider is
164 not required to enter into a contract under this section with
165 respect to the health care services delivered by its employees.

166 (5) NOTICE OF AGENCY RELATIONSHIP.—The governmental
167 contractor must provide written notice to each patient, or the
168 patient's legal representative, receipt of which must be
169 acknowledged in writing at the initial visit, that the provider
170 is an agent of the governmental contractor and that the
171 exclusive remedy for injury or damage suffered as the result of
172 any act or omission of the provider or of any employee or agent
173 thereof acting within the scope of duties pursuant to the
174 contract is by commencement of an action pursuant to ~~the~~

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175 ~~provisions of s. 768.28. Thereafter, or~~ with respect to any
176 federally funded community health center, the notice
177 requirements may be met by posting in a place conspicuous to all
178 persons a notice that the health care provider, or federally
179 funded community health center, is an agent of the governmental
180 contractor and that the exclusive remedy for injury or damage
181 suffered as the result of any act or omission of the provider or
182 of any employee or agent thereof acting within the scope of
183 duties pursuant to the contract is by commencement of an action
184 pursuant to ~~the provisions of s. 768.28.~~

185 Section 2. Paragraph (b) of subsection (9) of section
186 768.28, Florida Statutes, is amended to read:

187 768.28 Waiver of sovereign immunity in tort actions;
188 recovery limits; limitation on attorney fees; statute of
189 limitations; exclusions; indemnification; risk management
190 programs.—

191 (9)

192 (b) As used in this subsection, the term:

193 1. "Employee" includes any volunteer firefighter.

194 2. "Officer, employee, or agent" includes, but is not
195 limited to, any health care provider, and its employees or
196 agents, when providing services pursuant to s. 766.1115; any
197 nonprofit independent college or university located and
198 chartered in this state which owns or operates an accredited
199 medical school, and its employees or agents, when providing
200 patient services pursuant to paragraph (10) (f); and any public
201 defender or her or his employee or agent, including, among
202 others, an assistant public defender and an investigator.

203 Section 3. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 19, 2016

I respectfully request that **Senate Bill 1034**, relating to Health Care Providers, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 10

THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-16

Meeting Date

1034

Bill Number (if applicable)

592748

Amendment Barcode (if applicable)

Topic Health Care Providers

Name MIKE FISCHER

Job Title vlr

Address PO Box 1197

Street

FLA

City

FL

State

32302

Zip

Phone 222-6344

Email Mike@redfishconsult.com

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

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

Representing FLORIDA INDEPENDENT PHARMACY NETWORK

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

SB 1034

Bill Number (if applicable)

582748

Amendment Barcode (if applicable)

Topic Health Care Providers

Name Bill Mincy

Job Title VP

Address 3375-I Capital Circle NE

Street

Tallahassee

City

State

Zip

Phone (850) 322-7740

Email bill.mincy@ppsconline.com

Speaking: For Against Information

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

Amendment

Representing Independent Pharmacies in Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

1034

Bill Number (if applicable)

Topic Health Care

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr.

Phone _____

Street

Largo Fla. 33773

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1298

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Bad Faith Assertions of Patent Infringement

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maida	Cibula	JU	Fav/CS
2.			RI	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1298 amends the Patent Troll Prevention Act in following three main ways:

- Requires that a demand letter to be objectively baseless before it may be deemed a bad faith assertion of patent infringement.
- Removes the act’s bond-posting requirement for a plaintiff who may have made a bad-faith assertion of patent infringement.
- Limits the entitlement to and amount of punitive damages awards against a person who makes a bad-faith assertion of patent infringement.

II. Present Situation:

Patent Law and Federal Preemption

The U.S. Constitution authorizes Congress “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to ... Inventors the exclusive Right to their ... Discoveries.”¹ Federal patent laws grant patentees a limited monopoly in the form of a property right,² providing inventors with a “legal right, for a limited time, to exclude others from using, selling, offering to sell, or manufacturing the invention.”³ In order to promote progress as set forth by the U.S. Constitution, patent laws require inventors to describe their work in “full, clear, concise,

¹ U.S. Const. art. I, s. 8, cl. 8.

² See *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2124 (2014); see also 35 U.S.C. s. 261 (2012).

³ *Litton Systems, Inc. v. Honeywell, Inc.*, 145 F.3d 1472, 1474 (Fed. Cir. 1998).

and exact terms.”⁴ This strikes a “delicate balance” whereby inventors may rely on the aegis of the law while the public is “encouraged to pursue innovations, creations, and new ideas beyond the inventor’s exclusive rights.”⁵

As patents are creatures of the U.S. Constitution and acts of Congress, most issues related to patents reside exclusively within the province of the federal government. For example, federal district courts have original jurisdiction over any civil actions “arising under any Act of Congress relating to patents,” and “[n]o State court shall have jurisdiction over any claim for relief arising under any Act of Congress . . .”⁶ Interpreting 28 U.S.C. section 1338(a), the Supreme Court held that cases “arising under” federal patent law require a plaintiff to “set up some right, title or interest under the patent laws, or at least make it appear that some right or privilege will be defeated by one construction, or sustained by the opposite construction of these laws.”⁷ As such, if a party brings a lawsuit alleging patent infringement, a federal court—and only a federal court—would possess subject matter jurisdiction. Even cases technically arising under state law may still be under the exclusive ambit of federal courts.⁸ As articulated by the U.S. Supreme Court, federal jurisdiction over a state law claim will lie of a federal issue is: 1) necessarily raised, 2) actually disputed, 3) substantial, and 4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.⁹ Nevertheless, some patent-related actions may properly remain in state court.¹⁰

Whether SB 1298 is preempted is an open question. Although a patent grant is within the exclusive purview of federal law,¹¹ federal patent law does not “occupy the field.”¹² Rather, patent law is subject to conflict preemption.¹³ As such, there may be room for states to regulate the improper or unfair use of patents. This includes state laws creating tort liability pursuant to “objectively baseless” patent infringement claims.¹⁴

⁴ 35 U.S.C. s. 112 (2012).

⁵ See *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 535 U.S. 722, 731-2 (2002) (citing *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 150 (1989)); see also *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U.S. 225, 230-1 (1964) (“Thus the patent system is one in which uniform federal standards are carefully used to promote invention while at the same time preserving free competition.”).

⁶ 28 U.S.C. s. 1338(a) (2012); see also *Biotechnology Industry Organization v. District of Columbia*, 496 F.3d 1362, 1367 (Fed. Cir. 2007) (“This court has exclusive jurisdiction to review cases which arise under the patent laws.”) (citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 807 (1988)).

⁷ *Christianson v. Colt Industries Operating Corp.*, 486 U.S. at 807-8.

⁸ See *Gunn v. Minton*, 133 S. Ct. 1059, 1064-5 (2013).

⁹ *Id.* at 1065.

¹⁰ See *Milprint, Inc. v. Curwood, Inc.*, 422 F. Supp. 579 (E.D. Wis. 1976) *aff’d*, 562 F. 2d 418 (7th Cir. 1977) (holding that a contract action based upon patent license agreements and involving defense of patent noninfringement or invalidity may be brought and maintained in state court).

¹¹ *Sukumar v. Nautilus, Inc.*, 829 F. Supp. 2d 386, 394 (W.D. Va. 2011) (citing *Abbott Labs v. Brennan*, 952 F.2d 1346, 1355 (Fed. Cir. 1991)).

¹² See *Aronson v. Quick Point Pencil Co.*, 440 U.S. 257, 262 (1979) (“State law is not displaced merely because the contract relates to intellectual property which may or may not be patentable; the states are free to regulate the use of such intellectual property in any manner not inconsistent with federal law.”) (citing *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 479 (1974)). Note that federal law “occupies the field” if one can reasonably infer that Congress left no room to supplement it. See *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992).

¹³ *Sukumar v. Nautilus*, 829 F. Supp. 2d at 396-7 (“Where it is physically impossible to comply with both federal and state law, it is evident that federal law must prevail.”).

¹⁴ *Globetrotter Software, Inc. v. Elan Computer Group, Inc.*, 362 F.3d 1367, 1377 (Fed. Cir. 2004).

Patent Trolls

“Patent assertion entities,” often referred to more pejoratively as “patent trolls,” make no products themselves but instead file dubious patent infringement lawsuits purely to extract money from commercially-productive companies.¹⁵ Having purchased a patent—rather than developing a patentable product—these “patent trolls” assert their newly-acquired patents against companies that use the patented technology in their business operations.¹⁶ Patent trolls typically function by sending notices of alleged patent infringement to large numbers of businesses threatening litigation if those businesses refuse to pay a licensing fee.¹⁷ Even if a targeted business believes the patent infringement claim lacks merit, it often chooses not to litigate.¹⁸ Justifying unpredictable litigation costs can be difficult, so targets often eliminate the threat by paying the patent troll a sum far less than the cost of successfully defending the lawsuit.¹⁹ In 2011, patent troll suits cost American technology companies over \$29 billion.²⁰ Much of this burden falls on small and medium-sized companies.²¹

Patent Troll Prevention Act

Recognizing that the “frivolous filing of bad faith patent claims ... have led to technical, complex, and especially expensive litigation,”²² the Florida Legislature passed the Patent Troll Prevention Act (“Act”), Part VII of ch. 501, F.S.²³ Under this law, a person may not make a bad faith assertion of patent infringement.²⁴ In determining whether an assertion of patent infringement violates the act, a court may consider a number of factors, including, but not limited to, whether:

- The factual allegations concerning the specific areas in which the products litigated are actually covered by the patent;
- The demand letter requests payment of a license fee or response within an unreasonable period;
- The demand offers to license the patent for an amount that is not based on a reasonable estimate the value of the license;
- The claim or assertion of patent infringement is unenforceable, and the claimant knew, or should have known, that the claim was unenforceable;
- The claim of patent infringement is deceptive;
- The claimant has previously filed, or threatened to file, one or more lawsuits based upon the same or similar claim of patent infringement; and

¹⁵ Eric Rogers, Young Jeon, *Inhibiting Patent Trolling: A New Approach for Applying Rule 11*, 12 NW. J. TECH. & INTELL. Prop. 291, 294 (2014).

¹⁶ Thomas A. Hemphill, *There Paradox of Patent Assertion Entities*, American Enterprise Institute (August 12, 2013), available online at <http://www.aei.org/publication/the-paradox-of-patent-assertion-entities/> (last accessed February 5, 2016).

¹⁷ See Paul R. Gugliuzza, *Patent Trolls and Preemption*, Boston University School of Law Public Law & Legal Theory Paper No. 15-03, 1-4 (Jan. 20, 2015), available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539280 (last accessed February 5, 2016).

¹⁸ Eric Rogers, Young Jeon, *supra*, at 299.

¹⁹ *Id.*

²⁰ James E. Bessen & Michael J. Meurer, *The Direct Costs from NPE Disputes*, 99 CORNELL L. REV. 387, 412-13 (2014).

²¹ James E. Bessen & Michael J. Meurer, *supra*, at 388. 398.

²² Section 501.991(2), F.S.

²³ Sections 7-13, Ch. 2015-92, Laws of Fla, codified as sections 501.991-997, F.S.

²⁴ Section 501.993, F.S.

- Any other factor the court considers relevant.²⁵

Alternatively, the Act provides statutorily-defined factors evincing the absence of bad faith, including whether:

- The demand letter contains required identifying and contact information;
- The demand provides required information within a reasonable period;
- The claimant made a good faith effort to establish that the target of the lawsuit has actually infringed the patent and negotiated an appropriate remedy;
- The claimant made a substantial investment in the use of the patented invention or discovery in a product or sale of a product or item covered by the patent;
- The claimant is the inventor or joint inventor of the patented invention or discovery, or alternatively the original assignee; or
- Any other factor the court finds relevant.²⁶

The target of a bad faith patent infringement action may request a protective order requiring the initial claimant to post a bond in an amount equal to the less of \$250,000 or a good faith estimate of the target's expense of litigation, including attorney fees.²⁷

The Act creates a private right of action, which may be brought in a court of competent jurisdiction. A court may award equitable relief, damages, costs and fees, and punitive damages of either 1) \$50,000, or 2) three times the total damages, costs, and fees.²⁸

Last, institutions of higher education, technology transfer organizations owned by institutions of higher education, and other patent infringement assertions arising under 35 U.S.C. s. 271(e)(2)²⁹ or 42 U.S.C. s. 262³⁰ are exempt from liability under the Act.

Other State Laws

As of February 1, 2016, 27 states—including Florida—have passed statutes regulating bad faith patent infringement assertions.³¹ Many of these new laws are modeled after a statute first adopted in Vermont,³² which itself prohibits bad faith assertions of patent infringement.³³ Other states have outlawed assertions that “confirm false, misleading, or deceptive information,”³⁴ or have defined specific acts as illegal, such as making infringement assertions that “lack a reasonable basis in fact or law” or failing to provide, in a letter alleging patent infringement,

²⁵ Section 501.993(1), F.S.

²⁶ *Id.* at subsection (2).

²⁷ Section 501.994, F.S.

²⁸ Section 501.995, F.S.

²⁹ 35 U.S.C. s. 271(e) relates to the use, offering for sale, or sale of veterinary biological products.

³⁰ 42 U.S.C. s. 262 regulates biological products regarding the prevention, treatment, or cure of a disease or condition of human beings.

³¹ Patent Progress' Guide to State Patent Legislation (Feb. 1, 2016), available online at <http://www.patentprogress.org/patent-progress-legislation-guides/patent-progresss-guide-state-patent-legislation/> (last accessed February 5, 2016); See also Utah Code s. 78B-6-1901; Wash. Rev. Code. s. 19.350.900; and Va. Code. s. 59.1-215.2.

³² Gugliuzza, *supra* note 17, at 1582 n. 18.

³³ Vt. Stat. tit. 9, s. 4197(a) (2014).

³⁴ See, e.g., Wis. Stat. s. 100.197(2)(b) (2014).

“factual allegations” about how, exactly, the recipient infringes the patent.³⁵ The Vermont statute is currently facing a legal challenge based, in part, on federal preemption. A pending petition seeks a writ of certiorari with the United States Supreme Court.³⁶

III. Effect of Proposed Changes:

CS/SB 1298 amends the Patent Troll Prevention Act in several ways. Importantly, it removes the current criteria necessary to show a bad faith assertion of a patent infringement and replaces it with an “objectively baseless” standard, among other things. More specifically, the bill prohibits patent infringement demand letters that:

- Falsely assert that the sender has filed a lawsuit in connection with the claim;
- Assert a claim that is objectively baseless due to any of the following:
 - The sender, or a person whom the sender represents, lacks a current right to license the patent to, or enforce the patent against, the target;
 - The patent is invalid or unenforceable; or
 - The infringing activity occurred after the expiration of the patent.
- Likely materially mislead a reasonable person because it lacks 1) the identity of the person asserting the claim, including the name and address of such person, 2) the patent alleged to have been infringed, including the patent number of such patent, and 3) at least one product, service, or technology of the target alleged to infringe the patent, or at least one activity of the target which is alleged to infringe the patent.

The bill repeals ss. 501.994, F.S. As such, plaintiffs are no longer required to post a bond in an amount equal to the lesser of \$250,000 or a good faith estimate of the target’s expense of litigation. Furthermore, punitive damages under the act’s private cause of action may be awarded only if the court determines that the entity asserting the patent infringement claim has repeatedly violated the act. This may allow smaller companies previously lacking sufficient bond-paying-capital to initiate lawsuits based upon patent infringement.

Further, the bill amends awardable damages resulting from a successful private cause of action under the Act. The bill substitutes in “actual damages” for the current “damages” language and alters the provision relating to punitive damages. Under the bill, punitive damages are capped at \$75,000 and may be awarded only against a person found to have repeatedly violated the act.

Finally, the bill repeals section 501.997, F.S. As such, the Act applies to universities and technology transfer organizations owned by or affiliated with a university.

The bill takes effect upon becoming a law.

³⁵ See, e.g., Tenn. Code. s. 29-10-102(a)(3) (2014); Gugliuzza, *supra* note 17, at 1582-83.

³⁶ *Vermont v. MPHJ Technology Investments, LLC*, 803 F.3d 635 (Fed. Cir. 2015) (affirming a lower court decision, holding, in part, that the company’s counterclaim that federal law preempts the Vermont statute arose under federal patent law).

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

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As stated earlier, federal patent law does not occupy the field. Rather, patent law is subject to conflict preemption. As such, there may be room for states to regulate the improper or unfair use of patents. This includes state laws creating tort liability pursuant to “objectively baseless” patent infringement claims. Because SB 1298 includes “objectively baseless” language in Section 3, it may well survive a preemption challenge.

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

None.

B. Private Sector Impact:

The bill imposes no direct costs to the private sector, but it also eases restrictions on filing patent infringement lawsuits.

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: 501.991, 501.992, 501.993, and 501.995.

This bill repeals the following sections of the Florida Statutes: 501.994 and 501.997.

IX. Additional Information:

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

CS by Judiciary on February 16, 2016:

The committee substitute omits portions of the underlying bill which would have eliminated the private cause of action in existing law in favor of the enforcement of the Patent Troll Prevention Act by the Attorney General. Instead, the committee substitute authorizes a revised form of the existing private cause of action.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
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	.	

The Committee on Judiciary (Brandes) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 501.991, Florida Statutes, is amended to
read:

501.991 Legislative intent; construction.-

(1) The Legislature recognizes that it is preempted from
passing any law that conflicts with federal patent law. However,
the Legislature recognizes that the state is dedicated to
building an entrepreneurial and business-friendly economy where



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12 businesses and consumers alike are protected from abuse and
13 fraud. This includes protection from abusive and bad faith
14 demands and litigation.

15 (2) Patents encourage research, development, and
16 innovation. Patent holders have a legitimate right to enforce
17 their patents. The Legislature does not wish to interfere with
18 good faith patent litigation or the good faith enforcement of
19 patents. However, the Legislature recognizes a growing issue:
20 the frivolous filing of bad faith patent claims that have led to
21 technical, complex, and especially expensive litigation.

22 (3) The expense of patent litigation, which may cost
23 millions of dollars, can be a significant burden on companies
24 and small businesses. Not only do bad faith patent infringement
25 claims impose undue burdens on individual businesses, they
26 undermine the state's effort to attract and nurture
27 technological innovations. Funds spent to help avoid the threat
28 of bad faith litigation are no longer available for serving
29 communities through investing in producing new products, helping
30 businesses expand, or hiring new workers. The Legislature wishes
31 to help businesses avoid these costs by encouraging good faith
32 assertions of patent infringement and the expeditious and
33 efficient resolution of patent claims.

34 (4) This part may not be construed to:

35 (a) Limit the rights and remedies available to the state or
36 a person under any other law;

37 (b) Alter or restrict the Attorney General's authority
38 under any other law regarding claims of patent infringement; or

39 (c) Prohibit a person who owns, or has a right to license
40 or enforce, a patent from:



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- 41 1. Notifying other parties of such person's ownership of,
42 or rights under, the patent;
43 2. Offering the patent to other parties for license or
44 sale;
45 3. Notifying other parties of such parties' infringement of
46 the patent as provided by 35 U.S.C. s. 287; or
47 4. Seeking compensation for past or present infringement
48 of, or license to, the patent.

49 Section 2. Subsections (1) and (3) of section 501.992,
50 Florida Statutes, are amended to read:

51 501.992 Definitions.—As used in this part, the term:

52 (1) "Demand letter" means a ~~letter, e-mail, or other~~
53 written communication, including e-mail, asserting or claiming
54 that a person has engaged in patent infringement.

55 (3) "Target" means a person residing in, incorporated in,
56 or organized under the laws of this state who purchases, rents,
57 leases, or otherwise obtains a product or service in the
58 commercial market which is not for resale in the commercial
59 market ~~and who:~~

60 ~~(a) Has received a demand letter or against whom a written~~
61 ~~assertion or allegation of patent infringement has been made; or~~

62 ~~(b) Has been threatened in writing with litigation or~~
63 ~~against whom a lawsuit has been filed alleging patent~~
64 ~~infringement.~~

65 Section 3. Section 501.993, Florida Statutes, is amended to
66 read:

67 501.993 Bad faith assertions of patent infringement.—A
68 person may not send a demand letter to a target which makes ~~make~~
69 a bad faith assertion of patent infringement. A demand letter



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70 makes a bad faith assertion of patent infringement if it:

71 (1) Includes a claim that the target, or a person
72 affiliated with the target, has infringed a patent and that the
73 target is legally liable for such infringement; and ~~A court may~~
74 ~~consider the following factors as evidence that a person has~~
75 ~~made a bad faith assertion of patent infringement:~~

76 ~~(a) The demand letter does not contain the following~~
77 ~~information:~~

78 ~~1. The patent number;~~

79 ~~2. The name and address of the patent owner and assignee,~~
80 ~~if any; and~~

81 ~~3. Factual allegations concerning the specific areas in~~
82 ~~which the target's products, services, or technology infringe or~~
83 ~~are covered by the claims in the patent.~~

84 ~~(b) Before sending the demand letter, the person failed to~~
85 ~~conduct an analysis comparing the claims in the patent to the~~
86 ~~target's products, services, or technology, or the analysis did~~
87 ~~not identify specific areas in which the target's products,~~
88 ~~services, and technology were covered by the claims of the~~
89 ~~patent.~~

90 ~~(c) The demand letter lacked the information listed under~~
91 ~~paragraph (a), the target requested the information, and the~~
92 ~~person failed to provide the information within a reasonable~~
93 ~~period.~~

94 ~~(d) The demand letter requested payment of a license fee or~~
95 ~~response within an unreasonable period.~~

96 ~~(e) The person offered to license the patent for an amount~~
97 ~~that is not based on a reasonable estimate of the value of the~~
98 ~~license.~~



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99 ~~(f) The claim or assertion of patent infringement is~~
100 ~~unenforceable, and the person knew, or should have known, that~~
101 ~~the claim or assertion was unenforceable.~~

102 ~~(g) The claim or assertion of patent infringement is~~
103 ~~deceptive.~~

104 ~~(h) The person, including its subsidiaries or affiliates,~~
105 ~~has previously filed or threatened to file one or more lawsuits~~
106 ~~based on the same or a similar claim of patent infringement and:~~

107 ~~1. The threats or lawsuits lacked the information listed~~
108 ~~under paragraph (a); or~~

109 ~~2. The person sued to enforce the claim of patent~~
110 ~~infringement and a court found the claim to be meritless.~~

111 ~~(i) Any other factor the court finds relevant.~~

112 ~~(2) Meets one or more of the following criteria A court may~~
113 ~~consider the following factors as evidence that a person has not~~
114 ~~made a bad faith assertion of patent infringement:~~

115 ~~(a) The demand letter falsely asserts that the sender has~~
116 ~~filed a lawsuit in connection with the claim contained the~~
117 ~~information listed under paragraph (1)(a).~~

118 ~~(b) The demand letter asserts a claim that is objectively~~
119 ~~baseless due to any of the following:~~

120 ~~1. The sender, or a person whom the sender represents,~~
121 ~~lacks a current right to license the patent to, or enforce the~~
122 ~~patent against, the target.~~

123 ~~2. The patent is invalid or unenforceable pursuant to a~~
124 ~~final judgment or an administrative order.~~

125 ~~3. The infringing activity alleged in the demand letter~~
126 ~~occurred after the expiration of the patent The demand letter~~
127 ~~did not contain the information listed under paragraph (1)(a),~~



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128 ~~the target requested the information, and the person provided~~
129 ~~the information within a reasonable period.~~

130 (c) The demand letter is likely to materially mislead a
131 reasonable person because it does not contain sufficient
132 information to inform the target of all of the following:

133 1. The identity of the person asserting the claim,
134 including the name and address of such person.

135 2. The patent alleged to have been infringed, including the
136 patent number of such patent.

137 3. At least one product, service, or technology of the
138 target alleged to infringe the patent, or at least one activity
139 of the target which is alleged to infringe the patent ~~The person~~
140 ~~engaged in a good faith effort to establish that the target has~~
141 ~~infringed the patent and negotiated an appropriate remedy.~~

142 ~~(d) The person made a substantial investment in the use of~~
143 ~~the patented invention or discovery or in a product or sale of a~~
144 ~~product or item covered by the patent.~~

145 ~~(e) The person is the inventor or joint inventor of the~~
146 ~~patented invention or discovery, or in the case of a patent~~
147 ~~filed by and awarded to an assignee of the original inventor or~~
148 ~~joint inventors, is the original assignee.~~

149 ~~(f) The person has:~~

150 ~~1. Demonstrated good faith business practices in previous~~
151 ~~efforts to enforce the patent, or a substantially similar~~
152 ~~patent; or~~

153 ~~2. Successfully enforced the patent, or a substantially~~
154 ~~similar patent, through litigation.~~

155 ~~(g) Any other factor the court finds relevant.~~

156 Section 4. Section 501.994, Florida Statutes, is repealed.



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157 Section 5. Section 501.995, Florida Statutes, is amended to
158 read:

159 501.995 Private right of action.—A person aggrieved by a
160 violation of this part may bring an action in a court of
161 competent jurisdiction. A court may award the following remedies
162 to a prevailing plaintiff in an action brought pursuant to this
163 section:

- 164 (1) Equitable relief;
- 165 (2) Actual damages;
- 166 (3) Costs and fees, including reasonable attorney fees; and
- 167 (4) Punitive damages in an amount not to exceed \$75,000.

168 However, such punitive damages may only be awarded if the court
169 determines that the person asserting the patent infringement
170 claim has repeatedly violated this chapter ~~Punitive damages in~~
171 ~~an amount equal to \$50,000 or three times the total damages,~~
172 ~~costs, and fees, whichever is greater.~~

173 Section 6. Section 501.997, Florida Statutes, is repealed.

174 Section 7. This act shall take effect upon becoming law.

175
176 ===== T I T L E A M E N D M E N T =====

177 And the title is amended as follows:

178 Delete everything before the enacting clause
179 and insert:

180 A bill to be entitled
181 An act relating to bad faith assertions of patent
182 infringement; amending s. 501.991, F.S.; providing for
183 construction; amending s. 501.992, F.S; revising
184 definitions; amending s. 501.993, F.S.; prohibiting a
185 person from sending a demand letter to a target which



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186 makes a bad faith assertion of patent infringement;
187 specifying what constitutes such a demand letter;
188 repealing s. 501.994, F.S., relating to the
189 requirement that a plaintiff post a specified bond in
190 certain circumstances; amending s. 501.995, F.S.;
191 revising provisions authorizing the bringing of
192 actions and specified remedies under the Patent Troll
193 Prevention Act; repealing s. 501.997, F.S., relating
194 to an exemption for institutions of higher learning;
195 providing an effective date.



632174

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
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	.	

The Committee on Judiciary (Brandes) recommended the following:

1 **Senate Amendment to Amendment (618428) (with title**
2 **amendment)**

3
4 Delete line 173.

5
6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete lines 193 - 194

9 and insert:

10 Prevention Act;

By Senator Brandes

22-01205A-16

20161298__

A bill to be entitled

An act relating to bad faith assertions of patent infringement; amending s. 501.991, F.S.; providing for construction; amending s. 501.992, F.S.; deleting and revising definitions; amending s. 501.993, F.S.; prohibiting a person from sending a demand letter to a target which makes a bad faith assertion of patent infringement; specifying what constitutes such a demand letter; repealing s. 501.994, F.S., relating to the requirement that a plaintiff post a specified bond in certain circumstances; amending s. 501.995, F.S.; specifying that the Patent Troll Prevention Act does not create a private right of action; deleting provisions authorizing the bringing of actions and specified remedies; amending s. 501.996, F.S.; providing for enforcement by the Attorney General; specifying that the Attorney General may seek certain civil relief; deleting a provision stating that a violation is an unfair or deceptive trade practice under ch. 501, F.S.; repealing s. 501.997, F.S., relating to an exemption for institutions of higher learning; providing an effective date.

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

Section 1. Section 501.991, Florida Statutes, is amended to read:

501.991 Legislative intent; construction.-

(1) The Legislature recognizes that it is preempted from passing any law that conflicts with federal patent law. However, the Legislature recognizes that the state is dedicated to building an entrepreneurial and business-friendly economy where

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businesses and consumers alike are protected from abuse and fraud. This includes protection from abusive and bad faith demands and litigation.

(2) Patents encourage research, development, and innovation. Patent holders have a legitimate right to enforce their patents. The Legislature does not wish to interfere with good faith patent litigation or the good faith enforcement of patents. However, the Legislature recognizes a growing issue: the frivolous filing of bad faith patent claims that have led to technical, complex, and especially expensive litigation.

(3) The expense of patent litigation, which may cost millions of dollars, can be a significant burden on companies and small businesses. Not only do bad faith patent infringement claims impose undue burdens on individual businesses, they undermine the state's effort to attract and nurture technological innovations. Funds spent to help avoid the threat of bad faith litigation are no longer available for serving communities through investing in producing new products, helping businesses expand, or hiring new workers. The Legislature wishes to help businesses avoid these costs by encouraging good faith assertions of patent infringement and the expeditious and efficient resolution of patent claims.

(4) This part may not be construed to:

(a) Limit the rights and remedies available to the state or a person under any other law;

(b) Alter or restrict the Attorney General's authority under any other law regarding claims of patent infringement; or

(c) Prohibit a person who owns, or has a right to license or enforce, a patent from:

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62 1. Notifying other parties of such person's ownership of,
 63 or rights under, the patent;

64 2. Offering the patent to other parties for license or
 65 sale;

66 3. Notifying other parties of such parties' infringement of
 67 the patent as provided by 35 U.S.C. s. 287; or

68 4. Seeking compensation for past or present infringement
 69 of, or license to, the patent.

70 Section 2. Subsections (2) and (3) of section 501.992,
 71 Florida Statutes, are amended to read:

72 501.992 Definitions.—As used in this part, the term:

73 ~~(2) "Institution of higher education" means an educational~~
 74 ~~institution as defined in 20 U.S.C. s. 1001(a).~~

75 (2)(3) "Target" means a person residing in, incorporated
 76 in, or organized under the laws of this state who purchases,
 77 rents, leases, or otherwise obtains a product or service in the
 78 commercial market which is not for resale in the commercial
 79 market and who:

80 ~~(a) Has received a demand letter or against whom a written~~
 81 ~~assertion or allegation of patent infringement has been made; or~~

82 ~~(b) Has been threatened in writing with litigation or~~
 83 ~~against whom a lawsuit has been filed alleging patent~~
 84 ~~infringement.~~

85 Section 3. Section 501.993, Florida Statutes, is amended to
 86 read:

87 501.993 Bad faith assertions of patent infringement.—A
 88 person may not send a demand letter to a target which makes ~~make~~
 89 a bad faith assertion of patent infringement. A demand letter
 90 makes a bad faith assertion of patent infringement if it:

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91 (1) Includes a claim that the target, or a person
 92 affiliated with the target, has infringed a patent and that the
 93 target is legally liable for such infringement; and A court may
 94 consider the following factors as evidence that a person has
 95 made a bad faith assertion of patent infringement.

96 ~~(a) The demand letter does not contain the following~~
 97 ~~information:~~

98 ~~1. The patent number;~~

99 ~~2. The name and address of the patent owner and assignee,~~
 100 ~~if any; and~~

101 ~~3. Factual allegations concerning the specific areas in~~
 102 ~~which the target's products, services, or technology infringe or~~
 103 ~~are covered by the claims in the patent.~~

104 ~~(b) Before sending the demand letter, the person failed to~~
 105 ~~conduct an analysis comparing the claims in the patent to the~~
 106 ~~target's products, services, or technology, or the analysis did~~
 107 ~~not identify specific areas in which the target's products,~~
 108 ~~services, and technology were covered by the claims of the~~
 109 ~~patent.~~

110 ~~(c) The demand letter lacked the information listed under~~
 111 ~~paragraph (a), the target requested the information, and the~~
 112 ~~person failed to provide the information within a reasonable~~
 113 ~~period.~~

114 ~~(d) The demand letter requested payment of a license fee or~~
 115 ~~response within an unreasonable period.~~

116 ~~(e) The person offered to license the patent for an amount~~
 117 ~~that is not based on a reasonable estimate of the value of the~~
 118 ~~license.~~

119 ~~(f) The claim or assertion of patent infringement is~~

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120 unenforceable, and the person knew, or should have known, that
121 the claim or assertion was unenforceable.

122 ~~(g) The claim or assertion of patent infringement is~~
123 ~~deceptive.~~

124 ~~(h) The person, including its subsidiaries or affiliates,~~
125 ~~has previously filed or threatened to file one or more lawsuits~~
126 ~~based on the same or a similar claim of patent infringement and:~~

127 ~~1. The threats or lawsuits lacked the information listed~~
128 ~~under paragraph (a); or~~

129 ~~2. The person sued to enforce the claim of patent~~
130 ~~infringement and a court found the claim to be meritless.~~

131 ~~(i) Any other factor the court finds relevant.~~

132 (2) Meets one or more of the following criteria A court may
133 consider the following factors as evidence that a person has not
134 made a bad faith assertion of patent infringement:

135 (a) The demand letter falsely asserts that the sender has
136 filed a lawsuit in connection with the claim ~~contained the~~
137 ~~information listed under paragraph (1)(a).~~

138 (b) The demand letter asserts a claim that is objectively
139 baseless due to any of the following:

140 1. The sender, or a person whom the sender represents,
141 lacks a current right to license the patent to, or enforce the
142 patent against, the target.

143 2. The patent is invalid or unenforceable pursuant to a
144 final judgment or an administrative order.

145 3. The infringing activity alleged in the demand letter
146 occurred after the expiration of the patent ~~The demand letter~~
147 ~~did not contain the information listed under paragraph (1)(a),~~
148 ~~the target requested the information, and the person provided~~

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149 the information within a reasonable period.

150 (c) The demand letter is likely to materially mislead a
151 reasonable person because it does not contain sufficient
152 information to inform the target of all of the following:

153 1. The identity of the person asserting the claim.

154 2. The patent alleged to have been infringed.

155 3. At least one product, service, or technology of the
156 target alleged to infringe the patent, or at least one activity
157 of the end user which is alleged to infringe the patent The
158 person engaged in a good faith effort to establish that the
159 target has infringed the patent and negotiated an appropriate
160 remedy.

161 ~~(d) The person made a substantial investment in the use of~~
162 ~~the patented invention or discovery or in a product or sale of a~~
163 ~~product or item covered by the patent.~~

164 (e) The person is the inventor or joint inventor of the
165 patented invention or discovery, or in the case of a patent
166 filed by and awarded to an assignee of the original inventor or
167 joint inventors, is the original assignee.

168 ~~(f) The person has:~~

169 ~~1. Demonstrated good faith business practices in previous~~
170 ~~efforts to enforce the patent, or a substantially similar~~
171 ~~patent; or~~

172 ~~2. Successfully enforced the patent, or a substantially~~
173 ~~similar patent, through litigation.~~

174 ~~(g) Any other factor the court finds relevant.~~

175 Section 4. Section 501.994, Florida Statutes, is repealed.

176 Section 5. Section 501.995, Florida Statutes, is amended to
177 read:

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178 501.995 ~~No private right of action.~~This part does not
 179 create a private right of action. A person aggrieved by a
 180 violation of this part may bring an action in a court of
 181 competent jurisdiction. A court may award the following remedies
 182 to a prevailing plaintiff in an action brought pursuant to this
 183 section:

- 184 ~~(1) Equitable relief;~~
 185 ~~(2) Damages;~~
 186 ~~(3) Costs and fees, including reasonable attorney fees; and~~
 187 ~~(4) Punitive damages in an amount equal to \$50,000 or three~~
 188 ~~times the total damages, costs, and fees, whichever is greater.~~

189 Section 6. Section 501.996, Florida Statutes, is amended to
 190 read:

191 501.996 Enforcement by Attorney General; injunction; civil
 192 penalty.~~Notwithstanding any other provisions of this chapter,~~
 193 if the Attorney General has reasonable cause to believe that a
 194 person is in violation of s. 501.993, he or she may bring an
 195 action to enjoin the person from engaging in the violation,
 196 continuing the violation, or committing any act in furtherance
 197 of the violation. The Attorney General may also seek other
 198 appropriate civil relief, including, but not limited to:

- 199 (1) The imposition of a civil penalty of up to \$50,000 for
 200 each violation of s. 501.993;
 201 (2) Court costs, reasonable attorney fees, and reasonable
 202 costs of investigation; and
 203 (3) Restitution to a target for damages, court costs,
 204 attorney fees, and other reasonable expenses related to
 205 defending against the bad faith assertion of patent infringement
 206 ~~A violation of this part is an unfair or deceptive trade~~

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207 ~~practice under part II of this chapter.~~

208 Section 7. Section 501.997, Florida Statutes, is repealed.

209 Section 8. This act shall take effect July 1, 2016.

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The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 11, 2016

I respectfully request that **Senate Bill #1298**, relating to **Bad Faith Assertions of Patent Infringement**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", with a long horizontal line extending to the right.

Senator Jeff Brandes
Florida Senate, District 22

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-16

Meeting Date

1298

Bill Number (if applicable)

Topic Patent Law

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title Partner

Address 215 S. Monroe St

Phone 850 222 8900

Street

City

Tallahassee

State

Zip

Email SS@cardenaspartners.com

Speaking: For Against Information

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

Representing Caterpillar Corporation

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)

2/16/16

Meeting Date

SB 1298

Bill Number (if applicable)

Topic Patent Infringement

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title

Address 119 South Monroe Street, Suite 200

Phone 850-205-9000

Street

Tallahassee FL 32301

Email aimee.diazlyon@mhdfirm.com

City

State

Zip

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

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

Representing The Business Law Section of the Florida Bar

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16
Meeting Date

SB 1298
Bill Number (if applicable)

Topic Patent Infringement

Amendment Barcode (if applicable)

Name Jared Ross

Job Title SVP Governmental Affairs

Address 3692 Coolidge Ct.
Street

Phone _____

Tallahassee FL 32317
City State Zip

Email jared.ross@lscu.coop

Speaking: For Against Information

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

Representing Florida Credit Union 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

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

2/16/16

Meeting Date

1298

Bill Number (if applicable)

Topic Patent ~~Infring~~ Infringement

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title Vice President & General Counsel

Address 227 S. Adams St.

Phone 722-4082

Street

Tallahassee FL 32301

Email samantha@frf.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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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2/16/14

Meeting Date

1298

Bill Number (if applicable)

Topic Patent Infringements

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 134 S Bronough St

Phone 521-1235

Street

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 FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2-16-2016

Meeting Date

1298

Bill Number (if applicable)

Topic Patent Trolls

Amendment Barcode (if applicable)

Name Kumberly Siomkos

Job Title VP of Government Affairs

Address 1001 Thomasville Rd

Phone 5613174703

Street

Tallahassee

FL

32308

City

State

Zip

Email ksiomkos@flnabankers.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

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
2/03/16	SM	Fav/1 amendment
2/16/16	JU	Fav/CS
	ATD	
	AP	

February 3, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **CS/SB 64** – Judiciary Committee and Senator Joe Negron
HB 3535 Representative Amanda Murphy
Relief of the Estate of Danielle Maudsley

SPECIAL MASTER'S FINAL REPORT

THIS IS AN UNCONTESTED EQUITABLE CLAIM FOR \$1,750,000 PAYABLE FROM THE GENERAL REVENUE FUND OF THE DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, BASED ON A SETTLEMENT AGREEMENT BETWEEN THE ESTATE OF DANIELLE MAUDSLEY AND THE FLORIDA HIGHWAY PATROL AND TROOPER DANIEL COLE, WHICH RESOLVED A CIVIL ACTION THAT AROSE FROM THE ALLEGED NEGLIGENT USE OF AN ELECTRONIC CONTROL DEVICE THAT CAUSED THE DEATH OF DANIELLE MAUDSLEY.

FINDINGS OF FACT:

On September 19, 2011, Trooper Daniel Cole of the Florida Highway Patrol (FHP) arrested 20 year old Danielle Maudsley for two counts of leaving the scene of a crash with property damage and two counts of driving with no valid driver's license. The charges are all second degree misdemeanors.

The first hit-and-run crash occurred at approximately 8:47 a.m. on September 19, 2011. Trooper Cole was dispatched to the scene and while responding, a second hit-and-run crash, which occurred at approximately 9:41 a.m., was reported with tag numbers, vehicle descriptions, and driver descriptions

consistent in both crashes. Trooper Cole requested a *Be on the Lookout (BOLO)* for the suspect's vehicle. Both crashes occurred in Pinellas County.

A short time later, deputies from the Pinellas County Sheriff's Office (PCSO) located the suspect vehicle, which was damaged, at Ms. Maudsley's residence in Pinellas Park. Trooper Cole was notified and went to the Maudsley residence. Upon arrival Deputy Chad Earl (PCSO) informed Trooper Cole that Danielle Maudsley resisted his attempts to detain her, without violence, and he intended to charge her for that offense, and that she was already on probation for driving with no valid driver's license. After deputies informed Trooper Cole that Danielle Maudsley had made spontaneous statements to the deputies that she had been involved in the hit-and-run crashes, Trooper Cole arrested Ms. Maudsley.

Trooper Cole handcuffed Ms. Maudsley behind her back and transported her to the Pinellas Park FHP station at 7651 U.S.19 North to complete the investigative paperwork prior to taking her to the county jail.

Trooper Cole had activated the in-car video and audio system for the transport. The video shows that Danielle Maudsley is a slightly built woman and while fidgeting in the back of the patrol car removed one of her hands from the handcuffs. Upon arrival at the FHP station at approximately 11:04 a.m., and while exiting the patrol car, Ms. Maudsley passively informed Trooper Cole that her hand was free and she was unable to reinsert it into the handcuffs. Trooper Cole re-cuffed Ms. Maudsley behind her back and they entered the side door of the FHP station near the conference room.

Trooper Cole seated Ms. Maudsley in a chair in the conference room farthest from the door. Trooper Cole seated himself at the conference room table between Ms. Maudsley and the door to complete the investigative paperwork. At approximately 11:11 a.m. Ms. Maudsley advised Trooper Cole that she was thirsty. While escorting her to get a drink of water, she complained about the handcuffs and turned so that he could see that her wrist was caught in one of the handcuffs. Trooper Cole had her adjust her wrist so that it was not caught and he checked to be sure the handcuffs were still secure.

At approximately 11:41 a.m., Trooper Cole requested another FHP officer watch Ms. Maudsley so that he could use the restroom. According to the investigative report, Trooper Cole returned about one and a half minutes later and assumed sole control of Ms. Maudsley while he resumed the paperwork.

Throughout the period from initially entering the conference room, there was no indication of aggressive or uncooperative behavior on the part of Danielle Maudsley while in custody.

At approximately 11:45 a.m., while Trooper Cole was still engaged in the paperwork, Danielle Maudsley ran past him, out of the conference room, down the short hallway, and exited the side door in which she had entered. At that time, Danielle Maudsley was no longer handcuffed behind her back. According to Trooper Cole, he was unable to discern whether she was handcuffed at all.

Trooper Cole indicated that he never heard Ms. Maudsley get up, the jingle of a handcuff, or anything. He felt a presence move behind him and when he looked up, she was even with the doorway to the conference room.

The in-car video and audio in Trooper Cole's transport vehicle were still activated and recorded the ensuing events. Off camera, Trooper Cole is heard asking, "Where are you going?" and he whistled at her. The next sound, which is almost immediately, is the squeak of the push bar on the station's exit door. Investigative reports and the video support the conclusion that the sound was from Danielle Maudsley pushing the bar to exit the building.

According to the investigative report, when Trooper Cole got to the exit door, it was swinging back in his direction. He pushed the door open with his left hand as he pulled his electronic control device (Taser) from the holster on his belt with his right hand. He weighed almost three times Danielle's weight, and according to Trooper Cole believed that [tackling] going to the ground with Trooper Cole would certainly have resulted in her being injured.

The audio/video recording shows¹ Ms. Maudsley in full stride with her body posture leaning forward, within a distance of

¹ At time stamp 11:45:49 a.m. on the in-car video recording.

approximately one to two feet from Trooper Cole. Trooper Cole has the Taser in his right hand drawn and horizontal but his right elbow is still at his side. His posture is more erect. The left side of his body is not visible in the frame. Both are on the sidewalk under the eave of the building's roof.

According to the audio/video recording and still photographs from the recording, one second later, at 11:45:50 a.m., Trooper Cole's right hand with the Taser is outstretched approximately two feet from Ms. Maudsley's back. Both are still on the sidewalk beside the side door. The next still photograph with the same time stamp shows Ms. Maudsley stepping off the sidewalk in full stride, her back still to Trooper Cole, with her body posture indicating that she had received a Taser discharge into her back. She also released an audible squeal at this time. Trooper Cole had not warned the fleeing Maudsley that he was going to discharge the Taser. The distance between Trooper Cole and Ms. Maudsley had increased to approximately three to four feet by this point; however, the front of the Taser was approximately two feet away at the point of discharge.

At 11:45:51 a.m., Ms. Maudsley's body is twisting toward Trooper Cole in the parking lot. Still clearly handcuffed but in the front of her body, she falls backwards, striking the back of her head on the pavement of the parking lot.² She is whimpering and sits up. Trooper Cole instructs her to "lay down" several times, which she does. Other FHP troopers come out of the building to assist. Ms. Maudsley, while still whimpering and crying tries to sit up again and at 11:47:02 complains that she cannot not get up. This interchange continues until approximately 11:48 a.m., when she becomes quiet and still. Emergency Medical Services arrived at approximately 11:51 a.m., and transported Ms. Maudsley to Bayfront Medical Center.

At approximately 5:00 p.m., the physician attending to Ms. Maudsley advised that her condition was critical and her prognosis was not good due to the lack of activity in her brain. In addition Maudsley had tested positive for oxycodone, and cocaine in her system. Danielle Maudsley never regained consciousness, was diagnosed with a traumatic brain injury,

² The FDLE Investigative Report of the incident reports a measurement between the approximate point on the concrete pad where Trooper Cole fired his Taser at Daniele Maudsley to the point on the pavement/asphalt where Ms. Maudsley fell and fractured her skull at 15.217 feet.

remained in a constant vegetative state on life-support, and passed away on September 15, 2013.

The FHP Supervisor's Use of Control Report, signed in October, 2011, by the district shift commander, district commander, and troop commander concluded that based on the totality of the circumstances, the force used exceeded the minimum amount of force needed to effectuate the apprehension of Danielle Maudsley. Within that report, the supervising investigator noted that Trooper Cole was in no apparent danger and because of his closeness to the suspect, the time necessary to warn Ms. Maudsley would not have prevented him from being able to use the ECD if she continued to flee. He further noted that the ECD cartridges issued by the agency have a maximum range of 25 feet.

On or about September 20, 2011, the FHP requested the Florida Department of Law Enforcement (FDLE) investigate this incident as a Use of Force incident. On November 7, 2011, the FDLE concluded that Trooper Cole was in the legal performance of his official law enforcement duties and acted within the scope of his assignment. The investigation determined that the use of force by Trooper Cole was within the allowable parameters outlined in Chapter 776, Florida Statutes.

The Department of Highway Safety and Motor Vehicles (DHSMV) Office of Inspector General's administrative investigation likewise determined that Trooper Cole acted in accordance with Florida law and FHP policy.

Florida Statutes, FHP policies and procedures, and officer/trooper training programs provide structure, parameters, and guidance for the use of force to prevent escape, including the use of electronic control devices (ECD). Although not a complete recitation of these documents, the following considerations demonstrate the complexity of the issues presented in the facts of this claim bill:

- A law enforcement officer or other person who has an arrested person in his or her custody is justified in the use of any force which he or she reasonably believes to be necessary to prevent the escape of the arrested person from custody. Section 776.07, F.S.
- Members of the FHP shall in every instance seek to employ the minimum amount of control required to

successfully overcome physical resistance, prevent escapes, and effect arrests. Members' actions must be objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. FHP Procedures 10.01.07 and Policy 10.05.02 specific to ECD.

- In accordance with s. 943.1717(1), F.S., a member's decision to deploy the ECD shall involve an arrest or custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the member from passive physical resistance to active physical resistance, and the person (a) has the apparent ability to physically threaten the member or others; or, (b) is preparing or attempting to flee or escape. (Note: Fleeing cannot be the sole reason for deployment of the ECD.) FHP Policy Manual 10.05.04 C.
- There may be incidents in which the use of an ECD conflicts with [a list of 6 situations a member shall not use the device unless exigent circumstances exist, including use on a handcuffed prisoner]. In those cases, the use of the ECD must be based on justifiable facts and are subject to "Use of Control" supervisory review. FHP Policy Manual specific to ECD – Deployment 10.05.04 C 1.
- As in all uses of control, certain individuals may be more susceptible to injury. Members should be aware of the greater potential for injury when using an ECD against ... persons of small build regardless of age. FHP Policy Manual specific to ECD – Deployment 10.05.04 C 2.
- When reasonable, members preparing to fire the device should announce a verbal warning such as "Stop Resisting, Taser!, Taser!, Taser!" to warn the violator ... FHP Policy Manual specific to ECD – Deployment 10.05.04 C 4.

On November 2, 2012, Danielle Maudsley was determined to be incapacitated, and Julie Goddard was appointed her Guardian by the Circuit Court of the Ninth District in and for Orange County. Ms. Maudsley was residing in a nursing facility in Orange County at the time. When Ms. Maudsley died, Ms. Goddard became the Personal Representative of the Estate of Danielle Maudsley.

Litigation originated on May 23, 2013, in state court against Trooper Cole and the FHP in the Sixth Circuit of Pinellas County while Ms. Maudsley was still alive. The complaint

alleged that Trooper Cole acted in a manner exhibiting wanton and willful disregard of human rights and safety, by among other ways:

- Failing to use his Taser in a proper, safe and appropriate manner;
- Deploying his Taser on a handcuffed and running Danielle Maudsley when he knew or should have known that the use of the Taser under the circumstances would likely result in severe injuries to her;
- Failing to use other available, safer means to stop Danielle Maudsley, such as reaching out with his hands and grabbing her;
- Failing to provide a verbal warning in accordance with the policies and procedures set forth by the Florida Highway Patrol; and
- Failing to follow other accepted policies and procedures set forth by the FHP.

The complaint also alleged that the FHP was negligent in its training and instruction of Trooper Cole in the proper, safe, and appropriate use of his Taser.

On July 7, 2014, after Danielle Maudsley's death, an amended complaint was filed that also alleged excessive force and Fourth Amendment constitutional violation claims. The case was removed to the United States District Court, Middle District of Florida.

On August 10, 2015, the parties settled all claims for \$1,950,000 to avoid the cost of protracted and expensive litigation. The settlement agreement refers to the allegations of negligence against the FHP and Trooper Cole that are contained in the Complaint. While maintaining no admission of liability or responsibility, the FHP and Trooper Cole acknowledge that if this case went to trial, a federal jury could reasonably award damages to the Plaintiff in the amount of \$1,950,000 based on the facts of the case.

The limit of the State's sovereign immunity in the amount of \$200,000 has been paid by the Division of Risk Management pursuant to s. 768.28, F.S. The remaining \$1,750,000 is the subject of the claim bill and will be paid from General Revenue appropriated to the DHSMV if the claim bill becomes law. The FHP and Trooper Cole have agreed not to oppose a claim bill in this amount.

In the settlement agreement, the Plaintiff agrees to voluntarily dismiss the lawsuit, with prejudice, upon court approval. The Final Judgment has not been issued by the United States District Court for the Middle District of Florida in this matter. However, Senate Rule 4.81(6) provides that the hearing and consideration of a claim that is still within the judicial or administrative systems may proceed where the parties have executed a written settlement agreement.

A Medicaid lien of approximately \$400,521 and \$119 Pinellas County EMS outstanding medical bills exist.³ The net proceeds to the estate from this claim bill for \$1,750,000, after medical liens and attorney fees is expected to be approximately \$911,860. The probate court may award estate and personal representative fees, estimated at approximately \$114,030, in accordance with Florida law from all net proceeds⁴ to the estate.

Counsel for the Plaintiff represents it is his understanding from discussion with the attorney for the personal representative of the estate, that the proposed distribution of any claim bill will be made in accordance with Florida Statute, in that both parents will receive damages equally, [after liens, costs, and expenses have been paid]. However, Cheryl Maudsley, mother and primary caregiver of Danielle, both during her life and while she was hospitalized, will be petitioning the probate court for a greater apportionment of those damages. Danielle Maudsley's father is currently incarcerated. According to Counsel, Cheryl Maudsley also intends to establish a trust for her 8 year old daughter, Danielle's sister, with a majority of her portion of the funds.

This Special Master recommends several technical amendments to SB 64 to conform the facts stated in the preamble to findings of fact from the Special Master hearing and document submissions. In addition, the effective date of the bill is upon becoming a law. Amending the effective date to July 1, 2016, will allow for a General Revenue appropriation in the 2016-2017 General Appropriations Act rather than paying this claim from current year funds.

³ If this claim bill is not enacted, a negotiated amount of \$87,000 will be paid from the \$200,000 recovery under the waiver of sovereign immunity to satisfy the Medicaid lien. According to counsel, the \$200,000 has not been disbursed yet to the estate.

⁴ Estimated net proceeds is \$1,950,000 - \$487,500 (25% attorney and lobbying fees) - \$400,640 (Medicaid and medical bills) - \$14,636 (legal office expenses) = \$1,047,224.

CONCLUSIONS OF LAW:

A common law duty of care is owed to a person in custody. Kaiser v. Kolb, 543 So. 2d 732 (Fla 1989) Accordingly, Trooper Cole had a duty to reasonably carry out his operational responsibilities of maintaining custody of Danielle Maudsley and apprehending her when she attempted to flee. Under the doctrine of respondeat superior, the FHP, a Division of the DHSMV, is vicariously liable for the negligent acts of its employees, when such acts are within the course and scope of employment. See Mallory v. O'Neil, 69 So.2d 313 (Fla.1954), and s. 768.28, F.S.

Whether Trooper Cole implemented his responsibilities negligently or in accordance with statutory and departmental policy was an appropriate question for the jury. This hearing officer concludes that Trooper Cole negligently performed his duties in the firing of his Taser at the point in time that he discharged it, without first issuing a warning to allow her the opportunity to stop, without ascertaining to the best of his ability whether Ms. Maudsley was still handcuffed and to reassess the situation in that light, and without at least attempting to stop or overtake her in a manner that did not include a full body tackle. He had a 25 foot discharge range within which these actions could have been employed prior to a Taser discharge. Discharging the Taser was the proximate cause of Danielle Maudsley injuries and subsequent demise. The parties agreed to execute the settlement agreement to resolve this question as well as all allegations in the Amended Complaint. The settlement agreement is reasonable given the unfortunate outcome of this incident.

ATTORNEYS FEES:

Section 768.28(8), F.S., states that no attorney may charge, demand, receive, or collect for services rendered, fees in excess of 25 percent of any judgment or settlement. Claimant's counsel, Ralph M. Guito, III, Esq., has submitted an affidavit that the attorney fees, including lobbying fees, will not exceed 25 percent of the total amount awarded under the claim bill.

RECOMMENDATIONS:

Based upon the foregoing, I recommend that SB 64 be reported FAVORABLY, AS AMENDED.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Secretary of the Senate

CS by Judiciary:

The committee substitute omits some of the more egregious allegations of misconduct by the Department of Highway Safety and Motor Vehicles which were included in the underlying bill. Additionally, the committee substitute requires the payment of Medicaid liens from the proceeds of the claim bill.



511738

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. The facts stated in the preamble to this act are
found and declared to be true.

Section 2. The sum of \$1.75 million is appropriated from
the General Revenue Fund to the Department of Highway Safety and
Motor Vehicles for the relief of the Estate of Danielle Maudsley
for injuries and damages sustained as a result of the death of
Danielle Maudsley.



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12 Section 3. The Chief Financial Officer is directed to draw
13 a warrant in favor of the Estate of Danielle Maudsley in the sum
14 of \$1.75 million minus payments required to satisfy outstanding
15 Medicaid liens relating to the medical expenses and care of
16 Danielle Maudsley upon funds of the Department of Highway Safety
17 and Motor Vehicles in the State Treasury and to pay the same out
18 of such funds in the State Treasury.

19 Section 4. The amount paid by the Division of Risk
20 Management of the Department of Financial Services in accordance
21 with the statutory limits of liability set forth in s. 768.28,
22 Florida Statutes, and the amount awarded under this act are
23 intended to provide the sole compensation for all present and
24 future claims arising out of the factual situation described in
25 this act which resulted in the death of Ms. Maudsley. The total
26 amount paid for attorney fees, lobbying fees, costs, and similar
27 expenses relating to this claim may not exceed 25 percent of the
28 amount awarded under this act.

29 Section 5. This act shall take effect July 1, 2016.

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 everything before the enacting clause
34 and insert:

35 A bill to be entitled
36 An act for the relief of the Estate of Danielle
37 Maudsley; providing for an appropriation to compensate
38 the Estate of Danielle Maudsley for Ms. Maudsley's
39 death, sustained as a result of the alleged negligence
40 of Trooper Daniel Cole and the Florida Highway Patrol,



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41 a division of the Department of Highway Safety and
42 Motor Vehicles; providing that certain payments and
43 the appropriation satisfy all present and future
44 claims related to the alleged acts; providing a
45 limitation on the payment of compensation, fees, and
46 costs; providing an effective date.

47
48 WHEREAS, on September 19, 2011, 20-year old Danielle
49 Maudsley was arrested for nonviolent traffic infractions and was
50 subsequently taken to the Florida Highway Patrol substation in
51 Pinellas Park for processing, and

52 WHEREAS, during the processing, Ms. Maudsley attempted to
53 flee through the side door of the substation, and

54 WHEREAS, as Ms. Maudsley exited the side door of the
55 substation, still handcuffed, Trooper Daniel Cole of the Florida
56 Highway Patrol followed her outside, and

57 WHEREAS, Trooper Cole proceeded to remove his electronic
58 control device and fired it directly into Ms. Maudsley's back,
59 causing her to collapse and fall to the parking lot pavement
60 with great physical force and effect, and

61 WHEREAS, as a result of these events, Ms. Maudsley suffered
62 extensive traumatic brain injury and remained in a constant
63 vegetative state until her death on September 15, 2013, and

64 WHEREAS, in May 2015, a settlement agreement was entered
65 into between Julie Goddard, as personal representative of the
66 Estate of Danielle Maudsley, and the Florida Highway Patrol and
67 Trooper Cole to settle all claims arising out of Ms. Maudsley's
68 death, and

69 WHEREAS, the Florida Highway Patrol and Trooper Cole



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70 acknowledged that if this case had gone to trial in the United
71 States District Court for the Middle District of Florida, a jury
72 could reasonably have awarded damages in the amount of \$1.95
73 million to the Estate of Danielle Maudsley, and

74 WHEREAS, the settlement agreement required the Division of
75 Risk Management of the Department of Financial Services to pay
76 \$200,000 to the Estate of Danielle Maudsley in accordance with
77 the statutory limits of liability set forth in s. 768.28,
78 Florida Statutes, and

79 WHEREAS, Ms. Goddard, as personal representative of the
80 Estate of Danielle Maudsley, seeks satisfaction of the remaining
81 balance of the settlement agreement, which is \$1.75 million,
82 NOW, THEREFORE,



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Criminal and
Civil Justice, *Chair*
Appropriations
Banking and Insurance
Ethics and Elections
Higher Education
Regulated Industries
Rules

SENATOR JOE NEGRON
32nd District

February 1, 2016

Miguel Diaz de la Portilla, Chair
Committee on Judiciary
515 Knott Building
404 S Monroe Street
Tallahassee, FL 32399-1100

Re: Senate Bill 64

Dear Chairman Diaz de la Portilla:

I would like to request Senate Bill 64 relating an act of relief of the estate of Danielle Maudsley be placed on the agenda for the next scheduled committee meeting.

Thank you for your consideration of this request.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Joe Negron", written over a horizontal line.

Joe Negron
State Senator
District 32

JN/hd

c: Tom Cibula, Staff Director

REPLY TO:

- 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

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)

2/16/16

Meeting Date

64

Bill Number (if applicable)

Topic SB 64

Amendment Barcode (if applicable)

Name Ralph Guito Attorney

Job Title

Address 501 E. Kennedy Blvd. Ste 190C

Phone (813) 258-2007

City Tampa FL 33629

Email

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

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

Representing Estate of Danielle Mauderly

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

Lobbyist registered with Legislature: [] Yes [] No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 572

INTRODUCER: Senator Altman

SUBJECT: Involuntary Examinations Under the Baker Act

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rossitto-Van Winkle	Stovall	HP	Favorable
2.	Maida	Cibula	JU	Favorable
3.			AP	

I. Summary:

SB 572 adds advanced registered nurse practitioners and physician assistants to the list of health care providers who are authorized to initiate an involuntary mental health examination of another person under The Baker Act. An authorized health care provider may initiate the examination by executing a certificate stating that he or she examined a person within the past 48 hours and found that the person appears to meet the criteria for involuntary examination. The certificate must also state the observations on which the conclusion is based.

II. Present Situation:

The Florida Mental Health Act

In 1971, the Florida Legislature passed the Florida Mental Health Act—also known as “The Baker Act”—to address mental health needs of the state.¹ The Baker Act, codified in part I of ch. 394, F.S., provides the authority and process for the voluntary and involuntary examination of persons showing evidence of a mental illness. It further provides for the subsequent inpatient or outpatient placement of individuals for treatment.

Under the Act, a person may be taken by a law enforcement officer to a receiving facility for an involuntary examination if there is reason to believe the person has a mental illness and because of the mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination and the person is unable to determine for himself or herself whether examination is necessary; and

¹ Section 1, ch. 71-131, Laws of Fla.

- Without care or treatment, the person is likely to suffer from neglect or refuse to care for, cause substantial harm to, or be a danger to himself or herself or others.²

A person who is subject to an involuntary examination generally may not be held longer than 72 hours in a receiving facility.³

Involuntary examinations may be initiated by a circuit court or by a law enforcement officer.⁴ A law enforcement officer, as defined by section 943.10, F.S.,⁵ may take into custody a person who appears to meet the criteria for involuntary examination. The officer may then transport that person to the nearest receiving facility for examination.⁶

Similarly, the following professionals, having examined an individual within the preceding 48 hours, may initiate an involuntary examination by executing a certificate stating that the individual meets the criteria for involuntary examination:⁷

- A physician licensed under ch. 458, F.S., or ch 459, F.S, who has experience in the diagnosis and treatment of mental and nervous disorders;
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under ch. 394, F.S.;
- A clinical psychologist, as defined in s. 490.003(7), F.S., who has 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under ch. 394, F.S.;⁸
- A psychiatric nurse who is an ARNP certified under s. 464.012, F.S., has a master's or doctoral degree in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advanced practice nurse, and has 2 years of post-master's clinical experience under the supervision of a physician;⁹
- A mental health counselor licensed under ch. 491, F.S.;
- A marriage and family therapist licensed under ch. 491, F.S.; and
- A clinical social worker licensed under ch. 491, F.S.

The Department of Children and Families ("DCF") administers¹⁰ The Baker Act through receiving facilities that provide for the examination of persons showing evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities that

² Section 394.463(1), F.S.

³ Section 394.463(2)(f)(i), F.S.

⁴ Section 394.463(2)(a), F.S.

⁵ Under section 943.10, F.S., a law enforcement officer is defined as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state."

⁶ See generally Section 394.463(2), F.S.

⁷ Section 394.463(2)(a)3., F.S.

⁸ See Section 394.455(2), F.S.

⁹ See Section 394.455(23), F.S.

¹⁰ See generally section 394.457, F.S. DCF is designated as the "Mental health Authority" of Florida and shall exercise executive and administrative supervision over all mental health facilities, programs, and services.

provide for the examination and short-term treatment of persons who meet the criteria under The Baker Act.¹¹

Once received by a facility, a patient must be examined by a physician, a clinical psychologist, or a psychiatric nurse performing within the framework of an established protocol with a psychiatrist at a receiving facility without unnecessary delay.¹² The patient may, upon the order of a physician, be given emergency treatment if it is determined that such treatment is necessary for the safety of the patient or others.¹³ Upon recommendation of the administrator of the receiving facility, a patient who requires additional treatment may be transported to a treatment facility.¹⁴ Treatment facilities are designated by DCF and are state-owned, state-operated, or state-supported hospitals (e.g., Florida State Hospital) that provide extended treatment and hospitalization beyond what is provided in a receiving facility.¹⁵

Advanced Registered Nurse Practitioners

Currently, ARNPs¹⁶ are not enumerated as healthcare providers authorized by s. 394.463(2)(a)3., F.S., to initiate an involuntary examination.

Part I of chapter 464, F.S., governs the licensure and regulation of nurses in this state. Nurses are licensed by the Department of Health (DOH) and are regulated by the Board of Nursing.

A person is eligible for certification as an ARNP, if he or she holds a current, active registered nursing license and, as determined by the board:¹⁷

- Satisfactorily completes at least 1 year of a formal post-basic education program, the primary purpose of which is to prepare nurses for advanced or specialized practice;¹⁸
- Holds a current national advanced practice certification from a board approved specialty board;
- Holds a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills; or

¹¹ Section 394.455(26), F.S.

¹² Section 394.463(2)(f), F.S.

¹³ *Id.*

¹⁴ Section 394.467(1), F.S.

¹⁵ Section 394.455(32), F.S.

¹⁶ An ARNP is defined under s. 464.003(3), F.S., as “any person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, including certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.”

¹⁷ Section 464.012(1), F.S., and Rule 64B9-4.002, F.A.C., which provides that applications for certification as an advanced registered nurse practitioner pursuant to Section 464.012(3), F.S., must include proof of current national advanced practice certification from an approved nursing specialty board.

¹⁸ Section 464.0115(1), F.S., relating to the certification of clinical nurse specialists, states that any nurse seeking certification as a clinical nurse specialist must apply to the department and submit proof that he or she holds a current license to practice professional nursing, a master's degree in a clinical nursing specialty, and either: (a) Proof of current certification in a specialty area as a clinical nurse specialist from a nationally recognized certifying body as determined by the board; or (b) Proof that he or she holds a master's degree in a specialty area for which there is no certification within the clinical nurse specialist role and specialty and proof of having completed 1,000 hours of clinical experience in the clinical specialty for which he or she is academically prepared, with a minimum of 500 hours of clinical practice after graduation. The applicant for certification as a clinical nurse specialist must submit an affidavit to the Board of Nursing affirming the required hours of clinical experience. Falsification of the affidavit constitutes grounds for discipline in accordance with s. 464.018(1)(f), F.S.

- Submits proof that the applicant holds a current national advanced practice certification from a board-approved nursing specialty board.

An ARNP applicant must also pass a criminal background screening and pay applicable fees. Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

Section 464.003, F. S., lists three categories of ARNP: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.¹⁹ All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.²⁰

An ARNP may carry out treatments as specified in statute, including:²¹

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.; and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above, an ARNP may also perform other acts as authorized by statute and within his or her specialty.²² Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.²³

Physician Assistants

Physician assistants ("PAs"), as defined in s. 458.347 (2)(e), F.S., and s. 459.022(2)(e), F.S., are also not enumerated as healthcare providers authorized by s. 394.463(2)(a)3, F.S., to execute a certificate stating an individual meets the criteria for an involuntary examination.

Section 458.347, F.S., and Rule 64B-8, F.A.C., along with s. 459.022, F.S., and Rule and 64B15, F.A.C., govern the licensure and regulation of PAs in this state. The PA's are licensed by the DOH and are regulated by the Board of Medicine and the Board of Osteopathic Medicine; however, the DOH Council on PAs may make recommendations to the boards.²⁴ A person may be licensed as a PA if he or she:

- Is at least 18 years of age;
- Graduates from an approved PA program or its equivalent or meets standards approved by the board;
- Satisfactorily passes a proficiency examination with an acceptable score established by the National Commission on Certification of Physician Assistants (NCCPA);
- Completes the DOH application form and remits an application fee.

¹⁹ Section 464.012(2), F.S.

²⁰ Section 464.012(3), F.S.

²¹ *Id.*

²² Section 464.012(4), F.S.

²³ Section 464.012(4)(c)5, F.S.

²⁴ Section 458.347(9), F.S.

A PA must also pass a criminal background check. The renewal of PA licenses is biennial and contingent upon completion of certain continuing medical education requirements.

III. Effect of Proposed Changes:

The bill amends s. 394.463(2), F.S., to add ARNPs and PAs to the list of health care providers who may initiate the involuntary examination of another person under The Baker Act. As a result, an ARNP or PA may initiate an involuntary examination by executing a certificate stating that he or she has examined another person within the past 48 hours and found that the person appears to meet the criteria for involuntary examination. The certificate must also state the observations on which the conclusion is based.

The bill also amends s. 494.455, F.S., to define “advanced registered nurse practitioner” and “physician assistant.” An “advanced registered nurse practitioner” is defined as “a person licensed in the state to practice professional nursing and certified in advanced or specialized nursing as defined in s. 464.003, F.S.”²⁵ The definition of a “physician assistant” is tied to existing s. 458.347(2)(e), F.S.²⁶

Sections 3 through 8 of the bill, amend various sections of the Florida Statutes to conform cross-references to the definitions in s. 394.455, F.S.

The bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁵ “Advanced or specialized nursing practice,” as defined in s. 464.003(2), F.S., means “in addition to the practice of professional nursing, the performance of advanced-level nursing acts approved by the Board of Nursing which, by virtue of post-basic specialized education, training, and experience, are appropriately performed by an advanced registered nurse practitioner. Within the context of advanced or specialized nursing practice, the ARNP may perform acts of nursing diagnosis and nursing treatment of alterations of the health status. The ARNP may also perform certain acts of medical diagnosis and treatment, prescription, and operation.

²⁶ Physician assistant as defined in s. 458.347(2)(e), F.S., means, “a person who is a graduate of an approved program or its equivalent or meets standards approved by the boards and is licensed to perform medical services delegated by the supervising physician.”

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

None.

B. Private Sector Impact:

The bill may result in additional individuals being taken to a private receiving facility for an involuntary examination.

C. Government Sector Impact:

Because the bill increases the number of enumerated health care providers authorized to issue certificates for involuntary examination under The Baker Act, involuntary examinations may rise. The rise in involuntary examinations may commensurately increase government sector costs.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.455, 394.463, 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704.

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 Altman

16-00798-16

2016572__

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate that finds that a person appears to meet the criteria for involuntary examination under the Baker Act of persons believed to have mental illness; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (2) through (21) of section 394.455, Florida Statutes, are redesignated as subsections (3) through (22), respectively, present subsections (22) through (38) of that section are redesignated as subsections (24) through (40), respectively, and new subsections (2) and (23) are added to that section, to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(2) “Advanced registered nurse practitioner” means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(23) “Physician assistant” has the same meaning as defined in s. 458.347(2)(e).

Page 1 of 6

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

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

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

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

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient’s clinical record. A fee may not ~~shall~~ be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer

Page 2 of 6

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

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59 shall execute a written report detailing the circumstances under
60 which the person was taken into custody, and the report shall be
61 made a part of the patient's clinical record. Any receiving
62 facility accepting the patient based on this report must send a
63 copy of the report to the Agency for Health Care Administration
64 on the next working day.

65 3. A physician, physician assistant, clinical psychologist,
66 psychiatric nurse, mental health counselor, marriage and family
67 therapist, ~~or~~ clinical social worker, or advanced registered
68 nurse practitioner may execute a certificate stating that he or
69 she has examined a person within the preceding 48 hours and
70 finds that the person appears to meet the criteria for
71 involuntary examination and stating the observations upon which
72 that conclusion is based. If other less restrictive means are
73 not available, such as voluntary appearance for outpatient
74 evaluation, a law enforcement officer shall take the person
75 named in the certificate into custody and deliver him or her to
76 the nearest receiving facility for involuntary examination. The
77 law enforcement officer shall execute a written report detailing
78 the circumstances under which the person was taken into custody.
79 The report and certificate shall be made a part of the patient's
80 clinical record. Any receiving facility accepting the patient
81 based on this certificate must send a copy of the certificate to
82 the Agency for Health Care Administration on the next working
83 day.

84 Section 3. Paragraph (a) of subsection (3) of section
85 39.407, Florida Statutes, is amended to read:

86 39.407 Medical, psychiatric, and psychological examination
87 and treatment of child; physical, mental, or substance abuse

Page 3 of 6

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

16-00798-16

2016572__

88 examination of person with or requesting child custody.-

89 (3) (a) 1. Except as otherwise provided in subparagraph (b) 1.
90 or paragraph (e), before the department provides psychotropic
91 medications to a child in its custody, the prescribing physician
92 shall attempt to obtain express and informed consent, as defined
93 in s. 394.455(10) ~~s. 394.455(9)~~ and as described in s.
94 394.459(3) (a), from the child's parent or legal guardian. The
95 department must take steps necessary to facilitate the inclusion
96 of the parent in the child's consultation with the physician.
97 However, if the parental rights of the parent have been
98 terminated, the parent's location or identity is unknown or
99 cannot reasonably be ascertained, or the parent declines to give
100 express and informed consent, the department may, after
101 consultation with the prescribing physician, seek court
102 authorization to provide the psychotropic medications to the
103 child. Unless parental rights have been terminated and if it is
104 possible to do so, the department shall continue to involve the
105 parent in the decisionmaking process regarding the provision of
106 psychotropic medications. If, at any time, a parent whose
107 parental rights have not been terminated provides express and
108 informed consent to the provision of a psychotropic medication,
109 the requirements of this section that the department seek court
110 authorization do not apply to that medication until such time as
111 the parent no longer consents.

112 2. Any time the department seeks a medical evaluation to
113 determine the need to initiate or continue a psychotropic
114 medication for a child, the department must provide to the
115 evaluating physician all pertinent medical information known to
116 the department concerning that child.

Page 4 of 6

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

16-00798-16

2016572__

117 Section 4. Paragraphs (a) and (c) of subsection (3) of
 118 section 394.495, Florida Statutes, are amended to read:
 119 394.495 Child and adolescent mental health system of care;
 120 programs and services.-

121 (3) Assessments must be performed by:

122 (a) A professional as defined in s. 394.455(3), (5), (22),
 123 (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

124 (c) A person who is under the direct supervision of a
 125 professional as defined in s. 394.455(3), (5), (22), (25), or
 126 (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional
 127 licensed under chapter 491.

128 Section 5. Subsection (5) of section 394.496, Florida
 129 Statutes, is amended to read:

130 394.496 Service planning.-

131 (5) A professional as defined in s. 394.455(3), (5), (22),
 132 (25), or (26) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a
 133 professional licensed under chapter 491 must be included among
 134 those persons developing the services plan.

135 Section 6. Subsection (6) of section 394.9085, Florida
 136 Statutes, is amended to read:

137 394.9085 Behavioral provider liability.-

138 (6) For purposes of this section, the terms "detoxification
 139 services," "addictions receiving facility," and "receiving
 140 facility" have the same meanings as those provided in ss.
 141 397.311(22)(a)4., 397.311(22)(a)1., and 394.455(28) ~~394.455(26)~~,
 142 respectively.

143 Section 7. Paragraph (b) of subsection (1) of section
 144 409.972, Florida Statutes, is amended to read:

145 409.972 Mandatory and voluntary enrollment.-

Page 5 of 6

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

16-00798-16

2016572__

146 (1) The following Medicaid-eligible persons are exempt from
 147 mandatory managed care enrollment required by s. 409.965, and
 148 may voluntarily choose to participate in the managed medical
 149 assistance program:

150 (b) Medicaid recipients residing in residential commitment
 151 facilities operated through the Department of Juvenile Justice
 152 or mental health treatment facilities as defined by s.
 153 394.455(34) ~~s. 394.455(32)~~.

154 Section 8. Subsection (7) of section 744.704, Florida
 155 Statutes, is amended to read:

156 744.704 Powers and duties.-

157 (7) A public guardian may ~~shall~~ not commit a ward to a
 158 mental health treatment facility, as defined in s. 394.455(34)
 159 ~~s. 394.455(32)~~, without an involuntary placement proceeding as
 160 provided by law.

161 Section 9. This act shall take effect July 1, 2016.

Page 6 of 6

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

November 18, 2015

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla:

I respectfully request that SB 572, related to *Involuntary Examinations under the Baker Act*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Tom Cibula, Staff Director, 515 Knott Building
Joyce Butler, Committee Administrative Assistant

TA/dw

REPLY TO:

- 6787 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN
16th District

February 16, 2016

The Honorable Diaz de la Portilla
Senate Committee on Judiciary
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

Senate Bill 572, related to *Involuntary Examinations Under the Baker Act*, is on the Judiciary committee agenda on February 16, 2016. Due to illness I will be unable to attend.

Please recognize my Legislative Aide Ms. Lindy Smith to present SB 572 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Tom Cibula, Staff Director, 515 Knott Building
Joyce Butler, Committee Administrative Assistant

TA/dv

REPLY TO:

- 8910 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 868-2132
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

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)

2-16-15

Meeting Date

SB 572

Bill Number (if applicable)

Topic Involuntary EXAMS Under the Baker Act

Amendment Barcode (if applicable)

Name ALLISON CARVAJAL

Job Title Consultant

Address 120 S. MONROE ST.

Phone 727-7087

Street

TLH.

City

FL

State

32303

Zip

Email allison@rambaconsulting.com

Speaking: For Against Information

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

Representing Florida Nurse Practitioner 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.

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)

2/16/2016
Meeting Date

572
Bill Number (if applicable)

Topic Involuntary Exam Under the Baker Act

Amendment Barcode (if applicable)

Name Chris Floyd

Job Title Consultant

Address 101 E. College Ave.

Phone 813-624-5117

Street

Tallahassee

City

FL

State

33606

Zip

Email

Speaking: For Against Information

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

Representing FL Assoc. of Nurse Practitioners

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)

2/16/16

Meeting Date

572

Bill Number (if applicable)

Topic Involuntary Exams - Baker Act

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344

Street

Phone 850-443-1319

Tallahassee FL

City

State

Zip

Email alisa@
gotopsail.com

Speaking: For Against Information

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

Representing Florida Nurses 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)

2/16/2016
Meeting Date

SB 572
Bill Number (if applicable)

Topic Baker ACT

Amendment Barcode (if applicable)

Name STAN Whitaker

Job Title Chairman

Address 6294 NW Torrey A PK RD

Phone 850-545-8307

Street

Bristol
City

FL
State

32321
Zip

Email STANWhitt@aol.com

Speaking: For Against Information

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

Representing FL Association of Nurse Practitioners

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)

2.16.16

Meeting Date

572

Bill Number (if applicable)

Topic Involuntary Examinations

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 209 S. Monroe St., Ste. 201

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

Email _____

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
APPEARANCE RECORD

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

2/16/16

Meeting Date

572

Bill Number (if applicable)

Topic ARNPs Baker Act

Amendment Barcode (if applicable)

Name Dan Hendrickson

Job Title Advocacy Committee Chair

Address 319 E Park Ave, PO Box 1201

Phone 850 570 1967

Street

Tallahassee

FL

32302

Email danbhendrickson@comcast.net

City

State

Zip

Speaking: For Against Information

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

Representing Big Bend Mental Health Coalition, NAMI Tallahassee

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)

APPEARANCE RECORD

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

2/16/16
Meeting Date

SB 572
Bill Number (if applicable)

Topic Relating to Involuntary Examinations under The Baker Act Amendment Barcode (if applicable)

Name Corinne Mixon

Job Title Lobbyist

Address 119 East Park Ave
Street

Phone 950-222-2591

Tallahassee FL 32301
City State Zip

Email Corinne@MixonandAssociates.com

Speaking: For Against Information

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

Representing Florida Academy of Physician Assistants

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 670

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Gaetz

SUBJECT: Child Protection Teams

DATE: February 15, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 670 extends sovereign immunity protections to any physician licensed in this state who is a medical director for, or a member of, a child protection team, when carrying out duties as a team member. This is accomplished by adding those physicians to the definition of who is an “officer, employee, or agent” in the sovereign immunity statute.

A child protection team is a group of professionals who receive referrals, primarily from child protective investigators and law enforcement officers, alleging child abuse, abandonment, or neglect. The medically directed team evaluates the allegations and also provides recommendations for child safety and support services.

II. Present Situation:

Sovereign Immunity

The term “sovereign immunity” originally referred to the English common law concept that the government may not be sued because “the King can do no wrong.” Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents of those governments unless the immunity is expressly waived.

Article X, section 13 of the Florida Constitution recognizes the concept of sovereign immunity and gives the Legislature the power to waive immunity in part or in full by general law. Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state.

Under this statute, officers, employees, and agents of the state may not be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. However, personal liability may result from actions committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. Instead, the state steps in as the party litigant and defends against the claim. The recovery by any one person is limited to \$200,000 for one incident and the total for all recoveries related to one incident is limited to \$300,000.¹ The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps, but the plaintiff is not entitled to recover the excess damages without action by the Legislature.²

Child Protection Teams

A child protection team operates under the oversight of a medical director who is a board-certified pediatrician with special training in child abuse and neglect. The physician must be approved by Children's Medical Services at the Department of Health (DOH). Teams consist of additional physicians, advanced registered nurse practitioners, physician assistants, team psychologists, social workers, clerical assistance, and support personnel.³

There are currently 22 child protection teams in the state.⁴ Each office must be available 24 hours per day, every day, to provide immediate medical diagnosis and evaluation, for consultations by phone, or for other assessment services.⁵ The cases they receive are reported to them primarily by investigators with the Department of Children and Families and local sheriff's offices, but cases are also referred by hospitals and physicians. The groups that the teams target for assessments are children who may be physically abused, sexually abused, and those who lack health care, including medically neglected children.⁶

The Child Protection Team Program receives funding through the Department of Health, Division of Children's Medical Services. The department contracts with a variety of community-based organizations to provide child protection team services statewide. These groups include non-profits, universities, hospitals, and county governments.⁷

Whether Sovereign Immunity Applies to Child Protection Team Physicians

It is not definitively settled whether all child protection team physicians are covered under sovereign immunity. While case law suggests that, under certain circumstances, the physicians are covered, the Department of Health does not consistently agree with that conclusion.

¹ Section 768.28(5), F.S.

² *Id.*

³ Florida Department of Health, Children's Medical Services, *Child Protection Team Program Handbook*, June 2014 available at

[http://www.bing.com/search?q=child+protection+team+program+handbook+children's+medical+services&src=IE-TopResult&FORM=IETR02&conversationid=.](http://www.bing.com/search?q=child+protection+team+program+handbook+children's+medical+services&src=IE-TopResult&FORM=IETR02&conversationid=)

⁴ Telephone interview with Bryan Wendel and Peggy Scheuermann, Department of Health, Office of Legislative Planning, in Tallahassee, Fla. (Feb. 11, 2016).

⁵ *Supra* at note 3.

⁶ *Id.*

⁷ *Id.*

According to the Child Protection Team Program Policy and Procedure Handbook, “medical providers *appear* to act under the color of law and are agents of the state when they examine children allegedly abused or neglected under Section 39, F.S.”⁸ However, whether sovereign immunity applies is determined by the degree of control exercised or retained by the state.⁹ In *Stoll v. Noel*, the Florida Supreme Court explained that, under the appropriate circumstances, independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other’s control except with respect to his physical conduct is an agent and also independent contractor.¹⁰

The *Stoll* Court examined the employment contract between the Children’s Medical Services (CMS) physicians and the state to determine whether the state’s right to control was sufficient to create an agency relationship and held that it did.¹¹ The manuals and guides given to physician consultants demonstrated that CMS had final authority over all care and treatment provided to CMS patients, and that CMS could refuse to allow a physician consultant’s recommended course of treatment of any CMS patient for either medical or budgetary reasons.¹² Furthermore, the Court’s conclusion was supported by the state’s acknowledgement that the manual creates an agency relationship between CMS and its physician consultants, and the state acknowledged full financial responsibility for the physicians’ actions. The Court stated that the state’s interpretation of its manual is entitled to judicial deference and great weight.¹³

The Department of Health, however, has cautiously applied the legal findings of *Stoll* to its contract physicians, including the child protection team physicians. The Deputy State Health Officer for Children’s Medical Services, in a 2013 memorandum to all CMS physicians, did not issue a definitive statement as to whether CMS contract physicians are deemed to be agents of the state for sovereign immunity purposes. The memorandum stated that the *Stoll* decision “does not establish a bright line legal test to determine when a CMS contracted physician will be deemed to be an agent of the state as a matter of law” and the department would choose to evaluate each case on its own merits.¹⁴ In the following year, an internal DOH memorandum stated:

Although they furnish services to children within the CMS Network, CMS providers are independent contractors and consequently are not employees or

⁸ *Supra* note 3, at 74. Emphasis supplied.

⁹ *Stoll v. Noel*, 694 So. 2d 701, 703 (Fla. 1997).

¹⁰ *Id.* at 703, quoting from the *Restatement (Second) of Agency* s. 14N (1957).

¹¹ *Id.* at 703.

¹² *Id.*

¹³ *Id.*

¹⁴ Memorandum from Dennis V. Cookro, MD, MPH, Interim Deputy Secretary for Health, Deputy State Health Officer for CMS, to All CMS Physicians, *Subject: Liability Update* (Feb. 6, 2013) (on file with the Senate Judiciary Committee).

agents of the Department of Health and are personally responsible for their negligent acts.¹⁵

Accordingly, there is uncertainty at DOH as to whether all physicians working on child protection teams are protected by sovereign immunity. This uncertainty has made recruiting and retaining physicians difficult, and has resulted in long-term vacant positions around the state. If a physician is not covered under sovereign immunity, then he or she would likely need to obtain private medical malpractice insurance. Because the cost of obtaining medical malpractice insurance is expensive, the part-time salary one receives would be substantially diminished to the point that some physicians would not consider it worthwhile to undertake the very stressful job.¹⁶

Information supplied in support of this legislation states that no pediatrician living in Florida or elsewhere has ever applied to be the medical director of a child protection team; they have to be recruited. Recruiting staff has found that being able to offer pediatricians sovereign immunity has been a powerful tool in convincing them to accept the medical director positions.¹⁷

III. Effect of Proposed Changes:

The bill extends sovereign immunity protection to a physician licensed in this state who is a medical director for a child protection team or a member of a child protection team. The immunity only extends to the physician while he or she is carrying out duties as a child protection team member. By expanding the definition of an “officer, employee, or agent” in the sovereign immunity statute to include these physicians, they may not be held personally liable for torts committed while working with the child protection team. In contrast, the state may be held liable up to the limits provided in statute under the state’s waiver of sovereign immunity.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ Memorandum from Kimberly A. Tendrich, Senior Attorney, Children’s Medical Services, to Charlotte Curtis, Interim CMS Division Director, *Subject: Applicability of Section 768.28, Florida Statutes to CMS Contractors* (Feb. 14, 2014) (on file with the Senate Committee on Judiciary).

¹⁶ Correspondence and supplemental materials from Randell C. Alexander, M.D., Ph.D., Chair, Child Abuse and Injury Prevention Committee to Sen. Don Gaetz (Dec. 30, 2015) (on file with the Senate Committee on Judiciary).

¹⁷ *Id.*

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

None.

B. Private Sector Impact:

Physicians who are licensed in this state and are medical directors for, or members of, a child protection team would be provided sovereign immunity. The sovereign immunity protections will eliminate the need for the physicians to obtain private insurance coverage.

C. Government Sector Impact:

The Department of Health provided an initial fiscal estimate for the original bill which included a rough estimate of the state's general liability premium with the Child Protection Team staff included. However, because the scope of the bill was significantly reduced to cover only the physicians on the team, those estimates are no longer accurate.¹⁸ Nonetheless, the exposure to additional liability should cause the department's premiums to rise.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 768.28 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 Children, Families, and Elder Affairs on January 14, 2016:**

The committee substitute limits individuals being granted sovereign immunity under the bill to physicians licensed in this state who are medical directors for or members of a child protection team, when carrying out his or her duties as a team member.

¹⁸ Florida Department of Health, *2016 Agency Legislative Bill Analysis of SB 670* (Nov. 3, 2015) (on file with the Senate Committee on Judiciary).

B. Amendments:

None.

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

By the Committee on Children, Families, and Elder Affairs; and
Senator Gaetz

586-02127-16

2016670c1

A bill to be entitled

An act relating to child protection teams; amending s.
768.28, F.S.; revising the definition of the term
"officer, employee, or agent," as it applies to
immunity from personal liability in certain actions,
to include licensed physicians who are medical
directors for or members of a child protection team,
in certain circumstances; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (9) of
section 768.28, Florida Statutes, are amended to read:

768.28 Waiver of sovereign immunity in tort actions;
recovery limits; limitation on attorney fees; statute of
limitations; exclusions; indemnification; risk management
programs.—

(9) (a) ~~An~~ no officer, employee, or agent of the state or of
any of its subdivisions may not ~~shall~~ be held personally liable
in tort or named as a party defendant in any action for any
injury or damage suffered as a result of any act, event, or
omission of action in the scope of her or his employment or
function, unless such officer, employee, or agent acted in bad
faith or with malicious purpose or in a manner exhibiting wanton
and willful disregard of human rights, safety, or property.
However, such officer, employee, or agent shall be considered an
adverse witness in a tort action for any injury or damage
suffered as a result of any act, event, or omission of action in
the scope of her or his employment or function. The exclusive
remedy for injury or damage suffered as a result of an act,
event, or omission of an officer, employee, or agent of the

Page 1 of 2

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

586-02127-16

2016670c1

state or any of its subdivisions or constitutional officers is
~~shall be~~ by action against the governmental entity, or the head
of such entity in her or his official capacity, or the
constitutional officer of which the officer, employee, or agent
is an employee, unless such act or omission was committed in bad
faith or with malicious purpose or in a manner exhibiting wanton
and willful disregard of human rights, safety, or property. The
state or its subdivisions are ~~shall~~ not be liable in tort for
the acts or omissions of an officer, employee, or agent
committed while acting outside the course and scope of her or
his employment or committed in bad faith or with malicious
purpose or in a manner exhibiting wanton and willful disregard
of human rights, safety, or property.

(b) As used in this subsection, the term:

1. "Employee" includes any volunteer firefighter.
2. "Officer, employee, or agent" includes, but is not
limited to, any health care provider when providing services
pursuant to s. 766.1115; any nonprofit independent college or
university located and chartered in this state which owns or
operates an accredited medical school, and its employees or
agents, when providing patient services pursuant to paragraph
(10)(f); ~~and~~ any public defender or her or his employee or
agent, including, ~~among others,~~ an assistant public defender or
~~and~~ an investigator; and any physician licensed in this state
who is a medical director for or member of a child protection
team, as defined in s. 39.01, when carrying out her or his
duties as a team member.

Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Education, *Chair*
Appropriations
Education Pre-K - 12
Ethics and Elections
Health Policy
Higher Education
Rules

SENATOR DON GAETZ
1st District

Committee Request

To: Senator Miguel Diaz de la Portilla, Chair
Judiciary

Subject: Committee Agenda Request

Date: January 15, 2016

I respectfully request that Senate Bill 670, Child Protective Teams, be placed on the Judiciary agenda at your convenience. Thank you for your time and consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "Don Gaetz", written in a cursive style.

Senator Don Gaetz

REPLY TO:

- 4300 Legendary Drive, Suite 230, Destin, FL 32541 (850) 897-5747 FAX: (888) 263-2259
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, FL 32399-1100 (850) 487-5001
- 5230 West U.S. Highway 98, Administration Building, 2nd Floor, Panama City, FL 32401 (850) 747-5856

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)

6/16/14

Meeting Date

~~52~~ 670

Bill Number (if applicable)

Topic ~~Budget Act~~ DCF

Amendment Barcode (if applicable)

Name Greg Pound

Job Title

Address 9166 Sunrise Dr.

Phone

Street

Largo

Fla.

State

33773

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/16
Meeting Date

670
Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Alisa LaPolt

Job Title Lobbyist

Address PO Box 1344
Street

Phone 850-443-1319

Tallahassee FL 32302
City State Zip

Email alisa@getopsail.com

Speaking: For Against Information

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

Representing Florida Nurses Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

6070

2/16/16

Meeting Date

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Ron Watson

Job Title lobbyist

Address 3738 Mordon Way

Phone 850 567 1202

Street

Tallahassee

FL

32309

City

State

Zip

Email watson.strategies@comcast.net

Speaking: For Against Information

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

Representing Florida CHAIN

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

2-16-16

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

670

Meeting Date

Bill Number (if applicable)

Topic S.B. 670

Amendment Barcode (if applicable)

Name Jarrod Fowler

Job Title Director of Payment Advocacy

Address 1430 Piedmont Dr. East

Phone 904-525-4446

Street

Tallahassee FL 32308

City

State

Zip

Email Jfowler@flmedical.org

Speaking: For Against Information

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

Representing Florida Medical Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/16/16

Meeting Date

670

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 101 N. Monroe
Street

Phone 850-681-3240

Tallahassee FL
City State Zip

Email douglas.bell@kipn.com

Speaking: For Against Information

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

Representing Florida Chapter - American Academy of Pediatrics

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/16

Meeting Date

670

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Lynn M. Keefe, MD

Job Title CPT Medical Director

Address 1001-C West College Street

Phone 850-308-2257

Street

Niceville FL 32578

Email LKeefe@myfloridacounty.com

City

State

Zip

Speaking: For Against Information

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

Representing FL CPT

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)

2/16/16

Meeting Date

670

Bill Number (if applicable)

Topic Child Protection Teams

Amendment Barcode (if applicable)

Name Mike Cusick

Job Title _____

Address 200 West College
Street

Phone 222-5620

Tallahassee FL
City State

Email _____

Zip _____

Speaking: For Against Information

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

Representing Florida Association of Children's Hospitals

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)

16 FEB 2016

Meeting Date

670

Bill Number (if applicable)

Topic SOVEREIGN IMMUNITY

Amendment Barcode (if applicable)

Name PAUL JESS

Job Title .

Address 218 S. MONROE ST.

Phone 850 224-9403

Street

TALLAHASSEE FL 32301

Email

City

State

Zip

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

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

Representing FLORIDA JUSTICE ASSOCIATION

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

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.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 970

INTRODUCER: Banking and Insurance Committee and Senator Richter

SUBJECT: Unclaimed Property

DATE: February 15, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</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>AP</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 970 amends the Florida Disposition of Unclaimed Property Act (the act). Unclaimed property consists of any funds or other property, including insurance proceeds, that remain unclaimed by the owner for a certain period of time. The act requires holders of unclaimed property to exercise due diligence to locate owners and pay them the funds. If the owner cannot be located, the holder must report and remit the unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property. The bill makes the following changes to the act:

- Eliminates several exceptions to the general 20 percent fee cap on the compensation that may be paid to a claimant's representative who recovers unclaimed property;
- Requires that the purchase agreement for unclaimed property which compensates the buyer through a flat fee show the fee as a percentage of the property;
- Requires DFS to deny a claim for unclaimed property submitted by a purchaser of the property if the purchase agreement shows that the property was discounted by more than 20 percent;
- Requires that agreements to recover unclaimed property other than an original limited power of attorney be executed by the claimant no earlier than the date the claimant executed the original limited power of attorney;
- Requires a claim for unclaimed property to include certified copies of all court pleadings to establish entitlement to the property which were filed within 180 days before the claim form is signed;

- Repeals a provision giving DFS the exclusive right to notify owners of the existence of unclaimed property valued at more than \$250 within the first 45 days after the property is added to the unclaimed property database;
- Allows for unclaimed property in a campaign account for public office to escheat to the state;
- Increases the aggregate value of the unclaimed property held by DFS to \$10,000 from \$5,000 which may be claimed by the beneficiary of the estate of a deceased owner without initiating probate proceedings;
- Authorizes DFS to estimate the value of unclaimed property held by the holder of the property if the holder fails to provide records after being requested to do so; and
- Increases to 30 days from 10 days the time by which a purchaser of unclaimed property must pay the seller, and voids the claim by the purchaser, if proof of payment is not filed with DFS.

II. Present Situation:

Unclaimed Property

According to the Bureau of Unclaimed Property, in fiscal year 2014-2015, the bureau processed over 500,000 claims and returned \$253 million worth of property to Floridians.¹ Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for more than 5 years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.²

In 1987, Florida adopted the Uniform Unclaimed Property Act³ and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the act").⁴ The act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the act, the Department of Financial Services, Bureau of Unclaimed Property (DFS) is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the act.⁵ Holders of unclaimed property (which typically include banks and insurance companies) of \$50 or more are required to use due diligence to locate and

¹ Email from Elizabeth Boyd, Legislative Affairs Director, Office of the Chief Financial Officer (Feb. 25, 2016) (on file with the Senate Committee on Judiciary).

² Sections 717.104 – 717.116, F.S.

³ UNIFORM LAW COMMISSION, *Unclaimed Property Act (1952)(1981)*, [http://www.uniformlaws.org/Act.aspx?title=Unclaimed Property Act \(1952\)\(1981\)](http://www.uniformlaws.org/Act.aspx?title=Unclaimed%20Property%20Act%20(1952)(1981)) (last visited Feb. 15, 2016).

⁴ Chapter 87-105, Laws of Fla. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (last visited Feb. 15, 2016).

⁵ Section 717.102(1), F.S.

notify apparent owners of inactive accounts, at least 60 days but not more than 120 days, prior to filing a report with DFS.⁶ If the owners cannot be located, holders must file an annual report with DFS for all property, valued at \$50 or more, which is presumed unclaimed for the preceding year.⁷ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address of apparent owners.⁸ The holder must deliver all reportable unclaimed property to DFS when it submits its annual report.⁹

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.¹⁰ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.¹¹ DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, DFS is to deliver or pay over to the claimant the property or the amount DFS actually received or the proceeds, if it has been sold by DFS.¹²

If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.¹³ DFS is allowed to retain up to \$15 million to make prompt payment on verified claims and to cover costs incurred by DFS in administering and enforcing the act. All remaining funds received must be deposited into the State School Fund to be used for public education.¹⁴

Claims for recovery of unclaimed property held by DFS under the act may be filed by or on behalf of any person with an interest in the property.¹⁵ While the act provides the opportunity for anyone to recover the full value of their property at no cost, provision is made for claimants to designate someone who may perfect the claim for them. The claimant may designate and empower a representative to pursue the claim by executing a power of attorney agreement. The claimant may also sell the right to the property to certain individuals who are registered with DFS for this purpose.¹⁶ In either case, the transaction is subject to a fee limitation, unless a

⁶ Section 717.117(4), F.S.

⁷ Section 717.117, F.S.

⁸ For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. Section 717.117(1)(b), F.S.

⁹ Section 717.119, F.S.

¹⁰ Section 717.1201, F.S. Like many other states' unclaimed property acts, the act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.

¹¹ Sections 717.117 and 717.124, F.S.

¹² Section 717.124, F.S.

¹³ Section 717.123, F.S.

¹⁴ *Id.*

¹⁵ Section 717.124, F.S.

¹⁶ Only a Florida licensed attorney, a licensed Florida certified public accountant, a private investigator or an employee of a private investigator, or an employer of the private investigator if the employer holds a Class "A" license under ch. 493, F.S., may execute such purchase agreements. s. 717.1351, F.S. Additionally, the purchaser must be registered with DFS. DFS reports that there are currently 246 registrants under this provision. Florida Department of Financial Services, *Agency Analysis of 2016 SB 970*, p. 3 (Dec. 14, 2015) (on file with the Senate Committee on Judiciary).

disclosure statement is provided to the claimant, in the form and with the content specified in the act. The fee limitations are:

- For representatives operating under a power of attorney:¹⁷
 - 20 percent of the value of the property, not to exceed \$1,000;
 - However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated before or if the claimant is outside of the United States.
- For purchasers obtaining rights under a purchase agreement:¹⁸
 - 20 percent discount off of the value of the property, not to exceed a discount of \$1,000;
 - However, the \$1,000 discount limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

The act also prescribes the form and content of the purchase agreement that transfers the right of the claimant to another person and the document granting the power of attorney.

The public policy of the state is to provide DFS with the first opportunity to locate the owner of the unclaimed property and for the owner to receive the full value of his or her property.¹⁹ There are limitations on claiming by others through powers of attorney and purchase agreements. Powers of attorney and purchase agreements that are executed less than 45 days after the property is received by the DFS and that relate to accounts over \$250 in value are void under the act.²⁰ The 45 day limit on the claims provides DFS the opportunity to attempt to locate the property's owner. However, placing time and value limits on claim eligibility requires DFS to track accounts and audit claims to identify the amount and timing of the claims. The DFS reports that this is inefficient and the public purpose can be served through other provisions of the act. DFS recommends repealing s. 717.1381, F.S., to eliminate administrative inefficiency.²¹

Unclaimed Campaign Funds

Section 106.141, F.S., requires candidates for public office to dispose of the funds in their campaign account within 90 days after the date that their candidacy ended.²² Paragraph 106.141(4)(a), F.S., specifies a variety of options for the disposal of surplus campaign funds.

¹⁷ Section 717.135, F.S., requires the disclosure that the property is held by the DFS pursuant to the act, the mailing and Internet addresses of DFS, the person or name of the entity that held the property prior to the property becoming unclaimed, the date of the holder's last contact with the owner, if known, and the approximate value of the property, and the categories of unclaimed property the claimant's representative is seeking to recover. The categories of unclaimed property are: cash accounts; stale dated checks; life insurance or annuity contract assets; utility deposits; securities or other interests in business associations; wages; accounts receivable; and contents of safe-deposit boxes.

¹⁸ Section 717.1351, F.S. The content of the disclosure statement has the same elements as the disclosure described in s. 717.135, F.S., related to powers of attorney. However, the fee limitation does not apply if the representative must initiate probate proceedings for an estate that has never been probated, if the claimant is outside of the United States or is not a natural person, such as a business or similar entity.

¹⁹ Sections 717.118 and 717.1381, F.S.

²⁰ Section 717.1381, F.S.

²¹ Florida Department of Financial Services, *Agency Analysis of 2016 SB 970*, p. 3 (Dec. 14, 2015) and email from Elizabeth Boyd, Director of Legislative Affairs, Department of Financial Services, *Re: 45 Day Issue* (Jan. 27, 2016) (on file with the Senate Committee on Judiciary).

²² The triggers for disposition are when the candidate withdraws their candidacy, becomes an unopposed candidate, is eliminated, or is elected. Section 106.141(1), F.S.

With certain exceptions, they may take any combination of the following actions when disposing of the surplus:

- Return, pro rata to each contributor, the funds that have not been spent or obligated;
- Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code;
- Give not more than \$25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member; or
- Give the funds that have not been spent or obligated:
 - In the case of a candidate for state office, to the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or
 - In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

If the candidate accepted contributions under the Florida Election Campaign Financing Act, the surplus funds must be returned to the General Revenue Fund, after satisfying certain monetary obligations. If the candidate takes office, they may transfer a limited amount of the funds to his or her office account.

Violations of the campaign finance law are subject to criminal penalties, both misdemeanors and felonies. Failure to properly dispose of surplus campaign funds is a first degree misdemeanor punishable by up to a year in jail and/or a fine of \$1,000. Candidates are prohibited from accepting campaign contributions following the end of their candidacy. They are allowed to receive and deposit refund checks to be disposed of consistent with the requirements of law, as described above. However, the law does not specify how to dispose of cash (or other property), received in forms other than a check, that would otherwise go into the campaign account but comes into the possession of the former candidate after the end of his or her candidacy and the disposal of the funds in the campaign account.

III. **Effect of Proposed Changes:**

Section 1 revises the definitions of “business association,” “domicile,” and “insurance company” to simplify their text and improve understanding. Limited liability companies are specifically included in the definition of “business association.” A definition of “United States” is created to specify the meaning of that term, which is currently used throughout the act to determine various rights and conditions.

Section 2 of the bill provides that, if unclaimed property is owned by the campaign account of a candidate for public office, following a report of the property to the DFS, the property shall become the property of the state and the proceeds of the property shall be paid into the State School Fund.

Section 3 redefines what the value of a small estate account is. Generally, a claim for property related to the estate of a deceased person must be accompanied by an order from a probate court. However, there are exceptions for estates having an aggregate value of \$5,000 or less if no

probate proceeding is pending.²³ This section amends s. 717.1243, F.S., to increase the maximum threshold value of this small estate provision to \$10,000 from \$5,000.

Section 4 amends s. 717.1262, F.S., the provisions dealing with court documents. The section currently requires that a claimant whose right to property is based on a court document file a certified copy of the relevant court document with DFS. This section expands the requirement to include all pleadings filed with the court to establish the property right which were filed within the 180 days preceding the signing of the claim form.

Section 5 amends s. 717.1333, F.S., to authorize DFS to estimate the amount of unclaimed property held and due to DFS if the holder fails to produce records following a request by DFS. Currently, the holder of unclaimed property is obligated to report the value of property to DFS. If the holder's records are insufficient to permit preparation of the required report, the value of the property may be estimated. However, there is currently no authority for DFS to estimate the value of the property when the holder fails to produce the record.

Section 6 amends s. 717.135, F.S., which requires a claimant's representative to either give notice to a property owner that unclaimed property is held by the DFS Bureau of Unclaimed Property or limit the fees that a claimant's representative earns under a power of attorney to recover unclaimed property to 20 percent of the unclaimed property, not to exceed \$1,000. The bill applies the requirements of the section to claims where probate proceedings must be initiated on behalf of a claimant for an estate that has never been probated. The bill also applies the requirements of the section to claims made by a person outside the United States.

Section 717.135, F.S., also requires a specific form be used to execute a limited power of attorney that discloses to the property owner the dollar value of the property and the percent of the property that is being paid to the property, and additional disclosures. The bill removes a provision in current law that allows the property locator that charges a flat fee to not include in the limited power of attorney form the percent of the property paid as compensation to the property locator.

Sections 6 and 7 require any authorization or agreement for the recovery or purchase of property to be personally signed and dated by the claimant. The date of the authorization or agreement cannot precede the date on the grant of limited power of attorney or purchase agreement. The effect is to have a compliant power of attorney or purchase agreement be the first agreement in the case. This facilitates getting the disclosure, if one is going to be used to remove the fee cap, in front of the claimant during the first step in the claims process. The change is meant to address the problem of claimants being presented and obligated to noncompliant authorizations or agreements, only to later execute a compliant agreement, which misrepresents the factual circumstances of the representation and the lawfulness of the fee to DFS. The bill requires a copy of such authorizations or agreements to be filed with DFS along with the other required documents. Additionally, the bill requires DFS to deny any claim where the representative under an authorization or agreement refuses to reduce its fee to the maximum allowed by law, i.e., 20 percent of the value of the property, if the disclosure was required but not provided to the claimant timely. Taken together, the provisions of the bill creating ss. 717.135(5) and

²³ Section 717.1243, F.S.

717.1351(8), F.S., would allow the fee cap to be lifted when the specified disclosure is made at the time of the first engagement of services. Failure to do so limits fees to 20 percent of the value of the property or requires DFS' denial of the claim.

Section 7 amends s. 717.1351, F.S., which governs contracts to acquire ownership of unclaimed property from the person entitled to the unclaimed property. Current law limits the purchase price that may be offered if the purchaser does not disclose to the owner of unclaimed property that the property is being held by the Bureau of Unclaimed Property. If such notice is not provided, the purchase price may not discount the value of the unclaimed property more than 20 percent, up to a maximum discounted purchase price of \$1,000. The bill applies the requirements of the section to purchase agreements where probate proceedings must be initiated on behalf of a seller for an estate that has never been probated. The bill also applies the requirements of the section to sellers located outside the United States.

Currently, s. 717.1351, F.S., requires that purchase agreements specify the percent of the property to be paid to the purchaser on a discrete line item of the purchase agreement pursuant to the form and content requirements of the act. However, this line may be deleted if the purchaser is paid a flat fee instead of a percentage of the recovery. The bill eliminates this exception and requires every purchase agreement to include the required text regarding the percent of the property to be paid to the purchaser and the insertion of the appropriate percentage figure, which varies depending upon the amount of the flat fee and the value of the property to be recovered.

The bill also expands the time period a purchaser of unclaimed property has to remit the purchase price to the seller to 30 days from 10 days after the execution of the purchase contract. The bill expands the requirement that the purchaser file with the DFS proof that the seller received the purchase price to include all forms of payment, rather than just payment by check. The bill also provides that if proof of payment is not provided, the claim is void.

Section 8 repeals s. 717.1381, F.S. This eliminates the 45 day waiting period for claims over \$250 in value that are handled by a representative or purchaser. DFS reports that it will be able to maintain a waiting period using its authority under s. 717.117(3), F.S., and that the administrative efficiency will be improved by not having to audit claim filings for the timing of agreements and value of the claim for compliance with the repealed limitation.²⁴

Section 9 retains the portion of legislative intent in s. 717.1381, F.S., regarding the right of the claimant to recover his or her property without charge, by moving it to s. 717.139, F.S. However, it does not preserve the legislative intent statement regarding the obligation of DFS to make a meaningful attempt to locate the claimant.

Section 10 deletes the authorization for registrants to receive social security numbers. Currently, individuals who register with DFS as potential purchasers under the act are permitted to receive the social security numbers of apparent property owners of property reported to DFS. This is in addition to other information related to the unclaimed property.

Section 11 provides an effective date of July 1, 2016.

²⁴ Supra note 20.

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 allows for small estates up to \$10,000 to file an affidavit with the department for a claim made by a beneficiary.

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: 717.101, 717.1243, 717.1262, 717.1333, 717.135, 717.1351, 717.139 and 717.1400.

This bill creates section 717.1235 of the Florida Statutes.

This bill repeals section 717.1381 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 February 9, 2016:

- Removes the section of the bill relating to “surplus trustees”;
- Requires each court pleading filed within 180 days prior to a claim for unclaimed property to be filed with the Department of Financial Services;
- Requires all authorizations or agreements for representation regarding a claim for unclaimed property to meet specified requirements regarding accurate and personal completion by the claimant and allows for a claim to be denied if such agreements exceed the fee cap;
- Increases the maximum number of days for a claimant to be paid following a purchase agreement from 10 days to 30 days from the date of execution and voids the claim if proof of payment is not filed with the DFS;
- Restores a statement of legislative intent found in s.717.1381, F.S.
- Removes the section of the bill that expressed intent to apply a portion of the bill retroactively;
- Removes the section of the bill that deleted the \$1,000 fee cap on agreements to recover or purchase unclaimed property that do not provide specified disclosures; and
- Removes the section of the bill requiring a registration fee for claimant representatives.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Richter

597-03219-16

2016970c1

1 A bill to be entitled
 2 An act relating to unclaimed property; amending s.
 3 717.101, F.S.; revising and providing definitions;
 4 creating s. 717.1235, F.S.; requiring unclaimed funds
 5 reported in the name of specified campaigns for public
 6 office to be deposited with the Chief Financial
 7 Officer to the credit of the State School Trust Fund;
 8 amending s. 717.1243, F.S.; revising the aggregate
 9 value that constitutes a small estate account;
 10 amending s. 717.1262, F.S.; requiring certain persons
 11 claiming entitlement to unclaimed property to file
 12 certified copies of specified pleadings with the
 13 Department of Financial Services; amending s.
 14 717.1333, F.S.; revising requirements for the
 15 estimation of certain amounts due to the department;
 16 amending s. 717.135, F.S.; revising applicability;
 17 deleting a provision that allows specified wording on
 18 a certain power of attorney; providing requirements
 19 for a certain authorization or agreement to recover
 20 unclaimed property; requiring the department to deny a
 21 claim under certain circumstances; amending s.
 22 717.1351, F.S.; revising requirements and conditions
 23 for contracts to acquire ownership of or entitlement
 24 to property; deleting a provision that allows
 25 specified wording on a purchase agreement; providing
 26 requirements for a certain authorization or agreement
 27 to purchase unclaimed property; requiring the
 28 department to deny a claim under certain
 29 circumstances; repealing s. 717.1381, F.S., relating
 30 to void unclaimed property powers of attorney and
 31 purchase agreements; amending s. 717.139, F.S.;
 32 providing legislative intent; amending s. 717.1400,

Page 1 of 14

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33 F.S.; removing authorization for certain private
 34 investigators, public accountants, and attorneys to
 35 obtain social security numbers; providing an effective
 36 date.

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

40 Section 1. Subsections (4), (8), and (13) of section
 41 717.101, Florida Statutes, are amended, present subsection (24)
 42 of that section is renumbered as subsection (25), and a new
 43 subsection (24) is added to that section, to read:

44 717.101 Definitions.—As used in this chapter, unless the
 45 context otherwise requires:

46 (4) "Business association" means any corporation (other
 47 than a public corporation), joint stock company, investment
 48 company, business trust, partnership, limited liability company,
 49 or association of two or more individuals for business purposes
 50 ~~of two or more individuals, whether or not for profit or not for~~
 51 ~~profit, including a banking organization, financial~~
 52 ~~organization, insurance company, dissolved pension plan, or~~
 53 ~~utility.~~

54 (8) "Domicile" means the state of incorporation ~~for, in the~~
 55 ~~case of~~ a corporation incorporated under the laws of a state; ~~r~~
 56 or for unincorporated business associations, the state where the
 57 business association is organized and the state of the principal
 58 ~~place of business, in the case of a person not incorporated~~
 59 ~~under the laws of a state.~~

60 (13) "Insurance company" means an association, a
 61 corporation, or a fraternal or mutual benefit organization,

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62 whether ~~or not~~ for profit or not for profit, which is engaged in
 63 providing insurance coverage, ~~including, by way of illustration~~
 64 ~~and not limitation, accident, burial, casualty, credit life,~~
 65 ~~contract performance, dental, fidelity, fire, health,~~
 66 ~~hospitalization, illness, life (including endowments and~~
 67 ~~annuities), malpractice, marine, mortgage, surety, and wage~~
 68 ~~protection insurance.~~

69 (24) "United States" means any state, district,
 70 commonwealth, territory, insular possession, and any other area
 71 subject to the legislative authority of the United States of
 72 America.

73 Section 2. Section 717.1235, Florida Statutes, is created
 74 to read:

75 717.1235 Dormant campaign accounts; report of unclaimed
 76 property.—Unclaimed funds reported in the name of a campaign for
 77 public office which is required to dispose of surplus funds in
 78 its campaign account pursuant to s. 106.141 must be deposited
 79 with the Chief Financial Officer to the credit of the State
 80 School Trust Fund.

81 Section 3. Subsection (4) of section 717.1243, Florida
 82 Statutes, is amended to read:

83 717.1243 Small estate accounts.—

84 (4) This section only applies if all of the unclaimed
 85 property held by the department on behalf of the owner has an
 86 aggregate value of \$10,000 ~~\$5,000~~ or less and no probate
 87 proceeding is pending.

88 Section 4. Section 717.1262, Florida Statutes, is amended
 89 to read:

90 717.1262 Court documents.—Any person who claims entitlement

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91 to unclaimed property by reason of a court document shall file a
 92 certified copy of the court document with the department. The
 93 person shall also file with the department certified copies of
 94 all pleadings to obtain a court document establishing
 95 entitlement which were filed with the court within 180 days
 96 before the date the claim form was signed by the claimant or
 97 claimant's representative.

98 Section 5. Subsection (2) of section 717.1333, Florida
 99 Statutes, is amended to read:

100 717.1333 Evidence; estimations; audit reports, examiner's
 101 worksheets, investigative reports, other related documents.—

102 (2) If the records of the holder which ~~that~~ are available
 103 for the periods subject to this chapter are insufficient to
 104 permit the preparation of a report of the unclaimed property due
 105 and owing by a holder, or if the holder fails to provide records
 106 after being requested to do so, the amount due to the department
 107 may be reasonably estimated.

108 Section 6. Subsection (2) and paragraph (g) of subsection
 109 (4) of section 717.135, Florida Statutes, are amended, present
 110 subsections (5) and (6) of that section are renumbered as
 111 subsections (6) and (7), respectively, and a new subsection (5)
 112 is added to that section, to read:

113 717.135 Power of attorney to recover reported property in
 114 the custody of the department.—

115 (2) A power of attorney described in subsection (1) must:

116 (a) Limit the fees and costs for services to 20 percent per
 117 unclaimed property account held by the department. Fees and
 118 costs for cash accounts shall be based on the value of the
 119 property at the time the power of attorney is signed by the

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120 claimant. Fees and costs for accounts containing securities or
 121 other intangible ownership interests, which securities or
 122 interests are not converted to cash, shall be based on the
 123 purchase price of the security as quoted on a national exchange
 124 or other market on which the property is regularly traded at the
 125 time the securities or other ownership interest is remitted to
 126 the claimant or the claimant's representative. Fees and costs
 127 for tangible property or safe-deposit box accounts shall be
 128 based on the value of the tangible property or contents of the
 129 safe-deposit box at the time the ownership interest is
 130 transferred or remitted to the claimant. Total fees and costs on
 131 any single account owned by a natural person residing in this
 132 country must not exceed \$1,000; or

133 (b) Fully disclose that the property is held by the Bureau
 134 of Unclaimed Property of the Department of Financial Services
 135 pursuant to this chapter, the mailing address of the bureau, the
 136 Internet address of the bureau, the person or name of the entity
 137 that held the property prior to the property becoming unclaimed,
 138 the date of the holder's last contact with the owner, if known,
 139 and the approximate value of the property, and identify which of
 140 the following categories of unclaimed property the claimant's
 141 representative is seeking to recover, as reported by the holder:

- 142 1. Cash accounts.
- 143 2. Stale dated checks.
- 144 3. Life insurance or annuity contract assets.
- 145 4. Utility deposits.
- 146 5. Securities or other interests in business associations.
- 147 6. Wages.
- 148 7. Accounts receivable.

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149 8. Contents of safe-deposit boxes.

150
 151 ~~This subsection shall not apply if probate proceedings must be~~
 152 ~~initiated on behalf of the claimant for an estate that has never~~
 153 ~~been probated or if the unclaimed property is being claimed by a~~
 154 ~~person outside of the United States.~~

155 (4)

156 (g) This section does not prohibit the:

157 1. Use of bolding, italics, print of different colors, and
 158 text borders as a means of highlighting or stressing certain
 159 selected items within the text.

160 2. Placement of the name, address, and telephone number of
 161 the representative's firm or company in the top margin above the
 162 words "POWER OF ATTORNEY." No additional writing of any kind may
 163 be placed in the top margin including, but not limited to,
 164 logos, license numbers, Internet addresses, or slogans.

165 3. Placement of the word "pending" prior to the words "NET
 166 AMOUNT TO BE PAID TO CLAIMANT," if it is not yet possible to
 167 determine the percentage interest of an heir or legatee prior to
 168 a determination on the issue by the probate court.

169 4. Deletion of the words "Number of Shares of Stock (If
 170 Applicable)" if the agreement does not relate to the recovery of
 171 securities.

172 ~~5. Deletion of the words "Percent to Be Paid as~~
 173 ~~Compensation to Claimant's Representative" if the power of~~
 174 ~~attorney provides for a flat fee to be paid as compensation to~~
 175 ~~the claimant's representative.~~

176 (5) (a) Any other authorization or agreement to recover
 177 unclaimed property which is executed by or between a claimant's

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178 representative and claimant must be signed and personally dated
179 by the claimant. The date affixed to the authorization or
180 agreement by the claimant may not be earlier than the date
181 personally affixed by the claimant to the original limited power
182 of attorney under this section. A copy of the authorization or
183 agreement must be filed with the original claim submitted to the
184 department, along with the statutorily compliant original power
185 of attorney under this section.

186 (b) If the claimant's representative's fee for a document
187 described in this subsection exceeds 20 percent on any given
188 claim, s. 717.124(1)(d) applies.

189 Section 7. Subsections (2) and (4), paragraph (d) of
190 subsection (7), and subsection (8) of section 717.1351, Florida
191 Statutes, are amended to read:

192 717.1351 Acquisition of unclaimed property.-

193 (2) All contracts to acquire ownership of or entitlement to
194 unclaimed property from the person or persons entitled to the
195 unclaimed property must be in 10-point type or greater and must:

196 (a) Have a purchase price that discounts the value of the
197 unclaimed property at the time the agreement is executed by the
198 seller at no greater than 20 percent per account held by the
199 department. An unclaimed property account must not be discounted
200 in excess of \$1,000. ~~However, the \$1,000 discount limitation~~
201 ~~does not apply if probate proceedings must be initiated on~~
202 ~~behalf of the seller for an estate that has never been probated~~
203 ~~or if the seller of the unclaimed property is not a natural~~
204 ~~person or is a person outside the United States; or~~

205 (b) Fully disclose that the property is held by the Bureau
206 of Unclaimed Property of the Department of Financial Services

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207 pursuant to this chapter, the mailing address of the bureau, the
208 Internet address of the bureau, the person or name of the entity
209 that held the property prior to the property becoming unclaimed,
210 the date of the holder's last contact with the owner, if known,
211 and the approximate value of the property, and identify which of
212 the following categories of unclaimed property the buyer is
213 seeking to purchase as reported by the holder:

- 214 1. Cash accounts.
- 215 2. Stale dated checks.
- 216 3. Life insurance or annuity contract assets.
- 217 4. Utility deposits.
- 218 5. Securities or other interests in business associations.
- 219 6. Wages.
- 220 7. Accounts receivable.
- 221 8. Contents of safe-deposit boxes.

222
223 The purchase agreement described in this paragraph must state in
224 12-point type or greater in the order indicated with the blank
225 spaces accurately completed:

226
227 FULL DISCLOSURE STATEMENT

228
229 The property is currently held by the State of Florida
230 Department of Financial Services, Bureau of Unclaimed
231 Property, pursuant to chapter 717, Florida Statutes.
232 The mailing address of the Bureau of Unclaimed
233 Property is The Internet address of the
234 Bureau of Unclaimed Property is

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236 The property was remitted by:

237

238 Date of last contact:

239

240 Property category:

241

242 Immediately above the signature line for the seller, the

243 purchase agreement described in this paragraph must state in 12-

244 point type or greater:

245

246 Seller agrees, by signing below, that the FULL

247 DISCLOSURE STATEMENT has been read and fully

248 understood.

249

250 (4) Any contract to acquire ownership of or entitlement to

251 unclaimed property from the person or persons entitled to the

252 unclaimed property must provide for the purchase price to be

253 remitted to the seller or sellers within 30 ~~10~~ days after the

254 execution of the contract by the seller or sellers. The contract

255 must specify the unclaimed property account number, the name of

256 the holder who reported the property to the department, the

257 category of unclaimed property, the value of the unclaimed

258 property account, and the number of shares of stock, if

259 applicable. Proof that the seller received ~~of payment by check~~

260 must be filed with the department with the claim. If proof of

261 payment is not provided, the claim is void.

262 (7) This section does not prohibit the:

263 ~~(d) Deletion of the words "Percent of Property to be Paid~~

264 ~~to Buyer," if the purchase agreement provides for a flat fee to~~

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265 ~~be paid as compensation to the buyer.~~

266 (8) (a) Any other authorization or agreement to purchase

267 unclaimed property which is executed by or between a registrant

268 and seller must be signed and personally dated by the seller.

269 The date affixed to the authorization or agreement by the seller

270 may not be earlier than the date personally affixed by the

271 seller to the original purchase agreement under this section. A

272 copy of the authorization or agreement must be filed with the

273 original claim submitted to the department, along with the

274 statutorily compliant original purchase agreement under this

275 section.

276 (b) If the claimant's representative's purchase price paid

277 to the seller on a document referred to in this subsection

278 reduces the purchase price by more than 20 percent on any given

279 claim, s. 717.124(1)(d) applies.

280 (c) This section does not supersede the licensing

281 requirements of chapter 493.

282 Section 8. Section 717.1381, Florida Statutes, is repealed.

283 Section 9. Section 717.139, Florida Statutes, is amended to

284 read:

285 717.139 Uniformity of application and construction.—

286 Protecting the interests of owners of unclaimed property is

287 declared to be the public policy of this state. It is in the

288 best interests of the owners of unclaimed property that they

289 have the opportunity to receive the full amount of the unclaimed

290 property returned to them without deduction of any fees. This

291 chapter shall be applied and construed as to effectuate its

292 general purpose of protecting the interest of missing owners of

293 property, while providing that the benefit of all unclaimed and

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294 abandoned property shall go to all the people of the state, and
 295 to make uniform the law with respect to the subject of this
 296 chapter among states enacting it.

297 Section 10. Subsections (1), (2), and (3) of section
 298 717.1400, Florida Statutes, are amended to read:

299 717.1400 Registration.—

300 (1) In order to file claims as a claimant's representative,
 301 acquire ownership of or entitlement to unclaimed property,
 302 receive a distribution of fees and costs from the department,
 303 and obtain unclaimed property dollar amounts and, numbers of
 304 reported shares of stock, ~~and social security numbers~~ held by
 305 the department, a private investigator holding a Class "C"
 306 individual license under chapter 493 must register with the
 307 department on such form as the department shall prescribe by
 308 rule, and must be verified by the applicant. To register with
 309 the department, a private investigator must provide:

310 (a) A legible copy of the applicant's Class "A" business
 311 license under chapter 493 or that of the applicant's firm or
 312 employer which holds a Class "A" business license under chapter
 313 493.

314 (b) A legible copy of the applicant's Class "C" individual
 315 license issued under chapter 493.

316 (c) The business address and telephone number of the
 317 applicant's private investigative firm or employer.

318 (d) The names of agents or employees, if any, who are
 319 designated to act on behalf of the private investigator,
 320 together with a legible copy of their photo identification
 321 issued by an agency of the United States, or a state, or a
 322 political subdivision thereof.

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323 (e) Sufficient information to enable the department to
 324 disburse funds by electronic funds transfer.

325 (f) The tax identification number of the private
 326 investigator's firm or employer which holds a Class "A" business
 327 license under chapter 493.

328 (2) In order to file claims as a claimant's representative,
 329 acquire ownership of or entitlement to unclaimed property,
 330 receive a distribution of fees and costs from the department,
 331 and obtain unclaimed property dollar amounts and, numbers of
 332 reported shares of stock, ~~and social security numbers~~ held by
 333 the department, a Florida-certified public accountant must
 334 register with the department on such form as the department
 335 shall prescribe by rule, and must be verified by the applicant.
 336 To register with the department a Florida-certified public
 337 accountant must provide:

338 (a) The applicant's Florida Board of Accountancy number.

339 (b) A legible copy of the applicant's current driver
 340 license showing the full name and current address of such
 341 person. If a current driver license is not available, another
 342 form of identification showing the full name and current address
 343 of such person or persons shall be filed with the department.

344 (c) The business address and telephone number of the
 345 applicant's public accounting firm or employer.

346 (d) The names of agents or employees, if any, who are
 347 designated to act on behalf of the Florida-certified public
 348 accountant, together with a legible copy of their photo
 349 identification issued by an agency of the United States, or a
 350 state, or a political subdivision thereof.

351 (e) Sufficient information to enable the department to

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352 disburse funds by electronic funds transfer.

353 (f) The tax identification number of the accountant's
354 public accounting firm employer.

355 (3) In order to file claims as a claimant's representative,
356 acquire ownership of or entitlement to unclaimed property,
357 receive a distribution of fees and costs from the department,
358 and obtain unclaimed property dollar amounts and, numbers of
359 reported shares of stock, ~~and social security numbers~~ held by
360 the department, an attorney licensed to practice in this state
361 must register with the department on such form as the department
362 shall prescribe by rule, and must be verified by the applicant.
363 To register with the department, such attorney must provide:

364 (a) The applicant's Florida Bar number.

365 (b) A legible copy of the applicant's current driver
366 license showing the full name and current address of such
367 person. If a current driver license is not available, another
368 form of identification showing the full name and current address
369 of such person or persons shall be filed with the department.

370 (c) The business address and telephone number of the
371 applicant's firm or employer.

372 (d) The names of agents or employees, if any, who are
373 designated to act on behalf of the attorney, together with a
374 legible copy of their photo identification issued by an agency
375 of the United States, or a state, or a political subdivision
376 thereof.

377 (e) Sufficient information to enable the department to
378 disburse funds by electronic funds transfer.

379 (f) The tax identification number of the attorney's firm or
380 employer.

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381 Section 11. This act shall take effect July 1, 2016.

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The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 10, 2016

I respectfully request that **Senate Bill #970**, relating to Unclaimed Property , be placed on the:

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

A handwritten signature in cursive script, appearing to read "Garrett Richter".

Senator Garrett Richter
Florida Senate, District 23



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

February 16, 2016

The Honorable Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Diaz de la Portilla:

Thank you for placing Senate Bill 970, relating to Unclaimed Property, on your agenda. Unfortunately, I will not be able to present this bill personally and request that my aide, Michael Nacheff, be allowed to present this bill to your committee.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Tom Cibula, 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

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)

2-16-15

Meeting Date

SB 970

Bill Number (if applicable)

Topic Unclaimed Property

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Legislative Director

Address 400 N Monroe St

Phone 850-413-2863

Street

Tallahassee FL 32399

City

State

Zip

Email elizabeth.boyd@myfloridacfo.com

Speaking: For Against Information

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

Representing Dept. of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)



THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location

302 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
1/13/16	SM	Favorable
2/16/16	JU	Favorable
	ATD	
	AP	

January 13, 2016

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 32** – Senator Anitere Flores
HB 3527 Representative Jay Fant
Relief of Amie Draiemann O'Brien

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,116,940 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON

FINDINGS OF FACT:

On December 11, 2006, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 34 (2007). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported favorably with an amendment. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, James Knudson. My responsibilities were to review the records relating to the claim bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if known at the hearing, might have

significantly altered the findings or recommendation in the previous report.

According to counsel for the claimant, no substantial changes have occurred since the hearing. Counsel for the claimant, in a letter dated September 30, 2015, detailed the current status of Amie Draiemann (Stephenson) O'Brian and the two surviving children, Hailey and Christian, II. They reside in Knoxville, Tennessee where Amie Draiemann O'Brien works as a teacher's assistant tutoring children with disabilities at the school her children attend. Amie is also attending Tusculum College to attain her bachelor's degree in Psychology. Amie and Hailey attend counseling for their issues regarding Mr. Stephenson's death. Christian previously attended counseling, but has anger issues and has stopped doing so. Hailey plans to enroll at Walter's State Community College in Tennessee. Christian is considering joining the Navy after graduating high school, but has not made a decision regarding his future after high school.

The prior claim bill, SB 34 (2007) had provided an appropriation from the General Revenue Fund to the Department of Transportation to Amie Draiemann Stephenson of \$1,092,040, plus taxable costs. On December 2, 2011, a subsequent Senate special master issued a Final Report that adopted the findings of the 2006 Final Report and recommended two amendments to a subsequent version of this claim bill, SB 62 (2012), which were not adopted because that bill was not heard in a Senate committee. These amendments, are incorporated into the claim bill filed for the 2016 Legislative Session.

The bill apportions damages between Mr. Stephenson's estate, his wife, and two children in the amounts awarded in the jury verdict. The jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent).

Based on the forgoing and the absence of new developments that might justify altering the prior special master's findings, I recommend SB 32 FAVORABLY.

SPECIAL MASTER'S FINAL REPORT – SB 32

January 13, 2016

Page 3

Respectfully submitted,

James Knudson
Senate Special Master

cc: Secretary of the Senate



THE FLORIDA SENATE
SPECIAL MASTER ON CLAIM BILLS

Location

402 Senate Office Building

Mailing Address

404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/2/11	SM	Fav/1 amendment

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 70** – Senator Michael S. Bennett
Relief of Amie Draiemann Stephenson (O'Brien)

SPECIAL MASTER'S FINAL REPORT

THIS IS A CONTESTED EXCESS JUDGMENT CLAIM FOR \$1,092,040 AGAINST THE DEPARTMENT OF TRANSPORTATION ARISING OUT OF A MOTOR VEHICLE CRASH IN JACKSONVILLE IN 2000 THAT KILLED CHRIS STEPHENSON.

FINDINGS OF FACT:

On August 12, 2000, 29-year-old Christian D. Stephenson was killed when he lost control of the gas tanker that he was driving and crashed on the Hart Bridge Expressway in Jacksonville. The truck exploded in the crash, and Mr. Stephenson burned to death in the fire.

The posted speed limit on the portion of the expressway where the crash occurred was 45 MPH. Mr. Stephenson was traveling in excess of the speed limit (perhaps as fast as 60 MPH) at the time of the crash, according to the eye witnesses and experts who testified at the trial.

The road was wet, and it was raining at the time of the crash. However, it was not raining as heavily at the time of the crash as it had been in the hour or so preceding the crash.

Mr. Stephenson was traveling in the left lane of the road, following closely behind a jeep driven by Jason Keiffer. Unbeknown to Mr. Keiffer or Mr. Stephenson, there was a large pool of standing water in the left lane of the road. The water was estimated to be 300 feet long and 6 to 9 inches deep at its deepest point. The cause of the standing water was a clogged drainage basin in the median.

Mr. Keiffer hit the water and lost control of his jeep. Mr. Stephenson swerved to the right to miss Mr. Keiffer's jeep. That maneuver sent him in the direction of the safety zone in which three other vehicles were sitting. In order to miss those vehicles, Mr. Stephenson steered further to the right down an exit ramp where his truck hit a guardrail, flipped over, and burst into flames.

The three vehicles sitting in the safety zone were a City of Jacksonville police car, a car driven by Shana Williams, and a news van driven by Douglas Lockwood. Ms. Williams and Mr. Lockwood had each hit the water and lost control of their vehicles shortly before the crash involving Mr. Stephenson. The police car was driven by Lt. David Vanaman, who had just responded to the scene to assist Ms. Williams and Mr. Lockwood about the time that Mr. Stephenson lost control of his truck.

The Department of Transportation (DOT) is responsible for maintaining the drainage basins along the Hart Bridge Expressway. After the crash, DOT maintenance supervisor Alex Slaughter was called to the scene.

Mr. Slaughter called for the assistance of a vacuum truck to suck up the standing water and clean up the drainage basin. The vacuum truck was able to suck up all of the water on the road, but it was unable to unclog the drainage basin. As a result, it was necessary for Mr. Slaughter and three other DOT maintenance employees to climb down into the drainage basin and remove by hand the materials clogging the drain. The materials removed from the drainage basin included various items of trash and what was described at trial as a large rubber or plastic flap. It took the four DOT employees

two hours to remove all of the materials in the drainage basin. Approximately one cubic yard of debris was removed.

No evidence was presented as to when DOT had last inspected and/or cleaned out the drainage basin. Mr. Slaughter testified that the materials removed from the drainage basin had likely accumulated over 6 to 8 months. The plaintiffs' expert, Jerome Thomas, testified that the debris had likely been accumulating for several years. Mr. Thomas's estimate is more reasonable in light of the length of time that it took the DOT employees to unclog the drainage basin after the crash, the amount of debris removed, and the evidence of prior flooding at the site.

This was not the first time that the water had accumulated on the road in this location as a result of the clogged drainage basin. Several witnesses testified about seeing standing water at that location, and there had been several prior crashes, including one involving a City of Jacksonville fire truck, in which drivers lost control of their vehicles after hitting the water. However, there was no evidence that these accidents were reported to DOT, or that DOT had actual knowledge of the flooding caused by the clogged drain at this location.

Mr. Stephenson was survived by his wife, Amie, and two children, Hailey and Christian, II. Hailey (now 13) was 2 years old at the time of Mr. Stephenson's death. Christian, II (now 11), was born several months after Mr. Stephenson's death. Amie and Hailey both spent time in counseling after Mr. Stephenson's death. Christian is reportedly experiencing behavioral and emotional problems as a consequence of never having met his father.

Amie is a stay-at-home mom. She last worked outside the home in 1998, which was about the time that Hailey was born. Amie has moved on with her life. She married Kevin O'Brien, Mr. Stephenson's best friend, in October 2005. They have a daughter together.

Amie received approximately \$325,000 from various sources after Mr. Stephenson's death. That amount included \$104,581.34 in workers' compensation death benefits; a \$5,000 funeral benefit from Mr. Stephenson's insurer, State Farm; a \$100,000 uninsured motorist settlement from State

Farm; a \$10,000 settlement of a suit against Mr. Keiffer; a \$10,000 settlement of a suit against the City of Jacksonville; \$22,000 in donations through a charity fund established by a local hospital where Mr. Stephenson's mother worked; and \$75,000 in life insurance. These funds are in addition to the \$175,100 paid by DOT in satisfaction of its legal liability for the judgment in this case, as discussed below. Amie used the money from the charity fund to pay off the family's debts and purchase furniture for a new home. There is a statutory lien on the workers' compensation benefits, which will be paid from the proceeds of the claim bill.

In addition to the lump sum payments referenced above, Amie received Social Security survivor benefits of approximately \$700 per month until the time that she married Mr. O'Brien. Hailey and Chris, II, continue to receive survivor benefits. It was reported at the Special Master hearing that each child receives benefits of \$917 per month, and that the benefits will continue until the children turn 18.

Amie testified at the Special Master hearing that any money she receives from the claim bill will ultimately pass to her children, and not Mr. O'Brien. She confirmed that intent in writing after the hearing. Additionally, Mr. O'Brien submitted a written statement waiving his right to any of the money received by Amie from the claim bill.

DOT reported that it has sufficient funds available in its "unappropriated trust fund balances" to pay the claim, and those funds were suggested by DOT as the appropriate source for payment of this claim if the bill is approved over its objection. Payment of the claim from those funds will not adversely impact DOT's operations or any particular work program.

LEGAL PROCEEDINGS:

In 2001, Amie, as personal representative of Mr. Stephenson's estate, filed suit against DOT, the City of Jacksonville, Multimedia Holdings Corporation (Mr. Lockwood's employer), Ms. Williams, and Mr. Keiffer, in circuit court in Jacksonville. A two-week jury trial was held in March 2005.

Prior to trial, the court entered summary judgment in favor of Multimedia and Ms. Williams. Those rulings were affirmed on appeal, and judgments were subsequently entered in favor of

Ms. Williams (\$21,599 in attorney's fees and \$1,887.07 in costs) and Multimedia (\$5,148 in attorney's fees). Those judgments remain unsatisfied and are against Mr. Stephenson's estate, which has not yet been closed. It is expected that the judgments will be paid out of the proceeds from the claim bill that are paid to the estate.

Summary judgment was also entered in favor of Mr. Keiffer prior to the trial. The claimants' appeal of that ruling was dismissed after Mr. Keiffer agreed to pay \$10,000 to settle the suit against him. A \$10,000 pre-trial settlement was also reached with the City of Jacksonville.

As a result of the pre-trial rulings and settlements, the case proceeded to trial with DOT as the only defendant. The jury found DOT negligent and apportioned 36 percent of the negligence for Mr. Stephenson's death to DOT. The jury apportioned the remaining 64 percent of the negligence to Mr. Stephenson. The jury awarded a total of \$3,589,000, broken down as follows:

Damages to Mr. Stephenson's estate	\$1,300,000
Damages to Amie	\$763,000
Damages to Hailey	\$1,000,000
Damages to Chris, II	\$526,000

After the award was reduced to reflect Mr. Stephenson's comparative fault, a final judgment was entered against DOT for \$1,292,040.

The final judgment reserved jurisdiction to award costs against DOT. A cost judgment was never entered because the parties agreed that the amount of trial-related costs was roughly equivalent to the amount that would be offset against the judgment for the collateral sources received by Amie after Mr. Stephenson's death.

DOT did not appeal the final judgment. Amie appealed the final judgment, but the appeal was voluntarily dismissed because according to the claimants' attorney, Amie would not have been able emotionally to go through another trial in the event that the judgment was reversed on appeal.

DOT paid \$175,100 to the claimants in satisfaction of its legal liability under the judgment. The remainder of the \$200,000

available under the sovereign immunity cap was paid to the company that owned the truck Mr. Stephenson was driving which was destroyed in the crash. The "outstanding balance" of the judgment against DOT is \$1,117,940.

The claimants only received approximately \$26,000 of the \$175,100 paid by DOT, with approximately \$8,500 going to Amie, approximately \$11,300 going to Hailey, and approximately \$5,900 going to Christian, II. None of the initial payment went to Mr. Stephenson's estate. The remainder of the initial payment went to attorney's fees, costs, and the repayment of a loan taken out by the claimants.

The claimants' attorney reports that there are approximately \$320,000 of billed and unbilled costs and expenses which remain outstanding. Some of those expenses relate to post-trial matters, but the bulk of the expenses relate to the investigation and trial of the case.

CLAIMANT'S ARGUMENTS:

DOT was negligent by failing to keep the drainage basin free of debris, which caused water to overflow onto the road creating an unsafe condition that led to Mr. Stephenson's death.

DOT had at least constructive notice of the dangerous condition created by the clogged drainage basin as a result of prior crashes at the location caused by standing water.

The jury verdict against DOT should be given full effect.

RESPONDENT'S ARGUMENTS:

DOT did not have actual notice of the clogged drainage basin or the resulting dangerous roadway condition.

The clogged drain was not caused by months or years of accumulated debris, but rather by the large rubber or plastic flap that somehow got into the drainage basin.

The primary cause of the crash that killed Mr. Stephenson was his own negligence, namely his excessive speed for the wet road conditions that existed at the time of the crash.

CONCLUSIONS OF LAW:

DOT had a duty to maintain the drainage basin so that it did not become clogged and create an unsafe roadway condition. Although DOT argued that its decisions as to where drainage basins are located and how and when they are inspected are

planning level decisions entitled to sovereign immunity, it conceded that its duty to properly maintain a particular drainage basin is an operational level decision for which sovereign immunity has been partially waived by section 768.28, Florida Statutes.

DOT breached its duty, as evidenced by the fact that there was no evidence when the drainage basin was last cleaned out, and the fact that it took four DOT employees a total of two hours to remove the cubic yard of debris that had accumulated in the drainage basin. DOT's argument that the drainage basin became clogged because of a "freak event" (i.e., the rubber or plastic flap) was not persuasive in light of the amount of debris removed from the drainage basin after the crash and the evidence of prior crashes caused by standing water in the same location.

DOT's negligence was a proximate cause of Mr. Stephenson's death because but for the standing water in the roadway caused by the clogged drainage basin, Mr. Keiffer would not have lost control of his jeep causing Mr. Stephenson to take the evasive action that ultimately led to his death.

Mr. Stephenson's own negligence also contributed to his death because he was speeding at the time of his crash despite the wet road conditions, and he may have also been following Mr. Keiffer's jeep too closely. Accordingly, the jury's apportionment of fault between DOT and Mr. Stephenson is reasonable and appropriate.

The damages awarded by the jury are reasonable as well. Dr. Patricia Pacey, the expert who testified at trial for the claimants, calculated the economic damages of Mr. Stephenson's death to be approximately \$1.8 million. DOT's expert came to a similar amount. The jury awarded \$1.3 million to Mr. Stephenson's estate for economic damages. The remaining \$2.2 million of the verdict were non-economic damages apportioned amongst Amie, Hailey, and Christian, II.

The trial court did not enter a cost judgment against DOT, and it did not adjust the jury verdict to take into account collateral sources of recovery by Mr. Stephenson's family.

The evidence presented at the Special Master hearing establishes that, consistent with the agreement of the parties at the trial level, the costs incurred by the claimants are roughly equivalent to, and off-set, the collateral-source payments received by the claimants.

LEGISLATIVE HISTORY:

This is the sixth year that this claim has been presented to the Legislature. The bills filed in 2007 (SB 34), 2008 (SB 62), 2009 (SB 22), 2010 (SB 32), and 2011 (SB 30) were not referred to committee.

ATTORNEYS FEES:

The bill states that "attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the amount awarded under this act." (Emphasis supplied). This limitation is within the authority and discretion of the Legislature. See *Gamble v. Wells*, 450 So. 2d 850 (Fla. 1984); *Noel v. Schlesinger*, 984 So. 2d 1265 (Fla. 4th DCA 2008).

The claimants' attorney provided an affidavit stating that in accordance with s. 768.28(8), F.S., attorney's fees related to this claim will be capped at 25 percent of the amount awarded in the bill. The lobbyist's fee is 6 percent of amount awarded in the bill, and according to lobbyist's affidavit, the lobbyist's fee is "included within the 25 percent attorney fee cap."

There are approximately \$320,000 of outstanding costs and expenses. Those costs will not come out of the claimants' portion of the bill as a result of the bill language quoted above.

SPECIAL ISSUES:

This Final Report was written by Special Master T. Kent Wetherell, II, who conducted the claim bill hearing on this matter in December 2006. Having reviewed the case, the undersigned has elected to adopt Special Master Wetherell's report and recommendations, with minor editorial changes to the text.

One amendment to the bill is needed. The fourth whereas clause erroneously states that the jeep was traveling towards Mr. Stephenson's tanker truck. This clause should be amended to conform to the undisputed evidence that Mr. Stephenson's tanker truck was following the jeep.

Other amendments might be desirable. First, the last "whereas" clause in the bill states that the amount subject to being awarded pursuant to this act is \$1,092,040, which will be the unpaid balance of the final judgment after DOT has paid the claimants \$200,000 under the sovereign immunity cap. To date, DOT has not paid the claimants the full \$200,000. Instead, DOT paid \$25,000 to the company that owned the truck which was destroyed in the fire and \$175,000 to the claimants. Given that the bill seeks payment of \$1,092,040, which is the amount of the judgment less \$200,000, it appears that the claimants anticipate DOT will pay them the \$25,000 balance due under the cap without the compulsion of this legislation—or that they have abandoned the pursuit of this sum. If these assumptions are incorrect, the claimants should seek to amend the bill, to reflect that the "outstanding balance" against DOT is \$1,117,940, and to correct the "whereas" clause accordingly.

Second, the bill contemplates a single lump sum payment to Amie, as personal representative of Mr. Stephenson's estate, even though the jury verdict specifically apportioned damages between Mr. Stephenson's estate (36.22 percent of the award), Amie (21.26 percent), Hailey (27.86 percent), and Christian, II. (14.66 percent). Amie testified at the Special Master hearing (and the claimants' attorney confirmed in a written submittal this year) that she has no objection to the children's shares of the claim bill being specifically earmarked for them. It was suggested, however, that the children's shares of the claim bill should be paid into a trust since they are minors. The claimants should consider seeking an amendment to the bill that would provide for the allocation of the proceeds as follows: \$404,575.65 to Mr. Stephenson's estate; \$237,454.78 to Amie; \$311,212.04 in trust for Hailey; and \$163,697.53 in trust for Christian, II.

RECOMMENDATIONS:

For the reasons set forth above, I recommend that Senate Bill 62 (2012) be reported FAVORABLY, as amended.

SPECIAL MASTER'S FINAL REPORT – SB 70

December 2, 2011

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Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Michael S. Bennett
Debbie Brown, Interim Secretary of the Senate
Counsel of Record



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: January 26, 2016

I respectfully request that **Senate Bill #32**, relating to Relief/Amie Draiemann Stephenson, Hailey Morgan Stephenson, and Christian Darby Stephenson, II/Department of Transportation, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1104

INTRODUCER: Banking and Insurance Committee and Senator Flores

SUBJECT: Service of Process on Financial Institutions

DATE: February 15, 2016

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1104 amends the procedures for service of process upon a financial institution. The bill allows a financial institution to designate a place or registered agent with the Department of State as the sole location or agent for service of process. The location or agent must be available to receive service of process between 9 a.m. and 5 p.m. on business days, excluding federal and Florida holidays.

If service upon a financial institution cannot be made at the designated central location, or the institution has not designated a registered agent, service may be made upon the officer or director of the financial institution at its principal place of business.

Service of process required or authorized to be made by the Office of Financial Regulation (OFR) may continue to be made through certified mail to any officer, director, or business agent of the financial institution at its principal place of business or any other branch, office, or place of business.

II. Present Situation:

Background

In Florida, the Office of Financial Regulation (OFR) is responsible for the regulation of financial institutions chartered and organized under Florida law.¹ The OFR does not regulate national banks or banks that are chartered and regulated in other states. However, states are permitted to regulate the activities of national banks where doing so does not significantly interfere with the national bank's or the national bank regulator's exercise of its powers.² State law will not be upheld if the state prescriptions significantly impair the exercise of authority of the national banks.³ In issuing an order or rule, OFR must consider the importance of maintaining a competitive dual system of financial institutions and whether such an order or rule is in the public interest.⁴

Service of process is the term for the delivery of a summons, writ, or subpoena to the opposing party in a lawsuit.⁵ Service of process generally does not significantly impair the exercise of the authority of national banks, and is not preempted by federal law.⁶ Therefore, state law regulations in regard to service of process upon financial institutions are generally valid. The Florida Statutes govern the manner in which service of process, notice, or demand may be made on a financial institution that transacts business in this state, whether state or nationally chartered.⁷

Process against any financial institution may be served through a number of means. Currently, process may be served by the following methods:

- Personal service on the president or vice president, or other head of the corporation. If the president or vice president is absent, on the cashier, treasurer, secretary, or general manager. If process is still unable to be served on the previous individuals, it may be served on any director; or on any officer or business agent residing in the state.⁸
- Constructive service by publication when personal service on the institution cannot be had.⁹
- Personal service on the chair of the board, the president, any vice president, the secretary, or the treasurer, or the registered agent of the corporation at the registered office of the corporation in this state; or service on any other address in this state that is the principal office of the corporation.¹⁰

¹ See section 20.121(3)(a)2, F.S.

² *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1 (2007).

³ *Watters v. Wachovia Bank, N.A.*, 550 U.S. at 12 (citing *Barnett Bank of Marion Cty., N.A. v. Nelson*, 517 U.S. 25, 32-34 (1996) (holding federal law permitting national banks to sell insurance in small towns preempted state statute prohibiting banks from selling most types of insurance); *Franklin Nat. Bank of Franklin Square v. New York*, 347 U.S. 373, 377-79 (1954) (stating local restrictions preempted because they burdened exercise of national banks' incidental power to advertise)).

⁴ Section 655.061, F.S.; 5 Fla. Jur 2d Banks and Lending Institutions § 60.

⁵ Black's Law Dictionary (10th ed. 2014) (defining the term "service of process").

⁶ See 12 CFR 34.4(a)(1) (applying state law service of process to real estate loans).

⁷ See section 655.0201, F.S.

⁸ Section 48.081, F.S.

⁹ Section 49.011, F.S.

¹⁰ Section 607.0504, F.S.

Any financial institution is allowed, but is not required, to designate a registered agent as the financial institution's agent for service of process, notice, or demand required to be served on the financial institution.¹¹ If service cannot be made through a registered agent, service may be made to any officer, director, or business agent of the financial institution at its principal place of business or at any other branch, office, or place of business.

The previously mentioned methods are not the only means, nor necessarily the required means, of serving process on a financial institution.¹²

Insufficient Service of Process

In *Bank of America, N.A. v. Bornstein*, the Fourth District Court of Appeal found insufficient service of process upon a financial institution.¹³ In that case, the appellee sued and obtained a writ of garnishment on Bank of America. The process server served the writ of garnishment at a Bank of America branch in West Palm Beach on a branch teller who stated she was authorized to accept on behalf of the person to whom the process was directed.¹⁴ The Fourth DCA concluded service of process was insufficient because the process server served a bank teller, rather than an officer.¹⁵ To obtain personal jurisdiction over a corporate defendant, a return of process showing service on an inferior officer of a corporation must show that all superior officers designated in the statute were absent when service was attempted.¹⁶ Because appellee served an inferior officer of the financial institution, and did not show that all superior officers were absent when service was attempted, the court found that service of process had been insufficient.

III. Effect of Proposed Changes:

Section 1 creates s. 48.092, F.S., which states that service on a financial institution must be made in accordance with s. 655.0201, F.S.

Section 2 amends s. 655.0201, F.S. to allow a financial institution to designate a place or registered agent within this state as its sole location for service of process. The place or agent must be open or available to receive service on regular business days from at least 9 a.m. to 5 p.m. The revisions to s. 655.0201, F.S., eliminate the potential for serving a financial institution through constructive notice by publication.

If the financial institution has no registered agent, or service cannot be made at the designated location, service may be made to any officer or director of the financial institution at its principal place of business or at any other branch, office, or place of business in this state.

The bill allows the Office of Financial Regulation to serve process on a financial institution by serving any officer, director, or business agent at its principal place of business or any other

¹¹ Section 655.0201, F.S.

¹² Section 655.0201(4), F.S.

¹³ *Bank of America, N.A. v. Bornstein*, 39 So. 3d 500 (Fla. 4th DCA 2010).

¹⁴ *Bank of America*, 39 So. 3d at 501.

¹⁵ *Bank of America*, 39 So. 3d at 504.

¹⁶ *Bank of America*, 39 So. 3d at 503 (quoting *Nat'l Safety Assocs., Inc. v. Allstate Ins. Co.*, 799 So. 2d 316, 317 (Fla. 2d DCA 2001); accord *Space Coast Credit Union v. The First, F.A.*, 467 So. 2d 737, 739-40 (Fla. 5th DCA 1985)).

branch, office, or place of business in Florida. OFR can continue to serve process via certified mail.

Section 3 states the bill takes effect January 1, 2017.

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:

As financial institutions are likely the recipients of a large volume of process relating to their customers, allowing a financial institution to specify one place or agent for service of process may help the institution manage and respond to the process in a timely manner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 48.092 of the Florida Statutes.

The bill substantially amends section 655.0201 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 February 9, 2016:

- Removes provisions requiring Department of Financial Services to create a website to list the locations for service of process on financial institutions.
- Adds provisions allowing a financial institution to designate a registered agent or location for service.
- Provides hours when the agent must be available or the location must be open to accept service.
- Allows financial institutions to designate with the Department of State a place or registered agent that is the sole location or agent or service of process.

- B. **Amendments:**

None.

By the Committee on Banking and Insurance; and Senator Flores

597-03220-16

20161104c1

1 A bill to be entitled
 2 An act relating to service of process on financial
 3 institutions; creating s. 48.092, F.S.; requiring
 4 service on financial institutions to be made in
 5 accordance with s. 655.0201, F.S.; amending s.
 6 655.0201, F.S.; revising applicability of provisions
 7 of law governing service of process on financial
 8 institutions; authorizing certain financial
 9 institutions to designate with the Department of State
 10 a place or registered agent within the state as the
 11 sole location or agent for service of process, notice,
 12 levy, or demand; providing that service of process,
 13 notice, levy, or demand may be made at specified time
 14 periods; providing exceptions if the financial
 15 institution has no registered agent, service cannot be
 16 made at the sole location, or for service made by the
 17 Office of Financial Regulation; providing an effective
 18 date.

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

22 Section 1. Section 48.092, Florida Statutes, is created to
 23 read:

24 48.092 Service on financial institutions.—Service on
 25 financial institutions must be made in accordance with s.
 26 655.0201.

27 Section 2. Section 655.0201, Florida Statutes, is amended
 28 to read:

29 655.0201 Service of process, notice, levy, or demand on
 30 financial institutions.—

31 (1) Notwithstanding any other Florida law, this section
 32 establishes the proper location for service of process upon a

597-03220-16

20161104c1

33 financial institution for all types of service of process to be
 34 made on a financial institution ~~Process against any financial~~
 35 ~~institution authorized by federal or state law to transact~~
 36 ~~business in this state may be served in accordance with chapter~~
 37 ~~48, chapter 49, chapter 605, or part I of chapter 607, as~~
 38 ~~appropriate.~~

39 (2) A ~~Any~~ financial institution authorized by federal or
 40 state law to transact business in this state may designate with
 41 the Department of State a place or registered agent located
 42 within the state as the financial institution's sole location or
 43 agent for service of process, notice, levy, or demand. Any such
 44 place or registered agent so designated must be open and
 45 available for service of process during regular business hours
 46 on regular business days, which, at a minimum, is any time
 47 between the hours of 9 a.m. and 5 p.m. local time, on Mondays
 48 through Fridays, excluding federal and Florida holidays. After a
 49 financial institution designates a place or registered agent
 50 within this state, such place or registered agent is the sole
 51 location for service of process, including service for actions
 52 related to garnishment, levy, injunctions, lawsuits, and the
 53 attachment of safety deposit boxes, in accordance with chapters
 54 60, 76, and 77, and the Florida Rules of Civil Procedure
 55 ~~required or permitted by law to be served on the financial~~
 56 ~~institution. If the financial institution has no registered~~
 57 ~~agent, or its registered agent cannot with reasonable diligence~~
 58 ~~be served, service may be made to any executive officer of the~~
 59 ~~financial institution at its principal place of business in this~~
 60 ~~state.~~

61 (3) (a) If a financial institution has no registered agent

597-03220-16

20161104c1

62 or service cannot be made in accordance with subsection (2),
63 service may be made to any officer or director of the financial
64 institution at its principal place of business or at any other
65 branch, office, or place of business in the state.

66 (b) Notwithstanding subsection (2), any service required or
67 authorized to be made by the Office of Financial Regulation
68 under the financial institutions codes may be made to any
69 officer, director, or business agent of the financial
70 institution at its principal place of business or any other
71 branch, office, or place of business in the state as set forth
72 in s. 655.031(2) If service cannot be made in accordance with
73 subsection (2), service may be made to any officer, director, or
74 business agent of the financial institution at its principal
75 place of business or at any other branch, office, or place of
76 business in the state.

77 ~~(4) This section does not prescribe the only means, or~~
78 ~~necessarily the required means, of serving notice or demand on a~~
79 ~~financial institution.~~

80 Section 3. This act shall take effect January 1, 2017.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla , Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 9, 2016

I respectfully request that **Senate Bill #1104**, relating to Service of Process, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 37

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/16/14
Meeting Date

SB1104
Bill Number (if applicable)

Topic Service of Process on Financial Institutions

Amendment Barcode (if applicable)

Name Jennifer Martin

Job Title Director of Governmental Affairs

Address 3692 Coolidge Ct.
Street

Phone _____

Tallahassee FL 32317
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Credit Union 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)

2/16/16

Meeting Date

CS/SB 1104
Bill Number (if applicable)

Topic SERVICE of PROCESS

Amendment Barcode (if applicable)

Name MIKE FIELDS

Job Title STATE PRESIDENT

Address 301 S. CALHOUN ST

Phone 850-561-5922

Street

TALLAHASSEE

FL

32301

City

State

Zip

Email mike.fields@bankofamerica.com

Speaking: For Against Information

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

Representing BANK of AMERICA

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)

2-16-2016

Meeting Date

1104

Bill Number (if applicable)

Topic Service of Process on Financial Institutions

Amendment Barcode (if applicable)

Name ~~Kimberly~~ Kimberly Siomkos

Job Title VP of Government Affairs

Address 1001 Thomasville Rd Suite 201

Phone 501 3174774

Street

Tallahassee

FL

32308

City

State

Zip

Email ksiomkos@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)

2/16/2016

Meeting Date

SB 1104

Bill Number (if applicable)

Topic Waive in Support of SB 1104

Amendment Barcode (if applicable)

Name Ms. Jamie Champion-Mongiovi

Job Title Director of Communications & Govt. Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

Street

101 E Gaines Street

Florida

32399

Email jamie.mongiovi@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
APPEARANCE RECORD

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

16 FEB 2016
Meeting Date

1104
Bill Number (if applicable)

Topic SERVICE OF PROCESS

Amendment Barcode (if applicable)

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Speaking: For Against Information

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

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1294

INTRODUCER: Senator Grimsley

SUBJECT: Offenses Involving Minors and Vulnerable Persons

DATE: February 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 1294 increases protections for minors and victims of human trafficking.

Victim or Witness Testimony by Closed Circuit Television

Current law authorizes a victim or witness in certain circumstances who is under the age of 16 or who has an intellectual disability to testify in court by closed circuit television. The bill increases the eligible age of a child victim or witness who may testify by closed circuit television to 17 years of age.

Felony Murder Law

Current law authorizes a person to be charged with murder if a person dies during the commission of certain felonies enumerated in the statutes. The penalty may vary, depending upon other conditions present during the commission of the felony. The bill amends the felony murder law to include the crime of human trafficking as a qualifying felony for the charge of felony murder.

Human Trafficking Statute

Current law penalizes the crime of human trafficking. The bill clarifies that it is a second-degree felony if a person permanently brands or directs another to permanently brand another *for the purpose of committing a human trafficking offense*. The clarification limits the offense of branding to the human trafficking context.

The bill eliminates a potential defense to human trafficking crimes. If the victim of the human trafficking offense is under the age of 18 at the time of the crime, his or her lack of chastity or willingness or consent is not a defense to the human trafficking crime.

Rape Shield Law

Under Florida's Rape Shield Law, certain prior acts or reputation evidence of a victim is inadmissible in prosecutions for sexual battery. The Rape Shield Law is amended to include prosecutions for human trafficking and lewd or lascivious offenses in the list of cases for which the admission of certain evidence about the victim may be limited. These evidentiary protections currently apply only to victims in prosecutions for sexual battery.

II. Present Situation:

Victim or Witness Testimony by Closed Circuit Television

Case Law

The Sixth Amendment to the U.S. Constitution provides, in part: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him" In addition to ensuring the defendant the opportunity to cross-examine an adverse witness, the Sixth Amendment serves another role "of compelling [a witness] to stand face to face with the jury in order that they may look at him, and judge by his demeanor upon the stand and the manner in which he gives his testimony whether he is worthy of belief."¹

Courts have grappled in recent years with the Sixth Amendment right of confrontation in cases in which the testimony of child victims or witnesses is proffered in court. Children of abuse have been considered to be especially vulnerable to harm resulting from testifying in court before an abuser. In addressing the growing concern of the emotional harm to a child victim from testifying in court, many states have authorized the court to allow alternative measures of in-court testimony by a child victim.

State legislatures have variously adopted measures to protect a child victim in providing testimony by requiring or authorizing the court to:

- Close the courtroom to the public while the child testifies;
- Allow child victims to testify on videotape or closed circuit television; and
- Adopt the use of protective aids in the courtroom, such as one-way mirrors or screens to enable the child to testify without seeing the defendant.²

Some states have also created a hearsay exception in law to enable child victims to testify in an out-of-court manner.³

In the 1988 United States Supreme Court case of *Coy v. Iowa*, the court reviewed a case in which the state tried a defendant for child sexual abuse.⁴ The trial court allowed two child victims to testify in court from behind a screen, in accordance with state statute. The testimony ultimately

¹ *Mattox v. U.S.*, 156 U.S. 237, 242-243 (1895).

² Lisa Hamilton Thielmeyer, *Beyond Maryland v. Craig: Can and Should Adult Rape Victims be Permitted to Testify by Closed-Circuit Television?*, 67 IND. L.J. 797, 803-804 (Summer 1992).

³ *Id.*

⁴ *Coy v. Iowa*, 487 U.S. 1012 (1988).

led to the conviction of the defendant.⁵ In ruling that the court unconstitutionally interfered with the defendant's right to confront the witnesses against him, the Supreme Court opined, "It is difficult to imagine a more obvious or damaging violation of the defendant's right to a face-to-face encounter."⁶

In 1990, the United States Supreme Court took a more flexible approach in applying the Sixth Amendment to testimony by child victims. In *Maryland v. Craig*, the Court started its analysis from the proposition that the constitutional right to confrontation is not an absolute right or one which requires a defendant to always have a face-to-face meeting with an adverse witness.⁷ Rather, the court held, the purpose of the confrontation clause is to ensure that testimony is reliable and subject to rigorous adversarial testing.⁸ In light of this, the Court established a three-prong test for use in determining the necessity of allowing a child to testify in an alternative manner to traditional in-court direct and cross-examination. The criteria for necessity are:

- The trial court must find the procedure necessary to protect the child;
- Evidence must exist that the child would suffer emotional distress otherwise; and
- The emotional distress cited must be more than minimal.⁹

Florida Law

Florida allows testimony outside the courtroom in limited circumstances by child victims or witnesses and persons with intellectual disabilities. Section 92.54, F.S., provides a procedure for the court to apply in determining whether testimony may be proffered through closed circuit television. In so doing, s. 92.54, F.S., codifies the three-prong test of necessity established in *Maryland v. Craig*.¹⁰

In order to balance the defendant's right to confront his or her accuser with the State's interest in protecting the welfare of children, the court must:

- Determine whether a procedure such as closed circuit television is necessary to protect a child's welfare;
- Find that a substantial likelihood exists that a victim or witness under the age of 16 or who has an intellectual disability would suffer emotional harm otherwise; and
- Find that the emotional distress suffered by the child in the presence of the defendant would be at least moderate emotional harm.¹¹

To initiate the inquiry, a motion must be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem for the victim or witness; the defendant or the defendant's counsel; or the trial judge.¹²

⁵ *Id.* at 1014.

⁶ *Id.* at 1020.

⁷ *Maryland v. Craig*, 497 U.S. 836, 844 (1990). The Court indicated that it intended to expand upon, rather than overrule its decision in *Coy* regarding the application of the Sixth Amendment to child victim testimony. In fact, the *Craig Court* cited *Coy* for having said, "We leave for another day, however, the question whether any exceptions exist." *Coy*, *supra* note 4, at 1021.

⁸ *Id.* at 846.

⁹ *Id.* at 855-856.

¹⁰ Section 92.54, F.S.

¹¹ Section 92.54(1), F.S.

¹² Section 92.54(2), F.S.

During the victim's or witness's testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. If so, the court must authorize the defendant to see and hear the testimony of the victim or witness, while ensuring that the victim or witness does not hear or see the defendant.¹³

The same test is required for the admissibility of videotaped testimony of a victim or witness under the age of 16 or who has an intellectual disability.¹⁴

Human Trafficking

Section 787.06(2)(d), F.S., defines human trafficking as “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.”

A first-degree felony is committed by any person who knowingly, or in reckless disregard of the facts commits or attempts to commit human trafficking, or benefits financially from human trafficking:

- Through the labor or services of any child, including an unauthorized alien under the age of 18;
- Through the use of coercion for labor or services or commercial sexual activity of an adult, including an unauthorized alien; or
- Through the transport of a child or an adult from out-of-state for labor or services or commercial sexual activity.¹⁵

The penalty increases to a life felony if the human trafficking:

- Involves commercial sexual activity of a child under the age of 18 or a person who is mentally defective or incapacitated;¹⁶ or
- Involves a custodian of a child, including a parent or legal guardian, who sells or otherwise transfers custody or control of a child.¹⁷

In addition to these criminal acts, a second-degree felony is committed if a person is involved in permanently branding a victim of human trafficking. To permanently brand a person is to mark a person's body in such a way that if it is able to removed or repaired, it can be done so only through surgery, laser treatment, or another medical procedure.¹⁸

Felony Murder

The felony murder rule is a long-standing doctrine that provides that if a person dies during the course of an enumerated felony, in addition to the underlying felony, any of the defendants may be charged with murder. Intent to kill is presumed if under the felony murder rule.¹⁹

¹³ Section 92.54(4), F.S.

¹⁴ Section 92.53(1), F.S.

¹⁵ Section 787.06(3), F.S.

¹⁶ *Id.*

¹⁷ Section 787.06(4), F.S.

¹⁸ Section 787.06(4)(b), F.S.

¹⁹ *Gray v. State*, 654 So. 2d 934, 935 (citing *Amlotte v. State*, 456 So. 2d 448, 449-50 (Fla. 1984)).

Florida has a felony murder rule which provides a range of penalties. Section 782.04(1)(a), F.S., treats the death of a person as first-degree murder, chargeable as a capital felony, if the perpetrator is acting from a premeditated design to effect a death. The underlying felony, however, must be an enumerated crime. These crimes are:

- Drug Trafficking;
- Arson;
- Sexual battery;
- Robbery;
- Burglary;
- Kidnapping;
- Escape;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Unlawful distribution of any substance controlled under s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Murder of another human being;
- Resisting an officer with violence;
- Aggravated fleeing or eluding with serious bodily injury or death; or
- A felony that is an act of terrorism or is in furtherance of an act of terrorism.²⁰

If the perpetrator does not possess premeditated design during the commission of an enumerated felony, the perpetrator may be charged with first-degree murder, punishable by imprisonment of a length of time up to life imprisonment.²¹

Felony murder in the third degree²² occurs if a person is killed, without any design to effect death, during the commission of any felony other than an enumerated felony.²³

²⁰ Section 782.04(1)(a), F.S. If the person is killed by the person committing or attempting to commit the listed crime, the murder is a capital offense punishable by death or life imprisonment. If the person is killed by a person other than the one committing or attempting to commit the listed crime, the one who is committing or attempting to commit the crime is responsible for the death. Section 782.04(3), F.S., provides that under those circumstances, it is a second degree murder, punishable by 30 years to life imprisonment.

²¹ Section 782.04(2), F.S.

²² Third degree murder is punishable as a second degree felony punishable by up to 15 years imprisonment.

²³ Section 782.04(4), F.S.

Rules of Evidence Applicable to Sexual Offenses

In many U.S. jurisdictions, laws exist to prevent specific instances of the victim's prior sexual conduct from being admitted at trial in a prosecution for sexual battery or other sexual misconduct charges.²⁴ These laws are commonly referred to as "Rape Shield" laws.²⁵ Section 794.022, F.S., is Florida's Rape Shield law, and it has long been considered a codification of the rule of relevancy that a victim's prior sexual conduct is generally irrelevant in determining the defendant's guilt.²⁶ It applies to prosecutions for sexual battery, and provides that:

- The victim's testimony doesn't have to be corroborated by other evidence;
- Specific instances of the victim's sexual history with people other than the offender are inadmissible unless:
 - The evidence is introduced to prove that the defendant wasn't the source of physical evidence, such as semen; or
 - If consent is at issue, the evidence proves a pattern of the victim's conduct or behavior so similar to the conduct or behavior in the case that it is relevant to the issue of consent;
- The victim's reputation for sexual behavior is inadmissible;
- Evidence presented to prove the victim's appearance prompted the sexual battery is inadmissible;
- If consent is a defense, evidence of the victim's mental incapacity or defect can be admitted to prove that consent was not given; and
- An offender's use of a prophylactic device, or a victim's request that an offender use a prophylactic device, is not independently relevant.²⁷

The United States Code also has a Rape Shield statute. In contrast to Florida's Rape Shield law, the federal statute is not limited to sexual battery offenses; rather, the federal statute applies to *any* criminal or civil proceeding involving alleged sexual misconduct.²⁸ As such, federal courts have repeatedly held that a victim's prior history of sexual behavior, such as exotic dancing or prostitution, is irrelevant and inadmissible in prosecutions for crimes such as sex trafficking, forced labor, sex trafficking by force, fraud, or coercion, and sex trafficking of a child.²⁹

III. Effect of Proposed Changes:

The bill increases protections for minors and victims of human trafficking.

²⁴ Nat'l Dist. Attorney's Ass'n, *Rape Shield Statutes* (March 2011) (at http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwiMI-Xc06XKAhWFHD4KHVs-ByAQFggcMAA&url=http%3A%2F%2Fwww.ndaa.org%2Fpdf%2FNCPCA%2520Rape%2520Shield%25202011.pdf&usq=AFQjCNGB9ME_OADBm-qIDOCmtYCs3dYB7g) (last visited Feb. 12, 2016).

²⁵ See *Lewis v. State*, 591 So. 2d 922, 924 (Fla. 1991).

²⁶ *Marr v. Florida*, 494 So. 2d 1139, 1142-43 (Fla. 1986).

²⁷ Section 794.022, F.S.

²⁸ Fed. Rules Evid. Rule 412, 28 U.S.C.A.

²⁹ See *United States v. Rivera*, 799 F.3d 180, 185 (2d Cir. 2015) (holding that "[e]vidence of victims' prior acts of commercial sex is irrelevant to whether those victims were coerced into working as prostitutes"); *United States v. Roy*, 781 F.3d 416, 420 (8th Cir. 2015) (holding that the victim's participation in prostitution before or after the alleged incident is irrelevant to whether the defendant threatened her, beat her, or took her money); *United States v. Cephus*, 684 F.3d 703, 708 (7th Cir. 2012) (holding that the victim's prior history of prostitution was irrelevant to proving that she consented to having her wages withheld and being beaten).

Victim or Witness Testimony by Closed Circuit Television

Current law authorizes a victim or witness in certain circumstances who is under the age of 16 or who has an intellectual disability to testify in court by closed circuit television. The bill increases the eligible age of a child victim or witness to testify by closed circuit television to 17 years of age.

Felony Murder

Current law authorizes a person to be charged with murder if a person dies during the commission of an enumerated felony in the felony murder statutes. The bill amends the felony murder statutes to include the crime of human trafficking as a qualifying felony for all levels of felony murder.

Human Trafficking Statute

Human trafficking is generally charged presently as a first-degree felony, punishable by up to 30 years imprisonment. The bill increases criminal penalties for human trafficking if the perpetrator inflicts great bodily harm, permanent disability, or permanent disfigurement on the victim of the underlying human trafficking offense. The offense then becomes a first degree felony punishable by a term of imprisonment of up to life.

Additionally, the bill clarifies that if a person permanently brands or directs another to permanently brand another *for the purpose of committing a human trafficking offense* it is a second degree felony. This clarification limits the offense of branding to human trafficking circumstances.

The bill eliminates a potential defense to human trafficking crimes. If the victim of the human trafficking offense is under the age of 18 at the time of the crime, his or her lack of chastity or willingness or consent is not a defense to the human trafficking crime.

Rape Shield Law

Under Florida's Rape Shield Law, certain prior acts or reputation evidence of a victim is inadmissible in prosecutions for sexual battery. The Rape Shield Law is amended to include prosecutions for human trafficking and lewd or lascivious offenses in the list of cases for which the admission of certain evidence may be limited. These evidentiary protections currently apply only to victims in prosecutions for sexual battery.

Sections 90.404, 775.21, 943.0435, 944.606, and 944.607 are amended to conform and clarify cross-references to s. 787.06(3)(h), F.S. (2012). Paragraph (h) of s. 787.06(3), F.S., was merged with paragraph (g) of that section by ch. 2014-160, Laws of Florida.

The bill takes effect July 1, 2016.

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:

Based upon the preliminary assessment of the potential prison bed impact of the bill it is anticipated that the bill may have a positive insignificant impact on the number of prison beds necessary to accommodate persons convicted under the new and amended criminal offenses.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 92.54, 782.04, 787.06, 794.022, 90.404, 775.21, 943.0435, 944.606, and 944.607.

³⁰ 2016 Criminal Justice Impact Conference (CJIC), at <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/index.cfm>.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Grimsley

21-01365-16

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A bill to be entitled

An act relating to offenses involving minors and vulnerable persons; amending s. 92.54, F.S.; increasing the maximum age at which a victim or witness may be allowed to testify via closed circuit television rather than in a courtroom in certain circumstances; amending s. 782.04, F.S.; including human trafficking as an underlying felony offense to support a felony murder conviction; amending s. 787.06, F.S.; providing increased criminal penalties for human trafficking offenses if the victim suffers great bodily harm, permanent disability, or permanent disfigurement; specifying that penalties for branding must be for the purpose of committing the offense of human trafficking; prohibiting certain defense to prosecution; amending s. 794.022, F.S.; including human trafficking and lewd and lascivious offenses in the rules of evidence applicable to sexually-related offenses; amending ss. 90.404, 775.21, 943.0435, 944.606, and 944.607, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 92.54, Florida Statutes, is amended to read:

92.54 Use of closed circuit television in proceedings involving a victim or witness under the age of 18 ~~16~~ or who has an intellectual disability.—

(1) Upon motion and hearing in camera and upon a finding that there is a substantial likelihood that a victim or witness under the age of 18 ~~16~~ or who has an intellectual disability

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will suffer at least moderate emotional or mental harm due to the presence of the defendant if such victim or witness is required to testify in open court, or is unavailable as defined in s. 90.804(1), the trial court may order that the testimony of the victim or witness be taken outside of the courtroom and shown by means of closed circuit television.

(2) The motion may be filed by the victim or witness; the attorney, parent, legal guardian, or guardian ad litem of the victim or witness; the prosecutor; the defendant or the defendant's counsel; or the trial judge on his or her own motion.

(3) Only the judge, the prosecutor, the defendant, the attorney for the defendant, the operators of the videotape equipment, an interpreter, and some other person who, in the opinion of the court, contributes to the well-being of the child or the person who has an intellectual disability and who will not be a witness in the case may be in the room during the recording of the testimony.

(4) During the victim's or witness's testimony by closed circuit television, the court may require the defendant to view the testimony from the courtroom. In such a case, the court shall permit the defendant to observe and hear the testimony of the victim or witness, but must ensure that the victim or witness cannot hear or see the defendant. The defendant's right to assistance of counsel, which includes the right to immediate and direct communication with counsel conducting cross-examination, must be protected and, upon the defendant's request, such communication must be provided by any appropriate electronic method.

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62 (5) The court shall make specific findings of fact, on the
63 record, as to the basis for its ruling under this section.
64 Section 2. Subsections (1), (3), and (4) of section 782.04,
65 Florida Statutes, are amended to read:
66 782.04 Murder.—
67 (1) (a) The unlawful killing of a human being:
68 1. When perpetrated from a premeditated design to effect
69 the death of the person killed or any human being;
70 2. When committed by a person engaged in the perpetration
71 of, or in the attempt to perpetrate, any:
72 a. Trafficking offense prohibited by s. 893.135(1),
73 b. Arson,
74 c. Sexual battery,
75 d. Robbery,
76 e. Burglary,
77 f. Kidnapping,
78 g. Escape,
79 h. Aggravated child abuse,
80 i. Aggravated abuse of an elderly person or disabled adult,
81 j. Aircraft piracy,
82 k. Unlawful throwing, placing, or discharging of a
83 destructive device or bomb,
84 l. Carjacking,
85 m. Home-invasion robbery,
86 n. Aggravated stalking,
87 o. Murder of another human being,
88 p. Resisting an officer with violence to his or her person,
89 q. Aggravated fleeing or eluding with serious bodily injury
90 or death,

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91 r. Felony that is an act of terrorism or is in furtherance
92 of an act of terrorism, ~~or~~
93 s. Human trafficking; or
94 3. Which resulted from the unlawful distribution of any
95 substance controlled under s. 893.03(1), cocaine as described in
96 s. 893.03(2)(a)4., opium or any synthetic or natural salt,
97 compound, derivative, or preparation of opium, or methadone by a
98 person 18 years of age or older, when such drug is proven to be
99 the proximate cause of the death of the user,
100
101 is murder in the first degree and constitutes a capital felony,
102 punishable as provided in s. 775.082.
103 (b) In all cases under this section, the procedure set
104 forth in s. 921.141 shall be followed in order to determine
105 sentence of death or life imprisonment.
106 (3) When a human being is killed during the perpetration
107 of, or during the attempt to perpetrate, any:
108 (a) Trafficking offense prohibited by s. 893.135(1),
109 (b) Arson,
110 (c) Sexual battery,
111 (d) Robbery,
112 (e) Burglary,
113 (f) Kidnapping,
114 (g) Escape,
115 (h) Aggravated child abuse,
116 (i) Aggravated abuse of an elderly person or disabled
117 adult,
118 (j) Aircraft piracy,
119 (k) Unlawful throwing, placing, or discharging of a

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120 destructive device or bomb,
 121 (l) Carjacking,
 122 (m) Home-invasion robbery,
 123 (n) Aggravated stalking,
 124 (o) Murder of another human being,
 125 (p) Aggravated fleeing or eluding with serious bodily
 126 injury or death,
 127 (q) Resisting an officer with violence to his or her
 128 person, ~~or~~
 129 (r) Felony that is an act of terrorism or is in furtherance
 130 of an act of terrorism, or
 131 (s) Human trafficking,
 132
 133 by a person other than the person engaged in the perpetration of
 134 or in the attempt to perpetrate such felony, the person
 135 perpetrating or attempting to perpetrate such felony commits
 136 murder in the second degree, which constitutes a felony of the
 137 first degree, punishable by imprisonment for a term of years not
 138 exceeding life or as provided in s. 775.082, s. 775.083, or s.
 139 775.084.
 140 (4) The unlawful killing of a human being, when perpetrated
 141 without any design to effect death, by a person engaged in the
 142 perpetration of, or in the attempt to perpetrate, any felony
 143 other than any:
 144 (a) Trafficking offense prohibited by s. 893.135(1),
 145 (b) Arson,
 146 (c) Sexual battery,
 147 (d) Robbery,
 148 (e) Burglary,

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149 (f) Kidnapping,
 150 (g) Escape,
 151 (h) Aggravated child abuse,
 152 (i) Aggravated abuse of an elderly person or disabled
 153 adult,
 154 (j) Aircraft piracy,
 155 (k) Unlawful throwing, placing, or discharging of a
 156 destructive device or bomb,
 157 (l) Unlawful distribution of any substance controlled under
 158 s. 893.03(1), cocaine as described in s. 893.03(2)(a)4., or
 159 opium or any synthetic or natural salt, compound, derivative, or
 160 preparation of opium by a person 18 years of age or older, when
 161 such drug is proven to be the proximate cause of the death of
 162 the user,
 163 (m) Carjacking,
 164 (n) Home-invasion robbery,
 165 (o) Aggravated stalking,
 166 (p) Murder of another human being,
 167 (q) Aggravated fleeing or eluding with serious bodily
 168 injury or death,
 169 (r) Resisting an officer with violence to his or her
 170 person, ~~or~~
 171 (s) Felony that is an act of terrorism or is in furtherance
 172 of an act of terrorism, or
 173 (t) Human trafficking,
 174
 175 is murder in the third degree and constitutes a felony of the
 176 second degree, punishable as provided in s. 775.082, s. 775.083,
 177 or s. 775.084.

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178 Section 3. Paragraph (h) is added to subsection (3) of
 179 section 787.06, Florida Statutes, paragraph (b) of subsection
 180 (4) is amended, subsections (5) through (9) are renumbered as
 181 subsections (6) through (10), respectively, and a new subsection
 182 (5) is added to that section, to read:

183 787.06 Human trafficking.—

184 (3) Any person who knowingly, or in reckless disregard of
 185 the facts, engages in human trafficking, or attempts to engage
 186 in human trafficking, or benefits financially by receiving
 187 anything of value from participation in a venture that has
 188 subjected a person to human trafficking:

189 (h) And during the commission or attempt to commit the
 190 offense of human trafficking causes great bodily harm, permanent
 191 disability, or permanent disfigurement to the victim of the
 192 human trafficking offense or attempted offense commits a felony
 193 of the first degree, punishable for a term of years not
 194 exceeding life, as provided in s. 775.082, s. 775.083, or s.
 195 775.084.

196
 197 For each instance of human trafficking of any individual under
 198 this subsection, a separate crime is committed and a separate
 199 punishment is authorized.

200 (4)

201 (b) Any person who permanently brands, or directs to be
 202 permanently branded, for the purpose of committing an offense
 203 under this section, a victim of an offense under this section
 204 commits a second degree felony, punishable as provided in s.
 205 775.082, s. 775.083, or s. 775.084. For purposes of this
 206 subsection, the term "permanently branded" means a mark on the

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207 individual's body that, if it can be removed or repaired at all,
 208 can only be removed or repaired by surgical means, laser
 209 treatment, or other medical procedure.

210 (5) A victim's lack of chastity or the willingness or
 211 consent of a victim is not a defense to prosecution under this
 212 section if the victim was under 18 years of age at the time of
 213 the offense.

214 Section 4. Section 794.022, Florida Statutes, is amended to
 215 read:

216 794.022 Rules of evidence.—

217 (1) The testimony of the victim need not be corroborated in
 218 a prosecution under s. 787.06, s. 794.011, or s. 800.04.

219 (2) Specific instances of prior consensual sexual activity
 220 between the victim and any person other than the offender may
 221 ~~shall~~ not be admitted into evidence in a prosecution under s.
 222 787.06, s. 794.011, or s. 800.04. However, such evidence may be
 223 admitted if it is first established to the court in a proceeding
 224 in camera that such evidence may prove that the defendant was
 225 not the source of the semen, pregnancy, injury, or disease; or,
 226 when consent by the victim is at issue, such evidence may be
 227 admitted if it is first established to the court in a proceeding
 228 in camera that such evidence tends to establish a pattern of
 229 conduct or behavior on the part of the victim which is so
 230 similar to the conduct or behavior in the case that it is
 231 relevant to the issue of consent.

232 (3) Notwithstanding any other provision of law, reputation
 233 evidence relating to a victim's prior sexual conduct or evidence
 234 presented for the purpose of showing that manner of dress of the
 235 victim at the time of the offense incited the sexual battery may

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236 ~~shall~~ not be admitted into evidence in a prosecution under s.
 237 787.06, s. 794.011, or s. 800.04.

238 (4) When consent of the victim is a defense to prosecution
 239 under s. 787.06, s. 794.011, or s. 800.04, evidence of the
 240 victim's mental incapacity or defect is admissible to prove that
 241 the consent was not intelligent, knowing, or voluntary; and the
 242 court shall instruct the jury accordingly.

243 (5) An offender's use of a prophylactic device, or a
 244 victim's request that an offender use a prophylactic device, is
 245 not, by itself, relevant to either the issue of whether or not
 246 the offense was committed or the issue of whether or not the
 247 victim consented.

248 Section 5. Paragraphs (b) and (c) of subsection (2) of
 249 section 90.404, Florida Statutes, are amended to read:

250 90.404 Character evidence; when admissible.—

251 (2) OTHER CRIMES, WRONGS, OR ACTS.—

252 (b)1. In a criminal case in which the defendant is charged
 253 with a crime involving child molestation, evidence of the
 254 defendant's commission of other crimes, wrongs, or acts of child
 255 molestation is admissible and may be considered for its bearing
 256 on any matter to which it is relevant.

257 2. For the purposes of this paragraph, the term "child
 258 molestation" means conduct proscribed by s. 787.025(2)(c), s.
 259 787.06(3)(g), ~~former~~ s. 787.06(3)(h), Florida Statutes 2012, s.
 260 794.011, excluding s. 794.011(10), s. 794.05, former s. 796.03,
 261 former s. 796.035, s. 800.04, s. 827.071, s. 847.0135(5), s.
 262 847.0145, or s. 985.701(1) when committed against a person 16
 263 years of age or younger.

264 (c)1. In a criminal case in which the defendant is charged

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265 with a sexual offense, evidence of the defendant's commission of
 266 other crimes, wrongs, or acts involving a sexual offense is
 267 admissible and may be considered for its bearing on any matter
 268 to which it is relevant.

269 2. For the purposes of this paragraph, the term "sexual
 270 offense" means conduct proscribed by s. 787.025(2)(c), s.
 271 787.06(3)(b), (d), (f), or (g), ~~former~~ s. 787.06(3)(h), Florida
 272 Statutes 2012, s. 794.011, excluding s. 794.011(10), s. 794.05,
 273 former s. 796.03, former s. 796.035, s. 825.1025(2)(b), s.
 274 827.071, s. 847.0135(5), s. 847.0145, or s. 985.701(1).

275 Section 6. Paragraph (a) of subsection (4) of section
 276 775.21, Florida Statutes, is amended to read:

277 775.21 The Florida Sexual Predators Act.—

278 (4) SEXUAL PREDATOR CRITERIA.—

279 (a) For a current offense committed on or after October 1,
 280 1993, upon conviction, an offender shall be designated as a
 281 "sexual predator" under subsection (5), and subject to
 282 registration under subsection (6) and community and public
 283 notification under subsection (7) if:

284 1. The felony is:

285 a. A capital, life, or first degree felony violation, or
 286 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 287 is a minor and the defendant is not the victim's parent or
 288 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 289 violation of a similar law of another jurisdiction; or

290 b. Any felony violation, or any attempt thereof, of s.
 291 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 292 787.025(2)(c), where the victim is a minor and the defendant is
 293 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),

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294 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.
 295 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 296 former s. 796.035; s. 800.04; s. 810.145(8)(b); s. 825.1025; s.
 297 827.071; s. 847.0135, excluding s. 847.0135(6); s. 847.0145; s.
 298 916.1075(2); or s. 985.701(1); or a violation of a similar law
 299 of another jurisdiction, and the offender has previously been
 300 convicted of or found to have committed, or has pled nolo
 301 contendere or guilty to, regardless of adjudication, any
 302 violation of s. 393.135(2); s. 394.4593(2); s. 787.01, s.
 303 787.02, or s. 787.025(2)(c), where the victim is a minor and the
 304 defendant is not the victim's parent or guardian; s.
 305 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida
 306 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;
 307 former s. 796.03; former s. 796.035; s. 800.04; s. 825.1025; s.
 308 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 309 847.0145; s. 916.1075(2); or s. 985.701(1); or a violation of a
 310 similar law of another jurisdiction;

311 2. The offender has not received a pardon for any felony or
 312 similar law of another jurisdiction that is necessary for the
 313 operation of this paragraph; and

314 3. A conviction of a felony or similar law of another
 315 jurisdiction necessary to the operation of this paragraph has
 316 not been set aside in any postconviction proceeding.

317 Section 7. Paragraph (a) of subsection (1) of section
 318 943.0435, Florida Statutes, is amended to read:
 319 943.0435 Sexual offenders required to register with the
 320 department; penalty.—
 321 (1) As used in this section, the term:
 322 (a)1. "Sexual offender" means a person who meets the

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323 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 324 subparagraph c., or sub-subparagraph d., as follows:

325 a.(I) Has been convicted of committing, or attempting,
 326 soliciting, or conspiring to commit, any of the criminal
 327 offenses proscribed in the following statutes in this state or
 328 similar offenses in another jurisdiction: s. 393.135(2); s.
 329 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 330 the victim is a minor and the defendant is not the victim's
 331 parent or guardian; s. 787.06(3)(b), (d), (f), or (g); ~~former~~ s.
 332 787.06(3)(h), Florida Statutes 2012; s. 794.011, excluding s.
 333 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s.
 334 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s.
 335 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s.
 336 847.0145; s. 916.1075(2); or s. 985.701(1); or any similar
 337 offense committed in this state which has been redesignated from
 338 a former statute number to one of those listed in this sub-sub-
 339 subparagraph; and

340 (II) Has been released on or after October 1, 1997, from
 341 the sanction imposed for any conviction of an offense described
 342 in sub-sub-subparagraph (I). For purposes of sub-sub-
 343 subparagraph (I), a sanction imposed in this state or in any
 344 other jurisdiction includes, but is not limited to, a fine,
 345 probation, community control, parole, conditional release,
 346 control release, or incarceration in a state prison, federal
 347 prison, private correctional facility, or local detention
 348 facility;

349 b. Establishes or maintains a residence in this state and
 350 who has not been designated as a sexual predator by a court of
 351 this state but who has been designated as a sexual predator, as

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352 a sexually violent predator, or by another sexual offender
 353 designation in another state or jurisdiction and was, as a
 354 result of such designation, subjected to registration or
 355 community or public notification, or both, or would be if the
 356 person were a resident of that state or jurisdiction, without
 357 regard to whether the person otherwise meets the criteria for
 358 registration as a sexual offender;

359 c. Establishes or maintains a residence in this state who
 360 is in the custody or control of, or under the supervision of,
 361 any other state or jurisdiction as a result of a conviction for
 362 committing, or attempting, soliciting, or conspiring to commit,
 363 any of the criminal offenses proscribed in the following
 364 statutes or similar offense in another jurisdiction: s.
 365 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 366 787.025(2)(c), where the victim is a minor and the defendant is
 367 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 368 or (g); ~~former~~ s. 787.06(3)(h), Florida Statutes 2012; s.
 369 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03;
 370 former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.
 371 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
 372 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
 373 985.701(1); or any similar offense committed in this state which
 374 has been redesignated from a former statute number to one of
 375 those listed in this sub-subparagraph; or

376 d. On or after July 1, 2007, has been adjudicated
 377 delinquent for committing, or attempting, soliciting, or
 378 conspiring to commit, any of the criminal offenses proscribed in
 379 the following statutes in this state or similar offenses in
 380 another jurisdiction when the juvenile was 14 years of age or

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381 older at the time of the offense:

382 (I) Section 794.011, excluding s. 794.011(10);

383 (II) Section 800.04(4)(a)2. where the victim is under 12
 384 years of age or where the court finds sexual activity by the use
 385 of force or coercion;

386 (III) Section 800.04(5)(c)1. where the court finds
 387 molestation involving unclothed genitals; or

388 (IV) Section 800.04(5)(d) where the court finds the use of
 389 force or coercion and unclothed genitals.

390 2. For all qualifying offenses listed in sub-subparagraph
 391 (1)(a)1.d., the court shall make a written finding of the age of
 392 the offender at the time of the offense.

393
 394 For each violation of a qualifying offense listed in this
 395 subsection, except for a violation of s. 794.011, the court
 396 shall make a written finding of the age of the victim at the
 397 time of the offense. For a violation of s. 800.04(4), the court
 398 shall also make a written finding indicating whether the offense
 399 involved sexual activity and indicating whether the offense
 400 involved force or coercion. For a violation of s. 800.04(5), the
 401 court shall also make a written finding that the offense did or
 402 did not involve unclothed genitals or genital area and that the
 403 offense did or did not involve the use of force or coercion.

404 Section 8. Paragraph (b) of subsection (1) of section
 405 944.606, Florida Statutes, is amended to read:

406 944.606 Sexual offenders; notification upon release.—

407 (1) As used in this section:

408 (b) "Sexual offender" means a person who has been convicted
 409 of committing, or attempting, soliciting, or conspiring to

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410 commit, any of the criminal offenses proscribed in the following
 411 statutes in this state or similar offenses in another
 412 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.
 413 787.02, or s. 787.025(2)(c), where the victim is a minor and the
 414 defendant is not the victim's parent or guardian; s.
 415 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida
 416 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;
 417 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);
 418 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 419 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 420 916.1075(2); or s. 985.701(1); or any similar offense committed
 421 in this state which has been redesignated from a former statute
 422 number to one of those listed in this subsection, when the
 423 department has received verified information regarding such
 424 conviction; an offender's computerized criminal history record
 425 is not, in and of itself, verified information.

426 Section 9. Paragraph (a) of subsection (1) of section
 427 944.607, Florida Statutes, is amended to read:
 428 944.607 Notification to Department of Law Enforcement of
 429 information on sexual offenders.—
 430 (1) As used in this section, the term:
 431 (a) "Sexual offender" means a person who is in the custody
 432 or control of, or under the supervision of, the department or is
 433 in the custody of a private correctional facility:
 434 1. On or after October 1, 1997, as a result of a conviction
 435 for committing, or attempting, soliciting, or conspiring to
 436 commit, any of the criminal offenses proscribed in the following
 437 statutes in this state or similar offenses in another
 438 jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s.

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439 787.02, or s. 787.025(2)(c), where the victim is a minor and the
 440 defendant is not the victim's parent or guardian; s.
 441 787.06(3)(b), (d), (f), or (g); ~~former~~ s. 787.06(3)(h), Florida
 442 Statutes 2012; s. 794.011, excluding s. 794.011(10); s. 794.05;
 443 former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8);
 444 s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 445 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s.
 446 916.1075(2); or s. 985.701(1); or any similar offense committed
 447 in this state which has been redesignated from a former statute
 448 number to one of those listed in this paragraph; or
 449 2. Who establishes or maintains a residence in this state
 450 and who has not been designated as a sexual predator by a court
 451 of this state but who has been designated as a sexual predator,
 452 as a sexually violent predator, or by another sexual offender
 453 designation in another state or jurisdiction and was, as a
 454 result of such designation, subjected to registration or
 455 community or public notification, or both, or would be if the
 456 person were a resident of that state or jurisdiction, without
 457 regard as to whether the person otherwise meets the criteria for
 458 registration as a sexual offender.

459 Section 10. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: February 10, 2016

I respectfully request that **Senate Bill #1294**, relating to Offenses Involving Minors and Vulnerable Persons, be placed on the:

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

A handwritten signature in cursive script that reads "Denise Grimsley".

Senator Denise Grimsley
Florida Senate, District 21



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, *Chair*
Agriculture
Appropriations
Appropriations Subcommittee on Health
and Human Services
Health Policy
Transportation

JOINT COMMITTEES:

Joint Administrative Procedures Committee,
Alternating Chair
Joint Legislative Budget Commission

SENATOR DENISE GRIMSLEY

Deputy Majority Leader
21st District

February 16, 2016

The Honorable Miguel Diaz de la Portilla, Chairman
Committee on Judiciary
515 Knott Building
414 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

I respectfully request permission for a member of my staff, Anne Bell to present SB 1294, relating to Offenses Involving Minors and Vulnerable Persons on my behalf. I have a previously scheduled meeting I will be attending.

Sincerely,

A handwritten signature in cursive script that reads "Denise Grimsley".

Denise Grimsley
State Senate, District 21

REPLY TO:

- 205 South Commerce Avenue, Suite A, Sebring, Florida 33870 (863) 386-6016
- 212 East Stuart Avenue, Lake Wales, Florida 33853 (863) 679-4847
- 306 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

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)

2.16.16

Meeting Date

1294

Bill Number (if applicable)

Topic Minors & Vulnerable Persons

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 204 S. Monroe St., Ste. 201

Phone 577.3032

Street

Tall

City

FL

State

32301

Zip

Email barney@smart
justicealliance.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 Judiciary

BILL: CS/SB 1432

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Service of Process

DATE: February 18, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1432 authorizes additional methods of service of process if personal service of process cannot be effected.

Under current law, a process server may personally serve process, such as a subpoena or summons, on a witness or opposing party in a lawsuit. In certain instances in which personal service of process is not possible, existing law authorizes substitute service of process, which is the service of the process on the intended recipient's spouse or person in charge of the recipient's business or private mailbox. If personal service or substitute service of process cannot be effected, existing law authorizes constructive service of process, which is usually accomplished by publishing a notice to the defendant in a newspaper.

This bill allows a process server to effect substitute service of process on the person in charge of the intended recipient's virtual office or executive office or mini-suite. A virtual office may be an office that provides communications services such as telephone or fax services, and address services without providing dedicated office space, provided that all communications are routed through a common receptionist. An executive office or mini-suite is similar, except that it includes dedicated office space.

II. Present Situation:

Service of Process and Process Servers

The role of a process server is to serve summons, subpoenas, and other forms of process in civil and criminal actions.¹ The term “to serve” means to make legal delivery of a notice or a pleading.² A summons is a writ or a process beginning a plaintiff’s legal action and requiring a defendant to appear in court to answer the summons.³ A subpoena is a legal writ or order commanding a person to appear before a court or other tribunal.⁴ A subpoena can command a person to be present for a deposition or for a court appearance.

The sheriff of the county where the person is to be served is generally responsible for serving as process server. However, notice of the initial nonenforceable civil process, criminal witness subpoenas, and criminal summons may be delivered by a process server other than the sheriff—a special process server or a certified process server. Special process servers and certified process servers must meet certain statutory qualifications and appear on a list approved and maintained by the sheriff or the chief judge of a judicial circuit.⁵

Types of Process

Personal Service of Process

A process server generally must effect service of process by personal service by:

- Serving the person directly or by leaving a copy of a complaint, petition, or initial pleading or paper at the person’s usual place of abode with a person who is 15 years old or older; or
- Serving a person at his or her place of employment in a private area designated by the employer.⁶

Substitute Service of Process

If a person cannot be personally served, a process server may accomplish substitute service of process by:

- Serving process on a spouse if the cause of action is not an adversarial proceeding between the spouse and the person to be served, if the spouse requests service, and if the spouse and person to be served live together; or
- Serving process on an employee or other person in charge of the intended recipient’s business if the intended recipient is a sole proprietor and two attempts have been made to serve him or her.⁷

¹ Sections 48.011 and 48.021, F.S. “... the common law writ of *capias ad respondum* was the historical precedent to contemporary service of process. ...the writ obtained in personam jurisdiction over the defendant, allowing the royal court to secure the appearance of the defendant by taking him into custody.” Troy Blair, *Receipt of a Complaint, Prior to or Unattended by Formal Service of Process, does not Trigger a Defendant’s Thirty-day Period to Remove a Case: Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 38 DUQ. L.REV. 663, 666 (Winter 2000).

² BLACK’S LAW DICTIONARY (10th ed. 2014).

³ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁴ BLACK’S LAW DICTIONARY (10th ed. 2014).

⁵ Sections 48.021(1) and 48.29, F.S.

⁶ Section 48.031(1), F.S.

⁷ Section 48.031 (2), F.S.

Additionally, service of process of witness subpoenas may be accomplished through United States mail for the following cases:

- Criminal traffic case;
- Misdemeanor case;
- Second degree felony; or
- Third degree felony.⁸

To serve a subpoena on a witness by mail, the subpoena must be sent to the last known address of the witness at least 7 days before the appearance required in the subpoena. However, if a witness fails to appear in response to a subpoena served by mail, he or she may not be found in contempt of court.⁹

The final approved method of substitute service of process applies in instances in which the only address of person to be served is a private mailbox, discoverable through a public records search. If the process server confirms that the intended recipient maintains a mailbox at that location, the process server may leave a copy of the process with the person in charge of the private mailbox.¹⁰

Constructive Service of Process, including by Publication

Although the preferred methods of service of process are personal service or substitute service of process, another method is available. In instances in which these types of service of process may not be effected, constructive process is permitted in limited circumstances and actions. One type of constructive service of process is service by publication.

Service of process may be made by publication in certain legal actions, including:

- To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- To partition real or personal property within the jurisdiction of the court.
- Dissolution or annulment of marriage.
- For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder.
- To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.
- A writ of replevin, garnishment, or attachment that has been issued and executed.
- Certain parenting actions, including adoption, termination of parental rights, and to establish paternity in certain cases.

⁸ Section 48.031(3)(A), F.S.

⁹ Section 48.031(3)(A), F.S.

¹⁰ Section 48.031(6), F.S.

- An action in which personal service of process or notice is not required by the statutes or state constitution or by the Constitution of the United States.
- In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.¹¹

Service of process by publication may be effected upon any known or unknown person, corporation, or group that operates or does business in the state.¹²

If service of process is to be made by publication, the plaintiff or the plaintiff's attorney who requests service of process must first file a sworn statement as a condition precedent to the process being served through publication.¹³ What must be included in the sworn statement varies slightly, depending on the intended recipient. For example, the sworn statement on a service of process on a natural person must attest:

- That a diligent search and inquiry has been conducted to discover the name and address of the person served;
- To whether the person to be served is over or under the age of 18, or if age is unknown; and
- That the residence of the person is unknown, out-of-state or out-of-country, or in the state but that the person has either been absent from the state or concealed his or her whereabouts.¹⁴

III. Effect of Proposed Changes:

Current law authorizes process to be served through substitute service of process, such as to a private mailbox. This bill provides that a process server may also effect substitute service if the only address is for a virtual office, or an executive office or mini-suite. A virtual office may be an office that provides communication services such as telephone or fax services, and address services without providing dedicated office space, if all communications are routed through a common receptionist. An executive office or mini-suite includes a dedicated office space and other supportive services.

Once the process server confirms that the person to be served maintains a virtual office or mini-suite, the server may leave a copy at that location.

The bill takes effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹¹ Section 49.011, F.S.

¹² Section 49.021, F.S.

¹³ Section 49.031, F.S.

¹⁴ Section 49.041, F.S.

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:

A plaintiff may benefit by having a case heard in instances in which alternative service of process provided in the bill leads to the location of otherwise difficult to reach defendants.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 48.031 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Judiciary on February 16, 2016:

The CS removes the authority for a type of constructive service of process, electronic service of process, from the bill.

B. Amendments:

None.



800506

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2016	.	
	.	
	.	
	.	

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete lines 47 - 252.

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

And the title is amended as follows:

Delete lines 7 - 19

and insert:

office" and "executive office or mini suite";

providing an

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 48.031, F.S.; expanding the locations at which
 4 substitute service of process may be made when such
 5 location is the only discoverable address for the
 6 person to be served; defining the terms "virtual
 7 office" and "executive office or mini suite"; amending
 8 ss. 49.011 and 49.021, F.S.; authorizing electronic
 9 service of process as an alternative to service of
 10 process by publication; amending s. 49.031, F.S.;
 11 defining the term "electronic"; conforming provisions
 12 to changes made by the act; amending ss. 49.041,
 13 49.051, and 49.061, F.S.; revising the information
 14 that must be included in a sworn statement for certain
 15 service of process; creating s. 49.13, F.S.; providing
 16 that a plaintiff is entitled to be granted electronic
 17 service of process under certain circumstances;
 18 creating s. 49.14, F.S.; providing the requirements
 19 for electronic service of process; providing an
 20 effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (6) of section 48.031, Florida
 25 Statutes, is amended to read:

26 48.031 Service of process generally; service of witness
 27 subpoenas.—

28 (6) (a) If the only address for a person to be served, which
 29 is discoverable through public records, is a private mailbox, a
 30 virtual office, or an executive office or mini suite, substitute
 31 service may be made by leaving a copy of the process with the
 32 person in charge of the private mailbox, virtual office, or

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

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33 executive office or mini suite, but only if the process server
 34 determines that the person to be served maintains a mailbox, a
 35 virtual office, or an executive office or mini suite at that
 36 location.

37 (b) For purposes of this subsection, the term "virtual
 38 office" means an office that provides communications services,
 39 such as telephone or facsimile services, and address services
 40 without providing dedicated office space, and where all
 41 communications are routed through a common receptionist. The
 42 term "executive office or mini suite" means an office that
 43 provides communications services, such as telephone and
 44 facsimile services, a dedicated office space, and other
 45 supportive services, and where all communications are routed
 46 through a common receptionist.

47 Section 2. Section 49.011, Florida Statutes, is amended to
 48 read:

49 49.011 Service of process by publication or electronic
 50 service; cases in which allowed.—Service of process by
 51 publication or electronic service, if so ordered by the court,
 52 may be made in any court on any party identified in s. 49.021 in
 53 any action or proceeding:

54 (1) To enforce any legal or equitable lien or claim to any
 55 title or interest in real or personal property within the
 56 jurisdiction of the court or any fund held or debt owing by any
 57 party on whom process can be served within this state.

58 (2) To quiet title or remove any encumbrance, lien, or
 59 cloud on the title to any real or personal property within the
 60 jurisdiction of the court or any fund held or debt owing by any
 61 party on whom process can be served within this state.

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62 (3) To partition real or personal property within the
63 jurisdiction of the court.

64 (4) For dissolution or annulment of marriage.

65 (5) For the construction of any will, deed, contract, or
66 other written instrument and for a judicial declaration or
67 enforcement of any legal or equitable right, title, claim, lien,
68 or interest thereunder.

69 (6) To reestablish a lost instrument or record which has or
70 should have its situs within the jurisdiction of the court.

71 (7) In which a writ of replevin, garnishment, or attachment
72 has been issued and executed.

73 (8) In which any other writ or process has been issued and
74 executed which places any property, fund, or debt in the custody
75 of a court.

76 (9) To revive a judgment by motion or scire facias.

77 (10) For adoption.

78 (11) In which personal service of process or notice is not
79 required by the statutes or constitution of this state or by the
80 Constitution of the United States.

81 (12) In probate or guardianship proceedings in which
82 personal service of process or notice is not required by the
83 statutes or constitution of this state or by the Constitution of
84 the United States.

85 (13) For termination of parental rights pursuant to part
86 VIII of chapter 39 or chapter 63.

87 (14) For temporary custody of a minor child, under chapter
88 751.

89 (15) To determine paternity, but only as to the legal
90 father in a paternity action in which another man is alleged to

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91 be the biological father, in which case it is necessary to serve
92 process on the legal father in order to establish paternity with
93 regard to the alleged biological father.

94 Section 3. Section 49.021, Florida Statutes, is amended to
95 read:

96 49.021 Service of process by publication or electronic
97 service, upon whom. ~~When~~ ~~where~~ personal service of process or,
98 if appropriate, service of process under s. 48.194 cannot be
99 had, service of process by publication or electronic service may
100 be had upon any party, natural or corporate, known or unknown,
101 including:

102 (1) Any known or unknown natural person, and, when
103 described as such, the unknown spouse, heirs, devisees,
104 grantees, creditors, or other parties claiming by, through,
105 under, or against any known or unknown person who is known to be
106 dead or is not known to be either dead or alive. ~~‡~~

107 (2) Any corporation or other legal entity, whether its
108 domicile be foreign, domestic, or unknown, and whether dissolved
109 or existing, including corporations or other legal entities not
110 known to be dissolved or existing, and, when described as such,
111 the unknown assigns, successors in interest, trustees, or any
112 other party claiming by, through, under, or against any named
113 corporation or legal entity. ~~‡~~

114 (3) Any group, firm, entity, or persons who operate or do
115 business, or have operated or done business, in this state,
116 under a name or title which includes the word "corporation,"
117 "company," "incorporated," "inc.," or any combination thereof,
118 or under a name or title which indicates, tends to indicate or
119 leads one to think that the same may be a corporation or other

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120 legal entity, ~~and~~

121 (4) All claimants under any of such parties.

122
123 Unknown parties may be proceeded against exclusively or together
124 with other parties.

125 Section 4. Subsection (1) of section 49.031, Florida
126 Statutes, is amended, and subsection (2) of that section is
127 reordered and amended, to read:

128 49.031 Sworn statement as condition precedent.—

129 (1) As a condition precedent to service by publication or
130 electronic service, a statement shall be filed in the action
131 executed by the plaintiff, or the plaintiff's agent or attorney,
132 setting forth substantially the matters hereafter required,
133 which statement may be contained in a verified pleading, or in
134 an affidavit or other sworn statement.

135 (2) As used in this chapter, the term:

136 (c)(a) The word "Plaintiff" means any party in the action
137 who is entitled to service of original process on any other
138 party to the action or any person who may be brought in or
139 allowed to come in as a party by any lawful means.

140 (a)(b) The word "Defendant" means any party on whom service
141 by publication or electronic service is authorized by this
142 chapter, without regard to his or her designation in the
143 pleadings or position in the action.

144 (d)(e) The word "Publication" includes the posting of the
145 notice of action as provided for in ss. 49.10(1)(b) and 49.11.

146 (b) "Electronic" means any electronic method of delivering
147 notice to a defendant by electronic mail, social media, or other
148 electronic means in which a reasonable expectation of delivery

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149 to the party can be ascertained.

150 Section 5. Section 49.041, Florida Statutes, is amended to
151 read:

152 49.041 Sworn statement, natural person as defendant.—The
153 sworn statement of the plaintiff, or his or her agent or
154 attorney, for service of process by publication or electronic
155 service against a natural person, must ~~shall~~ show:

156 (1) That diligent search and inquiry have been made to
157 discover the name, ~~and~~ residence, e-mail address, and social
158 media accounts of such person, and that the same is set forth in
159 said sworn statement as particularly as is known to the
160 affiant, ~~and~~

161 (2) Whether such person is over or under the age of 18
162 years, if his or her age is known, or that the person's age is
163 unknown, ~~and~~

164 (3) In addition to the above, that the residence of such
165 person is, either:

166 (a) Unknown to the affiant; ~~or~~

167 (b) In some state or country other than this state, stating
168 said residence if known; or

169 (c) In the state, but that he or she has been absent from
170 the state for more than 60 days next preceding the making of the
171 sworn statement, or conceals himself or herself so that process
172 cannot be personally served, and that affiant believes that
173 there is no person in the state upon whom service of process
174 would bind said absent or concealed defendant.

175 Section 6. Section 49.051, Florida Statutes, is amended to
176 read:

177 49.051 Sworn statement, corporation as defendant.—The sworn

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178 statement of the plaintiff, or his or her agent or attorney, for
 179 service of process by publication or electronic service against
 180 a corporation, ~~must shall~~ show:

181 (1) That diligent search and inquiry have been made to
 182 discover the corporate defendant's true name, domicile,
 183 principal place of business, website, e-mail addresses, social
 184 media accounts, and status ~~as a (that is, whether~~ foreign,
 185 domestic, or dissolved corporation) ~~of the corporate defendant,~~
 186 and that the same is set forth in said sworn statement as
 187 particularly as is known to the affiant, and that diligent
 188 search and inquiry have also been made, to discover the names,
 189 ~~and~~ whereabouts, e-mail addresses, and social media accounts of
 190 all persons upon whom the service of process would bind the said
 191 corporation and that the same is specified as particularly as is
 192 known to the affiant, ~~and~~

193 (2) Whether ~~or not~~ the corporation has ever qualified to do
 194 business in this state, unless shown to be a Florida
 195 corporation, ~~and~~

196 (3) That all officers, directors, general managers,
 197 cashiers, resident agents, and business agents of the
 198 corporation, either:

199 (a) Are absent from the state; ~~or~~
 200 (b) Cannot be found within the state; ~~or~~
 201 (c) Conceal themselves so that process cannot be served
 202 upon them so as to bind the said corporation; ~~or~~
 203 (d) That their whereabouts are unknown to the affiant; or
 204 (e) That said officers, directors, general managers,
 205 cashiers, resident agents, and business agents of the
 206 corporation are unknown to affiant.

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207 Section 7. Section 49.061, Florida Statutes, is amended to
 208 read:

209 49.061 Sworn statement, parties doing business under a
 210 corporate name as defendants.—The sworn statement of the
 211 plaintiff, or his or her agent or attorney, for service of
 212 process by publication or electronic service against parties who
 213 have or may have done business under a corporate name, must
 214 ~~shall~~ show:

215 (1) The name under which the ~~said~~ parties have operated or
 216 done business, ~~and~~

217 (2) That, after diligent search and inquiry, the affiant
 218 has been unable to ascertain whether ~~or not~~ the organization
 219 operating under the corporate ~~said~~ name was a corporation,
 220 either domestic or foreign, ~~and~~

221 (3) The names, e-mail addresses, social media accounts, and
 222 places of residence, if known, of all persons known to have been
 223 interested in such organization, and whether or not other or
 224 unknown persons may have been interested in such organization;
 225 or that, after diligent search and inquiry, all persons
 226 interested in such organization are unknown to the affiant, and,
 227 unless all such persons are unknown to the affiant, ~~and~~

228 (4) That the known persons interested in such organization,
 229 either:

230 (a) Are absent from this state; ~~or~~
 231 (b) Cannot be found within this state; ~~or~~
 232 (c) Conceal themselves so that process cannot be personally
 233 served upon them; or
 234 (d) That their whereabouts are unknown to the affiant.

235 Section 8. Section 49.13, Florida Statutes, is created to

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236 read:

237 49.13 Electronic service of process.—On filing a motion
238 with the sworn statement attached as an exhibit and otherwise
239 complying with the requirements of this chapter, the plaintiff
240 is entitled to have an order from the judge granting electronic
241 service of process. Electronic service of process may only be
242 perfected by a trusted third party authorized to serve process
243 as defined in s. 48.021.

244 Section 9. Section 49.14, Florida Statutes, is created to
245 read:

246 49.14 Proof of electronic service of process.—Proof of the
247 electronic delivery of service of process must be by affidavit
248 of the person having knowledge of such electronic service. The
249 affidavit must include or have attached a copy of the notice,
250 must specify the dates that each form of electronic service was
251 transmitted, and must otherwise comply with the requirements of
252 law.

253 Section 10. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic
Security
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

February 12, 2016

The Honorable Miguel Diaz de la Portilla
Senate Judiciary Committee, Chair
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

I respectfully request that SB 1432, related to *Service of Process*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Tom Cibula/ Staff Director
Joyce Butler/ AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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)

2-16-16

Meeting Date

1432

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name MICHAEL NOLAN

Job Title PROCESS SERVER

Address 7498 ANGLEWOOD LANE
Street

Phone 562-6058

TALLAHASSEE FL 32309
City State Zip

Email _____

Speaking: For Against Information

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

Representing FAPPS

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)

2/16
Meeting Date

1432
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brennan Fogarty

Job Title President of Process Service

Address 400 Capitol Circle SE
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 _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 596

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Assignment or Transfer of Property Insurance Rights

DATE: February 15, 2016

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>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 596 provides that an agreement that purports to assign or transfer the right to enforce post-loss benefits in a property insurance policy is void. This provision would prevent the assignee from filing an action against the insurance company to enforce payment. This bill does not change current law regarding the right of an insured to file an action against the insurance company and does not change current law regarding the rights of those who perform home repairs from filing actions against homeowners.

The bill further provides that the assignment agreement is void if:

- It imposes a cancellation fee, a mortgage processing fee, or adds an amount for overhead and profit;
- The final invoice issued under the agreement exceeds the estimated cost for work performed and the increase was not authorized by the insurer;
- It prevents or inhibits an insurer from communicating with the insured at any time; or
- It purports to transfer or create any authority to adjust, negotiate, or settle any portion of a claim to a person not authorized to adjust, negotiate, or settle a claim.

This bill provides that for an assignment agreement to be valid all the following conditions must be met:

- The agreement must authorize a person or entity to be named as a payee or copayee for the benefit of payment for services rendered and materials provided to mitigate or repair covered damage only.

- The agreement must be provided to the insured's property insurer within 3 business days after execution.
- The agreement must allow the insured to cancel the agreement within the later of 3 business days after the agreement is executed or submitted to the insurer. If the assignment agreement is for work resulting from a state of emergency declared by the Governor and is executed within 1 year after the declaration, the insured may cancel the assignment within 5 business days of its execution.
- The agreement must contain an estimate for proposed services and materials to be provided.

The bill provides that an agreement to assign post-loss benefits must contain a specific notice that warns the insured that he or she is giving up certain rights and informs the insured of the right to rescind the agreement.

The bill does not apply to property insurance policy provisions relating to liability coverage.

This bill is effective upon becoming a law and its provisions apply to assignments executed after the effective date.

II. Present Situation:

Background on Assignment of Benefits

An assignment is the voluntary transfer of the rights of one party under a contract to another party. Current law generally allows an insurance policyholder to assign the benefits of the policy, such as the right to be paid, to another party. Once an assignment is made, the assignee can take action to enforce the contract. Accordingly, if the benefits are assigned and the insurer refuses to pay, the assignee may file a lawsuit against the insurer to recover the benefits.

Section 627.422, F.S., governs assignability of insurance contracts and provides that a policy may or may not be assignable according to its terms. In *Lexington Insurance Company v. Simkins Industries*,¹ the court held that a provision in an insurance contract prohibiting assignment was enforceable under the plain language of s. 627.422, F.S. The court explained that the purpose of a provision prohibiting assignment was to protect an insurer against unbargained-for risks.² However, Florida courts have held that an assignment made after the loss is valid even if the contract states otherwise.³ In *Continental Casualty Company v. Ryan Incorporated*,⁴ the court noted that it is a "well-settled rule that [anti-assignment provisions do] not apply to an assignment after loss." A court recently explained that the rationale for post-loss assignments is that "[a]n assignment of the policy, or rights under the policy, before the loss is incurred transfers the insurer's contractual relationship to a party with whom it never intended to contract, but an

¹ 704 So. 2d 1384 (Fla. 1998).

² *Id.* at 1386.

³ See *West Florida Grocery Company v. Teutonia Fire Insurance Company*, 77 So. 209 (Fla. 1917); *Better Construction, Inc. v. National Union Fire Insurance Company of Pittsburgh*, 651 So. 2d 141 (Fla. 3d DCA 1995)(reversed a dismissal based on a no-assignment provision because "a provision against assignment of an insurance policy does not bar an insured's assignment of an after-loss claim"); *Gisela Investments v. Liberty Mutual Ins. Co.*, 452 So. 2d 1056 (Fla. 3d DCA 1984) (holding that a "provision in a policy of insurance which prohibits assignment thereof except with consent of the insurer does not apply to prevent assignment of the claim or interest in the insurance money then due, after loss").

⁴ 974 So. 2d 368, 377 n. 7 (Fla. 2000).

assignment after loss is simply the transfer of the right to a claim for money” and “has no effect upon the insurer’s duty under the policy.”⁵

Assignments have been prohibited by contract in other insurance contexts. In *Kohl v. Blue Cross Blue Shield of Florida, Inc.*,⁶ the court found anti-assignment language was sufficiently clear and upheld language prohibiting the assignment of a health insurance claim. The court explained that anti-assignment clauses “prohibiting an insured’s assignments to out-of-network medical providers are valuable tools in persuading health [care] providers to keep their costs down and as such override the general policy favoring the free alienability of choses in action.”⁷

Section 627.428, F.S., provides, in part:

Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured’s or beneficiary’s attorney prosecuting the suit in which the recovery is had.

This statute allows the insured to recover attorney’s fees if the insured prevails in an action against an insurer. A person who takes an assignment of benefits is entitled to attorney’s fees if that assignee prevails in an action against an insurer.⁸

Assignment of Benefits in Property Insurance Cases

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

The typical scenario surrounding the use of an “assignment of benefits” involved vendors and contractors, mostly water remediation companies, who were called by an insured immediately after a loss to perform emergency remediation services, such as water extraction. The vendor came to the insured’s home and, before performing any work, required the insured to sign an “assignment of benefits” – when the insured would be most vulnerable to fraud and price-gouging. Vendors advised the insured, “We’ll take care of everything for you.” The vendor then submitted its bill to the insurer that was, on average, nearly 30 percent higher than comparative estimates from vendors without an assignment of benefits. Some vendors added to the invoice an additional 20 percent for “overhead and profit,” even though a general contractor would not be required or hired to oversee the work. Vendors used these inflated invoices to extract higher

⁵ *Wehr Constructors, Inc. v. Assurance Company of America*, 384 S.W. 3d 680, 683 (Ky. 2012).

⁶ 955 So. 2d 1140 (Fla. 4th DCA 2007).

⁷ *Id.* at 1144-1145.

⁸ See *All Ways Reliable Bldg. Maint., Inc. v. Moore*, 261 So. 2d 131 (Fla. 1972); *Allstate Insurance Co. v. Regar*, 942 So. 2d 969 (Fla.2d DCA 2006).

settlements from insurers. This, in turn, significantly increases litigation over the vendors' invoices.⁹

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

As a practical matter, a homeowner often will not be able to afford or hire a contractor immediately following a loss unless the contractor accepts an assignment of benefits to ensure payment. A homeowner may be unable to comply with the ... provision requiring the homeowner to protect and repair the premises unless the remediation contractor accepts an assignment of benefits, however, contractors will become unwilling to accept payments by assignment if court decisions render the assignments unenforceable

Whether the repair invoice is routed through the insured or submitted by the service provider directly by assignment, the service provider's repair invoice is submitted to the insurer for coverage and reviewed by an adjuster. The only difference an assignment makes is that, if an insurance company wishes to partially deny coverage or contest an invoice as unreasonable, the insured policyholder is not mired in litigation in which he or she has no stake.¹⁰

It is argued that in most cases, assignment of benefits works to the homeowner's advantage because the contractor is in a better position than most homeowners to discuss costs and repair requirements with insurance adjusters.¹¹

Proponents of changing the law relating to assignment of benefits argue that the ability to recover attorney's fees under s. 627.428, F.S., leads to more litigation in cases involving assignment of benefits because an assignee can recover full attorney's fees even if the award is small.¹² However, courts have explained that the purpose of s. 627.428, F.S., is to encourage the prompt payment of valid claims and place the insured in the same position he or she would have been had the insurer paid the claim.¹³

Recent Litigation in Cases Involving Assignment of Benefits

Several recent cases have addressed the assignment of post-loss benefits. In *Accident Cleaners, Inc. v. Universal Ins. Co.*,¹⁴ the Fifth District Court of Appeal rejected a claim that only those having an insurable interest at the time of loss could enforce an insurance contract and held that

⁹ See *Security First Insurance Company v. State of Florida, Office of Insurance Regulation*, Case 1D14-1864 (Fla. 1st DCA), Appellant's Initial Brief at pp. 3-4. (appellate record citations omitted).

¹⁰ See *One Call Property Services, Inc. v. Security First Insurance Company*, Case No. 4D14-0424 (Fla. 4th DCA), Appellant's Initial Brief at 46-48.

¹¹ Memorandum to Members of the House Insurance and Banking Subcommittee from Dale S. Dobuler, Florida Justice Association (October 26, 2015) (on file with the Senate Committee on Judiciary).

¹² See Florida Justice Reform Institute, White Paper: *Restoring Balance in Insurance Litigation*, (2015) at pp. 9-10. (on file with the Senate Committee on Judiciary).

¹³ See e.g. *Travelers Indemnity Insurance Company of Illinois v Meadows MRI, LLP*, 900 So. 2d 676, 678-679 (Fla. 4th DCA 2005).

¹⁴ Case No. 5D14-352 (5th DCA April 10, 2015). See s. 627.405, F.S.

the right to recover post-loss insurance benefits could be assigned. The court explained that nothing in the statute indicated the Legislature intended to change the “well-settled” law of assignability of contractual rights” or the “inability of insurers to restrict post-loss assignments.”

In *One Call Property Services, Inc. v. Security First Ins. Co.*,¹⁵ the Fourth District Court of Appeal explained that even “when an insurance policy contains a provision barring assignment of a policy, an insured may assign a post-loss claim.” The court rejected arguments that the insured had nothing to assign at the time the assignment was executed because benefits were not yet due under the policy.¹⁶

The court explained the competing policy arguments raised by the assignment of benefits issue:

Turning to the practical implications of this case, we note that this issue boils down to two competing public policy considerations. On the one side, the insurance industry argues that assignments of benefits allow contractors to unilaterally set the value of a claim and demand payment for fraudulent or inflated invoices. On the other side, contractors argue that assignments of benefits allow homeowners to hire contractors for emergency repairs immediately after a loss, particularly in situations where the homeowners cannot afford to pay the contractors up front.¹⁷

The court noted that if “studies show that these assignments are inviting fraud and abuse, then the legislature is in the best position to investigate and undertake comprehensive reform.”¹⁸

In *Security First Ins. Co. v. State of Florida, Office of Ins. Regulation*,¹⁹ an insurer sought approval from the Office of Insurance Regulation to amend its policy forms to prohibit assignment unless the insurer agreed to the assignment. The Office of Insurance Regulation disapproved the form filing based on Florida court cases holding post-loss benefits are freely assignable.²⁰ The First District Court of Appeal affirmed the Office of Insurance Regulation’s order but noted evidence of abuse of the assignment of benefit process.²¹ The court concluded “it is for the legislative branch to consider this public policy problem, not the courts” and noted that “legislative review provides a more detailed inquiry into the current situation in the industry and greater flexibility in achieving meaningful reform, if deemed necessary.”²²

In *One Call Property Services, Inc., A/A/O Carl and June Schlanger v. St. Johns Insurance Company*,²³ the circuit court granted summary judgment in an assignment of benefits case. A homeowner executed an assignment of benefits to One Call Property Services (One Call) after a water loss. When the insurer did not pay the amount demanded, One Call sued for breach of

¹⁵ 165 So. 3d 749, 753 (4th DCA 2015).

¹⁶ *Id.* at 754.

¹⁷ *Id.* at 755.

¹⁸ *Id.*

¹⁹ 177 So. 3d 627 (Fla. 1st DCA 2015).

²⁰ *Id.* at 628.

²¹ *Id.*

²² *Id.* at 630.

²³ Case No. 13-000868-CA (Fla. 19th Circuit, November 20, 2014).

contract. The court ruled that One Call did not have standing to bring the action and granted the insurer's motion for summary judgment. The court explained that the "proceeds of any insurance recovery from homestead property are constitutionally protected to the same extent as the property itself, and a homeowner cannot be divested of those proceeds through an unsecured agreement" and ruled that the assignment was invalid. The court held the assignment of benefits "impermissibly seeks to divest the homeowners of these constitutionally protected insurance proceeds and, therefore, the assignment is invalid." The court said this was "particularly true where, as here, the contract was [only executed by one spouse]." The court further ruled that One Call was unlawfully acting as a public adjuster.

One Call appealed the case in the Fourth District Court of Appeal. In the briefs, the parties argued whether the provision of the State Constitution prohibiting the forced sale of a homestead²⁴ prohibited the assignment of insurance proceeds. The briefs also addressed whether both spouses were required to agree to the assignment and whether One Call was unlawfully acting as a public adjuster. The court affirmed without issuing a written opinion;²⁵ so the exact reasoning behind the court's affirmance is not known.²⁶ The opinion should be final on February 15 if there is no motion for rehearing.²⁷

In *Bioscience West, Inc., v. Gulfstream Property and Casualty*,²⁸ the Second District Court of Appeal recently reversed a circuit court's holding that precluded a homeowner from assigning the benefits of her insurance policy to an emergency water mitigation company without first receiving consent from her insurance company. The court noted that nearly 100 years ago the Florida Supreme Court held that provisions in an insurance policy requiring consent to assignment of an insurance policy do not apply to assignments after a loss. As a result, the court held that post-loss insurance claims are freely assignable without the consent of the insurer.

There are at least two other cases pending in the district courts of appeal relating to assignment of benefits in water mitigation cases.²⁹ In one of the cases, both the homeowner and the assignee filed suit against the insurer. The trial court granted the insurer's motion for summary judgment after finding that the homeowner never intended to assign her right to sue the insurance company. In other cases, there are disputes over whether the assignee unlawfully acted as a public adjuster, whether the assignment is prohibited under Article X, s. 4, Fla. Const., and whether the assignment at issue is an invalid partial assignment. There is no timetable for the courts to decide these pending cases.

²⁴ Article X, s. 4, Fla. Const.

²⁵ Case No. 4D14-4585 (Fla. 4th DCA January 28, 2016).

²⁶ In Florida appellate courts, most cases are decided with a "per curiam affirmed" opinion. Such an opinion is binding on the parties to the litigation but is not binding precedent for other cases. See *Department of Legal Affairs v. District Court of Appeal, 5th District*, 434 So.2d 310 (Fla. 1983).

²⁷ Motions for rehearing must be filed within 15 days of the opinion unless another time is set by the court.

²⁸ *Bioscience West, Inc., v. Gulfstream Property and Casualty Insurance Co.*, 2016 WL 455723 (Fla. 2d DCA 2016).

²⁹ *Start to Finish Restoration, LLC v. Homeowners Choice Property & Casualty Insurance*, Case No. 2D15-2206 (Fla. 2d DCA) (briefs have been filed; oral argument set for February 24, 2016); *Restoration 1 CFL a/a/o I. Joy White v. State Farm Florida Insurance Company*, Case No. 5D15-1049 (Fla. 5th DCA) (briefs have been filed; oral argument is set for April 5, 2016).

Data Provided by Insurers

On October 6, 2015, the Insurance Consumer Advocate issued a data call to gather information relating to assignment of benefits. On October 23, 2015, the Office of Insurance Regulation issued a data call to insurance companies relating to assignment of benefits and its relationship to property insurance rates. Most insurers did not respond to the data call by the Insurance Consumer Advocate data call due to concerns about the disclosure of trade secrets. Insurance companies submitted information to the Office of Insurance Regulation during December and January.

The Office of Insurance Regulation released the results of the Assignment of Benefits Data Call on February 8, 2016.³⁰ The report stated that there has been an increase of approximately 10 per cent in the claim severity³¹ from 2010 to 2015 for claims with an assignment of benefits, while the severity for claims without an assignment of benefits increased by only 1 percent. The report, however, cautioned that very few of the insurers that responded to the data call were able to consistently track the use of assignment of benefits over the period of the data call. The report noted that “one should still be careful about relying too heavily on the results” of the report given the data supplied and noted that the more “granular that you get into the data, the less likely the data would be fully credible.”³²

The report stated that claims with an assignment of benefits have a much higher severity than claims without an assignment, generally at least 50 per cent more. But the report then stated that the cause of these results could not be determined from the information collected in the call. Two possible arguments were offered: assignment of benefits were generally used on more serious claims, or perhaps costs are inflated for claims with an assignment of benefits.³³

Citizens Property Insurance Corporation (“Citizens”) provided a summary of information it provided in response to the OIR data call. Citizens randomly sampled 983 claims reported in 2015 that were settled without a lawsuit being filed. The statewide average that Citizens paid for the loss and loss adjustment expense was \$15,822 if the claim had an assignment of benefits but \$8,507 if the claim did not have an assignment of benefits. If a lawsuit was filed, Citizens paid an average of \$37,677 per claim if the claim had an assignment of benefits and \$30,526 if the claim did not. In South East Florida (Miami-Dade, Broward, and Palm Beach counties), the percentage of claims litigated increased from 15.8 percent in 2010 to 38.4 percent in 2014. Citizens also reported that 31.9 percent of its claimants had representation either by an attorney or public adjuster at the first notice of loss in 2014. That percentage increased to 45.6 percent through the first 9 months of 2015.³⁴

³⁰ Florida Office of Insurance Regulation, *Report on Review of the 2015 Assignment of Benefits Data Call* (Feb. 8, 2016) available at <http://www.bing.com/search?q=report+on+review+of+the+2015+assignment+of+benefits+data+call&src=IE-TopResult&FORM=IETR02&conversationid=>.

³¹ Severity, according to the report, means the amount of losses paid for a claim.

³² *Supra* note 30 at 11.

³³ *Id.*

³⁴ Citizens Property Insurance Corporation, *Non-Catastrophic Homeowners Water Claims* (Jan. 2016) available at <https://www.citizensfla.com/web/public/media-resources>.

III. Effect of Proposed Changes:

This bill creates a new section of law to provide that an agreement that purports to assign or transfer the right to enforce post-loss benefits in a property insurance policy is void. This provision prevents the assignee from filing an action against the insurance company to enforce payment. Because the assignee may not file an action to enforce payment, the assignee may not collect attorney's fees under existing s. 627.428, F.S. This bill does not change current law regarding the right of insured to file an action against the insurance company and does not change current law regarding the rights of those who perform home repairs filing actions against homeowners.

This bill requires that all of the following conditions be met for an assignment agreement to be valid:

- The agreement must authorize a person or entity to be named as a payee or copayee for the benefit of payment as provided in the policy for services rendered and materials provided to mitigate or repair covered damage only.
- The agreement must be provided to the insured's property insurer within 3 business days after execution.
- The agreement must contain an estimate for proposed services and materials to be provided.
- The agreement must allow the insured to cancel the agreement within 3 business days³⁵ after the agreement is executed or submitted to the insurer, whichever is later. The assignee is entitled to be reimbursed for work already performed before cancellation of the agreement.

In addition to providing that an agreement that purports to transfer the right to enforce payment is void, the bill provides that an agreement is void if any of the following conditions are met:

- The agreement imposes an agreement cancellation fee, a check processing fee, a mortgage processing fee, or adds an amount for overhead and profit. This addresses concerns that some vendors are inflating the costs and overcharging consumers.³⁶
- The final invoice issued under the agreement exceeds the estimated cost for work performed and the increase was not authorized by the insurer.
- The agreement prevents or inhibits an insurer from communicating with the insured at any time. This addresses the problem, reported by some insurers, that assignees are preventing insureds from discussing the claim with the insurance company.
- The agreement purports to transfer or create any authority to adjust, negotiate, or settle any portion of a claim to a person not authorized to adjust, negotiate, or settle a claim under part VI of ch. 626, F.S. This provision prevents a person not licensed as an insurance adjuster from acting as an adjuster.

The agreement must contain the following notice, in 14-point type:

³⁵ The bill extends this period to 5 days if the agreement is executed to perform work resulting from an event for which the Governor has declared a state of emergency and is within 1 year of the declaration.

³⁶ See Florida's Assignment of Benefits Problem prepared by American Strategic Insurance (on file with the Banking and Insurance Committee). It provides examples of charges for mortgage processing fees ranging from \$300-\$1,500, examples of charges of 10 percent of the total bill for "overhead" and "profit," and cancellation charges of 15 percent to 30 percent.

WARNING: YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY TO A THIRD PARTY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 3 BUSINESS DAYS AFTER THE DATE THIS AGREEMENT IS EXECUTED OR WITHIN 3 BUSINESS DAYS AFTER YOUR PROPERTY INSURANCE COMPANY HAS RECEIVED A COPY OF THIS AGREEMENT, WHICHEVER IS LATER. IF WORK IS BEING PERFORMED AS A RESULT OF DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR AFTER SUCH DECLARATION, YOU HAVE 5 DAYS AFTER THE DATE OF EXECUTION TO CANCEL. THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR PROPERTY FROM FURTHER DAMAGE.

The bill does not apply to a power of attorney granted to a management company, family member, guardian, or similarly situated person which may include the authority to act in place of the principal on property insurance claims. The bill also does not apply to assignments relating to liability coverage in the property insurance policy.

This bill is effective upon becoming a law and its provisions apply to assignments executed after the effective date. The provisions do not apply to assignments executed before the bill's effective date.

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:

Access to Courts

The bill provides that any assignment that purports to transfer the right to enforce payment for post-loss benefits is void. It could argue that the effect of this bill is to remove the right for an assignee to sue for breach of the insurance contract. The Florida Supreme Court addressed the ability to limit an assignee's access to courts in *Nationwide*

*Mut. Fire Ins. Co. v. Pinnacle Medical Inc.*³⁷ In that case, Pinnacle, a medical provider, provided medical services to a person injured in an automobile accident. The injured person assigned his rights to receive benefits to Pinnacle. When the insurer refused to pay, Pinnacle, as assignee, brought suit against the insurer for breach of contract. A statute required that a medical provider who had accepted an assignment of benefits must submit to binding arbitration so the insurer argued that Pinnacle could not bring the action.³⁸

The court held that the statute prohibiting an assignee from bringing an action to enforce payment violated the Access to Courts³⁹ provision of the state constitution. The court explained that the right of an assignee to sue for breach of contract to enforce assigned rights predates the Florida Constitution. If a right to seek redress in the courts predates the Florida Constitution, the Legislature cannot abolish that right without providing a reasonable alternative or commensurate benefit unless the Legislature can show an overpowering public necessity for its abolishment and no alternative means of meeting the public necessity.⁴⁰

However, it could be argued that the bill is not impairing access to courts and is a statute restricting assignments. “Generally, causes of action derived from a contract are assignable and contract rights can be assigned unless forbidden by the terms of the contract itself, or unless the assignment would violate some rule of public policy or some statute, or the contract rights involve obligations of a personal nature.”⁴¹ Because statutes or public policy are valid reasons for limiting or prohibiting assignments and this bill declares an assignment “void” if it purports to transfer the right to enforce, it can be argued that there is no impairment of access to courts and that the bill is an example of the Legislature declaring by statute the public policy of this state relating to the assignment of benefits of property insurance contracts.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The data provided by Citizens Property Insurance Company indicates that the bill may be effective in lowering property insurance claim costs that are currently associated with an executed post-loss assignment of benefits.

³⁷ 753 So. 2d 55 (2000).

³⁸ *Id.* at 56.

³⁹ Art. 1, s. 21, Fla. Const.

⁴⁰ See *Pinnacle Medical*, 753 So. 2d at 57; *Kluger v. White*, 281 So. 2d 1, 4 (Fla. 1973); *Smith v. Department of Insurance*, 507 So. 2d 1080, 1088 (Fla. 1987).

⁴¹ 3A Fla.Jur.2d Assignments s. 6; Restatement 2d Contracts 317. See *Kohl v. Blue Cross and Blue Shield of Florida*, 955 So.2d 1140, 1143 (Fla. 4th DCA 2007) (upholding language prohibiting assignments to out of network medical providers).

C. **Government Sector Impact:**

If the changes in this bill reduce litigation, judicial workloads will also be reduced. Whether the bill will reduce litigation, however, is unknown.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 627.70133 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 February 1, 2016:

The CS removed a provision that limited the assignment to \$2,500.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

501.172 Agreements with service providers entered into
under urgent or emergency circumstances; assignment of benefits
relating to property insurance; limitations.—

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

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



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

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

19 (2) If a consumer, including a consumer who is a
20 policyowner of a property insurance policy, acts under urgent or
21 emergency circumstances to protect property from damage and
22 enters into an agreement with a service provider to stabilize,
23 protect, repair, or improve such property, the service provider
24 may only contract for or receive from the consumer at such time
25 the right to payment for the amount of work necessary to
26 stabilize, protect, and prevent additional damage from occurring
27 to the property. Such right to payment may include a post-loss
28 assignment of benefits under a property insurance policy or a
29 grant of a lien upon the property as permitted under chapter
30 713. A consumer's agreement to provide greater rights to a
31 service provider under such urgent or emergency circumstances,
32 including alleged rights to do further repairs, remediation, or
33 improvements or an assignment of rights, benefits, causes of
34 action, or other contractual rights in violation of this
35 subsection, is void.

36 (3) In all circumstances, an agreement entered into by a
37 consumer and a service provider after a loss or damage has
38 occurred to the consumer's property which contains a post-loss
39 assignment of benefits to the service provider or some third
40 person is not valid:



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41 (a) Unless the consumer or service provider provides a copy
42 of the agreement to the consumer's property insurer within 3
43 business days after execution by both the service provider and
44 consumer;

45 (b) Unless, with the exception of payment for work already
46 performed by a service provider to prevent additional damage
47 from occurring to the property as provided in subsection (2),
48 the agreement allows the consumer to rescind the agreement in
49 writing and without penalty or obligation within 3 business days
50 after the date the agreement is executed or within 3 business
51 days after the insurer has been provided with the agreement,
52 whichever is later. However, if the agreement is executed to
53 perform work resulting from an event for which the Governor has
54 declared a state of emergency and is within 1 year after such
55 declaration, the consumer has 5 business days after the date the
56 agreement is executed to rescind the agreement;

57 (c) To the extent that the agreement imposes any fee for
58 rescinding the agreement, a check processing fee, or a mortgage
59 processing fee;

60 (d) To the extent that the agreement prevents or inhibits
61 an insurer from communicating with the consumer at any time;

62 (e) To the extent that the agreement purports to transfer
63 or create any authority to adjust, negotiate, or settle any
64 portion of a claim to a person or an entity who is not
65 authorized to adjust, negotiate, or settle a claim on behalf of
66 the insured or claimant under part VI of chapter 626; or

67 (f) Unless the agreement contains the following notice in
68 14-point type to the consumer:

69



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70 WARNING: IF YOU HAVE PROPERTY INSURANCE, YOU MAY BE
71 AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR
72 INSURANCE POLICY TO A THIRD PARTY. PLEASE READ AND
73 UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. WITH THE
74 EXCEPTION OF PAYMENT FOR WORK ALREADY PERFORMED BY A
75 SERVICE PROVIDER TO PREVENT ADDITIONAL DAMAGE FROM
76 OCCURRING TO THE PROPERTY RESULTING FROM EMERGENCY OR
77 URGENT CIRCUMSTANCES, YOU HAVE THE RIGHT TO RESCIND
78 THIS AGREEMENT WITHOUT PENALTY WITHIN 3 BUSINESS DAYS
79 AFTER THE DATE THIS AGREEMENT IS EXECUTED OR WITHIN 3
80 BUSINESS DAYS AFTER YOUR PROPERTY INSURANCE COMPANY
81 HAS RECEIVED A COPY OF THIS AGREEMENT, WHICHEVER IS
82 LATER. IF WORK IS BEING PERFORMED AS A RESULT OF
83 DAMAGES CAUSED BY AN EVENT FOR WHICH THE GOVERNOR HAS
84 DECLARED A STATE OF EMERGENCY AND IS WITHIN 1 YEAR
85 AFTER SUCH DECLARATION, THE 3 BUSINESS DAY PERIOD TO
86 RESCIND THIS AGREEMENT IS EXTENDED TO 5 BUSINESS DAYS.
87 THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES UNDER YOUR
88 PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
89 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR
90 PROPERTY FROM FURTHER DAMAGE.

91
92 (4) This section does not apply to a power of attorney
93 granted to a management company, family member, guardian, or
94 similarly situated person which complies with chapter 709 and
95 which may include, as part of the authority granted, the
96 authority to act in place of a principal as it relates to a
97 property insurance claim.

98 (5) A policyholder who assigns the right to receive the



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99 benefit of payment under the policy is not liable to the
100 assignee for services and materials for which the insurer is
101 liable, and the assignee may not collect or attempt to collect
102 money from, maintain any action at law against, or claim a lien
103 on the real property of a policyholder or report a policyholder
104 to a credit agency for payment for which the insurer is liable
105 under the policy. However, this subsection does not prohibit the
106 assignee from collecting or attempting to collect money from,
107 maintaining an action at law against, or claiming a lien on the
108 real property of a policyholder or reporting a policyholder to a
109 credit agency for payment of the amount of the insurance
110 deductible or any amount attributable to services and materials
111 ordered by the policyholder which are not covered under the
112 insurance policy.

113 Section 2. Section 627.422, Florida Statutes, is amended to
114 read:

115 627.422 Assignment of policies; restrictions on post-loss
116 assignments of policy benefits.-

117 (1) A policy may be assignable, or not assignable, as
118 provided by the policy ~~its~~ terms. Subject to its terms relating
119 to assignability, any life or health insurance policy under the
120 terms of which the beneficiary may be changed upon the sole
121 request of the policyowner may be assigned either by pledge or
122 transfer of title, by an assignment executed by the policyowner
123 alone and delivered to the insurer, regardless of whether ~~or not~~
124 the pledgee or assignee is the insurer. Any such assignment
125 entitles ~~shall entitle~~ the insurer to deal with the assignee as
126 the owner or pledgee of the policy in accordance with the terms
127 of the assignment, until the insurer has received at its home



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128 office written notice of termination of the assignment or pledge
129 or written notice by or on behalf of some other person claiming
130 some interest in the policy in conflict with the assignment.

131 (2) A property insurer may include policy provisions in
132 property insurance policies which limit the post-loss
133 assignability of its policy rights only in accordance with s.
134 501.172. The commission may adopt rules to administer and
135 enforce this subsection.

136 Section 3. This act shall take effect July 1, 2016.

137
138 ===== T I T L E A M E N D M E N T =====

139 And the title is amended as follows:

140 Delete everything before the enacting clause
141 and insert:

142 A bill to be entitled
143 An act relating to consumer protection; creating s.
144 501.172, F.S.; defining terms; specifying limitations
145 to the assignment of specified rights by a consumer to
146 a service provider for certain services provided under
147 urgent or emergency circumstances to stabilize,
148 protect, repair, or improve real property; providing
149 that an agreement that provides certain greater rights
150 to a service provider under such circumstances is
151 void; providing that a specified agreement assigning
152 certain rights is not valid unless specified
153 conditions are met; providing applicability; providing
154 that a policyholder who assigns a certain right is not
155 liable to the assignee for specified services and
156 materials; prohibiting an assignee from taking certain



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157 actions for payments for which the insurer is liable;
158 providing applicability; amending s. 627.422, F.S.;
159 providing that a property insurer may include
160 provisions in property insurance policies limiting
161 post-loss assignability of policy rights only in
162 accordance with a specified provision; authorizing the
163 Financial Services Commission to adopt rules;
164 providing an effective date.



857012

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 18 - 23

and insert:

to residential property insurance policies, this section governs
the post-loss assignment or transfer of rights, benefits, or
policy provisions unrelated to liability coverage to a person or
entity other than the named insured. This section does not
affect the post-loss assignment or transfer of rights, benefits,
or other policy provisions related to liability coverage in the
residential property



857012

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Delete line 84
and insert:
residential property insurance claim.

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

And the title is amended as follows:

Delete line 4
and insert:
providing requirements under a residential property
insurance



210256

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete lines 70 - 74

and insert:

(c) It prevents or inhibits an insurer from communicating
with the insured at any time; or

(d) It purports to transfer or create any authority to



526662

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 33

and insert:

5 business days after execution;



166970

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete lines 47 - 61

and insert:

(e) The residential property insurance policy contains a notice that includes the following statement in at least 14-point, bold, uppercase type:

AS THE INSURED, YOU HAVE A LEGAL CONTRACTUAL RIGHT TO ASSIGN YOUR POST-LOSS BENEFITS FOR NEEDED REPAIRS OR REPLACEMENT OF DAMAGED PROPERTY.



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(f) Upon an assignment of benefits, a policyholder is not liable for billing and payment disputes between an insurer and the assignee, if the reason for the repairs is found by the insurer or a court of competent jurisdiction to be covered under the policy.



655334

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 67

and insert:

(b) A final invoice issued under the agreement
substantially exceeds the



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LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Soto) recommended the following:

Senate Amendment

Delete line 73

and insert:

with the insured at any time; and



444578

LEGISLATIVE ACTION

Senate

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House

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 85 - 88

and insert:

Section 2. Section 627.70133, Florida Statutes, applies to post-loss assignments or transfers of rights, benefits, or policy provisions not related to liability coverage which are executed after the effective date of this act.

Section 3. Paragraph (a) of subsection (1) and paragraph (a) of subsection (5) of section 627.70131, Florida Statutes, are amended to read:



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12 627.70131 Insurer's duty to acknowledge communications
13 regarding claims; investigation.—

14 (1) (a) Upon an insurer's receiving a communication with
15 respect to a claim, the insurer shall, within 7 ~~14~~ calendar
16 days, review and acknowledge receipt of such communication
17 unless payment is made within that period of time or unless the
18 failure to acknowledge is caused by factors beyond the control
19 of the insurer which reasonably prevent such acknowledgment. If
20 the acknowledgment is not in writing, a notification indicating
21 acknowledgment shall be made in the insurer's claim file and
22 dated. A communication made to or by an agent of an insurer with
23 respect to a claim shall constitute communication to or by the
24 insurer. If a residential property insurer receives a
25 communication in writing from a third party identified in s.
26 627.422 with respect to the claim requesting that the insurer
27 acknowledge the existence of a policy of insurance on the
28 property, the insurer must respond to the communication within 7
29 days after the request. If the insurer's acknowledgment is not
30 in writing, a notification indicating acknowledgment must be
31 made in the insurer's claim file and dated.

32 (5) (a) Within 45 ~~90~~ days after an insurer receives notice
33 of an initial, reopened, or supplemental property insurance
34 claim from a policyholder, the insurer shall pay or deny such
35 claim or a portion of the claim unless the failure to pay is
36 caused by factors beyond the control of the insurer which
37 reasonably prevent such payment. Any payment of an initial or
38 supplemental claim or portion of such claim made 45 ~~90~~ days
39 after the insurer receives notice of the claim, or made more
40 than 15 days after there are no longer factors beyond the



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41 control of the insurer which reasonably prevented such payment,
42 whichever is later, bears interest at the rate set forth in s.
43 55.03. Interest begins to accrue from the date the insurer
44 receives notice of the claim. The provisions of this subsection
45 may not be waived, voided, or nullified by the terms of the
46 insurance policy. If there is a right to prejudgment interest,
47 the insured shall select whether to receive prejudgment interest
48 or interest under this subsection. Interest is payable when the
49 claim or portion of the claim is paid. Failure to comply with
50 this subsection constitutes a violation of this code. However,
51 failure to comply with this subsection does not form the sole
52 basis for a private cause of action.

53 Section 4. Section 627.7142, Florida Statutes, is amended
54 to read:

55 627.7142 Homeowner Claims Bill of Rights.—An insurer
56 issuing a personal lines residential property insurance policy
57 in this state must provide a Homeowner Claims Bill of Rights to
58 a policyholder within 7 ~~14~~ days after receiving an initial
59 communication with respect to a claim, unless the claim follows
60 an event that is the subject of a declaration of a state of
61 emergency by the Governor. The purpose of the bill of rights is
62 to summarize, in simple, nontechnical terms, existing Florida
63 law regarding the rights of a personal lines residential
64 property insurance policyholder who files a claim of loss. The
65 Homeowner Claims Bill of Rights is specific to the claims
66 process and does not represent all of a policyholder's rights
67 under Florida law regarding the insurance policy. The Homeowner
68 Claims Bill of Rights does not create a civil cause of action by
69 any individual policyholder or class of policyholders against an



444578

70 insurer or insurers. The failure of an insurer to properly
71 deliver the Homeowner Claims Bill of Rights is subject to
72 administrative enforcement by the office but is not admissible
73 as evidence in a civil action against an insurer. The Homeowner
74 Claims Bill of Rights does not enlarge, modify, or contravene
75 statutory requirements, including, but not limited to, ss.
76 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does
77 not prohibit an insurer from exercising its right to repair
78 damaged property in compliance with the terms of an applicable
79 policy or ss. 627.7011(5)(e) and 627.702(7). The Homeowner
80 Claims Bill of Rights must state:

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HOMEOWNER CLAIMS

83

BILL OF RIGHTS

84

This Bill of Rights is specific to the claims process
85 and does not represent all of your rights under
86 Florida law regarding your policy. There are also
87 exceptions to the stated timelines when conditions are
88 beyond your insurance company's control. This document
89 does not create a civil cause of action by an
90 individual policyholder, or a class of policyholders,
91 against an insurer or insurers and does not prohibit
92 an insurer from exercising its right to repair damaged
93 property in compliance with the terms of an applicable
94 policy.

95

96

YOU HAVE THE RIGHT TO:

97

1. Receive from your insurance company an
98 acknowledgment of your reported claim within 7 ~~14~~ days



444578

99 after the time you communicated the claim.

100 2. Upon written request, receive from your
101 insurance company within 15 ~~30~~ days after you have
102 submitted a complete proof-of-loss statement to your
103 insurance company, confirmation that your claim is
104 covered in full, partially covered, or denied, or
105 receive a written statement that your claim is being
106 investigated.

107 3. Within 45 ~~90~~ days, subject to any dual
108 interest noted in the policy, receive full settlement
109 payment for your claim or payment of the undisputed
110 portion of your claim, or your insurance company's
111 denial of your claim.

112 4. Free mediation of your disputed claim by the
113 Florida Department of Financial Services, Division of
114 Consumer Services, under most circumstances and
115 subject to certain restrictions.

116 5. Neutral evaluation of your disputed claim, if
117 your claim is for damage caused by a sinkhole and is
118 covered by your policy.

119 6. Contact the Florida Department of Financial
120 Services, Division of Consumer Services' toll-free
121 helpline for assistance with any insurance claim or
122 questions pertaining to the handling of your claim.
123 You can reach the Helpline by phone at...(toll-free
124 phone number)..., or you can seek assistance online at
125 the Florida Department of Financial Services, Division
126 of Consumer Services' website at...(website
127 address)....



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YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs of damage before and after any repairs.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.



444578

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

158 And the title is amended as follows:

159 Delete line 11

160 and insert:

161 applicability; amending s. 627.70131, F.S.; revising
162 the timeframe under which an insurer is required to
163 review and acknowledge a received communication with
164 respect to a claim; requiring a residential property
165 insurer to respond to a specified communication within
166 a specified timeframe; requiring a dated notification
167 indicating acknowledgment to made in the insurer's
168 claim file under certain circumstances; revising the
169 timeframe under which an insurer must pay or deny a
170 certain claim, except under certain circumstances,
171 before interest accrues on the payment; amending s.
172 627.7142, F.S.; revising the timeframe under which a
173 certain insurer must provide a Homeowner Claims Bill
174 of Rights to a policyholder after receiving a
175 specified communication; revising timeframes contained
176 in the Homeowner Claims Bill of Rights under which a
177 policyowner is entitled to receive a certain
178 acknowledgement, confirmation, and settlement payment;
179 providing an effective date.

By the Committee on Banking and Insurance; and Senator Hukill

597-02873-16

2016596c1

1 A bill to be entitled
 2 An act relating to assignment or transfer of property
 3 insurance rights; creating s. 627.70133, F.S.;

4 providing requirements under a property insurance
 5 policy for the post-loss assignment or transfer of
 6 rights, benefits, or policy provisions not related to
 7 liability coverage; providing requirements for an
 8 agreement to assign or transfer such rights, benefits,
 9 or policy provisions; providing prohibitions and
 10 conditions that void such an agreement; providing
 11 applicability; providing an effective date.

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

15 Section 1. Section 627.70133, Florida Statutes, is created
 16 to read:

17 627.70133 Assignment of benefits or transfer of rights.-As
 18 to property insurance policies, this section governs the post-
 19 loss assignment or transfer of rights, benefits, or policy
 20 provisions unrelated to liability coverage to a person or entity
 21 other than the named insured. This section does not affect the
 22 post-loss assignment or transfer of rights, benefits, or other
 23 policy provisions related to liability coverage in the property
 24 insurance policy.

25 (1) An agreement entered into under this section to assign
 26 or transfer rights, benefits, or policy provisions is not valid
 27 unless:

28 (a) It authorizes a person or entity to be named as a payee
 29 or copayee for the benefit of payment as provided in the policy
 30 for services rendered and materials provided to mitigate or
 31 repair covered damage only;

32 (b) It is provided to the insured's property insurer within

597-02873-16

2016596c1

33 3 business days after execution;

34 (c) It contains an estimate for proposed services and
 35 materials to be provided;

36 (d) With the exception of reimbursement for work already
 37 performed to mitigate or repair covered damage, it allows the
 38 insured to cancel the agreement, in writing, without penalty or
 39 obligation within 3 business days after the date the agreement
 40 is executed or within 3 business days after the insurer has been
 41 provided with the agreement, whichever is later. However, if the
 42 agreement is executed to perform work resulting from an event
 43 for which the Governor has declared a state of emergency and is
 44 within 1 year after such declaration, the insured has 5 business
 45 days after the date the agreement is executed to cancel the
 46 agreement without penalty; and

47 (e) It contains the following notice in 14-point type:
 48 WARNING: YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE
 49 UNDER YOUR INSURANCE POLICY TO A THIRD PARTY. PLEASE READ AND
 50 UNDERSTAND THIS DOCUMENT BEFORE SIGNING IT. YOU HAVE THE RIGHT
 51 TO CANCEL THIS AGREEMENT WITHOUT PENALTY WITHIN 3 BUSINESS DAYS
 52 AFTER THE DATE THIS AGREEMENT IS EXECUTED OR WITHIN 3 BUSINESS
 53 DAYS AFTER YOUR PROPERTY INSURANCE COMPANY HAS RECEIVED A COPY
 54 OF THIS AGREEMENT, WHICHEVER IS LATER. IF WORK IS BEING
 55 PERFORMED AS A RESULT OF DAMAGES CAUSED BY AN EVENT FOR WHICH
 56 THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY AND IS WITHIN 1
 57 YEAR AFTER SUCH DECLARATION, YOU HAVE 5 DAYS AFTER THE DATE OF
 58 EXECUTION TO CANCEL. THIS AGREEMENT DOES NOT CHANGE YOUR DUTIES
 59 UNDER YOUR PROPERTY INSURANCE POLICY, SUCH AS PROMPTLY NOTIFYING
 60 YOUR INSURANCE COMPANY OF A LOSS AND MITIGATING YOUR PROPERTY
 61 FROM FURTHER DAMAGE.

597-02873-16

2016596c1

62 (2) An agreement is void if:

63 (a) It imposes an agreement cancellation fee, a check
64 processing fee, or a mortgage processing fee or adds an amount
65 for overhead and profit to the amount for mitigation and repair
66 of covered property;

67 (b) A final invoice issued under the agreement exceeds the
68 estimated cost for work performed and the increase in cost was
69 not authorized by the insurer;

70 (c) It purports to assign or transfer the right to enforce
71 payment for post-loss benefits in the policy;

72 (d) It prevents or inhibits an insurer from communicating
73 with the insured at any time; or

74 (e) It purports to transfer or create any authority to
75 adjust, negotiate, or settle any portion of a claim to a person
76 or entity who is not authorized to adjust, negotiate, or settle
77 a claim on behalf of the insured or claimant under part VI of
78 chapter 626.

79 (3) This section does not apply to a power of attorney
80 granted to a management company, family member, guardian, or
81 similarly situated person which complies with chapter 709 and
82 which may include, as part of the authority granted, the
83 authority to act in place of a principal as it relates to a
84 property insurance claim.

85 Section 2. This act applies to post-loss assignments or
86 transfers of rights, benefits, or policy provisions not related
87 to liability coverage which are executed after the effective
88 date of this act.

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



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

February 1, 2016

The Honorable Miguel Diaz de la Portilla
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 596 – Assignment or Transfer of Property Insurance Rights

Dear Chairman Diaz de la Portilla:

Senate Bill 596, relating Assignment or Transfer of Property Insurance Rights has been referred to the Judiciary Committee. I am requesting your consideration on placing SB 596 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: Tom Cibula, Staff Director of the Judiciary Committee
Joyce Butler, Administrative Assistant of the Judiciary 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
APPEARANCE RECORD

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

2/14/2014
Meeting Date

SB 594
Bill Number (if applicable)

Topic AOR

Amendment Barcode (if applicable)

Name CHRISTIAN CALLARA

Job Title STATE DIRECTOR

Address PO Box 10577

Phone (305) 608-4300

TALLAHASSEE FL 32302

Email CCALLARA@RSTREET.ORG

City State Zip

Speaking: For Against Information

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

Representing R STREET INSTITUTE

Appearing at request of Chair: Yes 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)

02/16/16

Meeting Date

596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Rita Vilaysack

Job Title owner

Address 1211 Hamlet Ave Suite B
Street

Phone 727-686-6864

Clearwater, FL 33756
City State Zip

Email Ritamarienz@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/14/14
12.16.16

Meeting Date

596

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Walter Lafreniere

Job Title Owner

Address 6428 NW 28th Lane

Phone 954-984-5740

Street

Margate

FL

33063

Email

City

State

Zip

Speaking: For Against Information

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

Representing All Hours Emergency Water Removal

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3
12.16.16

Meeting Date

596

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Brian Christensen

Job Title _____

Address 2202 Hoffner Ave

Phone 321-234-0464

Street

Orlando

FL

32809

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing Restoration 1 of Central 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

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

2
12.16.16

Meeting Date

596

Bill Number (if applicable)

Topic Prohibited Insurance Practices

Amendment Barcode (if applicable)

Name Richie Kidwell

Job Title Owner

Address 941 W. Morse Blvd.

Phone 407-233-0493

Street

Winter Park

FL

32789

City

State

Zip

Email richie@airqualityassessors.com

Speaking: For Against Information

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

Representing Air Quality Assessors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/15

Meeting Date

594

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 134 S Bronough St

Phone

Street

Tallahassee

Email

City

State

Zip

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

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

Representing FL chamber of commerce

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-2014

Meeting Date

SB 594

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Caleb Suseno

Job Title President

Address 3433 Lilia Pinedest Rd H 361

Phone

Street

Vero Beach

City

FL

State

33596

Zip

Email

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

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

Representing

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.

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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)

2/16/16

Meeting Date

596

Bill Number (if applicable)

Topic AOB

Amendment Barcode (if applicable)

Name Carlin Murray

Job Title Director of Government Affairs

Address _____
Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Office of Insurance Regulation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Tom Hayes

Job Title Project Manager

Address 121 S Orange Ave #1526

Phone _____

Street

Orlando

City

FL

State

32801

Zip

Email AHSCF.tomh@gmail.com

Speaking: For Against Information

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

Representing Advanced Home Solutions Construction Firm

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)

2/16/16
Meeting Date

SB596
Bill Number (if applicable)

Topic AOB SB596

Amendment Barcode (if applicable)

Name Eleanor Posner

Job Title Citizen-Business Executive

Address 3505 Shell Beach Court

Phone 561 498 0078

Delray Beach FL 33446
City State Zip

Email floridaabbe@yahoo.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

2/16/2016
Meeting Date

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

SB 596
Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Steve Pociask

Job Title President - AMERICAN CONSUMER INSTITUTE

Address 1701 PENNSYLVANIA AVENUE, SUITE 300

Phone 850-391-7677

Street

WASHINGTON, DC 20006

City

State

Zip

Email Steve@theAMERICAN CONSUMER.ORG

Speaking: For Against Information

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

Representing AMERICAN CONSUMER INSTITUTE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-2016

Meeting Date

5B 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Carole Hayes

Job Title RE Broker

Address 535 Greenbrier Ave.

Phone 407-361-6650

Celebration, FL 34747

Email caroleahayes@gmail.com

Speaking: For Against Information

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

Representing New World Realty, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignments of Benefits

Amendment Barcode (if applicable)

Name CHRISTREAT

Job Title _____

Address 3636 BERINDALE DR #105

Phone 013-663-4800

Street

VALRICO FL

33596

Email drywizard@yahoo.com

City

State

Zip

Speaking: For Against Information

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

Representing DRYWIZARD DRYWALL

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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2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Kathleen Cali

Job Title Office Manager

Address 7906-27th Ave W

Phone 941-792-1146

Bradenton FL 34209
City State Zip

Email Kathy @ STF Restoration
ncorn

Speaking: For Against Information

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

Representing Start to Finish Restoration

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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2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name JOHN BURKOWS

Job Title PRESIDENT

Address 2094 BEACON MANOR DR.

Phone 239-896-2947

Street

FORT MYERS FL 33907

Email johnh@acpfl.com

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Ralph Pokorny

Job Title President

Address 1130 S PowerLine Rd #101

Phone 561-305-0321

Street

Deerfield Beach FL 33442

City

State

Zip

Email RPokorny@RestorationXperts.Net

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

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

Representing Restoration Xperts Inc.

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

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

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)

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Richie Keene

Job Title President

Address 911 W. Morse Blvd #100

Phone 407-233-0493

Street

Winter Park FL 32789

City

State

Zip

Email richie@airqualityassessors.com

Speaking: For Against Information

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

Representing Air Quality Assessors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name RAJKO DIMITRIJEVIC

Job Title MARKETING DIRECTOR

Address 3255 POTTER ST

Phone 850 712-1933

Street

PENSACOLA

City

FL

State

32514

Zip

Email RAJKO.G.PROCLEAN@ESTIMATE.COM

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-2016

Meeting Date

JB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name JOSHUA BRIGHAM

Job Title OPERATIONS MANAGER

Address 3255 POTTER ST #C

Phone 850-484-8500

Street

PENSACOLA

City

FL

State

32514

Zip

Email josh@procleanrestoration.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name JOHN CALI

Job Title GM

Address 7906-21AVE W.

Phone 941 792-1140

Street
BRADENTON, FL 34209
City State Zip

Email JOHN@STFRestoration.com

Speaking: For Against Information

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

Representing Start to Truck Restoration

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)

2/16

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name Reggie Garcia

Job Title

Address P.O. Box 11069

Phone 933-7150

Street

Tallahassee Fla.

32302

Email reggiegarcia/law@icloud.com

City

State

Zip

Speaking: For Against Information

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

Representing THE FLA. Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-16
Meeting Date

596
Bill Number (if applicable)

Topic Assignment of Post loss Benefits

Amendment Barcode (if applicable)

Name Lisa Miller

Job Title CEO, Lisa Miller + Associates

Address 331 N Monroe St

Phone 850 528 9229

Tallahassee FL 32301

Email -

Speaking: For Against Information

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

Representing Jim + Lillian Hettrich (pronounced Het-Rick)

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)

2/16/16

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Post Loss Benefits

Amendment Barcode (if applicable)

Name Keri Silver

Job Title _____

Address PO Box 1565
Street

Phone 850-524-2394

Tallahassee FL 32309
City State Zip

Email Keri@raybornconsultants.com

Speaking: For Against Information

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

Representing Latin American Association of Insurance Agencies

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)

2-16-16

Meeting Date

596

Bill Number (if applicable)

Topic Assignment of Post Loss Benefits

Amendment Barcode (if applicable)

Name William Ryan

Job Title CEO

Address 1882 ~~King~~ Nighthall Dr

Phone —

Street

Neptune Beach FL 32266

Email —

City

State

Zip

Speaking: For Against Information

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

Representing Rytech Water Damage Restoration

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)

Feb 16/2016
Meeting Date

596
Bill Number (if applicable)

Topic SIMMONS Amendment

Amendment Barcode (if applicable)

Name Tim Meenan

Job Title _____

Address 325 W College Ave
Street
Tallahassee FL 32312
City State Zip

Phone (850) 425-4000

Email Tim@meenanlaw.com

Speaking: For Against Information

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

Representing Tower Hill Insurance Company

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)

(Sen. Hu Kill)

2/16
Meeting Date

596
Bill Number (if applicable)

Topic (Assignment of Benefits)

210256
Amendment Barcode (if applicable)

Name Reggie Garcia

(Sen. Soto)

Job Title _____

Address P.O. Box 11069
Street

Phone 933-7150

Tallahassee Fla. 32302
City State Zip

Email reggiegarcia@law
@icloud.com

Speaking: For Against Information

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

Representing The Florida Justice Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/10/14
Meeting Date

5910
Bill Number (if applicable)

Topic Assignment of Benefits

late filed
Amendment Barcode (if applicable)

Name *Richard Kidwell

amendment to Simmons amendment

Job Title President

Address 941 W. Morse Blvd #100

Phone 407-233-0423

Street Winter Park FL 32789
City State Zip

Email rkidwell@airqualityassessors.com

Speaking: For Against Information

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

Representing Air Quality Assessors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/16
Meeting Date

596
Bill Number (if applicable)

Topic Assignment of Benefits

late filed
Amendment Barcode (if applicable)
amendment
to SIMMONS

Name JOHN CALI

Job Title GM

Address 7906 - 27 Ave
Street

Phone 941 792-1146

Brenton FL 34209
City State Zip

Email JOHN@STRESTORATION.com

Speaking: For ~~Against~~ Information

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

Representing STARR to Finish Restoration LLC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/10/16
Meeting Date

5916
Bill Number (if applicable)

Topic Assignment of Benefits

late filed
Amendment Barcode (if applicable)

Name Walter LaFreniere

Simmons Amendment

Job Title Owner

Address 6428 NW 28 Lane
Street

Phone 239 777 9588

Maryville Fl. 33067
City State Zip

Email WaltLaFreniere@gmail.com

Speaking: For Against Information

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

Representing All Hours Emergency Water Removal

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)

2/16/2016
Meeting Date

596
Bill Number (if applicable)

Topic AOB

Ring, Simmons
Amendment Barcode (if applicable)

Name Mark Delegal

Soto Amendments

Job Title Counsel

Address 315 S. Calhoun Street, #600 Phone 774-7000

Tallahassee FL 32301 Email _____
City State Zip

Speaking: For Against Information

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

SIMMONS

Soto/Ring

Representing State Farm Florida Insurance Company

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)

2-16-16

Meeting Date

596

Bill Number (if applicable)

Date filed Amendment

Amendment Barcode (if applicable)

to Simmons Amendment

Topic: ASSIGNMENT of BENEFITS

Name: CHRIS TREAT

Job Title: Production Coordinator

Address: 3433 Little Pinecure Dr

Street

Phone: 813-684-4800

Vadveco

FL

City

State

Zip

Email

Speaking: For Against Information

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

Representing: Daywizard Daywear Services

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)

2.16.16

Meeting Date

596

Bill Number (if applicable)

ask filed amendment

Amendment Barcode (if applicable)

to SIMMONS amendment

Topic Assignment of Benefits

Name Caleb Suszko

Job Title President

Address 3433 Lithia Pinecrest Rd.

Street

Phone 813.684.4800

Valrico

City

FL

State

33596

Zip

Email

Speaking: For Against Information

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

Representing Dcywizard Deywan Services

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)

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

Topic Assignment of Benefits

~~Simmons~~ Strike all
Amendment Barcode (if applicable)

Name Caleb Suszko

Simmons

Job Title President

Address 3433 Lithia Pinecrest Rd #361

Phone

Street

Valrico

FL

33596

Email

City

State

Zip

Speaking: For Against Information

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

Representing Dayvizard Dayvan Services

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)

2-16-2016
Meeting Date

SB 596
Bill Number (if applicable)

Topic Assignment of Benefits

Amendment Barcode (if applicable)

Name CARLEB SUSZKO

Job Title _____

Address 3436 ERINDALE DR #105
Street
VALRICO FL 33596
City State Zip

Phone 813-663-4800

Email trynizard@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

210250

Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name John Calio

Job Title GM

Address 7906 - 27th Ave W

Street

Phone 941-792-1146

Bradenton FL 34209

City

State

Zip

Email John@STERestoration.com

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

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

Representing Start to Finish Restoration

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.

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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)

2-16-2016

Meeting Date

5B 596

Bill Number (if applicable)

210254

Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Tom Hayes

Job Title Project Manager

Address 121 S. Orange Ave

Street

Phone 407-810-4328

City

State

Zip

Email AttSCF.tomh@gmail.com

Speaking: For Against Information

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

Representing Advanced Home Solutions

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)

2-16-2016
Meeting Date

SB 596
Bill Number (if applicable)

210250
Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Rudye Kewell

Job Title President

Address 949 W Morse Blvd #100
Street

Phone 407-233-0493

Wanta Park FL 32789
City State Zip

Email Rudye@airqualityassessors.com

Speaking: For Against Information

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

Representing Air Quality Assessors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2-16-2016

Meeting Date

SB 596

Bill Number (if applicable)

210250

Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name RALPH POKORNY

Job Title PRESIDENT

Address 1130 S. POWERLINE RD

Phone 561-305-0321

Street

DEERFIELD BCH FL 33442

City

State

Zip

Email rpokorny@restorationxperts.net

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2-16-2016
Meeting Date

5B 596
Bill Number (if applicable)

210251P
Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Walter Lafreniere

Job Title owner All Hours Emergency Water Removal

Address 6428 NW 28 Loop

Phone 239 777 9568

Maryate Fl. 33063
City State Zip

Email WaltLafreniere@gmail.com

Speaking: For Against Information

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

Representing All Hours Emergency Water Removal

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)

2/16/16

Meeting Date

SB 596

Bill Number (if applicable)

210256

Amendment Barcode (if applicable)

Topic Assignment or Transfer of Property Insurance Rights

Name Foyt Ralston

Job Title

Address 101 North Monroe Street, Suite 900

Phone 850-222-8611

Street

Tallahassee

FL

32301

Email fralston@bmlaw.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Restoration Specialist

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/16/16

Meeting Date

596

Bill Number (if applicable)

646050

Amendment Barcode (if applicable)

Topic AOB

Name Caitlin Murray

Job Title Director of Government Affairs

Address Street

Phone

City

State

Zip

Email

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

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

Representing Office of Insurance Regulation

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

2/11/14

Meeting Date

594

Bill Number (if applicable)

646050

Amendment Barcode (if applicable)

Topic AOB Strike-all

Name Carolyn Johnson

Job Title Policy Director

Address 134 S Bronough St

Street

Phone 850-521-1235

Tallahassee

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing FL Chamber of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

2/14/14

Meeting Date

596

Bill Number (if applicable)

646050

Amendment Barcode (if applicable)

Topic AGB

Name Lee Jacobson

Job Title Attorney

Address 2876 S Osceola Ave

Street

Phone _____

Orlando

City

FL

State

32806

Zip

Email _____

Speaking: For Against Information

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

Representing Hale, Hale & Jacobson

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)

2/16/16
Meeting Date

596
Bill Number (if applicable)
646050
Amendment Barcode (if applicable)

Topic Assignment of Benefits

Name Christine Ashburn

Job Title VP - Communications & Legislative Affairs

Address 232 Killearn Center Blvd
Street
Tallahassee FL 32309
City State Zip

Phone 513-3746

Email _____

Speaking: For Against Information

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

Representing Citizens Property Ins. Corp

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2.16.16

Meeting Date

596

Bill Number (if applicable)

646050

Amendment Barcode (if applicable)

Topic AOTB

Name Ashmy Kaulifeh (Co-lead)

Job Title Lobbyist

Address 101 S. Colby

Street

Phone 222-9075

City

RH

State

Zip

Email akaulifeh@capitol.org

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Florida Justice Reform Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee Judge:

Started: 2/16/2016 4:08:22 PM

Ends: 2/16/2016 6:00:19 PM Length: 01:51:58

4:08:22 PM Meeting called to order by Chair Diaz de la Portilla
4:08:24 PM Roll call by Administrative Assistant Joyce Butler
4:08:33 PM Quorum present
4:08:47 PM Tab 4, SB 64 introduced by Chair Diaz de la Portilla
4:08:56 PM Explanation of SB 64, Relief of the Estate of Danielle Maudsley by the Department of Highway Safety and Motor Vehicles by Senator Negron
4:09:35 PM Comments from Chair Diaz de la Portilla
4:09:39 PM Amendment Barcode #511738 introduced by Chair Diaz de la Portilla
4:09:46 PM Explanation of Amendment Barcode #511738 by Senator Negron
4:09:54 PM Comments from Chair Diaz de la Portilla
4:10:00 PM Amendment Barcode #511738 adopted without objection
4:10:08 PM Comments from Chair Diaz de la Portilla
4:10:13 PM Speaker Ralph Guito, Attorney, Estate of Danielle Maudsley
4:12:07 PM Comments from Chair Diaz de la Portilla
4:12:15 PM Closure waived
4:12:17 PM Roll call on CS/SB 64 by Administrative Assistant Joyce Butler
4:12:34 PM CS/SB 64 reported favorably
4:12:42 PM Tab 8, SB 32 introduced by Chair Diaz de la Portilla
4:12:51 PM Explanation of SB 32, Relief of O'Brien and Stephenson by Department of Transportation by Senator Flores
4:13:29 PM Comments from Chair Diaz de la Portilla
4:13:38 PM Closure waived
4:13:42 PM Roll call on SB 32 by Administrative Assistant Joyce Butler
4:13:55 PM SB 32 reported favorably
4:14:06 PM Tab 9, CS/SB 1104 introduced by Chair Diaz de la Portilla
4:14:15 PM Explanation of CS/SB 1104, Service of Process on Financial Institutions by Senator Flores
4:14:34 PM Comments from Chair Diaz de la Portilla
4:14:44 PM Jennifer Martin, Director of Governmental Affairs, Florida Credit Union Association waives in support
4:14:51 PM Mike Fields, State President, Bank of America waives in support
4:14:59 PM Kimberly Siomkos, Vice President of Governmental Affairs, Florida Bankers Association waives in support
4:15:08 PM Jamie Champion-Mongiovi, Director of Communications & Gov't Affairs, Florida Office of Financial Regulation waives in support
4:15:17 PM Speaker Paul Jess, Florida Justice Association
4:17:48 PM Question from Senator Soto
4:17:54 PM Response from Mr. Jess
4:18:22 PM Follow-up question from Senator Soto
4:18:30 PM Response from Mr. Jess
4:19:35 PM Comments from Chair Diaz de la Portilla
4:19:46 PM Closure by Senator Flores

4:19:52 PM Roll call on CS/SB 1104 by Administrative Assistant Joyce Butler
4:20:09 PM CS/SB 1104 reported favorably
4:20:28 PM Tab 3, SB 1298 introduced by chair Diaz de la Portilla
4:20:40 PM Comments from Chair Diaz de la Portilla
4:20:47 PM Explanation of SB 1298, Bad Faith Assertions of Patent Infringements by Senator Brandes
4:21:09 PM Introduction of Amendment Barcode #618428 by Chair Diaz de la Portilla
4:21:19 PM Explanation of Amendment Barcode #618428 by Senator Brandes
4:21:55 PM Comments from Chair Diaz de la Portilla
4:21:59 PM Amendment Barcode #618428 adopted
4:22:12 PM Amendment to Amendment Barcode #632174 introduced by Chair Diaz de la Portilla
4:22:19 PM Amendment to Amendment Barcode #632174 explained by Senator Brandes
4:22:24 PM Comments from Chair Diaz de la Portilla
4:22:31 PM Amendment to Amendment Barcode #632174 adopted
4:22:45 PM Amendment as amended adopted
4:22:56 PM Kimberly Siomkos, Vice President of Governmental Affairs Florida Bankers Association waives in support
4:23:02 PM Carolyn Thompson waives in support
4:23:08 PM Samantha Padgett, Vice President & General Counsel, Florida Retail Federation waives in support
4:23:13 PM Jared Ross, Senior Vice President Governmental Affairs, Florida Credit Union Association waives in support
4:23:18 PM Aimee Diaz Leon, The Business Law Section of the Florida Bar waives in support
4:23:25 PM Stephen Shiver, Partner, Caterpillar Corporation waives in support
4:23:34 PM Comments from Chair Diaz de la Portilla
4:23:36 PM Closure waived
4:23:39 PM Roll call on CS/SB 1298 by Administrative Assistant Joyce Butler
4:23:45 PM CS/SB 1298 reported favorably
4:24:06 PM Introduction of Tab 2 by Chair Diaz de la Portilla
4:24:09 PM Explanation of SB 1024, Health Care Providers by Senator Simmons
4:24:43 PM Comments from Chair Diaz de la Portilla
4:24:53 PM Amendment Barcode #582748 introduced by Chair Diaz de la Portilla
4:25:01 PM Explanation of Amendment Barcode #582748 by Senator Bean
4:25:07 PM Comments from Chair Diaz de la Portilla
4:25:12 PM Question from Senator Joyner
4:25:20 PM Response from Senator Bean
4:25:42 PM Response from Senator Simmons
4:26:01 PM Follow-up question from Senator Joyner
4:26:22 PM Response from Senator Simmons
4:27:24 PM Amendment Barcode #582748 adopted
4:27:30 PM Question from Senator Soto
4:28:01 PM Response from Senator Simmons
4:28:26 PM Follow-up question from Senator Soto
4:28:38 PM Response from Senator Simmons
4:29:53 PM Follow-up question from Senator Soto
4:30:01 PM Response from Senator Simmons
4:31:04 PM Comments from Chair Diaz de la Portilla
4:31:22 PM Bill Mincy, Vice President, Independent Pharmacies in Florida waives in support
4:31:26 PM Mike Fisher, Florida Independent Pharmacy Network waives in support
4:31:33 PM Speaker Greg Pound
4:33:06 PM Comments from Chair Diaz de la Portilla
4:33:13 PM Closure by Senator Simmons

4:33:55 PM Roll call on CS/SB 1034 by Administrative Assistant Joyce Butler
4:34:10 PM CS/SB 1034 reported favorably
4:34:19 PM Tab 11, SB 1432 introduced by Chair Diaz de la Portilla
4:34:32 PM Explanation of SB 1432, Service of Process by Senator Stargel
4:34:47 PM Comments from Chair Diaz de la Portilla
4:35:02 PM Amendment Barcode #800506 introduced
4:35:10 PM Explanation of Amendment Barcode #800506 by Senator Stargel
4:35:21 PM Comments from Chair Diaz de la Portilla
4:35:27 PM Amendment Barcode #800506 adopted
4:35:38 PM Comments from Chair Diaz de la Portilla
4:36:09 PM Closure waived
4:36:13 PM Roll call on CS/SB 1432 by Administrative Assistant Joyce Butler
4:36:22 PM CS/SB 1432 reported favorably
4:36:45 PM Tab 10, SB 1294 introduced by Chair Diaz de la Portilla
4:37:13 PM Explanation of SB 1294 by Anne Bell, Legislative Aide to Senator Grimsley
4:37:55 PM Comments from Chair Diaz de la Portilla
4:38:12 PM Barney Bishop, President & CEO, Florida Smart Justice Alliance waives in support
4:38:27 PM Comments from Chair Diaz de la Portilla
4:38:33 PM Closure waived
4:38:37 PM Roll call on SB 1294 by Administrative Assistant Joyce Butler
4:38:46 PM SB 1294 reported favorably
4:39:01 PM Tab 5, SB 572 introduced by Chair Diaz de la Portilla
4:39:15 PM Explanation of SB 572, Involuntary Examinations Under the Baker Act by Lindy Smith, Legislative Aide to Senator Altman
4:40:22 PM Comments from Chair Diaz de la Portilla
4:40:31 PM Allison Carvajal, Consultant, Florida Nurse Practitioner Network waives in support
4:40:45 PM Chris Floyd, Consultant, Florida Association of Nurse Practitioners waives in support
4:40:51 PM Alisia LaPolt Lobbyist, Florida Nurses Association waives in support
4:40:57 PM Stan Whittaker, Chairman, Florida Association of Nurse Practitioners waives in support
4:41:05 PM Barney Bishop, President & CEO, Florida Smart Justice Alliance waives in support
4:41:10 PM Dan Hendrickson, Advocacy Committee Chair, Big Bend Mental Health Coalition, NAMI Tallahassee waives in support
4:41:21 PM Corrine Mixon, Lobbyist, Florida Academy of Physician Assistants waives in support
4:41:35 PM Closure waived
4:41:37 PM Roll call on SB 572 by Administrative Assistant Joyce Butler
4:41:46 PM SB 572 reported favorably
4:41:57 PM Tab 7, CS/SB 970 introduced by Chair Diaz de la Portilla
4:42:17 PM Explanation of CS/SB 970 by Michael Nacheff, Legislative Aide to Senator Richter
4:42:51 PM Comments from Chair Diaz de la Portilla
4:42:55 PM Question from Senator Joyner
4:43:02 PM Response from Mr. Nacheff
4:43:36 PM Comments from Chair Diaz de la Portilla
4:43:47 PM Speaker Elizabeth Boyd, Legislative Director, Department of Financial Services
4:44:22 PM Follow-up question from Senator Joyner
4:44:40 PM Response from Ms. Boyd
4:45:10 PM Follow-up question from Senator Joyner
4:45:16 PM Response from Ms. Boyd
4:45:47 PM Additional question from Senator Joyner
4:45:54 PM Response from Ms. Boyd
4:46:40 PM Follow-up question from Senator Joyner
4:46:48 PM Response from Ms. Boyd
4:46:56 PM Additional question from Senator Joyner

4:47:01 PM Response from Ms. Boyd
4:47:24 PM Comments from Chair Diaz de la Portilla
4:47:40 PM Closure waived
4:47:44 PM Roll call on CS/SB 970 by Administrative Assistant Joyce Butler
4:47:58 PM CS/SB 970 reported favorably
4:48:08 PM Tab 6, CS/SB 670 introduced by Chair Diaz de la Portilla
4:48:19 PM Explanation of CS/SB 670, Child Protection Teams by Senator Gaetz
4:48:53 PM Comments from Chair Diaz de la Portilla
4:49:22 PM Question from Senator Soto
4:49:28 PM Response from Senator Gaetz
4:49:51 PM Follow-up question from Senator Soto
4:50:16 PM Response from Senator Gaetz
4:50:26 PM Follow-up question from Senator Soto
4:50:34 PM Response from Senator Gaetz
4:51:41 PM Follow-up question from Senator Soto
4:51:52 PM Response from Senator Gaetz
4:52:34 PM Question from Senator Joyner
4:52:41 PM Response from Senator Gaetz
4:54:14 PM Follow-up question from Senator Joyner
4:54:20 PM Response from Senator Gaetz
4:54:35 PM Additional question from Senator Joyner
4:55:05 PM Response from Senator Gaetz
4:57:03 PM Follow-up question from Senator Joyner
4:57:49 PM Response from Senator Gaetz
5:00:33 PM Comments from Chair Diaz de la Portilla
5:00:48 PM Response from Tom Cibula, Staff Director
5:01:22 PM Question from Chair Diaz de la Portilla
5:01:30 PM Response from Mr. Cibula
5:01:50 PM Speaker Greg Pound
5:03:37 PM Speaker Alisa LaPolt, Lobbyist, Florida Nurses Association
5:04:51 PM Ron Watson, Lobbyist, Florida CHAIN waives in support
5:04:56 PM Jarrod Fowler, Director of Payment Advocacy, Florida Medical Association waives in support
5:05:00 PM Speaker Doug Bell, Florida Chapter American Academy of Pediatrics
5:06:11 PM Speaker Lynn Keefe, MD, CPT Medical Director
5:08:54 PM Mike Cusick, Florida Association of Children's Hospitals waives in support
5:09:05 PM Speaker Paul Jess, Florida Justice Association
5:12:17 PM Question from Senator Soto
5:13:16 PM Response from Mr. Jess
5:13:54 PM Question from Senator Simmons
5:14:00 PM Response from Mr. Jess
5:15:14 PM Comments from Chair Diaz de la Portilla
5:15:24 PM Comments from Senator Joyner in debate
5:16:39 PM Comments from Senator Bean
5:17:06 PM Comments from Chair Diaz de la Portilla
5:17:11 PM Closure by Senator Gaetz
5:19:09 PM Roll call on SB 670 by Administrative Assistant Joyce Butler
5:19:18 PM CS/SB 670 reported favorably
5:19:40 PM Tab 1, SB 668 introduced by Chair Diaz de la Portilla
5:19:47 PM Explanation of SB 668, Family Law by Senator Stargel
5:23:23 PM Comments from Chair Diaz da la Portilla
5:23:29 PM Question from Senator Joyner

5:23:37 PM Response from Senator Stargel
5:24:54 PM Question from Senator Soto
5:25:01 PM Response from Senator Stargel
5:26:59 PM Comments from Chair Diaz de la Portilla
5:27:08 PM Chair passed to Senator Ring
5:27:21 PM Amendment Barcode #399458 introduced by Chair Ring
5:27:30 PM Explanation of Amendment Barcode #399458 by Senator Diaz de la Portilla
5:28:22 PM Comments from Chair Ring
5:28:30 PM Corey Hoffman, Wellington, Florida waives in opposition
5:29:14 PM Barbara DeVane, Florida Now waives in opposition
5:29:24 PM Speaker Cynthia Wheeler, South Bay Florida in opposition
5:30:02 PM James Horrisberger, Commercial Pilot waives in support
5:30:13 PM Terrance Power waives in support
5:30:18 PM Speaker Deborah Gray in opposition
5:30:53 PM Question from Senator Soto
5:31:00 PM Response from Ms. Gray
5:32:38 PM Suzanne Stawski, Attorney waives in opposition
5:32:57 PM Robin Patrowicz, Attorney/Senior Advisor waives in opposition
5:33:44 PM Vicki Stoughton, Physical Assistant Therapist waives in opposition
5:34:01 PM Camille Fiveash waives in opposition
5:34:11 PM Elizabeth Newmeyer, Veterinary Technician waives in opposition
5:34:29 PM Speaker Jordan Miles speaking in opposition
5:36:59 PM Question from Senator Stargel
5:37:09 PM Response from Mr. Miles
5:38:14 PM Theresa Miles waives in opposition
5:38:51 PM Lisa Rawson waives in opposition
5:38:56 PM Karen Librizzi waives in opposition
5:39:20 PM Comments from Senator Stargel regarding Amendment
5:39:41 PM Closure waived
5:39:47 PM Amendment Barcode #399458 reported favorably
5:40:16 PM Comments from Chair Diaz de la Portilla regarding time certain
5:40:32 PM Motion by Senator Simpson regarding time-certain at 5:50
5:40:46 PM Roll call on time-certain motion by Administrative Assistant Joyce Butler
5:40:59 PM Time certain motion passes for 5:50 time certain
5:41:15 PM Amendment Barcode #306662 introduced by Chair Diaz de la Portilla
5:41:26 PM Explanation of Amendment Barcode #306652 by Senator Soto
5:42:22 PM Comments from Chair Diaz de la Portilla
5:42:35 PM Senator Stargel in debate on Amendment Barcode # 306652 in opposition
5:43:13 PM Closure on Amendment Barcode #306652 by Senator Soto
5:43:36 PM Amendment Barcode #306652 fails
5:44:03 PM Motion for time-certain failed because of 2/3 vote failure per Chair Diaz de la Portilla
5:44:36 PM Steven Schang, MD, FACP, FACC waives in support
5:45:02 PM Speaker Robert Showers, President/Owner of "Any Lab Test Now" in support
5:46:17 PM Speaker Larry Rutah, Florida Family Law Reform in support
5:47:47 PM Speaker Barbara DeVane, Florida Now in opposition
5:51:39 PM Speaker Karen Librizzi, Bradenton, Florida in opposition
5:54:51 PM Speaker Lisa Rawson, Gulf Breeze, FL in opposition
5:56:11 PM Camille Fiveash waives in opposition
5:57:54 PM Jordon Miles, Merritt Island, Florida waives in opposition
5:57:58 PM Time certain - 5:59
5:58:16 PM Roll call on Time-certain motion at 5:59
5:58:43 PM Motion passes for time-certain

5:58:53 PM Elizabeth Newmeyer waives in opposition
5:58:54 PM Suzanne Przystawski, Attorney waives in opposition
5:59:00 PM Linda Miklowitz J.D. waives in opposition
5:59:09 PM Theresa Miles waives in opposition
5:59:12 PM Vicki Soughton waives in opposition
5:59:27 PM Comments from Senator Joyner
5:59:33 PM Comments from Chair Diaz de la Portilla
5:59:38 PM Roll call CS/SB 668 by Administrative Assistant Joyce Butler
5:59:45 PM Bill CS/SB 668 reported favorably
6:00:03 PM Senator Beans moves to rise