



Judiciary Committee

**Wednesday, February 14, 2024
9:00 AM - 1:00 PM
404 HOB**

Meeting Packet

**Paul Renner
Speaker**

**Tommy Gregory
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Wednesday, February 14, 2024 09:00 am
End Date and Time: Wednesday, February 14, 2024 01:00 pm
Location: Sumner Hall (404 HOB)
Duration: 4.00 hrs

Consideration of the following bill(s):

HB 29 Value of Motor Vehicles Exempt from Legal Process by Benjamin
CS/CS/HB 275 Offenses Involving Critical Infrastructure by Energy, Communications & Cybersecurity Subcommittee, Criminal Justice Subcommittee, Canady
HB 347 Exemptions from Products Liability Actions by Truenow
CS/HB 549 Theft by Criminal Justice Subcommittee, Rommel
HB 1093 Florida Uniform Fiduciary Income and Principal Act by Caruso
CS/HB 1189 Corporate Actions by Regulatory Reform & Economic Development Subcommittee, Abbott
CS/HB 1241 Probation and Community Control Violations by Criminal Justice Subcommittee, Snyder
CS/HB 1243 Homeowners' Associations by Regulatory Reform & Economic Development Subcommittee, Porras
HB 1367 Asbestos and Silica Claims by Brackett
CS/HB 1389 Digital Voyeurism by Criminal Justice Subcommittee, Cassel
HB 1393 Court Interpreter Services by Tuck
CS/HB 1415 Peer Support for First Responders by Civil Justice Subcommittee, Chamberlin
HB 1425 Juvenile Justice by Yarkosky
CS/HB 1545 Child Exploitation Offenses by Criminal Justice Subcommittee, Baker
HB 1563 Construction Contracting by Grant
CS/HB 1589 Driving Without a Valid Driver License by Criminal Justice Subcommittee, Plakon
CS/HB 1653 Duties and Prohibited Acts Associated with Death by Criminal Justice Subcommittee, Giallombardo
HB 1657 Criminal Offenses Against Law Enforcement Officers and Other Personnel by Baker
HB 6009 Relief/Patricia Ermini/Lee County Sheriff's Office by Hart

Consideration of the following proposed committee substitute(s):

PCS for CS/CS/HB 569 -- Civil Proceedings

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 02/12/2024 4:07PM by Ramirez.Julia

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 29 Value of Motor Vehicles Exempt from Legal Process

SPONSOR(S): Benjamin

TIED BILLS: **IDEN./SIM. BILLS:** SB 158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Mathews	Jones
2) Insurance & Banking Subcommittee	19 Y, 0 N	Herrera	Lloyd
3) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as it is used as a residence. In addition to this constitutional exemption of homestead property and other personal property, Florida law protects certain assets from legal process so that they also remain beyond a creditor's reach, including:

- Funds held in individual retirement accounts ("IRA") and other tax-exempt accounts.
- The cash surrender value of a life insurance policy and the proceeds of an annuity contract.
- Funds held in qualified tuition programs and medical, Coverdell education, and hurricane savings accounts.
- Disability income benefits.
- Wages, unless the debtor agrees to waive the exemption in writing.
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.
- A debtor's interest in any professionally prescribed health aids for the debtor or for a debtor's dependent.
- A debtor's interest in a refund or a credit received or to be received pursuant to the Internal Revenue Code; however, this exemption is not applicable to a debt owed for child support or spousal support.
- A debtor's interest in personal property, not to exceed \$4,000, if the debtor does not claim or receive the benefits of a homestead exemption; however, this exemption is not applicable to a debt owed for child support or spousal support.
- A debtor's interest, not to exceed \$1,000 in value, in a single motor vehicle.

HB 29 increases the maximum value of an exempt motor vehicle from \$1,000 to \$5,000.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Constitutional Exemptions

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors as long as it is used as a residence, as well as up to \$1,000 in personal property.¹

Other Asset Exemptions

In addition to the exemption of homestead property and personal property provided by the Florida Constitution, chapter 222, F.S., protects certain assets from legal process so that they remain out of a creditor's reach, including:

- Funds held in an individual retirement account ("IRA") and other tax-exempt accounts.²
- A life insurance policy's proceeds.³
- A life insurance policy's cash surrender value and an annuity contract's proceeds.⁴
- Funds held in qualified tuition programs and medical, Coverdell education, and hurricane savings accounts.⁵
- Disability income benefits.⁶
- Wages, unless the debtor agrees to waive the exemption in writing.⁷
- Certain personal property items.⁸
- Any professionally prescribed health aides.⁹
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances.¹⁰
- A debtor's interest in a motor vehicle, up to \$1,000 in value.¹¹

Effect of Proposed Changes

HB 29 amends section 222.25, F.S., to increase the maximum value for a single exempt motor vehicle from \$1,000 to \$5,000. The maximum value has not been amended since s. 222.25, F.S., was created in 1993.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 222.25, F.S., relating to other individual property of natural persons exempt from legal process.

Section 2: Provides an effective date of July 1, 2024.

¹ Art. X, s. 4, Fla. Const.

² S. 222.21, F.S.

³ S. 222.13, F.S.

⁴ S. 222.14, F.S.

⁵ S. 222.22, F.S.

⁶ S. 222.18, F.S.

⁷ Ss. 222.11 and 225.15, F.S.

⁸ S. 222.061, F.S.

⁹ S. 222.25, F.S.

¹⁰ S. 222.201, F.S.

¹¹ S. 222.25(1), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

During the 2022 session, the Legislature passed CS/HB 265. CS/HB 265 was substantively similar to HB 29, except that it contained a provision limiting the exemption to bankruptcy proceedings. The Governor vetoed the bill due to the limitation of the exemption to only Floridians in bankruptcy. However, the Governor noted in his veto message that the exemption value is likely ripe for an increase.¹²

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

¹² See Veto Letter of Ron DeSantis, Governor (May 20, 2022), <https://www.flgov.com/wp-content/uploads/2022/05/5.20.22-Transmittal-Letters.pdf> (last visited Nov. 29, 2024).

1 A bill to be entitled
 2 An act relating to value of motor vehicles exempt from
 3 legal process; amending s. 222.25, F.S.; revising
 4 upward the value of a motor vehicle owned by a natural
 5 person which is exempt from legal process; providing
 6 an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (1) of section 222.25, Florida
 11 Statutes, is amended to read:

12 222.25 Other individual property of natural persons exempt
 13 from legal process.—The following property is exempt from
 14 attachment, garnishment, or other legal process:

15 (1) A debtor's interest, not to exceed \$5,000 ~~\$1,000~~ in
 16 value, in a single motor vehicle as defined in s. 320.01(1) ~~s.~~
 17 ~~320.01~~.

18 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 275 Offenses Involving Critical Infrastructure

SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Criminal Justice Subcommittee, Canady and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 340

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
2) Energy, Communications & Cybersecurity Subcommittee	15 Y, 0 N, As CS	Bauldree	Keating
3) Judiciary Committee		Padgett	Kramer

SUMMARY ANALYSIS

CS/CS/HB 275 creates s. 812.141, F.S., to create new criminal offenses involving critical infrastructure, including:

- Improperly tampering with critical infrastructure that results in damage to such critical infrastructure that is \$200 or more, or where the damage causes the interruption or impairment of the function of critical infrastructure which costs \$200 or more in labor and supplies to restore, punishable as a second degree felony;
- Trespassing on physical critical infrastructure as to which notice against entering or remaining in is given, punishable as a third degree felony;
- Accessing a computer, computer system, computer network, or electronic device owned, operated, or used by a critical infrastructure entity without authorization, punishable as a third degree felony; and
- Physically tampering with or inserting a computer contaminant into a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a critical infrastructure entity, punishable as a second degree felony.

The bill defines "critical infrastructure" to mean any linear asset, or any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls:

- A power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
- A chemical or rubber manufacturing or storage facility or a mining facility.
- A natural gas or compressed gas compressor station, storage facility, or gas pipeline.
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
- A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
- Any portion of an aboveground oil or gas pipeline.
- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operating, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or facility or a civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

A person who is found in a civil action to have improperly tampered with critical infrastructure based on a conviction is civilly liable to the owner or operator in an amount equal to three times the amount of the actual damage sustained by the owner or operator, or three times any claim made against the owner or operator, whichever is greater, for any personal injury, wrongful death, or property damage caused by the act.

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

FULL ANALYSIS

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0275c.JDC

DATE: 2/12/2024

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Damage to Critical Infrastructure

According to the Cybersecurity and Infrastructure Security Agency (CISA) within the United States Department of Homeland Security, critical infrastructure are “those assets, systems, and networks that provide functions necessary for our way of life,” and that are “...considered so vital to the United States that their incapacitation or destruction would have a debilitating effect on security, national economic security, national public health or safety, or any combination thereof.”¹ CISA broadly classifies critical infrastructure into the following sectors: chemicals; commercial facilities; communications; critical manufacturing; dams; defense industrial bases; emergency services; energy; financial services; food and agriculture; government facilities; healthcare and public health; information technology; nuclear reactors, materials, and waste; transportation systems; and water and wastewater systems.²

Due to the vast number of critical infrastructure facilities, the difficulty in securing and monitoring such facilities, and the widespread effects that damage to such facilities can cause, critical infrastructure facilities have become a frequent target of both physical and cyber attacks in recent years.³ In 2022, physical security incidents against electric infrastructure, such as vandalism, trespassing, and theft, increased 70 percent from the previous year.⁴ In September 2022, six separate “intrusion events” occurred at Duke Energy electric substations in central Florida, resulting in several brief power outages.⁵ On December 3, 2022, gunfire damaged an electrical substation in Moore County, North Carolina, leaving approximately 45,000 people without power and resulting in the death of one person.⁶

Florida Laws Prohibiting Damage to Critical Infrastructure

Under Florida law, there is not a specific criminal offense prohibiting a person from tampering with critical infrastructure. However, a person who tampers with such infrastructure either by intentionally causing damage or illegally entering on the property upon which the critical infrastructure is located could be prosecuted for committing other criminal offenses, such as criminal mischief or trespass.

Criminal Mischief

A person commits criminal mischief by willfully and maliciously injuring or damaging the property of another, including by vandalism or graffiti.⁷ The penalty for criminal mischief generally corresponds to the value of the damage:

Value of Damage ⁸	Penalty
≤ \$200	Second degree misdemeanor ⁹

¹ Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Security and Resilience*, <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience> (last visited Feb. 12, 2024).

² Cybersecurity and Infrastructure Security Agency, *Critical Infrastructure Sectors*, <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors> (last visited Feb. 12, 2024).

³ Dinah Voyles Pulver and Grace Hauck, *Attacks on power substations are growing. Why is the electric grid so hard to protect?*, USA Today (Dec. 30, 2022) <https://www.usatoday.com/story/news/nation/2022/12/30/power-grid-attacks-increasing/10960265002/> (last visited Feb. 12, 2024).

⁴ National Conference of State Legislatures, *Human-Driven Physical Threats to Energy Infrastructure*, <https://www.ncsl.org/energy/human-driven-physical-threats-to-energy-infrastructure> (last visited Feb. 12, 2024).

⁵ Andrew Dorn and Evan Lambert, *Report shows 6 “intrusions” at power stations in Florida*, WDHN (Dec. 8, 2022), <https://www.wdhn.com/news/report-shows-6-intrusions-at-power-stations-in-florida/> (last visited Feb. 12, 2024).

⁶ John Nagy and Jonathan Bym, *Still no arrests, but warrants reveal more details on Moore County power grid attacks*, The News & Observer (Dec. 16, 2023), <https://www.newsobserver.com/news/state/north-carolina/article283121923.html> (last visited Feb. 12, 2024).

⁷ S. 806.13(1)(a), F.S.

⁸ S. 806.13(1)(b), F.S.

⁹ A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine. Ss. 775.082 or 775.083, F.S.

> \$200 but ≤ \$1,000	First degree misdemeanor ¹⁰
> \$1,000	Third degree felony ¹¹

Criminal mischief may also be enhanced to a third degree felony based on a prior criminal mischief conviction¹² or the nature of the property damaged, including when a person damages:

- Property that results in the interruption or impairment of a business operation or public communication, transportation, supply of water, gas or power, or other public service which costs \$1,000 or more in labor and supplies to restore.¹³
- A church, synagogue, mosque, or other place of worship, or a religious article therein, if the damage is valued at greater than \$200.¹⁴
- A memorial¹⁵ or historic property,¹⁶ if the damage is valued at greater than \$200.¹⁷
- A public telephone, regardless of the value of the damage.¹⁸
- A sexually violent predator detention or commitment facility, if the damage is valued at greater than \$200.¹⁹

Trespass

A person commits the offense of trespass on property other than a structure²⁰ or conveyance,²¹ punishable as a first degree misdemeanor, if he or she, without being authorized, licensed, or invited, willfully enters upon or remains in any property, other than a structure or conveyance:

- As to which notice against entering or remaining is given, either by actual communication to the offender or by posting, fencing, or cultivation; or
- If the property is the unenclosed curtilage²² of a dwelling and the offender enters or remains with the intent to commit an offense thereon, other than the offense of trespass.²³

¹⁰ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 or 775.083, F.S.

¹¹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹² S. 806.13(1)(b)4., F.S.

¹³ S. 806.13(1)(b)3., F.S.

¹⁴ S. 806.13(2), F.S.

¹⁵ "Memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the following memorials established under ch. 265, F.S.:

- Florida Women's Hall of Fame.
- Florida Medal of Honor Wall.
- Florida Veterans' Hall of Fame.
- POW-MIA Chair of Honor Memorial.
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden.
- Florida Law Enforcement Officers' Hall of Fame.
- Florida Holocaust Memorial.
- Florida Slavery Memorial.
- Any other memorial located within the Capitol Complex, including, but not limited to, Waller Park.

S. 806.135(1)(b), F.S.

¹⁶ "Historic property" means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. S. 806.135(1)(a), F.S.

¹⁷ S. 806.13(3), F.S.

¹⁸ S. 806.13(4), F.S.

¹⁹ S. 806.13(5), F.S.

²⁰ "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

²¹ "Conveyance" means any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

²² "Unenclosed curtilage" means the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling. S. 810.09(1)(b), F.S.

²³ S. 810.09(1)(a), F.S.

A trespass offense is enhanced to a third degree felony if:

- A person becomes armed with a firearm or other dangerous weapon during the commission of the offense;²⁴ or
- The property trespassed upon is any of the following and the property complies with specified posting of notice requirements:
 - A construction site;²⁵
 - Commercial horticulture property;²⁶
 - An agricultural site for testing or research purposes;²⁷
 - A certified domestic violence center;²⁸
 - An agricultural chemicals manufacturing facility;²⁹ or
 - The operational area of an airport, if the offender trespasses with the intent to injure another person, damage property, or impede the operation or use of an aircraft, runway, taxiway, ramp, or apron area.³⁰

Offenses Against Computers

Under s. 815.06, F.S., a person commits an offense against users of computers, computer systems, computers networks, or electronic devices if he or she willfully, knowingly, and without authorization or exceeding authorization:

- Accesses or causes to be accessed any computer,³¹ computer system,³² computer network,³³ or electronic device³⁴ with knowledge that such access is unauthorized or the manner of use exceeds authorization;
- Disrupts or denies or causes the denial of the ability to transmit data to or from an authorized user of a computer, computer system, computer network, or electronic device, which, in whole or in part, is owned by, under contract to, or operated for, on behalf of, or in conjunction with another;
- Destroys, takes, injures, or damages equipment or supplies used or intended to be used in a computer, computer system, computer network, or electronic device;
- Destroys, injures, or damages any computer, computer system, computer network, or electronic device;
- Introduces any computer containment into any computer, computer system, computer network, or electronic device; or
- Engages in audio or video surveillance of an individual by accessing any inherent feature or component of a computer, computer system, computer network, or electronic device, including accessing the data or information of a computer, computer system, computer network, or electronic device that is stored by a third party.

Generally, a person who commits a violation of s. 815.06, F.S., commits a third degree felony. A person commits a second degree felony if he or she commits a violation of s. 815.06, F.S., that interrupts or

²⁴ S. 810.09(2)(c), F.S.

²⁵ S. 810.09(2)(d), F.S.

²⁶ S. 810.09(2)(e), F.S.

²⁷ S. 810.09(2)(f), F.S.

²⁸ S. 810.09(2)(g), F.S.

²⁹ S. 810.09(2)(i), F.S.

³⁰ S. 810.09(2)(j), F.S.

³¹ "Computer" means an internally programmed, automatic device that performs data processing. S. 815.03(2), F.S.

³² "Computer system" means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files. S. 815.03(7), F.S.

³³ "Computer network" means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities. S. 815.03(4), F.S.

³⁴ "Electronic device" means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose. S. 815.03(9), F.S.

impairs a governmental operation or public communication, transportation, or supply of water, gas, or other public service.³⁵

Additionally, under s. 815.061, F.S., a person commits a third degree felony if he or she willfully, knowingly and without authorization gains access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized.³⁶ A person commits a second degree felony if he or she willfully, knowingly, and without authorization physically tampers with, inserts a computer contaminant into, or otherwise transmits commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by a public utility.³⁷

Offense Severity Ranking Chart

Felony offenses subject to the Criminal Punishment Code (CPC) are listed in a single offense severity ranking chart (OSRC), which uses 10 offense levels to rank felonies from least severe (Level 1) to most severe (Level 10). Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. A person's primary offense, any other current offenses, and prior offenses are scored using the points designated for the offense severity level of each offense. The final calculation, following the scoresheet formula, determines the lowest permissible sentence that the trial court may impose, absent a valid reason for departure.³⁸ If an offense is unranked, the CPC specifies a default level on the OSRC depending on the felony degree of the offense.³⁹

Effect of Proposed Changes

CS/CS/HB 275 creates s. 812.141, F.S., to create various new criminal offenses involving critical infrastructure.

Improperly Tampering with Critical Infrastructure

The bill prohibits a person from improperly tampering with critical infrastructure resulting in damage to critical infrastructure that is \$200 or more, or if such damage results in the interruption or impairment of the function of critical infrastructure which costs \$200 or more in labor and supplies to restore. A violation of the prohibition is punishable as a second degree felony.

The bill defines the term "critical infrastructure" to mean any of the following:

- Any linear asset; or
- Any of the following for which the owner or operator thereof has employed physical or digital measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, identity and access management, firewalls, virtual private networks, encryption, multi-factor authentication, passwords, or other cybersecurity systems and controls:
 - An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.
 - A chemical or rubber manufacturing or storage facility.
 - A mining facility.
 - A natural gas or compressed gas compressor station, storage facility, or pipeline.
 - A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.
 - A liquid natural gas or propane gas terminal or storage facility with a capacity of 4,000 gallons or more.
 - Any portion of an aboveground oil or gas pipeline.

³⁵ S. 815.06(3)(b)3., F.S. A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

³⁶ S. 815.061(2)(a), F.S.

³⁷ S. 815.061(2)(b), F.S.

³⁸ S. 921.0022, F.S.

³⁹ S. 921.0023, F.S.

- A wireless or wired communications network, including the tower, antennae, support structures, and all associated ground-based equipment, including equipment intended to provide communications to governmental entities, including, but not limited to, law enforcement agencies, fire emergency medical services, emergency management agencies, or any other governmental entity.
- A water intake structure, water treatment facility, wastewater treatment plant, pump station, or lift station.
- A deepwater port, railroad switching yard, airport, trucking terminal, or other freight transportation facility.
- A facility used for the operating, landing, takeoff, or surface maneuvering of vehicles, aircraft, or spacecraft.
- A transmission facility used by a federally licensed radio or television station.
- A military base or facility or a civilian defense industrial base conducting research and development of military weapons systems, subsystems, components, or parts.
- Cyber or virtual assets, including electronic systems, networks, servers, data centers, devices, hardware, software, or data essential to the reliable operations, monitoring, and security of any critical infrastructure.
- Dams and other water control structures.

The bill defines “linear asset” as any electric distribution or transmission asset, gas distribution or transmission pipeline, communication wirelines, or railway, or any attachments thereto.

Under the bill, “improperly tampers” means, to knowingly and intentionally cause, or attempt to cause, a significant interruption or impairment of a function of critical infrastructure by:

- Changing the physical location or physical or virtual condition of the critical infrastructure, or any portion thereof, without permission or authority to do so;
- Otherwise moving, damaging, or destroying the critical infrastructure or any portion thereof, without permission or authority to do so; or
- Accessing without authorization, introducing malware, or taking any other action that compromises the integrity or availability of the critical infrastructure’s digital systems.

The bill does not rank the offense of improperly tampering with critical infrastructure on the OSRC. As such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill specifies that a person who is found in a civil action to have improperly tampered with critical infrastructure based on such a conviction is civilly liable to the owner or operator of the critical infrastructure for damages in an amount equal to three times:

- The actual damage sustained by the owner or operator due to any property damage, personal injury, or wrongful death caused by the act; or
- Any claim made against the owner or operator for any property damage, personal injury, or wrongful death caused by the malfunction of the critical infrastructure resulting from the criminal act, whichever is greater.

Trespass on Critical Infrastructure

The bill prohibits a person from willfully entering or remaining on physical critical infrastructure without being authorized, licensed, or invited to do so if notice against entering or remaining in is given, either by actual communication to the offender or by posting, fencing, or cultivation as described in s. 810.011, F.S.

A violation of the prohibition is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Unauthorized Access to/Tampering with Computers

The bill prohibits a person from willfully, knowingly, and without authorization, gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized. A violation of the prohibition is a third degree felony. The bill does not rank the offense on the OSRC and as such, the third degree felony offense defaults to a Level 1 offense on the OSRC.

Finally, the bill prohibits a person from willfully, knowingly, and without authorization, physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure. A violation of the prohibition is a second degree felony. The bill does not rank the offense and as such, the second degree felony offense defaults to a Level 4 offense on the OSRC.

The bill defines the following terms to have the same meaning as in s. 815.03, F.S.:

- “Computer” means an internally programmed, automatic device that performs data processing.
- “Computer system” means a device or collection of devices, including support devices, one or more of which contain computer programs, electronic instructions, or input data and output data, and which perform functions, including, but not limited to, logic, arithmetic, data storage, retrieval, communication, or control. The term does not include calculators that are not programmable and that are not capable of being used in conjunction with external files.
- “Computer network” means a system that provides a medium for communication between one or more computer systems or electronic devices, including communication with an input or output device such as a display terminal, printer, or other electronic equipment that is connected to the computer systems or electronic devices by physical or wireless telecommunication facilities.
- “Electronic device” means a device or a portion of a device that is designed for and capable of communicating across a computer network with other computers or devices for the purpose of transmitting, receiving, or storing data, including, but not limited to, a cellular telephone, tablet, or other portable device designed for and capable of communicating with or across a computer network and that is actually used for such purpose.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 812.141, F.S., relating to offenses involving critical infrastructure; improper tampering; civil remedies; trespass on critical infrastructure; computer offenses involving critical infrastructure.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to critical infrastructure, which may result in increased admissions to such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 19, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and one strike-all amendment to the PCS and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Added additional facilities, including the cyber or virtual assets of a critical infrastructure facility, to the definition of “critical infrastructure.”
- Expanded the definition of “improperly tampers” to prohibit the unauthorized access, introduction of malware, or taking any other action that compromises the integrity or availability of a critical infrastructure’s digital systems.
- Required improper tampering to result in damage to critical infrastructure of \$200 or greater for the penalty in the bill to apply.
- Prohibited a person from trespassing on critical infrastructure, a violation of which is punishable as a third degree felony, and provided notice and posting requirements for the trespass offense to apply.
- Prohibited a person from willfully, knowingly, and without authorization, gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by any critical infrastructure entity while knowing that such access is unauthorized, a violation of which is punishable as a third degree felony.
- Prohibited a person from physically tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to, a computer, computer system, computer network, or electronic device that causes a disruption in any service delivered by any critical infrastructure, a violation of which is punishable as a second degree felony.
- Deleted a provision that specified that a that a prosecution for an offense committed before July 1, 2024, is not abated or affected by the bill.

The strike-all amendment differed from the PCS as it:

- Defined the term “linear asset.”
- Included any linear asset within the definition of “critical infrastructure.”
- Prohibited a person from improperly tampering with critical infrastructure that results in the interruption or impairment of the function of critical infrastructure which costs \$200 or more in labor and supplies to restore, a violation of which is punishable as a second degree felony.
- Prohibited a person from trespassing on a linear asset, a violation of which is punishable as a third degree felony.
- Deleted specific notice and posting requirements for the offense of trespassing on critical infrastructure.
- Required a violation of the prohibition against physical tampering with, inserting a computer contaminant into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device that causes a disrupting in any service delivered by critical infrastructure to be made willfully, knowingly, and without authorization.
- Defined the terms “computer,” “computer system,” “computer network,” and “electronic device.”
- Made technical changes to improve clarity, align provisions in the bill, and improve the structure of the bill.

On January 30, 2024, the Energy, Communications & Cybersecurity Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed from the bill the crime of trespassing on a linear asset where no notice against entering is given.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

1 A bill to be entitled
 2 An act relating to offenses involving critical
 3 infrastructure; creating s. 812.141, F.S.; providing
 4 definitions; providing criminal penalties for
 5 improperly tampering with critical infrastructure
 6 resulting in specified monetary damage or cost to
 7 restore; providing for civil liability upon a
 8 conviction for such violations; providing criminal
 9 penalties for trespass upon critical infrastructure;
 10 providing notice requirements; providing criminal
 11 penalties for the unauthorized access to or tampering
 12 with specified electronic devices or networks of
 13 critical infrastructure; providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 812.141, Florida Statutes, is created
 18 to read:

19 812.141 Offenses involving critical infrastructure;
 20 improper tampering; civil remedies; trespass on critical
 21 infrastructure; computer offenses involving critical
 22 infrastructure.-

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

24 (a) "Critical infrastructure" means:

25 1. Any linear asset; or

26 2. Any of the following for which the owner or operator
 27 thereof has employed physical or digital measures designed to
 28 exclude unauthorized persons, including, but not limited to,
 29 fences, barriers, guard posts, identity and access management,
 30 firewalls, virtual private networks, encryption, multifactor
 31 authentication, passwords, or other cybersecurity systems and
 32 controls:

33 a. An electric power generation, transmission, or
 34 distribution facility, or a substation, a switching station, or
 35 an electrical control center.

36 b. A chemical or rubber manufacturing or storage facility.

37 c. A mining facility.

38 d. A natural gas or compressed gas compressor station,
 39 storage facility, or pipeline.

40 e. A gas processing plant, including a plant used in the
 41 processing, treatment, or fractionation of natural gas.

42 f. A liquid natural gas or propane gas terminal or storage
 43 facility with a capacity of 4,000 gallons or more.

44 g. Any portion of an aboveground oil or gas pipeline.

45 h. A wireless or wired communications network, including
 46 the tower, antennae, support structures, and all associated
 47 ground-based equipment, including equipment intended to provide
 48 communications to governmental entities, including, but not
 49 limited to, law enforcement agencies, fire emergency medical
 50 services, emergency management agencies, or any other

51 governmental entity.

52 i. A water intake structure, water treatment facility,
53 wastewater treatment plant, pump station, or lift station.

54 j. A deepwater port, railroad switching yard, airport,
55 trucking terminal, or other freight transportation facility.

56 k. A facility used for the operation, landing, takeoff, or
57 surface maneuvering of vehicles, aircraft, or spacecraft.

58 l. A transmission facility used by a federally licensed
59 radio or television station.

60 m. A military base or military facility conducting
61 research and development of military weapons systems,
62 subsystems, components, or parts.

63 n. A civilian defense industrial base conducting research
64 and development of military weapons systems, subsystems,
65 components, or parts.

66 o. Cyber or virtual assets, including electronic systems,
67 networks, servers, data centers, devices, hardware, software, or
68 data that are essential to the reliable operations, monitoring,
69 and security of any critical infrastructure.

70 p. Dams and other water control structures.

71 (b) "Improperly tampers" means to knowingly and
72 intentionally cause, or attempt to cause, a significant
73 interruption or impairment of a function of critical
74 infrastructure by:

75 1. Changing the physical location or physical or virtual

76 condition of the critical infrastructure, or any portion
77 thereof, without permission or authority to do so;

78 2. Otherwise moving, damaging, or destroying the critical
79 infrastructure or any portion thereof, without permission or
80 authority to do so; or

81 3. Accessing without authorization, introducing malware,
82 or taking any other action that compromises the integrity or
83 availability of the critical infrastructure's digital systems.

84 (c) "Linear asset" means any electric distribution or
85 transmission asset, gas distribution or transmission pipeline,
86 communication wirelines, or railway, and any attachments
87 thereto.

88 (2) A person who improperly tampers with critical
89 infrastructure resulting in damage to critical infrastructure
90 that is \$200 or more or in the interruption or impairment of the
91 function of critical infrastructure which costs \$200 or more in
92 labor and supplies to restore, commits a felony of the second
93 degree, punishable as provided in s. 775.082, s. 775.083, or s.
94 775.084.

95 (3) A person who is found in a civil action to have
96 improperly tampered with critical infrastructure based on a
97 conviction for a violation of subsection (2) is liable to the
98 owner or operator of the critical infrastructure for damages in
99 an amount equal to three times the actual damage sustained by
100 the owner or operator due to any property damage, personal

101 injury, or wrongful death, caused by the act or an amount equal
102 to three times any claim made against the owner or operator for
103 any property damage, personal injury, or wrongful death caused
104 by the malfunction of the critical infrastructure resulting from
105 the act, whichever is greater.

106 (4) A person commits the offense of trespass on critical
107 infrastructure, a felony of the third degree, punishable as
108 provided in s. 775.082, s. 775.083, or s. 775.084, if he or she
109 without being authorized, licensed, or invited, willfully enters
110 upon or remains on physical critical infrastructure as to which
111 notice against entering or remaining in is given, either by
112 actual communication to the offender or by posting, fencing, or
113 cultivation as described in s. 810.011.

114 (5)(a) A person who willfully, knowingly, and without
115 authorization gains access to a computer, a computer system, a
116 computer network, or an electronic device that is owned,
117 operated, or used by any critical infrastructure entity while
118 knowing that such access is unauthorized commits a felony of the
119 third degree, punishable as provided in s. 775.082, s. 775.083,
120 or s. 775.084.

121 (b) A person who willfully, knowingly, and without
122 authorization physically tampers with, inserts a computer
123 contaminant into, or otherwise transmits commands or electronic
124 communications to, a computer, a computer system, a computer
125 network, or an electronic device that causes a disruption in any

126 | service delivered by any critical infrastructure commits a
127 | felony of the second degree, punishable as provided in s.
128 | 775.082, s. 775.083, or s. 775.084.

129 | (c) For purposes of this subsection, the terms "computer,"
130 | "computer system," "computer network," and "electronic device"
131 | have the same meanings as in s. 815.03.

132 | Section 2. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Canady offered the following:

Amendment

Remove lines 27-110 and insert:

thereof has employed measures designed to exclude unauthorized persons, including, but not limited to, fences, barriers, guard posts, or signs prohibiting trespass:

a. An electric power generation, transmission, or distribution facility, or a substation, a switching station, or an electrical control center.

b. A chemical or rubber manufacturing or storage facility.

c. A mining facility.

d. A natural gas or compressed gas compressor station, or storage facility.

e. A gas processing plant, including a plant used in the

Amendment No. 1

- 17 processing, treatment, or fractionation of natural gas.
- 18 f. A liquid natural gas or propane gas terminal or storage
19 facility with a capacity of 4,000 gallons or more.
- 20 g. A wireless or wired communications facility, including
21 the tower, antennae, support structures, and all associated
22 ground-based equipment.
- 23 h. A water intake structure, water treatment facility,
24 wastewater treatment plant, pump station, or lift station.
- 25 i. A seaport as listed in s. 311.09.
- 26 j. A railroad switching yard, trucking terminal, or other
27 freight transportation facility.
- 28 k. An airport as defined in s. 330.27.
- 29 l. A spaceport territory as defined in s. 331.303.
- 30 m. A transmission facility used by a federally licensed
31 radio or television station.
- 32 n. A military base or military facility conducting
33 research and development of military weapons systems,
34 subsystems, components, or parts.
- 35 o. A civilian defense industrial base conducting research
36 and development of military weapons systems, subsystems,
37 components, or parts.
- 38 p. A dam as defined in s. 373.403, or other water control
39 structures such as locks, floodgates, or dikes, that are
40 designed to maintain or control the level of navigable
41 waterways.

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Amendment No. 1

42 (b) "Improperly tampers" means to cause, or attempt to
43 cause, significant damage to, or a significant interruption or
44 impairment of a function of, critical infrastructure without
45 permission or authority to do so.

46 (c) "Linear asset" means any electric distribution or
47 transmission asset, oil or gas distribution or transmission
48 pipeline, communication wirelines, or railway, and any
49 attachments thereto.

50 (2) A person commits a felony of the second degree,
51 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
52 if he or she knowingly and intentionally improperly tampers with
53 critical infrastructure which results in:

54 (a) Damage to such critical infrastructure that is \$200 or
55 more; or

56 (b) The interruption or impairment of the function of such
57 critical infrastructure which costs \$200 or more in labor and
58 supplies to restore.

59 (3) A person who is found in a civil action to have
60 improperly tampered with critical infrastructure based on a
61 conviction for a violation of subsection (2) is liable to the
62 owner or operator of the critical infrastructure for damages in
63 an amount equal to three times the actual damage sustained by
64 the owner or operator due to any property damage, personal
65 injury, or wrongful death, caused by the act or an amount equal
66 to three times any claim the owner or operator was required to

Amendment No. 1

67 pay for any property damage, personal injury, or wrongful death
68 caused by the malfunction of the critical infrastructure
69 resulting from the act, whichever is greater.

70 (4) A person commits the offense of trespass on critical
71 infrastructure, a felony of the third degree, punishable as
72 provided in s. 775.082, s. 775.083, or s. 775.084, if he or she
73 without being authorized, licensed, or invited, willfully enters
74 upon or remains on critical infrastructure as to which

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 347 Exemptions from Products Liability Actions

SPONSOR(S): Civil Justice Subcommittee, Truenow

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 5 N	Mawn	Jones
2) Judiciary Committee		Mawn	Kramer

SUMMARY ANALYSIS

The Florida Courts System is composed of the Supreme Court, six district courts of appeal, 20 circuit courts, and 67 county courts. Florida law provides the mechanisms by which a person becomes subject to the jurisdiction of such courts, which include:

- Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- Committing a tort within this state.
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
 - The defendant was engaged in solicitation or service activities within this state; or
 - Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the Florida Department of Agriculture ("Department"), by rule, declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant. The Florida Pesticide Law, set out in Part I of Ch. 487, F.S. and enforced by the Department, regulates the distribution, sale, and use of pesticides in this state to protect people and the environment from the adverse effects of pesticides. Such regulations include pesticide registration requirements, a list of prohibited activities, and licensing and other requirements for various persons involved in pesticide manufacturing, distribution, sale, or application. Such persons are also generally subject to suit in a products liability action, meaning a civil action based upon a theory of strict liability, negligence, breach of warranty, nuisance, or similar theories for damages caused by the manufacture, construction, design, formulation, installation, preparation, or assembly of a product.

HB 347 amends s. 487.081, F.S., to provide that a products liability action, including an action for failure to warn, may not be brought or maintained against any pesticide distributor, dealer, or applicator unless:

- Such person exercised substantial control over the aspect of the design, testing, manufacture, or labeling of the product that caused the alleged harm for which recovery of damages is sought;
- Such person altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recovery of damages is sought;
- Such person handled, used, or applied the product in a manner inconsistent with the product label and that such action or failure to warn caused the alleged harm for which recovery of damages is sought; or
- The manufacturer of the product that caused the alleged harm for which recovery of damages is sought is not subject to the jurisdiction of Florida courts.

The bill may have an indeterminate fiscal impact on state and local governments. The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0347b.JDC

DATE: 2/12/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Courts System

The Florida Courts System is composed of the Supreme Court, six district courts of appeal, 20 circuit courts, and 67 county courts.¹ Florida law provides the mechanisms by which a person becomes subject to the jurisdiction of such courts. Specifically, s. 48.193, F.S., provides that a person, whether or not a citizen or resident of Florida, who personally or through an agent does any of the acts enumerated below thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the state courts for any cause of action arising from any of the following acts:

- Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- Committing a tort² within this state.
- Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- Contracting to insure a person, property, or risk located within this state at the time of contracting.
- With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not.
- Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
 - The defendant was engaged in solicitation or service activities within this state; or
 - Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
- Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
- With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.
- Entering into a contract containing provisions subjecting the parties to the contract to the jurisdiction of this state.

Products Liability

A “products liability action” is a civil action based upon a theory of strict liability,³ negligence,⁴ breach of warranty,⁵ nuisance,⁶ or similar theories for damages caused by the manufacture, construction, design,

¹ Office of the State Courts Administrator, *Florida Courts*, <https://www.flcourts.gov/Florida-Courts> (last visited Feb. 8, 2024).

² A tort is a wrong committed by one person against another for which the law provides a civil remedy. Torts may be intentional, such as battery, or unintentional, such as negligence. Legal Information Institute, *Tort*, <https://www.law.cornell.edu/wex/tort> (last visited Feb. 8, 2024).

³ “Strict liability” exists when a defendant is liable for committing an action, regardless of what his or her intent or mental state was when committing the action. In the products liability context, strict liability applies when a defective product for which an appropriate defendant holds responsibility causes injury to an appropriate plaintiff. Legal Information Institute, *Strict Liability*, https://www.law.cornell.edu/wex/strict_liability (last visited Feb. 8, 2024).

⁴ “Negligence” is the failure to behave with the level of care that a reasonable person would have exercised under the same circumstances. The elements required to prove negligence are duty, breach, causation, and damages. Legal Information Institute, *Negligence*, <https://www.law.cornell.edu/wex/negligence> (last visited Feb. 8, 2024).

formulation, installation, preparation, or assembly of a product or the failure to warn that the product is potentially dangerous.⁷ However, it is the substance of an action, not the conclusory terms used by a party, that determines whether an action is a products liability action.⁸

Products liability laws are based on the premise that companies have a duty to protect consumers from potential hazards caused by their products.⁹ Generally, a product must meet the ordinary expectations of a consumer; when a product has an unexpected defect or danger, the product cannot be said to meet those expectations.¹⁰ However, Florida courts have held that:

- A manufacturer has no duty to design the safest possible product;
- A manufacturer cannot be held liable for the misuse of a product;
- There is no duty to warn of an obvious danger or a danger about which the user is aware;
- A legally sufficient warning does not need to prevent a user from misusing a product; and
- A product manufacturer, distributor or seller does not owe a duty to a third party who is injured as a result of a buyer's use of a product for unintended purposes.¹¹

Pesticides

Federal Pesticide Regulation

The Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") regulates pesticide distribution, sale, and use in the United States.¹² Under FIFRA, all pesticides distributed or sold in the United States must be registered with the Environmental Protection Agency ("EPA"), and the EPA may not register a pesticide before the applicant shows, among other things, that using the pesticide in accordance with its specifications "will not generally cause unreasonable adverse effects on the environment."¹³ FIFRA defines "unreasonable adverse effects on the environment" to mean:

- Any unreasonable risk to man or the environment, accounting for the economic, social, and environmental costs and benefits of the pesticide's use; or
- A human dietary risk from residues that result from the pesticide's use in or on any food inconsistent with standards set by the Federal Food, Drug, and Cosmetic Act ("FFDCA").¹⁴

Under FIFRA, the states generally have the primary authority for compliance monitoring and acting against illegal pesticide use through state-enacted monitoring programs and the imposition of state-enacted civil or criminal penalties.¹⁵ However, the EPA may also bring civil or criminal enforcement actions under applicable federal law in certain circumstances.¹⁶

The FFDCA, in turn, authorizes the EPA to set tolerances, or maximum residue limits, for pesticide residue on foods.¹⁷ In setting tolerances, the EPA must find that a tolerance is "safe," meaning that there is a "reasonable certainty that no harm will result from aggregate exposure to the pesticide

⁵ "Breach of warranty" is the violation of an express or implied contract of warranty, and thus it is a breach of contract. Essentially, it occurs when the warrantor fails to provide the assurances warranted. Legal Information Institute, *Breach of Warranty*, https://www.law.cornell.edu/wex/breach_of_warranty (last visited Feb. 8, 2024).

⁶ "Nuisance" means actions within a person's control that interfere with the rights of others. Examples include creating loud noises or letting water run onto another person's property. Courts look broadly to evaluate whether an action by a party constitutes a nuisance and, in doing so, consider whether the action unreasonably interferes with the health, safety, and comfort of the affected parties. The length of the action, degree of unreasonableness, and whether there is a law or regulation prohibiting the action are influential. Legal Information Institute, *Nuisance*, <https://www.law.cornell.edu/wex/nuisance> (last visited Feb. 8, 2024).

⁷ The statute of limitations for a products liability action depends on the specific theory alleged. For example, the statute of limitations for a negligence action is two years, while the statute of limitations for a breach of warranty action is four years. Ss. 95.11 and 768.81(1)(d), F.S.

⁸ *Id.*

⁹ The Florida Bar, *Product Liability*, <https://www.floridabar.org/practice-areas/product-liability/> (last visited Feb. 8, 2024).

¹⁰ *Id.*

¹¹ *Michael Grieco v. Daiho Sangyo., Inc.*, 344 So. 3d 11 (Fla. 4th DCA 2022).

¹² 7 U.S.C. s. 136, *et seq.*

¹³ *Id.*

¹⁴ *Id.*; The Federal Food, Drug, and Cosmetic Act is codified at 21 U.S.C. s. 301, *et seq.*

¹⁵ 7 U.S.C. s. 136, *et seq.*; EPA, *Basic Information on Enforcement*, <https://www.epa.gov/enforcement/basic-information-enforcement> (last visited Feb. 8, 2024).

¹⁶ *Id.*

¹⁷ 21 U.S.C. s. 301, *et seq.*

residue.”¹⁸ Where there is no such established tolerance for a given pesticide, a food containing such pesticide’s residue is subject to seizure by the federal government.¹⁹ However, once a tolerance for a given pesticide is established, a residue level exceeding such tolerance triggers the possibility of federal and state enforcement actions.²⁰

The Florida Pesticide Law

A pesticide is any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses, bacteria, or fungi on or in living humans or other animals, which the Florida Department of Agriculture (“Department”), by rule, declares to be a pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.²¹ The Florida Pesticide Law, set out in Part I of Ch. 487, F.S., and enforced by Department, regulates the distribution, sale, and use of pesticides in this state to protect people and the environment from the adverse effects of pesticides.²² Such regulations exist in addition to applicable federal regulations and include pesticide registration requirements, a list of prohibited activities, and licensing and other requirements for various persons involved in pesticide manufacturing, distribution, sale, or application.

Under the Florida Pesticide Law:

- “Certified applicator” means any individual who has been recognized by the Department as a competent pesticide applicator and, thus, is eligible to apply for licensure in one or more of the designated applicator license types and categories.²³
- “Commercial applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of any restricted-use pesticide²⁴ for any purpose on any property other than as provided by the definitions of “private applicator,” “product specific applicator,” or “public applicator,” whether or not the individual is a private applicator with respect to some uses.²⁵
- “Dealer” means any person, other than the manufacturer or distributor, who offers for sale, sells,²⁶ barter, or otherwise supplies pesticides to the ultimate user or consumer.²⁷
- “Distributor” means any person who offers for sale, holds for sale, sells, barter, or supplies pesticides in this state.²⁸
- “Licensed applicator” means an individual who has reached the age of majority and is authorized by license from the Department to use or supervise the use of any restricted-use pesticide covered by the license.²⁹
- “Manufacturer” means a person engaged in the business of importing, producing, preparing, mixing, formulating, or reformulating pesticides for the purpose of distribution.³⁰
- “Private applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of any restricted-use pesticide for purposes of

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ “Plant regulator” means any substance or mixture of substances intended, through physiological action, for accelerating or retarding the rate of growth or maturation, or for otherwise altering the behavior, of ornamental or crop plants or the produce thereof; but does not include substances intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments. “Defoliant” means any substance or mixture of substances intended for causing the leaves or foliage to drop from a plant, with or without causing abscission. “Desiccant” means any substance or mixture of substances intended for artificially accelerating the drying of plant tissues. S. 487.021 (19), (21), (49), and (51), F.S.

²² Ss. 487.011 and 487.012, F.S.

²³ S. 487.021(15), F.S.

²⁴ “Restricted-use pesticide” means a pesticide which, when applied in accordance with its directions for use, warnings, and cautions and for uses for which it is registered or for one or more such uses, or in accordance with a widespread and commonly recognized practice, may generally cause, without additional regulatory restrictions, unreasonable adverse effects on the environment, or injury to the applicator or other persons, and which has been classified as a restricted-use pesticide by the department or the administrator of the United States Environmental Protection Agency. S. 487.021(58), F.S.

²⁵ S. 487.021(16), F.S.

²⁶ Under the Florida Pesticide Law, “sell” or “sale” includes exchanges. S. 487.021(59), F.S.

²⁷ S. 487.021(17), F.S.

²⁸ S. 487.021(24), F.S.

²⁹ S. 487.021(41), F.S.

³⁰ S. 487.021(42), F.S.

producing any agricultural commodity on property owned or rented by his or her employer, or, if applied without compensation other than the trading of personal services between producers of agricultural commodities, on the property of another person.³¹

- “Public applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of restricted-use pesticides as an employee of a state agency, municipal corporation, or other governmental agency.³²
- “Product specified applicator” means an individual who has reached the age of majority and is licensed by the Department to use or supervise the use of a particular restricted-use pesticide product that is identified on the license by the United States Environmental Protection Agency registration number, as well as any Florida-specific registration number and any specific identifying information as deemed appropriate for non-federally registered products with a specified exemption, provided that such pesticides are used for a specified purpose.³³

In addition to facing penalties under the Florida Pesticide Law and applicable federal regulations, pesticide distributors, dealers, applicators, and manufacturers are subject to suit in state court for a products liability action where the state courts have jurisdiction over such persons.

Effect of Proposed Changes

HB 347 amends s. 487.081, F.S., to specify that a products liability action, including for failure to warn, may not be brought or maintained against any pesticide distributor, dealer, or applicator unless:

- Such person exercised substantial control over the aspect of the design, testing, manufacture, or labeling of the product that caused the alleged harm for which recovery of damages is sought;
- Such person altered or modified the product, and the alteration or modification was a substantial factor in causing the alleged harm for which recover of damages is sought;
- Such person handled, used, or applied the product in a manner inconsistent with the product label and such action or failure to warn caused the alleged harm for which recovery of damages is sought; or
- The manufacturer of the product that caused the alleged harm for which recovery of damages is sought is not subject to the jurisdiction of Florida courts.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 487.081, F.S., relating to exemptions.

Section 2: Provides an effective date of July 1, 2024.

³¹ S. 487.021(52), F.S.

³² S. 487.021(55), F.S.

³³ S. 487.021(56), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on the state court system to the extent that it reduces products liability actions brought or maintained in the state. The bill may also have a positive fiscal impact on state government to the extent that any state actor applies pesticides but cannot be named as a defendant in a products liability lawsuit related to such use.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a positive fiscal impact on local governments to the extent that any local government actor applies pesticides but cannot be named as a defendant in a products liability lawsuit related to such use.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on pesticide distributors, dealers, or applicators to the extent that they are ineligible to be named as defendants in a products liability action and are thereby spared litigation costs and the payment of damages.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to exemptions from products liability
 3 actions; amending s. 487.081, F.S.; specifying
 4 circumstances under which products liability actions
 5 may not be brought against distributors, dealers, or
 6 applicators; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (7) is added to section 487.081,
 11 Florida Statutes, to read:

12 487.081 Exemptions.—

13 (7) A products liability action, including a failure to
 14 warn, may not be brought or maintained against any distributor,
 15 dealer, or applicator unless:

16 (a) The distributor, dealer, or applicator exercised
 17 substantial control over the aspect of the design, testing,
 18 manufacture, or labeling of the product that caused the alleged
 19 harm for which recovery of damages is sought;

20 (b) The distributor, dealer, or applicator altered or
 21 modified the product, and the alteration or modification was a
 22 substantial factor in causing the alleged harm for which
 23 recovery of damages is sought;

24 (c) The distributor, dealer, or applicator handled, used,
 25 or applied the product in a manner inconsistent with the product

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26 label and that such action or failure to warn caused the alleged
27 harm for which recovery of damages is sought; or

28 (d) The manufacturer of the product that caused the
29 alleged harm for which recovery of damages is sought is not
30 subject to the jurisdiction of this state.

31 Section 2. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Truenow offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (7) is added to section 487.081,

7 Florida Statutes, to read:

8 487.081 Exemptions.—

9 (7) A products liability action, including a failure to
 10 warn, may not be brought or maintained against any agricultural
 11 employer as defined in s. 487.2031(1), or any distributor,
 12 dealer, or applicator unless:

13 (a) The agricultural employer, distributor, dealer, or
 14 applicator exercised substantial control over the aspect of the
 15 design, testing, manufacture, or labeling of the product that
 16 caused the alleged harm for which recovery of damages is sought;

Amendment No. 1

17 (b) The agricultural employer, distributor, dealer, or
18 applicator altered or modified the product and the alteration or
19 modification was a substantial factor in causing the alleged
20 harm for which recovery of damages is sought;

21 (c) The agricultural employer, distributor, dealer, or
22 applicator handled, used, or applied the product in a manner
23 inconsistent with the product label and such action or failure
24 to warn caused the alleged harm for which recovery of damages is
25 sought;

26 (d) The manufacturer of the product that caused the
27 alleged harm for which recovery of damages is sought is not
28 subject to the jurisdiction of this state.

29
30 This subsection applies only to pesticides as defined in s.
31 487.021.

32 Section 2. This act shall take effect July 1, 2024.

33
34 -----
35 **T I T L E A M E N D M E N T**

36 Remove everything before the enacting clause and insert:
37 An act relating to exemptions from products liability actions;
38 amending s. 487.081, F.S.; specifying circumstances under which
39 products liability actions may not be brought against
40 agricultural employers or pesticide distributors, dealers, or

Amendment No. 1

41 applicators; providing applicability; providing construction;
42 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 549 Theft

SPONSOR(S): Criminal Justice Subcommittee, Rommel and others

TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1222

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 3 N, As CS	Butcher	Hall
2) Justice Appropriations Subcommittee	11 Y, 3 N	Saag	Keith
3) Judiciary Committee		Butcher	Kramer

SUMMARY ANALYSIS

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender's prior history of theft convictions, the circumstances under which the theft occurs, or the type of property stolen. Specifically, s. 812.014(2)(d), F.S., prohibits a person from stealing property valued at \$100 or more, but less than \$750, when such property is taken from a dwelling or the unenclosed curtilage of a dwelling. A violation of the prohibition is a third degree felony and ranked as a Level 2 offense on the offense severity ranking chart (OSRC) of the Criminal Punishment Code.

CS/HB 549 amends s. 812.014, F.S., to reduce the threshold value for third degree felony theft from a dwelling or unenclosed curtilage of a dwelling from \$100 or more, but less than \$750, to \$40 or more, but less than \$750. Additionally, the bill creates new offenses relating to theft from a dwelling or unenclosed curtilage of a dwelling, including: a third degree felony, ranked as a Level 4 offense, if the property stolen is valued at \$750 or more; a second degree felony, ranked as a Level 5 offense, if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof, and; a first degree misdemeanor, if the property stolen is valued at less than \$40. If a person having one prior theft conviction commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 2 offense. If a person having two or more prior theft convictions commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 4 offense.

In recent years, some retail merchants have experienced an increase in another type of property theft called "smash-and-grab" theft. In this form of organized retail crime, a group of offenders enter a retail store en masse to steal merchandise, typically overwhelming the merchant's employees and preventing the merchant from stopping the theft. In recent years, law enforcement has reported such offenders utilizing social media to coordinate illegal group activity.

CS/HB 549 amends s. 812.015, F.S., to:

- Prohibit a person from acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense, punishable as a third degree felony.
- Prohibit a person from acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense and, in the course of organizing or committing the offense, soliciting the participation of another person in the offense through the use of a social media platform, as defined in s. 501.2041(1), F.S., punishable as a second degree felony.
- Enhance the criminal penalty to a first degree felony for specified violations of retail theft, when committed by a person who has two or more prior specified retail theft convictions or who possesses a firearm during the commission of a specified retail theft offense.
- Revise specified aggregation criteria for retail theft offenses to:
 - Increase the period in which the number of thefts or the value of merchandise stolen during individual thefts may be aggregated to determine the total number of thefts or value of property stolen, from 30 days to 365 days.
 - Decrease the number of theft offenses under ss. 812.015(8)(f) and 812.015(9)(d), F.S., where an offender must commit a certain aggregate number of thefts within a specified timeframe and obtain a specified number of items of merchandise, from *five* thefts to *three* thefts.

The bill may have a positive indeterminate impact on jail and prison beds. See Fiscal Comments.

The bill provides an effective date of October 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0549c.JDC

DATE: 2/12/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Theft from a Dwelling or the Unenclosed Curtilage of a Dwelling

Background

In recent years, the rise of e-commerce has led to an increase in “porch piracy”, a crime that occurs when a person or group of persons steal a package or other mail parcel from the owner’s porch or other area near the owner’s home before he or she has the opportunity to retrieve the package. Nearly eight in ten Americans have reported falling victim to such package theft in 2022, totaling an estimated 260 million packages worth \$19.5 billion.¹ At least eight states have specifically made package theft a felony.²

Florida Law

Burglary

Section s. 810.02, F.S., prohibits a person from committing burglary by:

- Entering a dwelling, structure, or conveyance with the intent to commit an offense therein – unless the premises are at the time open to the public or the person’s entry is licensed or invited; or
- Remaining in a dwelling, structure, or conveyance:
 - Surreptitiously, with the intent to commit an offense therein;
 - After permission to remain is withdrawn, with the intent to commit an offense therein; or
 - To commit or attempt to commit a forcible felony.³

A burglary is a felony offense classified according to the offense’s specific circumstances, as follows:

- A burglary or attempted burglary of an unoccupied structure or conveyance is a third degree felony.^{4,5}
- A burglary of a dwelling, an occupied structure or conveyance, or an authorized emergency vehicle is a second degree felony.^{6,7}
- A burglary is a first degree felony when an offender:^{8,9}
 - Commits an assault or a battery;
 - Becomes armed with explosives or a dangerous weapon within the premises he or she is burglarizing;
 - Enters a dwelling or structure and:

¹ Ana Durrani, *The Worst States For Porch Pirates 2024* (May 18, 2023), Forbes, <https://www.forbes.com/home-improvement/home-security/worst-states-for-porch-pirates/> (last visited Feb. 12, 2024).

² *Id.* These states include Arkansas (Ark. Code s. 5-36-103(b)(3) (2023); Class D felony), Georgia (Ga. Code s. 16-8-24 (2023); felony, requirement that person possess minimum of ten separate pieces of stolen mail addressed to three or more different mailboxes and addresses), Kentucky (Ky. Rev. Stat. Ann. s. 514.140 (2023); Class D felony), Michigan (Mich. Comp. Laws s. 445.33 (2023); misdemeanor for first violation; felony for second or subsequent violation), New Jersey (N.J. Stat. s. 2C:20-2 (2023); felony crime of the second degree), Oklahoma (Okla. Stat. tit. 21, s. 1740.2 (2023); misdemeanor; felony if three or more separate offenses committed within 60-day period), Tennessee (Tenn. Code s. 39-14-129 (2023); misdemeanor for first violation; felony for second or subsequent violation), and Texas (TX Penal Code Ann. s. 31.20 (2023); misdemeanor if mail stolen from fewer than 10 addresses; state jail felony if mail stolen from at least 10 but fewer than 30 addresses; felony if mail stolen from 30 or more addresses).

³ “Forcible felony” means treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual. S. 776.08, F.S.

⁴ S. 810.02(4), F.S.

⁵ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁶ S. 810.02(3), F.S.

⁷ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁸ S. 810.02(2), F.S.

⁹ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

- Causes damage to a dwelling or structure with a motor vehicle; or
- Causes damage to a dwelling or structure over \$1,000.

Under ch. 810, F.S., a:

- “Dwelling” means a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof;¹⁰
- “Structure” means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof;¹¹ and
- “Conveyance” includes any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car.¹²

In *State v. Hamilton*,¹³ the Florida Supreme Court (FSC) held that Florida’s burglary statute requires that “curtilage” be enclosed in order to prove a violation of s. 810.02, F.S. In *Hamilton*, the defendant was alleged to have entered the yard of a home to steal motors attached to a boat, but the yard was not enclosed by fencing or shrubs or in any other manner.¹⁴ Although the standard jury instruction for burglary provided that “[s]tructure means any building of any kind, either temporary or permanent, that has a roof over it, and the *enclosed* space of ground and outbuildings immediately surrounding the structure” (emphasis added), the trial court gave a modified instruction that contained no requirement that the yard be “enclosed.”^{15,16} The FSC concluded that the trial court committed reversible error and that the enclosure requirement in the standard jury instruction was a necessary element to prove burglary under s. 810.02, F.S.¹⁷

Even though there must be an enclosure to prove that a person committed burglary, the enclosure need not be continuous and may have an ungated opening for entering and exiting.¹⁸ For purposes of burglary, a “dwelling” also includes an attached porch or attached garage.^{19,20}

Under current law, whether a package thief commits burglary may depend on where a package or other mail parcel is located, and whether or not that location is part of the enclosed curtilage of the dwelling. For example, a package thief who steals a package from the front of a driveway or a mailbox near the road may not have committed burglary, whereas a package thief who enters a screened-off front porch and steals a package near a front door or an attached porch may have committed burglary.

Theft from a Dwelling or the Unenclosed Curtilage of a Dwelling

Generally, a person commits theft by knowingly obtaining or using, or endeavoring to obtain or to use, the property of another with the intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.²¹

¹⁰ S. 810.011(2), F.S.

¹¹ However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of the absence of a wall or roof. S. 810.011(2), F.S.

¹² “To enter a conveyance” includes taking apart any portion of the conveyance. However, during a state of emergency, for purposes of ss. 810.02 and 810.08, F.S., only, the term “conveyance” means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist. S. 810.011(3), F.S.

¹³ 660 So.2d 1038 (Fla. 1995).

¹⁴ *Id.* at 1039.

¹⁵ *Id.*

¹⁶ Fla. Std. Jury Instr. 13.1 (Crim.). The current standard jury instruction for burglary still defines “structure” as that term was defined in *Hamilton*.

¹⁷ *Supra*, note 13 at 1044–45.

¹⁸ *Dubose v. State*, 210 So. 3d 641 (Fla. 2017).

¹⁹ *Id.*

²⁰ See also *supra*, note 17, and s. 810.011(2), F.S.

²¹ S. 812.014(1), F.S.

Section 812.014, F.S., defines theft offenses and generally categorizes the offense level based on the value of the property stolen. Whether a theft is a misdemeanor or a felony may also depend on the offender’s prior history of theft convictions or the type of property stolen. The offense levels for theft crimes based on property value thresholds and general property types are classified as follows:

	Property Value	Offense Level
Grand Theft	≥ \$100,000	First Degree Felony
	≥ \$20,000, but < \$100,000	Second Degree Felony
	≥ \$10,000, but < \$20,000	Third Degree Felony
	≥ \$5,000, but < \$10,000	Third Degree Felony
	≥ \$750, but < \$5,000	Third Degree Felony
	≥ \$100, but < \$750 if taken from a dwelling or unenclosed curtilage of a dwelling	Third Degree Felony
Petit Theft	≥ \$100, but < \$750	First Degree Misdemeanor
	< \$100	Second Degree Misdemeanor

Additionally, s. 812.014, F.S., increases the severity of a petit theft offense if a person has one or more prior theft convictions. Petit theft committed by a person with a previous theft conviction is a first-degree misdemeanor.²² Petit theft committed by a person with two or more previous theft convictions is a third-degree felony.²³

Under s. 812.014(2)(d), F.S., a person commits grand theft of the third degree and a felony of the third degree if the property stolen is valued at \$100 or more, but less than \$750, and is taken from a dwelling as defined in s. 810.011(2) or from the unenclosed curtilage of a dwelling pursuant to s. 810.09(1). “Dwelling” is defined the same as in s. 810.011(2), F.S., relating to burglary, and “unenclosed curtilage” is defined the same as in s. 810.09(1), F.S., meaning the unenclosed land or grounds, and any outbuildings, that are directly and intimately adjacent to and connected with the dwelling and necessary, convenient, and habitually used in connection with that dwelling.

Theft from a dwelling or the unenclosed curtilage of a dwelling under s. 812.014(2)(d), F.S., captures a broader scope of theft activity than burglary, which specifically requires that any curtilage from which the taking may occur to be *enclosed*. As such, under current law, a package thief who steals a package valued at \$100 or more, but less than \$750, from the unenclosed curtilage of a dwelling commits theft under s. 812.014(2)(d), but not burglary under s. 810.02, F.S.

Additionally, s. 812.014(2)(d), F.S., does not include an offense that takes into account an offender’s prior record of theft convictions, or the number of dwellings from which the offense is committed.

²² S. 812.014(3)(b), F.S.
²³ S. 812.014(3)(c), F.S.
STORAGE NAME: h0549c.JDC
DATE: 2/12/2024

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code²⁴ are listed in a single offense severity ranking chart (OSRC),²⁵ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{26,27} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{28,29} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.³⁰

Theft from a dwelling or the unenclosed curtilage of a dwelling under s. 812.014(2)(d), F.S., is currently ranked as a Level 2 offense on the OSRC.

Effect of Proposed Changes – Theft from a Dwelling or the Unenclosed Curtilage of a Dwelling

CS/HB 549 amends s. 812.014, F.S., to reduce the threshold value for third degree felony theft from a dwelling or unenclosed curtilage of a dwelling from the current threshold of \$100 or more, but less than \$750, to \$40 or more, but less than \$750. The bill continues to rank the offense as a Level 2 offense on the OSRC, the same as current law.

Additionally, the bill creates several new offenses relating to theft from a dwelling or unenclosed curtilage of a dwelling, including:

- Grand theft of the third degree, punishable as a third degree felony, if the property stolen is valued at \$750 or more. The new offense is ranked as a Level 4 offense on the OSRC.
- Grand theft of the second degree, punishable as a second degree felony, if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof. The new offense is ranked as a Level 5 offense on the OSRC.
- Petit theft of the first degree, punishable as a first degree misdemeanor, if the property stolen is valued at less than \$40.
 - If a person having one prior theft conviction commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 2 offense on the OSRC.
 - If a person having two or more prior theft convictions commits the offense, the penalty is enhanced to a third degree felony and ranked as a Level 4 offense on the OSRC.

²⁴ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

²⁵ S. 921.0022, F.S.

²⁶ S. 921.0022(2), F.S.

²⁷ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

²⁸ Sections 921.0022 and 921.0024, F.S.

²⁹ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

³⁰ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

Retail Theft

Background

Organized Retail Crime

Instances of organized retail crime (ORC) commonly involve premeditated crimes where multiple offenders operate in different specified roles or positions.³¹ A smash-and-grab theft is a form of ORC in which a group of participants enter a retail store en masse and steal merchandise. Typically, the merchant's employees are overwhelmed by the large number of participants, whose numbers prevent the merchant from stopping the theft and cause panic among shoppers.³² Smash-and-grab thefts occur across the country, and in the past, law enforcement has reported that offenders utilize social media to coordinate illegal group activity.³³

Regarding ORC, the National Retail Federation published the following data gathered from its 2023 Retail Security Survey:³⁴

- In Fiscal Year 2022, 81 percent of respondents reported that ORC offenders had grown more violent. In 2023, more than two-thirds (67 percent) of respondents said that they were seeing even more violence and aggression from ORC perpetrators compared with a year ago.
- The most aggressive or violent shoplifters, as reported by respondents, are those involved in groups, gangs and smash-and-grab thefts, followed by repeat offenders.
- When taken as a percentage of total retail sales in 2022, "shrink," or the measurement of losses calculated during a specific period of time, represented \$112.1 billion in losses, up from \$93.9 billion in 2021. Theft – both internal and external – accounted for nearly two-thirds (65 percent) of shrink.
- ORC accounted for almost 5 percent, or \$4.7 billion, of shrink.³⁵

Florida Law

Under s. 812.015(1)(d), F.S., retail theft includes taking any of the following actions with the intent to deprive a merchant of the possession, use, benefit, or full retail value of property:

- Taking possession of, or carrying away, merchandise, property, money or negotiable documents;
- Altering or removing a label, universal product code, or price tag;
- Transferring merchandise from one container to another; or
- Removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

Under s. 812.015(8)(a)-(e), F.S., retail theft is a third degree felony if the property stolen is valued at \$750 or more, and a person:

- Individually commits retail theft, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, which may occur through multiple acts of retail theft, in which the amount of each individual theft is aggregated within a 30-day period³⁶ to determine the value of the property stolen;

³¹ Storm Suitter, *Organized Retail Crime Methods and How to Prevent Them* (Sep. 28, 2021), LiveView Technologies, <https://www.lvt.com/blog/organized-retail-crime-methods-and-how-to-prevent-them> (last visited on Feb. 12, 2024).

³² Brandon Beyer, Rubén Rosario, and Robbin Simmons. *Police: Shattered glass during 'smash and grab' at Sawgrass Mills Mall leads to panic* (Dec. 17, 2023), WSVN 7 News, <https://wsvn.com/news/local/broward/police-shattered-glass-during-smash-and-grab-at-sawgrass-mills-mall-leads-to-panic/> (last visited on Feb. 12, 2024).

³³ Mary Hanbury, *Police say that smash-and-grab robberies at Nordstrom, Louis Vuitton, and Best Buy were organized on social media by groups of people who had never met* (Dec. 14, 2021), Business Insider, <https://www.businessinsider.com/smash-and-grab-robberies-organized-on-social-media-police-2021-12> (last visited on Feb. 12, 2024).

³⁴ *National Retail Security Survey 2023* (Sep. 26, 2023), NRF, https://cdn.nrf.com/sites/default/files/2023-09/NRF_National_Retail_Security_Survey_2023.pdf (last visited Feb. 12, 2024).

³⁵ David Montgomery, *'Smash-and-grab' robberies fuel new laws, but critics question the need* (Dec. 19, 2023), Stateline, <https://stateline.org/2023/12/19/smash-and-grab-robberies-fuel-new-laws-but-critics-question-the-need/> (last visited Feb. 12, 2024).

³⁶ In 2019, CS/HB 7125 amended s. 812.015, F.S., and increased the aggregation period from 48 hours to 30 days. Ch. 2019-167, Laws of Fla.

- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in the control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to determine the value of the property stolen;³⁷
- Individually, or in concert with one or more other persons, commits theft from more than one location within a 30-day period, in which the amount of each individual theft is aggregated to determine the value of the property stolen;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.

Under s. 812.015(8)(f), F.S., retail theft is a third degree felony, regardless of the value of property stolen, if a person:

- Individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 10 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at different physical merchant locations.³⁸

Under s. 812.015(9)(a)-(c), F.S., retail theft is a second degree felony if a person:

- Commits a second or subsequent felony retail theft offense;
- Individually, or in concert with one or more other persons, coordinates the activities of one or more persons in committing the offense of retail theft, in which the amount of each individual theft within a 30-day period is aggregated to determine the value of the stolen property and such value is in excess of \$3,000;³⁹ or
- Conspires with another person to commit retail theft with the intent to sell the stolen property for monetary or other gain, and subsequently takes or causes such property to be placed in control of another person in exchange for consideration, in which the stolen property taken or placed within a 30-day period is aggregated to have a value in excess of \$3,000.⁴⁰

Under s. 812.015(9)(d), F.S., retail theft is a second degree felony, regardless of the value of property stolen, if a person:

- Individually, or in concert with one or more other persons, commits five or more retail thefts within a 30-day period and in committing such thefts obtains or uses 20 or more items of merchandise, and the number of items stolen during each theft is aggregated within the 30-day period to determine the total number of items stolen, regardless of the value of such merchandise, and two or more of the thefts occur at a different physical retail merchant location.⁴¹

³⁷ S. 812.015(8)(b), F.S., is ranked as a Level 3 offense on the OSRC. Ss. 812.015(8)(a), (c), (d), and (e) are unlisted third degree felonies and are thus each ranked as a Level 1 offense on the OSRC.

³⁸ S. 812.015(8)(f), F.S., is ranked as a Level 5 offense on the OSRC.

³⁹ Ss. 812.015(9)(a)-(b), F.S., are each ranked as a Level 6 offense on the OSRC.

⁴⁰ S. 812.015(9)(c), F.S., is an unlisted second degree felony and thus ranked as a Level 4 offense on the OSRC.

⁴¹ S. 812.015(9)(d), F.S., is ranked as a Level 6 offense on the OSRC.

Effect of Proposed Changes – Retail Theft

CS/HB 549 amends s. 812.015, F.S., to create two new retail theft offenses, prohibiting a person from:

- Acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense, punishable as a third degree felony.
- Acting in concert with five or more other persons within one or more establishments for the purpose of overwhelming the response of a merchant, merchant's employee, or law enforcement officer in order to carry out the offense or avoid detection or apprehension for the offense and, in the course of organizing or committing the offense, soliciting the participation of another person in the offense through the use of a social media platform, as defined in s. 501.2041(1), F.S.,⁴² punishable as a second degree felony.

Under the bill, these two new retail theft offenses may apply regardless of the value of property stolen.

The bill also creates new enhanced retail theft offenses, each punishable as a first degree felony, if a person commits retail theft under ss. 812.015(8) or (9), F.S., and:

- Has two or more previous convictions of violations of either or both of those subsections; or
- Possesses a firearm during the commission of such offense.⁴³

Additionally, the bill amends the aggregation criteria for specified retail theft offenses as follows:

- For retail theft offenses under ss. 812.015(8), 812.015(9), and 812.015(10), F.S., where a specified number of retail thefts or a specified value of property stolen is aggregated to determine the total number of retail thefts or value of property stolen, the bill increases the aggregation period from 30 days to 365 days.
- For retail theft offenses under ss. 812.015(8)(f) and 812.015(9)(d), F.S., that occur during a specified time period, at a specified number of locations, involving a specified number of items of merchandise, the bill decreases the aggregate number of retail thefts required to prove a violation from *five* retail thefts to *three* retail thefts.

The bill requires a court to order a person convicted of committing retail theft to pay restitution, which must include the value of merchandise that was damaged or stolen and the cost of repairing or replacing any other property that was damaged in the course of committing the offense.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 812.014, F.S., relating to theft.

Section 2: Amends s. 812.015, F.S., relating to retail and farm theft; transit fare evasion; mandatory fine; alternative punishment; detention and arrest; exemption from liability for false arrest; resisting arrest; penalties.

Section 3: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 4: Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers and other specified personnel; reclassification of offenses; minimum sentences.

Section 5: Provides an effective date of October 1, 2024.

⁴² Section 501.2041(1)(g), F.S., defines "social media platform" as any information service, system, Internet search engine, or access software provider that 1) provides or enables computer access by multiple users to a computer server, including an Internet platform or a social media site; 2) operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity; 3) does business in the state; and 4) satisfies at least one of the following thresholds: (a) has annual gross revenues in excess of \$100 million, as adjusted in January of each odd-numbered year to reflect any increase in the Consumer Price Index, or (b) has at least 100 million monthly individual platform participants globally.

⁴³ Under the bill, committing retail theft and having two or more convictions under ss. 812.015(8) or (9), F.S., is unlisted as thus ranked as a Level 7 offense on the OSRC. The bill ranks committing retail theft and possessing a firearm during the commission of the offense as a Level 8 offense on the OSRC.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on merchants who lose money from organized retail theft, to the extent that the requirements of the bill may result in more orders of restitution or orders of restitution in greater amounts. Restitution generally must be ordered in theft cases under current law, and the impact of the bill's changes on the frequency or value of restitution orders is indeterminate.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by decreasing thresholds for specified retail and residential theft offenses, enhancing penalties for specified offenses, and creating new misdemeanor and felony offenses, which may result in more jail and prison admissions or longer sentences for convicted offenders.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 10, 2024, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill as it:

- Amended s. 812.014, F.S, to create the following theft from a dwelling or the unenclosed curtilage of a dwelling offenses:
 - A second degree felony if the property stolen is taken from more than 20 dwellings or from the unenclosed curtilage of more than 20 dwellings, or any combination thereof.
 - A third degree felony if the property stolen is valued at \$40 or more, but less than \$750, or is valued at \$750 or more.
 - A first degree misdemeanor if the property stolen is valued at less than \$40, which may be enhanced to a third degree felony if the person has one or more prior theft convictions.
- Further amended s. 812.015, F.S., to:
 - Create a first degree felony if a person violates ss. 812.015(8) or (9), F.S., and has two or more previous convictions of violations of either or both of those subsections or possesses a firearm during the commission of the offense.
 - Increase the aggregation periods under ss. 812.015(8), (9), and (10), F.S., from 30 days to 365 days, when determining the total number of thefts a person commits or the total value of merchandise a person steals for specified retail theft offenses.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to theft; amending s. 812.014, F.S.;
3 reducing the minimum threshold amount for an offense
4 of grand theft of the third degree; creating an
5 offense of grand theft of the third degree; providing
6 criminal penalties; creating an offense of grand theft
7 of the second degree; providing criminal penalties;
8 creating an offense of petit theft of the first
9 degree; providing criminal penalties; providing
10 enhanced criminal penalties for committing petit theft
11 of the first degree and having certain previous
12 convictions; amending s. 812.015, F.S.; defining the
13 term "social media platform"; revising the number of
14 thefts required within a specified aggregation period
15 required to commit a specified violation for retail
16 theft; revising specified timeframes, from 30-day
17 periods to 365-day periods, in which individual acts
18 of retail theft may be aggregated to establish
19 specified thresholds; prohibiting a person from
20 committing retail theft with a specified number of
21 other persons for a specified purpose; providing a
22 criminal penalty; revising the number of thefts
23 required within a specified aggregation period
24 required to commit a specified violation for retail
25 theft; prohibiting a person from committing retail

26 theft with a specific number of other persons for a
 27 specified purpose when such person uses a social media
 28 platform to solicit the participation of other
 29 persons; providing a criminal penalty; providing
 30 criminal penalties for a person who commits retail
 31 theft and has certain prior retail theft convictions;
 32 providing criminal penalties for a person who commits
 33 retail theft who possesses a firearm during the
 34 commission of the offense; requiring a court to order
 35 a person convicted of retail theft to pay specified
 36 restitution; amending s. 921.0022, F.S.; ranking
 37 offenses on the offense severity ranking chart of the
 38 Criminal Punishment Code; amending s. 784.07, F.S.;
 39 correcting a cross-reference; providing an effective
 40 date.

41

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

43

44 Section 1. Paragraphs (e) and (f) of subsection (2) of
 45 section 812.014, Florida Statutes, are renumbered as paragraphs
 46 (f) and (g), respectively, paragraphs (c) and (d) of that
 47 subsection are amended, and a new paragraph (e) is added to that
 48 subsection, to read:

49 812.014 Theft.—

50 (2)

51 (c) It is grand theft of the third degree and a felony of
52 the third degree, punishable as provided in s. 775.082, s.
53 775.083, or s. 775.084, if the property stolen is:

54 1. Valued at \$750 or more, but less than \$5,000.

55 2. Valued at \$5,000 or more, but less than \$10,000.

56 3. Valued at \$10,000 or more, but less than \$20,000.

57 4. A will, codicil, or other testamentary instrument.

58 5. A firearm, except as provided in paragraph (g)
59 ~~paragraph (f)~~.

60 6. A motor vehicle, except as provided in paragraph (a).

61 7. Any commercially farmed animal, including any animal of
62 the equine, avian, bovine, or swine class or other grazing
63 animal; a bee colony of a registered beekeeper; and aquaculture
64 species raised at a certified aquaculture facility. If the
65 property stolen is a commercially farmed animal, including an
66 animal of the equine, avian, bovine, or swine class or other
67 grazing animal; a bee colony of a registered beekeeper; or an
68 aquaculture species raised at a certified aquaculture facility,
69 a \$10,000 fine shall be imposed.

70 8. Any fire extinguisher that, at the time of the taking,
71 was installed in any building for the purpose of fire prevention
72 and control. This subparagraph does not apply to a fire
73 extinguisher taken from the inventory at a point-of-sale
74 business.

75 9. Any amount of citrus fruit consisting of 2,000 or more

76 individual pieces of fruit.

77 10. Taken from a designated construction site identified
78 by the posting of a sign as provided for in s. 810.09(2)(d).

79 11. Any stop sign.

80 12. Anhydrous ammonia.

81 13. Any amount of a controlled substance as defined in s.
82 893.02. Notwithstanding any other law, separate judgments and
83 sentences for theft of a controlled substance under this
84 subparagraph and for any applicable possession of controlled
85 substance offense under s. 893.13 or trafficking in controlled
86 substance offense under s. 893.135 may be imposed when all such
87 offenses involve the same amount or amounts of a controlled
88 substance.

89
90 However, if the property is stolen during a riot or an
91 aggravated riot prohibited under s. 870.01 and the perpetration
92 of the theft is facilitated by conditions arising from the riot;
93 or within a county that is subject to a state of emergency
94 declared by the Governor under chapter 252, the property is
95 stolen after the declaration of emergency is made, and the
96 perpetration of the theft is facilitated by conditions arising
97 from the emergency, the offender commits a felony of the second
98 degree, punishable as provided in s. 775.082, s. 775.083, or s.
99 775.084, if the property is valued at \$5,000 or more, but less
100 than \$10,000, as provided under subparagraph 2., or if the

101 property is valued at \$10,000 or more, but less than \$20,000, as
102 provided under subparagraph 3. As used in this paragraph, the
103 terms "conditions arising from a riot" and "conditions arising
104 from the emergency" have the same meanings as provided in
105 paragraph (b). A person arrested for committing a theft during a
106 riot or an aggravated riot or within a county that is subject to
107 a state of emergency may not be released until the person
108 appears before a committing magistrate at a first appearance
109 hearing. For purposes of sentencing under chapter 921, a felony
110 offense that is reclassified under this paragraph is ranked one
111 level above the ranking under s. 921.0022 or s. 921.0023 of the
112 offense committed.

113 (d)1. It is grand theft of the third degree and a felony
114 of the third degree, punishable as provided in s. 775.082, s.
115 775.083, or s. 775.084, if the property stolen is valued at \$40
116 ~~\$100~~ or more, but less than \$750, and is taken from a dwelling
117 as defined in s. 810.011(2) or from the unenclosed curtilage of
118 a dwelling pursuant to s. 810.09(1).

119 2. It is grand theft of the third degree and a felony of
120 the third degree, punishable as provided in s. 775.082, s.
121 775.083, or s. 775.084, if the property stolen is valued at \$750
122 or more and is taken from a dwelling as defined in s. 810.011(2)
123 or from the unenclosed curtilage of a dwelling pursuant to s.
124 810.09(1).

125 3. It is grand theft of the second degree and a felony of

126 the second degree, punishable as provided in s. 775.082, s.
127 775.083, or s. 775.084, if the property stolen is taken from
128 more than 20 dwellings as defined in s. 810.011(2) or from the
129 unenclosed curtilage of more than 20 dwellings pursuant to s.
130 810.09(1), or any combination thereof.

131 (e)1. It is petit theft of the first degree and a
132 misdemeanor of the first degree, punishable as provided in s.
133 775.082 or s. 775.083, if the property stolen is valued at less
134 than \$40 and is taken from a dwelling as defined in s.
135 810.011(2) or from the unenclosed curtilage of a dwelling
136 pursuant to s. 810.09(1).

137 2. A person who commits a violation of subparagraph 1. and
138 who has previously been convicted of any theft commits a felony
139 of the third degree, punishable as provided in s. 775.082 or s.
140 775.083.

141 3. A person who commits a violation of subparagraph 1. and
142 who has previously been convicted two or more times of any theft
143 commits a felony of the third degree, punishable as provided in
144 s. 775.082 or s. 775.083.

145 Section 2. Subsection (11) of section 812.015, Florida
146 Statutes, is renumbered as subsection (13), subsections (1),
147 (8), (9), and (10) are amended, and new subsections (11) and
148 (12) are added to that section, to read:

149 812.015 Retail and farm theft; transit fare evasion;
150 mandatory fine; alternative punishment; detention and arrest;

151 exemption from liability for false arrest; resisting arrest;
 152 penalties.—

153 (1) As used in this section:

154 (a)~~(h)~~ "Antishoplifting or inventory control device" means
 155 a mechanism or other device designed and operated for the
 156 purpose of detecting the removal from a mercantile establishment
 157 or similar enclosure, or from a protected area within such an
 158 enclosure, of specially marked or tagged merchandise. The term
 159 includes any electronic or digital imaging or any video
 160 recording or other film used for security purposes and the cash
 161 register tape or other record made of the register receipt.

162 (b)~~(i)~~ "Antishoplifting or inventory control device
 163 countermeasure" means any item or device which is designed,
 164 manufactured, modified, or altered to defeat any antishoplifting
 165 or inventory control device.

166 (c)~~(e)~~ "Farm produce" means livestock or any item grown,
 167 produced, or manufactured by a person owning, renting, or
 168 leasing land for the purpose of growing, producing, or
 169 manufacturing items for sale or personal use, either part time
 170 or full time.

171 (d)~~(g)~~ "Farm theft" means the unlawful taking possession
 172 of any items that are grown or produced on land owned, rented,
 173 or leased by another person. The term includes the unlawful
 174 taking possession of equipment and associated materials used to
 175 grow or produce farm products as defined in s. 823.14(3)(e).

176 (e)~~(f)~~ "Farmer" means a person who is engaging in the
 177 growing or producing of farm produce, milk products, honey,
 178 eggs, or meat, either part time or full time, for personal
 179 consumption or for sale and who is the owner or lessee of the
 180 land or a person designated in writing by the owner or lessee to
 181 act as her or his agent. No person defined as a farm labor
 182 contractor pursuant to s. 450.28 shall be designated to act as
 183 an agent for purposes of this section.

184 (f)~~(k)~~ "Mass transit vehicle" means buses, rail cars, or
 185 fixed-guideway mover systems operated by, or under contract to,
 186 state agencies, political subdivisions of the state, or
 187 municipalities for the transportation of fare-paying passengers.

188 (g)~~(a)~~ "Merchandise" means any personal property, capable
 189 of manual delivery, displayed, held, or offered for retail sale
 190 by a merchant.

191 (h)~~(b)~~ "Merchant" means an owner or operator, or the
 192 agent, consignee, employee, lessee, or officer of an owner or
 193 operator, of any premises or apparatus used for retail purchase
 194 or sale of any merchandise.

195 (i)~~(d)~~ "Retail theft" means the taking possession of or
 196 carrying away of merchandise, property, money, or negotiable
 197 documents; altering or removing a label, universal product code,
 198 or price tag; transferring merchandise from one container to
 199 another; or removing a shopping cart, with intent to deprive the
 200 merchant of possession, use, benefit, or full retail value.

201 (j) "Social media platform" has the same meaning as
 202 provided in s. 501.2041(1).

203 ~~(k)-(l)~~ "Transit agency" means any state agency, political
 204 subdivision of the state, or municipality which operates mass
 205 transit vehicles.

206 (l)-(j) "Transit fare evasion" means the unlawful refusal
 207 to pay the appropriate fare for transportation upon a mass
 208 transit vehicle, or to evade the payment of such fare, or to
 209 enter any mass transit vehicle or facility by any door,
 210 passageway, or gate, except as provided for the entry of fare-
 211 paying passengers, and shall constitute petit theft as
 212 proscribed by this chapter.

213 (m) "Trespass" means the violation as described in s.
 214 810.08.

215 (n)-(e) "Value of merchandise" means the sale price of the
 216 merchandise at the time it was stolen or otherwise removed,
 217 depriving the owner of her or his lawful right to ownership and
 218 sale of said item.

219 (8) Except as provided in subsection (9) or subsection
 220 (11), a person who commits retail theft commits a felony of the
 221 third degree, punishable as provided in s. 775.082, s. 775.083,
 222 or s. 775.084, if the person:

223 (a) Individually, or in concert with one or more other
 224 persons, coordinates the activities of one or more individuals
 225 in committing the offense, which may occur through multiple acts

226 of retail theft, in which the amount of each individual theft is
 227 aggregated within a 365-day ~~30-day~~ period to determine the value
 228 of the property stolen and such value is \$750 or more;

229 (b) Conspires with another person to commit retail theft
 230 with the intent to sell the stolen property for monetary or
 231 other gain, and subsequently takes or causes such property to be
 232 placed in the control of another person in exchange for
 233 consideration, in which the stolen property taken or placed
 234 within a 365-day ~~30-day~~ period is aggregated to determine the
 235 value of the stolen property and such value is \$750 or more;

236 (c) Individually, or in concert with one or more other
 237 persons, commits theft from more than one location within a 365-
 238 day ~~30-day~~ period, in which the amount of each individual theft
 239 is aggregated to determine the value of the property stolen and
 240 such value is \$750 or more;

241 (d) Acts in concert with one or more other individuals
 242 within one or more establishments to distract the merchant,
 243 merchant's employee, or law enforcement officer in order to
 244 carry out the offense, or acts in other ways to coordinate
 245 efforts to carry out the offense and such value is \$750 or more;

246 (e) Commits the offense through the purchase of
 247 merchandise in a package or box that contains merchandise other
 248 than, or in addition to, the merchandise purported to be
 249 contained in the package or box and such value is \$750 or more;

250 ~~or~~

251 (f) Individually, or in concert with one ~~1~~ or more other
 252 persons, commits three ~~5~~ or more retail thefts within a 365-day
 253 ~~30-day~~ period and in committing such thefts obtains or uses 10
 254 or more items of merchandise, and the number of items stolen
 255 during each theft is aggregated within the 365-day ~~30-day~~ period
 256 to determine the total number of items stolen, regardless of the
 257 value of such merchandise, and two ~~2~~ or more of the thefts occur
 258 at different physical merchant locations; or

259 (g) Acts in concert with five or more other persons within
 260 one or more establishments for the purpose of overwhelming the
 261 response of a merchant, merchant's employee, or law enforcement
 262 officer in order to carry out the offense or avoid detection or
 263 apprehension for the offense.

264 (9) Except as provided in subsection (11), a person
 265 commits a felony of the second degree, punishable as provided in
 266 s. 775.082, s. 775.083, or s. 775.084, if the person:

267 (a) Violates subsection (8) and has previously been
 268 convicted of a violation of subsection (8) or of this
 269 subsection;

270 (b) Individually, or in concert with one or more other
 271 persons, coordinates the activities of one or more persons in
 272 committing the offense of retail theft, in which the amount of
 273 each individual theft within a 365-day ~~30-day~~ period is
 274 aggregated to determine the value of the stolen property and
 275 such value is in excess of \$3,000;

276 (c) Conspires with another person to commit retail theft
 277 with the intent to sell the stolen property for monetary or
 278 other gain, and subsequently takes or causes such property to be
 279 placed in control of another person in exchange for
 280 consideration, in which the stolen property taken or placed
 281 within a 365-day ~~30-day~~ period is aggregated to have a value in
 282 excess of \$3,000; ~~or~~

283 (d) Individually, or in concert with one ~~1~~ or more other
 284 persons, commits three ~~5~~ or more retail thefts within a 365-day
 285 ~~30-day~~ period and in committing such thefts obtains or uses 20
 286 or more items of merchandise, and the number of items stolen
 287 during each theft is aggregated within the 365-day ~~30-day~~ period
 288 to determine the total number of items stolen, regardless of the
 289 value of such merchandise, and two ~~2~~ or more of the thefts occur
 290 at a different physical retail merchant location; or

291 (e) Acts in concert with five or more other persons within
 292 one or more establishments for the purpose of overwhelming the
 293 response of a merchant, merchant's employee, or law enforcement
 294 officer in order to carry out the offense or avoid detection or
 295 apprehension for the offense and, in the course of organizing or
 296 committing the offense, solicits the participation of another
 297 person in the offense through the use of a social media
 298 platform.

299 (10) If a person commits retail theft in more than one
 300 judicial circuit within a 365-day ~~30-day~~ period, the value of

301 the stolen property resulting from the thefts in each judicial
 302 circuit may be aggregated, and the person must be prosecuted by
 303 the Office of the Statewide Prosecutor in accordance with s.
 304 16.56.

305 (11) A person commits a felony of the first degree,
 306 punishable as provided in s. 775.082, s. 775.083, or s. 775.084,
 307 if he or she violates subsection (8) or subsection (9) and:

308 (a) Has two or more previous convictions of violations of
 309 either or both of those subsections; or

310 (b) Possesses a firearm during the commission of such
 311 offense.

312 (12) A court must order a person convicted of violating
 313 this section to pay restitution, which must include the value of
 314 merchandise that was damaged or stolen and the cost of repairing
 315 or replacing any other property that was damaged in the course
 316 of committing the offense.

317 Section 3. Paragraphs (b), (d), (e), (f), (g), and (h) of
 318 subsection (3) of section 921.0022, Florida Statutes, are
 319 amended to read:

320 921.0022 Criminal Punishment Code; offense severity
 321 ranking chart.—

322 (3) OFFENSE SEVERITY RANKING CHART

323 (b) LEVEL 2

324

Florida	Felony	Description
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	Statute	Degree	
325	379.2431 (1) (e) 3.	3rd	Possession of 11 or fewer marine turtle eggs in violation of the Marine Turtle Protection Act.
326	379.2431 (1) (e) 4.	3rd	Possession of more than 11 marine turtle eggs in violation of the Marine Turtle Protection Act.
327	403.413 (6) (c)	3rd	Dumps waste litter exceeding 500 lbs. in weight or 100 cubic feet in volume or any quantity for commercial purposes, or hazardous waste.
328	517.07 (2)	3rd	Failure to furnish a prospectus meeting requirements.
329	590.28 (1)	3rd	Intentional burning of lands.
330	784.03 (3)	3rd	Battery during a riot or an aggravated riot.

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331	784.05(3)	3rd	Storing or leaving a loaded firearm within reach of minor who uses it to inflict injury or death.
332	787.04(1)	3rd	In violation of court order, take, entice, etc., minor beyond state limits.
333	806.13(1)(b)3.	3rd	Criminal mischief; damage \$1,000 or more to public communication or any other public service.
334	806.13(3)	3rd	Criminal mischief; damage of \$200 or more to a memorial or historic property.
335	810.061(2)	3rd	Impairing or impeding telephone or power to a dwelling; facilitating or furthering burglary.
336	810.09(2)(e)	3rd	Trespassing on posted

commercial horticulture
property.

337

812.014 (2) (c) 1. 3rd Grand theft, 3rd degree; \$750
or more but less than \$5,000.

338

812.014 (2) (d) 1. 3rd Grand theft, 3rd degree; \$40
~~812.014 (2) (d)~~ ~~\$100~~ or more but less than
\$750, taken from dwelling or
its unenclosed curtilage ~~of~~
~~dwelling~~.

339

812.014 (2) (e) 2. 3rd Petit theft, 1st degree; less
than \$40 taken from dwelling or
its unenclosed curtilage with
one prior theft conviction.

340

812.015 (7) 3rd Possession, use, or attempted
use of an antishoplifting or
inventory control device
countermeasure.

341

817.234 (1) (a) 2. 3rd False statement in support of
insurance claim.

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342	817.481 (3) (a)	3rd	Obtain credit or purchase with false, expired, counterfeit, etc., credit card, value over \$300.
343	817.52 (3)	3rd	Failure to redeliver hired vehicle.
344	817.54	3rd	With intent to defraud, obtain mortgage note, etc., by false representation.
345	817.60 (5)	3rd	Dealing in credit cards of another.
346	817.60 (6) (a)	3rd	Forgery; purchase goods, services with false card.
347	817.61	3rd	Fraudulent use of credit cards over \$100 or more within 6 months.
348	826.04	3rd	Knowingly marries or has sexual intercourse with person to whom

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related.

349

831.01 3rd Forgery.

350

831.02 3rd Uttering forged instrument;
utters or publishes alteration
with intent to defraud.

351

831.07 3rd Forging bank bills, checks,
drafts, or promissory notes.

352

831.08 3rd Possessing 10 or more forged
notes, bills, checks, or
drafts.

353

831.09 3rd Uttering forged notes, bills,
checks, drafts, or promissory
notes.

354

831.11 3rd Bringing into the state forged
bank bills, checks, drafts, or
notes.

355

832.05 (3) (a) 3rd Cashing or depositing item with
intent to defraud.

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356	843.01(2)	3rd	Resist police canine or police horse with violence; under certain circumstances.
357	843.08	3rd	False personation.
358	843.19(3)	3rd	Touch or strike police, fire, SAR canine or police horse.
359	893.13(2)(a)2.	3rd	Purchase of any s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs other than cannabis.
360	893.147(2)	3rd	Manufacture or delivery of drug paraphernalia.
361			
362	(d) LEVEL 4		
363	Florida	Felony	Description
	Statute	Degree	
364			

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365	316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
366	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
367	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
368	517.07(1)	3rd	Failure to register securities.
369	517.12(1)	3rd	Failure of dealer or associated person of a dealer of securities to register.
370	784.031	3rd	Battery by strangulation.
	784.07(2) (b)	3rd	Battery of law enforcement

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officer, firefighter, etc.

371	784.074 (1) (c)	3rd	Battery of sexually violent predators facility staff.
372	784.075	3rd	Battery on detention or commitment facility staff.
373	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
374	784.08 (2) (c)	3rd	Battery on a person 65 years of age or older.
375	784.081 (3)	3rd	Battery on specified official or employee.
376	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
377	784.083 (3)	3rd	Battery on code inspector.
378	784.085	3rd	Battery of child by throwing, tossing, projecting, or

			expelling certain fluids or materials.
379	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
380	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
381	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
382	787.07	3rd	Human smuggling.
383	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
384	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or

			other weapon on school property.
385	790.115 (2) (c)	3rd	Possessing firearm on school property.
386	794.051 (1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
387	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
388	806.135	2nd	Destroying or demolishing a memorial or historic property.
389	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
390	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
391			

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392	810.06	3rd	Burglary; possession of tools.
393	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
394	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
395	812.014 (2)(c)4. & 6.-10.	3rd	Grand theft, 3rd degree; specified items.
396	<u>812.014(2)(d)2.</u>	<u>3rd</u>	<u>Grand theft, 3rd degree; \$750 or more taken from dwelling or its unenclosed curtilage.</u>
397	<u>812.014(2)(e)3.</u>	<u>3rd</u>	<u>Petit theft, 1st degree; less than \$40 taken from dwelling or its unenclosed curtilage with two or more prior theft convictions.</u>
	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property

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stolen \$300 or more.

398

817.505 (4) (a) 3rd Patient brokering.

399

817.563 (1) 3rd Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.

400

817.568 (2) (a) 3rd Fraudulent use of personal identification information.

401

817.5695 (3) (c) 3rd Exploitation of person 65 years of age or older, value less than \$10,000.

402

817.625 (2) (a) 3rd Fraudulent use of scanning device, skimming device, or reencoder.

403

817.625 (2) (c) 3rd Possess, sell, or deliver skimming device.

404

828.125 (1) 2nd Kill, maim, or cause great bodily harm or permanent

breeding disability to any registered horse or cattle.

405

836.14(2) 3rd Person who commits theft of a sexually explicit image with intent to promote it.

406

836.14(3) 3rd Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.

407

837.02(1) 3rd Perjury in official proceedings.

408

837.021(1) 3rd Make contradictory statements in official proceedings.

409

838.022 3rd Official misconduct.

410

839.13(2)(a) 3rd Falsifying records of an individual in the care and custody of a state agency.

411

839.13(2)(c) 3rd Falsifying records of the

412			Department of Children and Families.
413	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
414	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
415	843.15(1) (a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
416	843.19(2)	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
417	847.0135(5) (c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
	870.01(3)	2nd	Aggravated rioting.

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418	870.01(5)	2nd	Aggravated inciting a riot.
419	874.05(1)(a)	3rd	Encouraging or recruiting another to join a criminal gang.
420	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)5. drugs).
421	914.14(2)	3rd	Witnesses accepting bribes.
422	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
423	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
424	916.1085 (2)(c)1.	3rd	Introduction of specified contraband into certain DCF facilities.
425			

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426	918.12	3rd	Tampering with jurors.
427	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
428	944.47(1) (a) 6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
429	951.22(1) (h) ,	3rd	Intoxicating drug,
430	(j) & (k)		instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.
431	(e) LEVEL 5		
432	Florida Statute	Felony Degree	Description
	316.027(2) (a)	3rd	Accidents involving personal injuries other than serious

			bodily injury, failure to stop; leaving scene.
433	316.1935(4) (a)	2nd	Aggravated fleeing or eluding.
434	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
435	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
436	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
437	379.365(2) (c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or

certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.

438

379.367 (4) 3rd Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.

439

379.407 (5) (b) 3. 3rd Possession of 100 or more undersized spiny lobsters.

440

381.0041 (11) (b) 3rd Donate blood, plasma, or organs knowing HIV positive.

441

440.10 (1) (g) 2nd Failure to obtain workers' compensation coverage.

442

440.105 (5) 2nd Unlawful solicitation for the purpose of making workers'

compensation claims.

443

440.381 (2) 3rd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

444

624.401 (4) (b) 2. 2nd Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.

445

626.902 (1) (c) 2nd Representing an unauthorized insurer; repeat offender.

446

790.01 (3) 3rd Unlawful carrying of a concealed firearm.

447

790.162 2nd Threat to throw or discharge destructive device.

448

790.163 (1) 2nd False report of bomb, explosive, weapon of mass destruction, or use of firearms

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in violent manner.

449

790.221 (1) 2nd Possession of short-barreled
shotgun or machine gun.

450

790.23 2nd Felons in possession of
firearms, ammunition, or
electronic weapons or devices.

451

796.05 (1) 2nd Live on earnings of a
prostitute; 1st offense.

452

800.04 (6) (c) 3rd Lewd or lascivious conduct;
offender less than 18 years of
age.

453

800.04 (7) (b) 2nd Lewd or lascivious exhibition;
offender 18 years of age or
older.

454

806.111 (1) 3rd Possess, manufacture, or
dispense fire bomb with intent
to damage any structure or
property.

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456	<u>812.014 (2) (d) 3.</u>	<u>2nd</u>	<u>Grand theft, 2nd degree; theft from 20 or more dwellings or their unenclosed curtilage, or any combination.</u>
457	812.0145 (2) (b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
458	812.015 (8) (a) & (c) - (e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
459	812.015 (8) (f)	3rd	Retail theft; multiple thefts within specified period.
460	<u>812.015 (8) (g)</u>	<u>3rd</u>	<u>Retail theft; committed with specified number of other persons.</u>
461	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
	812.081 (3)	2nd	Trafficking in trade secrets.

462	812.131 (2) (b)	3rd	Robbery by sudden snatching.
463	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
464	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
465	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
466	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
467	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud,

			\$5,000 or more or use of personal identification information of 10 or more persons.
468	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
469	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
470	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
471	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.
472	827.071 (5)	3rd	Possess, control, or intentionally view any photographic material, motion

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picture, etc., which includes
child pornography.

473

828.12(2) 3rd Tortures any animal with intent
to inflict intense pain,
serious physical injury, or
death.

474

836.14(4) 2nd Person who willfully promotes
for financial gain a sexually
explicit image of an
identifiable person without
consent.

475

839.13(2)(b) 2nd Falsifying records of an
individual in the care and
custody of a state agency
involving great bodily harm or
death.

476

843.01(1) 3rd Resist officer with violence to
person; resist arrest with
violence.

477

847.0135(5)(b) 2nd Lewd or lascivious exhibition

			using computer; offender 18 years or older.
478	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
479	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
480	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
481	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
482	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
483			

484	893.13(1)(c)2.	2nd	<p>Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.</p>
485	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.</p>
485	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6.,</p>

(2)(c)7., (2)(c)8., (2)(c)9.,
 (2)(c)10., (3), or (4) within
 1,000 feet of property used for
 religious services or a
 specified business site.

486

893.13(1)(f)1. 1st Sell, manufacture, or deliver
 cocaine (or other s.
 893.03(1)(a), (1)(b), (1)(d),
 or (2)(a), (2)(b), or (2)(c)5.
 drugs) within 1,000 feet of
 public housing facility.

487

893.13(4)(b) 2nd Use or hire of minor; deliver
 to minor other controlled
 substance.

488

893.1351(1) 3rd Ownership, lease, or rental for
 trafficking in or manufacturing
 of controlled substance.

489

490 (f) LEVEL 6

491

Florida	Felony	Description
Statute	Degree	

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492	316.027 (2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
493	316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
494	400.9935 (4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
495	499.0051 (2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
496	499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
497	499.0051 (4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
498			

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499	775.0875(1)	3rd	Taking firearm from law enforcement officer.
500	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
501	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
502	784.041	3rd	Felony battery; domestic battery by strangulation.
503	784.048(3)	3rd	Aggravated stalking; credible threat.
504	784.048(5)	3rd	Aggravated stalking of person under 16.
505	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
506	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.

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507	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
508	784.081 (2)	2nd	Aggravated assault on specified official or employee.
509	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
510	784.083 (2)	2nd	Aggravated assault on code inspector.
511	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
512	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
513	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.

514	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
515	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
516	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
517	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
518	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or

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older.

519

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

520

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

521

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

522

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

523

812.014 (2) (c) 5. 3rd Grand theft; third degree; firearm.

524

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

525

812.015 (9) (a) 2nd Retail theft; property stolen

			\$750 or more; second or subsequent conviction.
526	812.015 (9) (b)	2nd	Retail theft; aggregated property stolen within <u>365</u> 30 days is \$3,000 or more; coordination of others.
527	812.015 (9) (d)	2nd	Retail theft; multiple thefts within specified period.
528	<u>812.015 (9) (e)</u>	<u>2nd</u>	<u>Retail theft; committed with specified number of other persons and use of social media platform.</u>
529	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
530	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
531	817.49 (2) (b) 2.	2nd	Willful making of a false

report of a crime resulting in death.

532

817.505 (4) (b) 2nd Patient brokering; 10 or more patients.

533

817.5695 (3) (b) 2nd Exploitation of person 65 years of age or older, value \$10,000 or more, but less than \$50,000.

534

825.102 (1) 3rd Abuse of an elderly person or disabled adult.

535

825.102 (3) (c) 3rd Neglect of an elderly person or disabled adult.

536

825.1025 (3) 3rd Lewd or lascivious molestation of an elderly person or disabled adult.

537

825.103 (3) (c) 3rd Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

538

827.03 (2) (c) 3rd Abuse of a child.

539	827.03(2)(d)	3rd	Neglect of a child.
540	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
541	828.126(3)	3rd	Sexual activities involving animals.
542	836.05	2nd	Threats; extortion.
543	836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
544	843.12	3rd	Aids or assists person to escape.
545	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
546			

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547	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
548	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
549	893.131	2nd	Distribution of controlled substances resulting in overdose or serious bodily injury.
550	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
551	918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community

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supervision, resulting in great
bodily harm.

552

944.40 2nd Escapes.

553

944.46 3rd Harboring, concealing, aiding
escaped prisoners.

554

944.47(1) (a) 5. 2nd Introduction of contraband
(firearm, weapon, or explosive)
into correctional facility.

555

951.22(1) (i) 3rd Firearm or weapon introduced
into county detention facility.

556

557 (g) LEVEL 7

558

Florida	Felony	Description
Statute	Degree	

559

316.027(2) (c) 1st Accident involving death,
failure to stop; leaving scene.

560

316.193(3) (c) 2. 3rd DUI resulting in serious bodily
injury.

561	316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
562	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
563	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
564	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
565	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.

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566	456.065 (2)	3rd	Practicing a health care profession without a license.
567	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
568	458.327 (1)	3rd	Practicing medicine without a license.
569	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
570	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
571	461.012 (1)	3rd	Practicing podiatric medicine without a license.
572	462.17	3rd	Practicing naturopathy without a license.
573	463.015 (1)	3rd	Practicing optometry without a

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license.

574

464.016 (1) 3rd Practicing nursing without a license.

575

465.015 (2) 3rd Practicing pharmacy without a license.

576

466.026 (1) 3rd Practicing dentistry or dental hygiene without a license.

577

467.201 3rd Practicing midwifery without a license.

578

468.366 3rd Delivering respiratory care services without a license.

579

483.828 (1) 3rd Practicing as clinical laboratory personnel without a license.

580

483.901 (7) 3rd Practicing medical physics without a license.

581

484.013 (1) (c) 3rd Preparing or dispensing optical

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devices without a prescription.

582

484.053 3rd Dispensing hearing aids without a license.

583

494.0018(2) 1st Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.

584

560.123(8)(b)1. 3rd Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.

585

560.125(5)(a) 3rd Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

586

655.50(10)(b)1. 3rd Failure to report financial transactions exceeding \$300 but

less than \$20,000 by financial institution.

587

775.21(10) (a) 3rd Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

588

775.21(10) (b) 3rd Sexual predator working where children regularly congregate.

589

775.21(10) (g) 3rd Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

590

782.051(3) 2nd Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

591

782.07(1) 2nd Killing of a human being by the act, procurement, or culpable

592	782.071	2nd	negligence of another (manslaughter).
593	782.072	2nd	Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).
594	784.045 (1) (a) 1.	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
595	784.045 (1) (a) 2.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
596	784.045 (1) (b)	2nd	Aggravated battery; using deadly weapon.
597	784.048 (4)	3rd	Aggravated battery; perpetrator aware victim pregnant.
			Aggravated stalking; violation

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of injunction or court order.

598

784.048 (7) 3rd Aggravated stalking; violation
of court order.

599

784.07 (2) (d) 1st Aggravated battery on law
enforcement officer.

600

784.074 (1) (a) 1st Aggravated battery on sexually
violent predators facility
staff.

601

784.08 (2) (a) 1st Aggravated battery on a person
65 years of age or older.

602

784.081 (1) 1st Aggravated battery on specified
official or employee.

603

784.082 (1) 1st Aggravated battery by detained
person on visitor or other
detainee.

604

784.083 (1) 1st Aggravated battery on code
inspector.

605

606	787.06(3)(a)2.	1st	Human trafficking using coercion for labor and services of an adult.
607	787.06(3)(e)2.	1st	Human trafficking using coercion for labor and services by the transfer or transport of an adult from outside Florida to within the state.
608	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
609	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
610	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

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611	790.166 (3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
612	790.166 (4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
613	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
614	794.08 (4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
615	796.05 (1)	1st	Live on earnings of a prostitute; 2nd offense.
616			

617	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
618	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
619	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age or older.
620	800.04(5)(e)	1st	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years; offender 18 years or older; prior conviction for specified sex offense.
621	806.01(2)	2nd	Maliciously damage structure by fire or explosive.

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622	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
623	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
624	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
625	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
626	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.

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627	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
628	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
629	<u>812.014 (2) (g)</u> 812.014 (2) (f)	2nd	Grand theft; second degree; firearm with previous conviction of s. 812.014 (2) (c) 5.
630	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
631	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
632	812.131 (2) (a)	2nd	Robbery by sudden snatching.
633	812.133 (2) (b)	1st	Carjacking; no firearm, deadly

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weapon, or other weapon.

634

817.034 (4) (a) 1. 1st Communications fraud, value
greater than \$50,000.

635

817.234 (8) (a) 2nd Solicitation of motor vehicle
accident victims with intent to
defraud.

636

817.234 (9) 2nd Organizing, planning, or
participating in an intentional
motor vehicle collision.

637

817.234 (11) (c) 1st Insurance fraud; property value
\$100,000 or more.

638

817.2341 1st Making false entries of
(2) (b) & material fact or false
(3) (b) statements regarding property
values relating to the solvency
of an insuring entity which are
a significant cause of the
insolvency of that entity.

639

817.418 (2) (a) 3rd Offering for sale or

advertising personal protective
equipment with intent to
defraud.

640

817.504 (1) (a) 3rd Offering or advertising a
vaccine with intent to defraud.

641

817.535 (2) (a) 3rd Filing false lien or other
unauthorized document.

642

817.611 (2) (b) 2nd Traffic in or possess 15 to 49
counterfeit credit cards or
related documents.

643

825.102 (3) (b) 2nd Neglecting an elderly person or
disabled adult causing great
bodily harm, disability, or
disfigurement.

644

825.103 (3) (b) 2nd Exploiting an elderly person or
disabled adult and property is
valued at \$10,000 or more, but
less than \$50,000.

645

827.03 (2) (b) 2nd Neglect of a child causing

			great bodily harm, disability, or disfigurement.
646	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
647	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
648	838.015	2nd	Bribery.
649	838.016	2nd	Unlawful compensation or reward for official behavior.
650	838.021(3)(a)	2nd	Unlawful harm to a public servant.
651	838.22	2nd	Bid tampering.
652	843.0855(2)	3rd	Impersonation of a public officer or employee.
653	843.0855(3)	3rd	Unlawful simulation of legal

process.

654

843.0855(4) 3rd Intimidation of a public officer or employee.

655

847.0135(3) 3rd Solicitation of a child, via a computer service, to commit an unlawful sex act.

656

847.0135(4) 2nd Traveling to meet a minor to commit an unlawful sex act.

657

872.06 2nd Abuse of a dead human body.

658

874.05(2)(b) 1st Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.

659

874.10 1st,PBL Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

660

893.13(1)(c)1. 1st Sell, manufacture, or deliver

cocaine (or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

661

893.13(1) (e) 1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 5., within 1,000 feet of property used for religious services or a specified business site.

662

893.13(4) (a) 1st Use or hire of minor; deliver to minor other controlled substance.

663

893.135(1) (a) 1. 1st Trafficking in cannabis, more

than 25 lbs., less than 2,000 lbs.

664

893.135 1st Trafficking in cocaine, more
(1) (b) 1.a. than 28 grams, less than 200
grams.

665

893.135 1st Trafficking in illegal drugs,
(1) (c) 1.a. more than 4 grams, less than 14
grams.

666

893.135 1st Trafficking in hydrocodone, 28
(1) (c) 2.a. grams or more, less than 50
grams.

667

893.135 1st Trafficking in hydrocodone, 50
(1) (c) 2.b. grams or more, less than 100
grams.

668

893.135 1st Trafficking in oxycodone, 7
(1) (c) 3.a. grams or more, less than 14
grams.

669

893.135 1st Trafficking in oxycodone, 14
(1) (c) 3.b. grams or more, less than 25

grams.

670

893.135 1st Trafficking in fentanyl, 4
 (1) (c) 4.b. (I) grams or more, less than 14
 grams.

671

893.135 1st Trafficking in phencyclidine,
 (1) (d) 1.a. 28 grams or more, less than 200
 grams.

672

893.135 (1) (e) 1. 1st Trafficking in methaqualone,
 200 grams or more, less than 5
 kilograms.

673

893.135 (1) (f) 1. 1st Trafficking in amphetamine, 14
 grams or more, less than 28
 grams.

674

893.135 1st Trafficking in flunitrazepam, 4
 (1) (g) 1.a. grams or more, less than 14
 grams.

675

893.135 1st Trafficking in gamma-
 (1) (h) 1.a. hydroxybutyric acid (GHB), 1
 kilogram or more, less than 5

kilograms.

676

893.135 1st Trafficking in 1,4-Butanediol,
 (1) (j) 1.a. 1 kilogram or more, less than 5
 kilograms.

677

893.135 1st Trafficking in Phenethylamines,
 (1) (k) 2.a. 10 grams or more, less than 200
 grams.

678

893.135 1st Trafficking in synthetic
 (1) (m) 2.a. cannabinoids, 280 grams or
 more, less than 500 grams.

679

893.135 1st Trafficking in synthetic
 (1) (m) 2.b. cannabinoids, 500 grams or
 more, less than 1,000 grams.

680

893.135 1st Trafficking in n-benzyl
 (1) (n) 2.a. phenethylamines, 14 grams or
 more, less than 100 grams.

681

893.1351(2) 2nd Possession of place for
 trafficking in or manufacturing
 of controlled substance.

682	896.101 (5) (a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
683	896.104 (4) (a) 1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
684	943.0435 (4) (c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
685	943.0435 (8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
686	943.0435 (9) (a)	3rd	Sexual offender; failure to comply with reporting requirements.
687			

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688	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
689	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
690	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
691	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
692	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	944.607(13)	3rd	Sexual offender; failure to

report and reregister; failure to respond to address verification; providing false registration information.

693

985.4815(10) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

694

985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

695

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

696

697 (h) LEVEL 8

698

Florida	Felony	Description
Statute	Degree	

699

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700	316.193 (3) (c) 3.a.	2nd	DUI manslaughter.
701	316.1935(4) (b)	1st	Aggravated fleeing or attempted eluding with serious bodily injury or death.
702	327.35(3) (c) 3.	2nd	Vessel BUI manslaughter.
703	499.0051(6)	1st	Knowing trafficking in contraband prescription drugs.
704	499.0051(7)	1st	Knowing forgery of prescription labels or prescription drug labels.
705	560.123(8) (b) 2.	2nd	Failure to report currency or payment instruments totaling or exceeding \$20,000, but less than \$100,000 by money transmitter.
	560.125(5) (b)	2nd	Money transmitter business by unauthorized person, currency or payment instruments totaling

706	655.50(10) (b)2.	2nd	or exceeding \$20,000, but less than \$100,000.
707	777.03(2) (a)	1st	Failure to report financial transactions totaling or exceeding \$20,000, but less than \$100,000 by financial institutions.
708	782.04(4)	2nd	Accessory after the fact, capital felony.
709	782.051(2)	1st	Killing of human without design when engaged in act or attempt of any felony other than arson, sexual battery, robbery, burglary, kidnapping, aggravated fleeing or eluding with serious bodily injury or death, aircraft piracy, or unlawfully discharging bomb.
			Attempted felony murder while perpetrating or attempting to perpetrate a felony not

enumerated in s. 782.04 (3).

710

782.071 (1) (b) 1st Committing vehicular homicide and failing to render aid or give information.

711

782.072 (2) 1st Committing vessel homicide and failing to render aid or give information.

712

787.06 (3) (a) 1. 1st Human trafficking for labor and services of a child.

713

787.06 (3) (b) 1st Human trafficking using coercion for commercial sexual activity of an adult.

714

787.06 (3) (c) 2. 1st Human trafficking using coercion for labor and services of an unauthorized alien adult.

715

787.06 (3) (e) 1. 1st Human trafficking for labor and services by the transfer or transport of a child from outside Florida to within the

state.

716

787.06(3)(f)2. 1st Human trafficking using coercion for commercial sexual activity by the transfer or transport of any adult from outside Florida to within the state.

717

790.161(3) 1st Discharging a destructive device which results in bodily harm or property damage.

718

794.011(5)(a) 1st Sexual battery; victim 12 years of age or older but younger than 18 years; offender 18 years or older; offender does not use physical force likely to cause serious injury.

719

794.011(5)(b) 2nd Sexual battery; victim and offender 18 years of age or older; offender does not use physical force likely to cause serious injury.

720	794.011 (5) (c)	2nd	Sexual battery; victim 12 years of age or older; offender younger than 18 years; offender does not use physical force likely to cause injury.
721	794.011 (5) (d)	1st	Sexual battery; victim 12 years of age or older; offender does not use physical force likely to cause serious injury; prior conviction for specified sex offense.
722	794.08 (3)	2nd	Female genital mutilation, removal of a victim younger than 18 years of age from this state.
723	800.04 (4) (b)	2nd	Lewd or lascivious battery.
724	800.04 (4) (c)	1st	Lewd or lascivious battery; offender 18 years of age or older; prior conviction for specified sex offense.

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731

806.01(1)	1st	Maliciously damage dwelling or structure by fire or explosive, believing person in structure.
810.02(2)(a)	1st, PBL	Burglary with assault or battery.
810.02(2)(b)	1st, PBL	Burglary; armed with explosives or dangerous weapon.
810.02(2)(c)	1st	Burglary of a dwelling or structure causing structural damage or \$1,000 or more property damage.
812.014(2)(a)2.	1st	Property stolen; cargo valued at \$50,000 or more, grand theft in 1st degree.
<u>812.015(11)(b)</u>	<u>1st</u>	<u>Retail theft; possession of a firearm during commission of offense.</u>

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732	812.13 (2) (b)	1st	Robbery with a weapon.
733	812.135 (2) (c)	1st	Home-invasion robbery, no firearm, deadly weapon, or other weapon.
734	817.418 (2) (b)	2nd	Offering for sale or advertising personal protective equipment with intent to defraud; second or subsequent offense.
735	817.504 (1) (b)	2nd	Offering or advertising a vaccine with intent to defraud; second or subsequent offense.
736	817.505 (4) (c)	1st	Patient brokering; 20 or more patients.
737	817.535 (2) (b)	2nd	Filing false lien or other unauthorized document; second or subsequent offense.
	817.535 (3) (a)	2nd	Filing false lien or other

unauthorized document; property owner is a public officer or employee.

738

817.535 (4) (a) 1. 2nd

Filing false lien or other unauthorized document; defendant is incarcerated or under supervision.

739

817.535 (5) (a) 2nd

Filing false lien or other unauthorized document; owner of the property incurs financial loss as a result of the false instrument.

740

817.568 (6) 2nd

Fraudulent use of personal identification information of an individual under the age of 18.

741

817.611 (2) (c) 1st

Traffic in or possess 50 or more counterfeit credit cards or related documents.

742

825.102 (2) 1st

Aggravated abuse of an elderly

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person or disabled adult.

743 825.1025(2) 2nd Lewd or lascivious battery upon
an elderly person or disabled
adult.

744 825.103(3)(a) 1st Exploiting an elderly person or
disabled adult and property is
valued at \$50,000 or more.

745 837.02(2) 2nd Perjury in official proceedings
relating to prosecution of a
capital felony.

746 837.021(2) 2nd Making contradictory statements
in official proceedings
relating to prosecution of a
capital felony.

747 860.121(2)(c) 1st Shooting at or throwing any
object in path of railroad
vehicle resulting in great
bodily harm.

748 860.16 1st Aircraft piracy.

749	893.13(1)(b)	1st	Sell or deliver in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
750	893.13(2)(b)	1st	Purchase in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
751	893.13(6)(c)	1st	Possess in excess of 10 grams of any substance specified in s. 893.03(1)(a) or (b).
752	893.135(1)(a)2.	1st	Trafficking in cannabis, more than 2,000 lbs., less than 10,000 lbs.
753	893.135 (1)(b)1.b.	1st	Trafficking in cocaine, more than 200 grams, less than 400 grams.
754	893.135 (1)(c)1.b.	1st	Trafficking in illegal drugs, more than 14 grams, less than 28 grams.

755	893.135 (1) (c) 2.c.	1st	Trafficking in hydrocodone, 100 grams or more, less than 300 grams.
756	893.135 (1) (c) 3.c.	1st	Trafficking in oxycodone, 25 grams or more, less than 100 grams.
757	893.135 (1) (c) 4.b. (II)	1st	Trafficking in fentanyl, 14 grams or more, less than 28 grams.
758	893.135 (1) (d) 1.b.	1st	Trafficking in phencyclidine, 200 grams or more, less than 400 grams.
759	893.135 (1) (e) 1.b.	1st	Trafficking in methaqualone, 5 kilograms or more, less than 25 kilograms.
760	893.135 (1) (f) 1.b.	1st	Trafficking in amphetamine, 28 grams or more, less than 200 grams.
761			

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762	893.135 (1) (g) 1.b.	1st	Trafficking in flunitrazepam, 14 grams or more, less than 28 grams.
763	893.135 (1) (h) 1.b.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 5 kilograms or more, less than 10 kilograms.
764	893.135 (1) (j) 1.b.	1st	Trafficking in 1,4-Butanediol, 5 kilograms or more, less than 10 kilograms.
765	893.135 (1) (k) 2.b.	1st	Trafficking in Phenethylamines, 200 grams or more, less than 400 grams.
766	893.135 (1) (m) 2.c.	1st	Trafficking in synthetic cannabinoids, 1,000 grams or more, less than 30 kilograms.
767	893.135 (1) (n) 2.b.	1st	Trafficking in n-benzyl phenethylamines, 100 grams or more, less than 200 grams.

768	893.1351(3)	1st	Possession of a place used to manufacture controlled substance when minor is present or resides there.
769	895.03(1)	1st	Use or invest proceeds derived from pattern of racketeering activity.
770	895.03(2)	1st	Acquire or maintain through racketeering activity any interest in or control of any enterprise or real property.
771	895.03(3)	1st	Conduct or participate in any enterprise through pattern of racketeering activity.
772	896.101(5)(b)	2nd	Money laundering, financial transactions totaling or exceeding \$20,000, but less than \$100,000.
	896.104(4)(a)2.	2nd	Structuring transactions to evade reporting or registration

requirements, financial transactions totaling or exceeding \$20,000 but less than \$100,000.

773

774 Section 4. Paragraph (f) of subsection (1) of section
775 784.07, Florida Statutes, is amended to read:

776 784.07 Assault or battery of law enforcement officers and
777 other specified personnel; reclassification of offenses; minimum
778 sentences.—

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

780 (f) "Public transit employees or agents" means bus
781 operators, train operators, revenue collectors, security
782 personnel, equipment maintenance personnel, or field
783 supervisors, who are employees or agents of a transit agency as
784 described in s. 812.015(1) ~~s. 812.015(1)(1)~~.

785 Section 5. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 569 Civil Proceedings

SPONSOR(S): Judiciary Committee

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded to the party. Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital.

Sovereign immunity is a principle under which a government cannot be sued without its consent. Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In turn, s. 768.28(1), F.S., allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of government employees acting in the scope of employment. This liability exists only where a private person would be liable for the same conduct.

However, s. 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident. Although a court may enter a judgment in excess of these caps, a claimant generally may not recover an award above the caps absent a claim bill passed by the Legislature. Further, s. 768.28(6), F.S., imposes pre-suit requirements upon a claimant seeking to recover against a state or local government entity, allowing a general six-month period for the government entity to review and dispose of a claim before the claimant may file a lawsuit.

The PCS:

- Defines "litigation financing" and regulates its practice by prohibiting a litigation financier from engaging in specified conduct.
- Requires disclosures relating to specified foreign investments in litigation financing agreements.
- Requires a litigation financing agreement to indemnify the plaintiff to the civil action for certain costs and expenses.
- Provides that a litigation financing agreement executed in violation of the PCS is void and unenforceable, and provides enforcement mechanisms.
- Increases the sovereign immunity caps for damages against state and local government entities to \$400,000 per individual and \$600,000 per incident.
- Allows a local government to settle a claim and pay the settled amount without the need for a claim bill.
- Prohibits an insurance policy from conditioning the payment of benefits on the enactment of a claim bill.
- Provides that, when determining liability limits, the cap in effect when the claim accrues controls.
- Revises certain statutes of limitation and time periods by which a claimant must provide written notice of the claim in certain cases.
- Reduces the general pre-suit statutory time period for a government entity to review and dispose of a claim and tolls the statute of limitations during the time it takes for the entity to deny a claim.
- Extends the existing limitation of liability for electric utilities to affiliates of such utilities.

The PCS will likely have an indeterminate, significant negative fiscal impact on state and local governments due to the changes in sovereign immunity.

The PCS provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Litigation Financing

Litigation financing is a non-recourse transaction in which a litigation financier provides funds to a party to a civil lawsuit, or an attorney thereof, in exchange for a right to receive a portion of any monetary recovery awarded; in other words, the litigation financier only gets paid if the case resolves in the funded party's favor.¹ This can be a powerful tool for a party to a civil action who, without such funding, might have been forced to abandon the lawsuit or else find an attorney with sufficient financial reserves to front the costs of litigation.² Where the opposing party or his or her attorney has significant financial resources, litigation financing may level the playing field.³

Litigation financiers invest in a variety of lawsuits based on the lawsuit's particular risk profile and the financier's available capital.⁴ An unscrupulous litigation financier may invest in lawsuits for reasons other than a pure return on investment, and may impermissibly attempt to control or direct the lawsuit to maximize the potential return or to further a goal unrelated to the right to financial recovery.⁵ Reputable litigation financiers, on the other hand, may implement a demanding due diligence process to ensure their investment in a particular lawsuit is financially sound.⁶ Unlike with a traditional loan, where a lender might look at a consumer's credit score, income, and other indicators of the consumer's ability to repay the loan, a litigation financier typically looks at the strength of the claim underlying the civil action, considering the likelihood that the party or attorney seeking funding will prevail and the potential damages which may be awarded.⁷

In weighing the strength of the claim, a litigation financier typically reviews the evidence available in the lawsuit for which litigation financing is sought.⁸ Depending on the lawsuit's nature, this could result in a litigation financier obtaining proprietary information or information affecting national security interests.

¹ Giugi Carminati, *Litigation Finance: A Modern Financial Tool for Corporate Counsel*, American Bar Association: Business Law Today (Dec. 2022), https://www.americanbar.org/groups/business_law/resources/business-law-today/2022-december/a-modern-financial-tool-for-corporate-counsel/ (last visited Feb. 11, 2024).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See, e.g., *Bollea v. Gawker Media*, LLC, 913 F. Supp. 2d 1325 (M.D. Fla. 2012). Therein, Terry Bollea (known professionally as Hulk Hogan) sued Gawker Media for publishing on its website a video of Bollea engaging in sexual relations with a married woman. The lawsuit gained national attention for several reasons, among them the fact that billionaire and PayPal co-founder Peter Thiel had secretly funded Bollea's lawsuit; significantly, Gawker had published a piece outing Thiel as gay in 2007, and, many viewed Thiel's decision to fund Bollea's lawsuit as Thiel's revenge against Gawker (a charge which Thiel denied). The jury ultimately found Gawker liable and awarded Bollea \$115 million in compensatory damages and \$25 million in punitive damages; a few months later, Gawker filed for Chapter 11 bankruptcy and sold several of its media outlets before settling with Bollea for \$31 million. John Freund, *The 6th Anniversary of the Peter Thiel/Hulk Hogan/Gawker Case: What Have We Learned*, Litigation Finance Journal (Mar. 17, 2022), <https://litigationfinancejournal.com/the-6th-anniversary-of-the-peter-thiel-hulk-hogan-gawker-case-what-have-we-learned/> (last visited Feb. 11, 2024); see also, e.g., *Sysco Corp. v. Glaz LLC, et al.*, Case 1:23-cv-01451 (N.D. Ill. 2023). Therein, Sysco sued subsidiaries of Burford Capital Limited, a litigation financier from which Sysco had obtained financing for antitrust litigation, for preventing Sysco from accepting reasonable settlement offers in said litigation in order to increase Burford Capital's return and thereby forcing Sysco to continue litigating against its will. Sysco later settled the matter, ceding control over its lawsuits to Burford Capital. Emily R. Siegel, *Bloomberg Law*, <https://news.bloomberglaw.com/business-and-practice/everybody-wins-as-sysco-hands-burford-control-of-lawsuits> (last visited Feb. 11, 2024).

⁶ Carminati, *supra* note 1.

⁷ Paige Marta Skiba and Jean Xiao, *Consumer Litigation Funding: Just Another Form of Payday Lending?*, Law and Contemporary Problems Vol. 80 No. 117 (Nov. 3, 2017), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4840&context=lcp> (last visited Feb. 11, 2024).

⁸ Carminati, *supra* note 1

Concern has been expressed that:

- Where the litigation financier is a foreign actor, the foreign actor could use such information to advance its strategic interests against the United States.⁹
- Where a foreign actor provides litigation financing, the foreign actor obtains a financial interest in the financed lawsuit's outcome, which interest may be used to attempt to influence the lawsuit's direction and other decisions related thereto for purposes which may be adverse to the interests of the United States.¹⁰

Class Action Lawsuits

A "class action" is a procedural device that allows one or more plaintiffs to file and prosecute a lawsuit on behalf of a large group of individuals (the "class") who have suffered the same wrong at the hands of the defendant.¹¹ Practically speaking, a class action allows courts to manage lawsuits that would be otherwise unmanageable if each class member were required to join in the lawsuit as a named plaintiff.¹² Such actions also protect the defendant from inconsistent judgments and facilitate the spreading of litigation costs among numerous litigants.¹³

A class action lawsuit may be brought in federal court and, in certain instances, in state court; in either case, the judgment or any settlement is binding on all class members, who are thereafter generally prohibited from filing their own individual lawsuits raising the same claim.¹⁴ However, a defined class, rather uniquely, may include a person harmed by the defendant in the same manner as the other class members without such person ever receiving notice of the action.¹⁵ Thus, courts must be particularly careful to ensure that a lawsuit can be fairly adjudicated as a class action.¹⁶

Consolidated Actions

When civil actions involving a common question of law or fact are pending before a Florida court, the Florida Rules of Civil Procedure authorize the court to order a joint hearing or trial of any or all of the matters in issue in the actions; to consolidate all the actions into one action; and to make such orders about proceedings therein to avoid unnecessary costs or delay.¹⁷ However, in determining whether to consolidate civil actions, the court must consider whether:

- The trial process will be accelerated due to the consolidation;
- Unnecessary costs and delays can be avoided by consolidation;
- There is otherwise the possibility for inconsistent verdicts;
- Consolidation would eliminate duplicative trials involving substantially the same operative facts and questions of law; and
- Consolidation would deprive a party of a substantive right.¹⁸

Indemnification

"Indemnification" occurs when one person compensates (that is, "indemnifies") another person for damages or losses the indemnified person incurred or will incur related to a particular event or

⁹ U.S. Chamber of Commerce, *Institute for Legal Reform, Bipartisan Federal Legislation Tackles Foreign Influence in Third Party Litigation Funding*, <https://instituteforlegalreform.com/blog/bipartisan-federal-legislation-tackles-foreign-influence-in-third-party-litigation-funding/> (last visited Feb. 11, 2024).

¹⁰ *Id.*

¹¹ Class actions are often appropriate to address environmental harms (such as for oil spills or the release of toxic chemicals); large-scale consumer fraud (such as for misleading or false advertising); anti-trust violations (such as the artificial raising or fixing of prices for goods or services); product defects (where the entire line is defective, such as for defective airbags or contaminated food items); data breaches (such as those for the release of personal and payment information); civil rights violations (such as was evidenced in the *Brown v. Board of Education* lawsuit) and dangerous pharmaceuticals (such as was evidenced in the opioid crisis litigation). Legal Information Institute, *Class Action*, https://www.law.cornell.edu/wex/class_action (last visited Feb. 11, 2024).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*; see Fed. R. Civ. P. 23.; s. 768.734, F.S.

¹⁵ Legal Information Institute, *supra* note 12.

¹⁶ *Id.*

¹⁷ Fla. R. Civ. Pro. 1.270(a).

¹⁸ *State Farm Fla. Ins. Co. v. Bonham*, 886 So. 2d 1072 (Fla. 5th DCA 2004).

incident.¹⁹ Typically, indemnification is voluntarily provided for in a written contract executed between the person who will indemnify and the person who will be indemnified.²⁰ However, indemnification may also be required by law in certain circumstances.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits unfair methods of competition, and unconscionable, unfair, or deceptive acts or practices in the conduct of any trade or commerce.²¹ FDUTPA operates for the purposes of:²²

- Simplifying, clarifying, and modernizing the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices;
- Protecting the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce; and
- Making state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA provides investigative and enforcement authority to a state attorney if a violation occurs in or affects the judicial circuit under the office’s jurisdiction, and to the Department of Legal Affairs (“DLA”) within the Office of the Attorney General if a violation occurs in or affects more than one judicial circuit, or if a state attorney defers to DLA or fails to act within 90 days.²³ An enforcing authority may, within four years after a violation occurs or within two years after the last payment in a transaction involved in a violation, bring an action:

- To obtain a declaratory judgment that an act or practice violates FDUTPA;
- To enjoin any person who has violated, is violating, or is otherwise likely to violate FDUTPA; or
- On behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of FDUTPA.²⁴

Additionally, an enforcing authority may collect a civil penalty of up to \$10,000 per violation plus reasonable attorney fees and costs for a willful violation and up to a \$15,000 penalty plus reasonable attorney fees and costs for a willful violation involving a senior citizen, a disabled person, a military servicemember, or the spouse or dependent child of a military servicemember.²⁵ DLA may also issue a cease and desist order if such order would be in the public’s interest.²⁶

FDUTPA also creates a private cause of action for any person aggrieved by a violation of FDUTPA to:

- Obtain a declaratory judgement that an act or practice violates FDUTPA;
- Enjoin a person who has violated, is violating, or is otherwise likely to violate this part; and
- Recover actual damages plus reasonable attorney fees and costs.²⁷

Sovereign Immunity

Sovereign immunity is a principle under which a government cannot be sued without its consent.²⁸ Article X, section 13 of the Florida Constitution allows the Legislature to waive this immunity. In accordance with article X, section 13 of the Florida Constitution, Florida law allows for suits in tort against the state and its agencies and subdivisions for damages resulting from the negligence of

¹⁹ Legal Information Institute, *Indemnify*, <https://www.law.cornell.edu/wex/indemnify> (last visited Feb. 11, 2024).

²⁰ *Id.*

²¹ The term “trade or commerce” is defined as advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated. The term includes the conduct of any trade or commerce including any nonprofit or not-for-profit person or activity. Ss. 501.203(8) and 501.204(1), F.S.

²² S. 501.202, F.S.

²³ Ss. 501.203(2), 501.206, and 501.207, F.S.

²⁴ S. 501.207(1) and (5), F.S.

²⁵ Ss. 501.2075, 501.2077, and 501.2105, F.S.

²⁶ S. 501.208(1), F.S.

²⁷ Ss. 501.2105 and 501.211, F.S.

²⁸ *Sovereign immunity*, Legal Information Institute, https://www.law.cornell.edu/wex/sovereign_immunity (last visited Dec. 7, 2023).

government employees acting in the scope of employment.²⁹ This liability exists only where a private person would be liable for the same conduct. The waiver of sovereign immunity provided under section 768.28, F.S., applies only to “injury or loss of property, personal injury, or death caused by the negligent or wrongful act or omission of any employee of the agency or subdivision while acting within the scope of the employee’s office or employment.”³⁰

Section 768.28(5), F.S., caps tort recovery from a governmental entity at \$200,000 per person and \$300,000 per incident.³¹ Although a court may enter an excess judgment, absent a claim bill passed by the Legislature, a claimant may generally not collect more than the caps provide.³²

Individual government employees, officers, or agents are immune from suit or liability for damages caused by any action taken in the scope of employment, unless the damages result from the employee’s acting in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.³³ A government entity is not liable for any damages resulting from actions by an employee outside the scope of his or her employment, and is not liable for damages resulting from actions committed by the employee in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard for human rights, safety, or property.³⁴

Presuit Procedures for a Claim Against the Government

Before a claimant files a lawsuit against a government entity, the claimant generally must present the claim in writing to the government entity within a time period prescribed by law, which is generally three years.³⁵ If the claim is brought against the state, the claimant must also present the claim to the Department of Financial Services (DFS). The government entity generally then has six months to review the claim. If the government entity does not dispose of the claim within that six-month period, the claimant may generally proceed with the lawsuit.³⁶

Damages

Generally, damages are of two kinds: compensatory and punitive.³⁷ Compensatory damages are awarded as compensation for the loss sustained to make the party whole, insofar as that is possible.³⁸ They arise from actual and indirect pecuniary loss.³⁹ Section 768.28, F.S., does not allow for the recovery of punitive damages, but only for the recovery of compensatory damages.

The liability caps in s. 768.28(5), F.S., of \$200,000 per person and \$300,000 per incident, apply to “all of the elements of the monetary award to a plaintiff against a sovereignly immune entity.”⁴⁰ In other words, a plaintiff’s entire recovery, including damages, back pay, attorney fees, and any other costs, are limited by the caps in s. 768.28, F.S.

Claim Bills

A plaintiff may recover an amount in excess of the caps described in s. 768.28(5), F.S., by way of a claim bill. A claim bill is not an action at law, but rather is a legislative measure that directs the Chief Financial Officer, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation.⁴¹ Such obligations typically arise from the

²⁹ S. 768.28(1), F.S.

³⁰ *City of Pembroke Pines v. Corrections Corp. of America, Inc.*, 274 So. 3d 1105, 1112 (Fla. 4th DCA 2019) (quoting s. 768.28(1), F.S.) (internal punctuation omitted).

³¹ S. 768.28(5), F.S.

³² *Breaux v. City of Miami Beach*, 899 So. 2d 1059 (Fla. 2005).

³³ S. 768.28(9)(a), F.S.

³⁴ *Id.*

³⁵ See s. 768.28(6)(a), F.S.

³⁶ See s. 768.28(6)(d), F.S.

³⁷ 22 Am. Jur. 2d s. 1 at 13 (1965).

³⁸ *Fisher v. City of Miami*, 172 So. 2d 455 (Fla. 1965).

³⁹ *Margaret Ann Supermarkets, Inc. v. Dent*, 64 So. 2d 291 (Fla. 1953).

⁴⁰ *Gallagher v. Manatee Cty.*, 927 So. 2d 914, 918 (Fla. 2d DCA 2006).

⁴¹ *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007)

negligence of officers or employees of the State or a local governmental entity.⁴² Legislative claim bills are typically pursued after procurement of a judgment or settlement in an action at law.⁴³ The amount awarded is based on the Legislature's concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable.⁴⁴ Unlike civil judgments, claim bills are not obtainable by right upon the claimant's proof of his entitlement; rather, they are granted as a matter of legislative grace.⁴⁵

Once a legislative claim bill is formally introduced, a special master usually conducts a quasi-judicial hearing.⁴⁶ This hearing may resemble a trial during which the claimant offers testimony as well as documentary and physical evidence necessary to establish the claim. Trial records may be substituted for witness testimony. Testifying witnesses are sworn and subject to cross-examination.⁴⁷ A respondent may present a defense to contest the claim, and the special master may then prepare a report with an advisory recommendation to the Legislature if the bill is placed on an agenda.⁴⁸

Alternatively, a government entity may, without the need for a claim bill, settle a claim or pay a judgment against it for an amount in excess of the caps in s. 768.28, F.S., if that amount is within the limits of its insurance coverage.⁴⁹

Statute of Limitations for Sexual Battery on a Person Under 16

Section 95.11, F.S., provides statutes of limitation for various types of civil actions. In 2010, the Legislature amended s. 95.11 to remove any statute of limitations applying to a civil action against a private entity for sexual battery if the victim was under 16 at the time of the crime.⁵⁰ The Legislature provided, however, that this amendment would not resuscitate any civil claims that were already barred by the statute of limitations at the time.⁵¹

Lighting Services and Utilities

Under current law, a streetlight provider is not liable for any civil damages for personal injury, wrongful death, or property damage related to the malfunction or failure of a streetlight.⁵² Currently, a "streetlight provider" means the state or any of its officers, agencies, or instrumentalities, any political subdivision, any public utility, or any electric utility.⁵³ As such, any state or local entity providing maintenance of streetlights is not liable for civil damages arising from a malfunction or failure of the streetlight to properly illuminate the area. However, current law does not extend the same limitation of liability to affiliates of the utility provider.

In general, to be eligible for such a limitation on liability, the streetlight provider must:

- Disclose its designated procedures for providing actual notice of an inoperative or malfunctioning streetlight to its customers and the general public;
- Repair any inoperative or malfunctioning streetlight within 60 days after receiving actual notice of the streetlight's defect;
- Note in the business records that a streetlight which the provider received actual notice of being inoperative or malfunctioning was, upon investigation, to be in proper working order;

⁴² *Id.*

⁴³ *City of Miami v. Valdez*, 847 So. 2d 1005 (Fla. 3d DCA 2003).

⁴⁴ *Wagner*, 960 So. 2d at 788 (citing Kahn, Legislative Claim Bills, Fla. B. Journal (April 1988)).

⁴⁵ *United Servs. Auto. Ass'n v. Phillips*, 740 So. 2d 1205, 1209 (Fla. 2d DCA 1999).

⁴⁶ *Wagner*, 960 So. 2d at 788 (citing Kahn at 26).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ S. 768.28(5), F.S.

⁵⁰ Ch. 2010-54, s. 1, Laws of Fla.; s. 95.11(9), F.S.

⁵¹ *Id.* ("This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010").

⁵² S. 768.1382(2), F.S.

⁵³ S. 768.1382(1)(e), F.S. See also *Clay Electric Coop., Inc. v. Johnson*, 873 SO. 2d 1182 (Fla. 2003).

- Note in the business records that the repairs necessary for the streetlight cannot be completed within 60 days and document the determination as to the amount of time such corrective action will require.⁵⁴

Effect of Proposed Changes

Litigation Financing

PCS for HB 569 creates Part II of Chapter 69, F.S., to regulate certain types of litigation financing in Florida.

Definitions

The PCS creates s. 69.101, F.S., to provide definitions. Specifically, the PCS defines “litigation financing agreement” or “litigation financing” as a transaction in which a litigation financier agrees to provide financing to an attorney or party in a civil action in exchange for a right to receive payment, which right is contingent in any respect on the outcome of such action or on the outcome of any matter within a portfolio that includes such action and involves the same counsel or affiliated counsel.

However, under the PCS, the terms do not apply to:

- An agreement in which funds are provided for or to a party to a civil action for such person’s use in paying his or her costs of living or other personal or familial expenses while the action is pending, if such funds are not used to finance the action itself or other legal costs.
- An agreement in which an attorney consents to provide legal services on a contingency fee basis or to advance his or her client’s legal costs.
- An entity (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to a civil action.
- A health insurer that has paid, or is obligated to pay, any sums for health care for an injured person under the terms of a health insurance plan or agreement.
- The repayment of a financial institution for loans made to a party to a civil action, when repayment of the loan is not contingent upon such lawsuit’s outcome.
- Funding provided to a nonprofit organization, if the organization uses the funding to seek only injunctive or equitable relief, whether as a party or on behalf of a client or member of the organization, and irrespective of whether the organization seeks an award of costs or attorney fees in providing pro bono representation.
- Funding provided by a nonprofit organization exempt from federal income tax under s. 501(c)(3) of the United States Internal Revenue Code, by grant or otherwise, to support the pursuit of pro bono, no-cost litigation.

The PCS also defines:

- “Foreign person” to mean a person that is not:
 - A United States citizen;
 - An alien lawfully admitted for permanent United States residence;
 - An unincorporated association, a majority of members of which are United States citizens or aliens lawfully admitted for permanent United States residence; or
 - A corporation that is incorporated in the United States.
- “Foreign principal” to mean:
 - The government or a government official of a foreign country;
 - A political subdivision or political party of a foreign country; or
 - A partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country whose shares or other ownership interest is owned by the government, a government official, a political subdivision, or a political party of a foreign country.
- “Health care practitioner” to mean any person licensed under any of the following chapters of the Florida Statutes: 457; 458; 459; 460; 461; 462; 463; 464; 465; 466; 467; part I, part II, part

Ill, part V, part X, part XIII, or part XIV of 468; 478; 480; part I, part II, or part III of 483; 484; 486; 490; or 491.

- “Litigation financier” to mean a person engaged in the business of providing litigation financing.
- “National security interest” to mean those interests relating to the national defense, foreign intelligence and counterintelligence, international and domestic security, and foreign relations.
- “Proprietary information” to mean information developed, created, or discovered by a person, or which became known by or was conveyed to the person, which has commercial value in the person’s business (such as trade secrets, schematics, algorithms, or business research).
- “Sovereign wealth fund” to mean an investment fund owned or controlled by a foreign principal or an agent thereof.

Representation of Client Interests

The PCS creates s. 69.103, F.S., to authorize a court to take a litigation financing agreement’s existence into account in the following situations:

- In a class action lawsuit brought in Florida courts when determining whether a class representative or class counsel would adequately and fairly represent the class’s interests.
- In actions involving a common question of law or fact pending before the court which may be or have been consolidated when determining whether the lead counsel or any co-lead counsel would adequately and fairly represent the interests of the parties to such actions.

Prohibited Conduct

The PCS creates s. 69.105, F.S., to prohibit a litigation financier from:

- Directing, or making any decision with respect to, the course of any civil action for which the litigation financier has provided financing, or any settlement or other disposition thereof. Under the bill, all rights to make decisions with respect to the course and settlement or other disposition of the subject civil action remain solely with the parties thereto and their attorneys.
- Contracting for or receiving a larger share of the proceeds of a financed civil action than the share of the proceeds collectively recovered by the plaintiffs to any such action after the payment of attorney fees and costs.
- Assigning or securitizing a litigation financing agreement in whole or in part.
- Being assigned rights to or in a civil action, other than the right to receive a share of the proceeds thereof under the litigation financing agreement.

Required Disclosures

The PCS creates s. 69.107, F.S., to require that specified disclosures of certain foreign financial and related interests be made to certain parties. Specifically, the PCS requires a party to a civil action or his or her attorney to, except as otherwise stipulated to by the parties to the action or as otherwise ordered by a court of competent jurisdiction, disclose the name, address, and citizenship or country of incorporation or registration of any foreign person, foreign principal, or sovereign wealth fund that, with respect to the civil action:

- Obtained or will obtain a right to receive payment that is contingent upon the action’s outcome or on the outcome of any matter within a portfolio that includes the action and involves the same counsel or affiliated counsel;
- Provided or will provide funds, whether directly or indirectly, which funds have been or will be used to satisfy any term of a litigation financing agreement into which the party or his or her attorney has entered to finance the action; or
- Has received or is entitled to receive proprietary information or information affecting national security interests obtained as a result of the financing of the action by a litigation financing agreement entered into by the party or his or her attorney.

Under the PCS, such a disclosure must be made to the following persons or entities:

- All parties to the civil action or proceeding;
- The court, agency, or tribunal in which the action is pending;

- Any known person (such as an insurer) with a preexisting contractual obligation to indemnify or defend a party to the action;
- The Florida Department of Financial Services; and
- The Office of the Florida Attorney General.

Further, the PCS provides that the fact of the existence of any litigation financing agreement that involves any of the foreign interests described above, and the identities of all parties to such agreement, are discoverable in any civil action, administrative proceeding, claim, or other legal proceeding financed by such an agreement, unless the court, for good cause shown, determines otherwise.

Nature of Disclosure Obligations

Under the PCS, the disclosure obligations described above are ongoing obligations. Thus, where a party to a civil action or his or her attorney obtains information relating to the interests of a foreign person, foreign principal, or sovereign wealth fund after commencing the action, the party or attorney has 30 days from the date of obtaining such information to comply with any applicable disclosure obligations.

Indemnification by Litigation Financiers

The PCS creates s. 69.109, F.S., to require a litigation financier to agree, in any litigation financing agreement, to indemnify the plaintiffs to the funded civil action or their attorneys against any adverse costs, attorney fees, damages, or sanctions that may be ordered or awarded against such persons in such action. However, under the PCS, indemnification is not required for those adverse costs, attorney fees, damages, or sanctions which the litigation financier can show resulted from the intentional misconduct of such plaintiffs or their attorneys.

Violations and Enforcement

The PCS creates s. 69.111, F.S., to provide that a litigation financing agreement executed in violation of the PCS is void and unenforceable. Further, under the PCS, a violation of the PCS's prohibited conduct or indemnification provisions by a litigation financier is a FDUTPA violation.

Sovereign Immunity

Statutory Caps

The PCS also amends s. 768.28, F.S., to increase the statutory caps on judgments against the state or an agency or subdivision thereof from \$200,000 per person and \$300,000 per incident to \$400,000 per person and \$600,000 per incident. As such, a judgment against the state or against a local government entity could be paid without action by the Legislature if it does not exceed \$400,000 per person or \$600,000 per incident.

Further, the PCS authorizes a subdivision of the state to agree to settle a claim made or judgment rendered against it in excess of the statutory limits without further action by the Legislature. Thus, a county or municipality, or other local government entity, could agree to pay a claim that exceeds the \$400,000/\$600,000 caps without the need for a claim bill. However, a claimant suing the state would still have to seek legislative approval in the form of a claim bill for any amount exceeding the statutory caps.

The PCS clarifies that when determining the liability limits for a claim, the applicable caps are those that are in effect on the date the claim accrues. The PCS also prohibits an insurance policy from conditioning the payment of benefits, in whole or in part, on the enactment of a claim bill.

Timeframes for Filing an Action

The PCS modifies various statutes of limitations on the ability to file a claim against the state or an agency or subdivision thereof. As such, a claim against the state or an agency or subdivision of the state is forever barred unless civil action is commenced as follows:

- For claims based on negligence: within two years.⁵⁵
- For claims based on contribution: within the limitations established in s. 768.31(4), F.S.
- For claims based on medical malpractice or wrongful death: within the limitations established in s. 95.11(4), F.S.
- For claims based on sexual battery on a victim under 16: within 15 years after the victim has reached the age of majority, except for an action that would have been time-barred on or before July 1, 2010.
- For any other claim: within four years.

The PCS decreases the allotted time for a claimant to present the required written notice of the claim to the appropriate agency from three years to 18 months. Similarly, the PCS decreases the time period in which a claimant must present written notice of a claim for wrongful death from two years to 18 months. However, if the claim is based on a sexual battery of a victim under the age of 16, in violation of s. 794.011, the claimant must present written notice of the claim within 13 years after the claimant reaches the age of majority. However, the PCS does not resuscitate any such claims which would have been time-barred as of July 1, 2010.

The PCS also decreases from six months to four months the time period in which DFS or the appropriate agency must make final disposition of a claim. As such, the responding agency must make final disposition of a claim within four months of such claim being filed or it is deemed a final denial. However, the PCS does not change the time period by which an agency must make a final disposition of a claim for medical malpractice or wrongful death. As such, a final disposition for a claim made for medical malpractice or wrongful death must still be made within 90 days from the date of filing or it is deemed a final denial of the claim.

The PCS clarifies that the statute of limitations is tolled as to all prospective defendants for the period of time taken by DFS or the appropriate agency to deny the claim.

Limitation of Liability for Electric Utilities and Affiliates

The PCS amends s. 768.1382, F.S., to extend the existing limitation of liability for electric utilities performing streetlight repair and maintenance to affiliates of such utilities. Under the PCS, such limitation of liability is additionally made available to affiliates of an electric utility, regardless of whether the electric utility or its affiliates are providing streetlight services inside or outside of its regulated territory.

Additionally, the PCS clarifies that the limitation of liability applies to the repair and maintenance of public safety equipment attached to any streetlights. As such, an electric utility or its affiliates cannot be held liable for civil damages arising from the malfunction or failure of a streetlight or public safety equipment attached to a streetlight.

Applicability and Conforming Changes

The PCS provides for severability. Specifically, the PCS provides that, if any portion of the PCS or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the PCS which can be given effect without the invalid provisions.

The portions of the PCS relating to litigation financing generally apply to a litigation financing agreement entered into on or after October 1, 2024. However, the disclosure obligations in s. 69.107, F.S., created by the PCS, apply to any civil action pending or commenced on or after October 1, 2024. The PCS gives any party to a civil action or the attorney thereof who would have been required to make a

⁵⁵ This two-year period is the same as the statute of limitations for bringing a negligence claim against a private party. See s. 95.11(4)(a), F.S.

disclosure under s. 69.107, F.S., had it been in effect at the time the relevant action occurred, 30 days from October 1, 2024, to comply with the disclosure obligations.

The sections of the PCS addressing sovereign immunity and claims and against the government amend a number of statutory sections for the purpose of incorporating the changes made by the language of the PCS and provides that the provisions of the PCS are applicable to claims accruing on or after October 1, 2024. The PCS provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Designates ss. 69.011-69.081, F.S., as Part I of chapter 69, F.S., relating to general provisions.

Section 2: Creates ss. 69.101-69.109, F.S., and designates these sections as Part II of chapter 69, F.S., relating to litigation financing.

Section 3: Amends s. 768.28, F.S., relating to waiver of sovereign immunity in tort actions; recovery limits; civil liability for damages caused during a riot; limitation on attorney fees; statute of limitations; exclusions; indemnification; risk management programs.

Section 4: Amends s. 768.1382, F.S., relating to streetlights, security lights, and other similar illumination; limitation on liability.

Section 5: Reenacts provisions within the Florida Statutes for the purpose of incorporating the amendments made by the act.

Section 6 Provides for severability.

Section 7: Provides applicability of the disclosure obligations.

Section 8: Provides specific applicability for sections 1 and 2 of the act.

Section 9: Provides specific applicability for sections 3 and 4 of the act.

Section 10: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The increase in caps will likely have an indeterminate negative fiscal impact to the state budget based on a general increase in the amount the state is able to pay out.

See *also* Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The cost resulting from the change to a local government's ability to settle claims without regard to any statutory limit on damages under s. 768.28, F.S., is indeterminate. However, local government expenditures may increase for settlements, awards, and other legal costs. Additionally, the increase in caps may result in more sovereign immunity claims being paid by a local entity without the need for Legislative action.

See *also* Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may have a positive economic impact on the private sector to the extent that it shields persons from specified actions of litigation financiers or allows a person to recover his or her actual damages resulting from a litigation financier's violation of the PCS.

Further, the bill may enable more individuals who have tort claims against the state or one of its agencies or subdivisions to receive larger payments without the need to pursue a claim bill. The ability to collect larger settlements or judgments against government entities may also serve as an incentive for private attorneys to represent claimants in these matters. However, the bill may reduce government services to the public in proportion to additional amounts paid to satisfy tort claims.

D. FISCAL COMMENTS:

Litigation Financing

The PCS may have an indeterminate fiscal impact on the offices of the state attorneys and on DLA to the extent that it increases the number of FDUTPA claims they enforce. However, to the extent that such entities can absorb any additional costs resulting from the PCS within existing resources, and may recover civil fines and attorney fees under FDUTPA, the fiscal impact to such entities may be insignificant.

Increase in Sovereign Immunity Caps

By increasing the sovereign immunity caps, the PCS increases the possibility that the state and its agencies and subdivisions will spend more of their resources to satisfy tort claims. The provision of larger payments in satisfaction of tort claims, however, may also reduce the demand for other government services that would have otherwise been necessary for claimants.

Revisions to Statutes of Limitation

By reducing the statute of limitations for specified suits against the government arising in negligence, the PCS may reduce the number of cases initiated and the potential damages sought by claimants from the government. Further, by reducing the pre-suit time period for a government entity or DFS to review and dispose of a claim against the state, the PCS may affect the pre-suit settlement process.

By increasing the statute of limitations for sexual battery on a victim under 16, the PCS may increase the number of claims against the government for such sexual battery. The PCS may reduce the workload of the Legislature by reducing the number of claim bills filed but may also reduce the legislative oversight of claims against local government entities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This PCS does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Equal Protection

Section 1 of the Fourteenth Amendment to the United States Constitution provides, in pertinent part, that "[n]o State shall...deny to any person within its jurisdiction the equal protection of the laws."

Though the Constitution does distinguish between citizens and non-citizens in certain respects, this clause, known as the Equal Protection Clause, makes no such distinction; thus, the United States

Supreme Court has long interpreted it to apply to all persons within the territorial jurisdiction of the United States, without regard to their national origin.⁵⁶ Where a law discriminates between persons on the basis of national origin or other “suspect classifications,” courts assess the law under a heightened scrutiny standard, requiring the enacting government to have a compelling interest justifying the discrimination, which discrimination must be carefully tailored to serve such interest.⁵⁷

The PCS creates additional disclosure requirements where a foreign person, foreign principal, or sovereign wealth fund has a specified financial interest in or obtains certain information as a result of a civil action, which requirements do not apply where the litigation financier or the entity that obtains such information is a domestic entity. Whether or not the imposition of such additional requirements in this manner violates the Equal Protection Clause is for the courts to decide; however, the State may have a compelling interest in requiring disclosures related to a foreign person, foreign principal, or sovereign wealth fund as contemplated by the PCS.

B. RULE-MAKING AUTHORITY:

The PCS requires that certain disclosures be made to DFS and the OAG but does not provide either agency with rule-making authority related to such disclosures.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

⁵⁶ *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886).

⁵⁷ The National Constitution Center, *The Equal Protection Clause*, <https://constitutioncenter.org/the-constitution/amendments/amendment-xiv/clauses/702> (last visited Jan. 25, 2024).

1 A bill to be entitled
2 An act relating to civil proceedings; designating ss.
3 69.011-69.081, F.S., as part I of ch. 69, F.S.;
4 creating part II of ch. 69, F.S., relating to
5 litigation financing; creating s. 69.101, F.S.;
6 providing definitions; creating s. 69.103, F.S.;
7 requiring a court's consideration of potential
8 conflicts of interest which may arise from the
9 existence of a litigation financing agreement in
10 specified circumstances; creating s. 69.105, F.S.;
11 prohibiting specified acts by litigation financiers;
12 creating s. 69.107, F.S.; requiring certain
13 disclosures related to litigation financing agreements
14 involving foreign persons, foreign principals, or
15 sovereign wealth funds; providing for discovery
16 related to litigation financing agreements; creating
17 s. 69.109, F.S.; requiring the indemnification of
18 specified fees, costs, and sanctions by a litigation
19 financier in specified circumstances; creating s.
20 69.111, F.S.; providing that a litigation financing
21 agreement is void in specified circumstances;
22 providing for enforcement of specified violations
23 under the Florida Deceptive and Unfair Trade Practices
24 Act; amending s. 768.28, F.S.; increasing the
25 statutory limits on liability for tort claims against

26 | the state and its agencies and subdivisions;
 27 | authorizing a subdivision of the state to settle a
 28 | claim in excess of the statutory limit without further
 29 | action by the Legislature regardless of insurance
 30 | coverage limits; prohibiting an insurance policy from
 31 | conditioning payment of benefits on the enactment of a
 32 | claim bill; specifying that the limitations in effect
 33 | on the date the claim accrues apply to that claim;
 34 | revising the period within which certain claims must
 35 | be presented to certain entities; revising exceptions
 36 | relating to instituting actions on tort claims against
 37 | the state or one of its agencies or subdivisions;
 38 | revising the period after which the failure of certain
 39 | entities to make final disposition of a claim shall be
 40 | deemed a final denial of the claim for certain
 41 | purposes; revising the statute of limitations for tort
 42 | claims against the state or one of its agencies or
 43 | subdivisions and exceptions thereto; providing a
 44 | claimant a specific timeframe to file suit; amending
 45 | s. 768.1382, F.S.; expanding the limitation of
 46 | liability for electric utilities performing
 47 | streetlight maintenance to include the affiliates of
 48 | such electric utilities; reenacting ss. 45.061,
 49 | 110.504, 111.071, 125.01015, 163.01, 190.043, 213.015,
 50 | 252.51, 252.89, 252.944, 260.0125, 284.31, 284.38,

51 322.13, 337.19, 341.302, 351.03, 373.1395, 375.251,
 52 381.0056, 393.075, 394.9085, 395.1055, 403.706,
 53 409.175, 409.993, 420.504, 420.507, 455.221, 455.32,
 54 456.009, 456.076, 471.038, 472.006, 497.167, 513.118,
 55 548.046, 556.106, 589.19, 627.7491, 723.0611, 760.11,
 56 766.1115, 766.112, 768.1355, 768.1382, 768.295,
 57 944.713, 946.5026, 946.514, 961.06, 1002.33, 1002.333,
 58 1002.34, 1002.351, 1002.37, 1002.55, 1002.83, 1002.88,
 59 1006.24, and 1006.261, F.S., to incorporate the
 60 amendments made to s. 768.28, F.S., in references
 61 thereto; providing severability; providing
 62 applicability; providing an effective date.

63

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

65

66 Section 1. Sections 69.011, 69.021, 69.031, 69.041,
 67 69.051, 69.061, 69.071, and 69.081, Florida Statutes, are
 68 designated as part I of chapter 69, Florida Statutes, and
 69 entitled "General Provisions."

70 Section 2. Part II of chapter 69, Florida Statutes,
 71 consisting of ss. 69.101, 69.103, 69.105, 69.107, 69.109, and
 72 69.111, Florida Statutes, is created to read:

73

74

PART II

75

LITIGATION FINANCING

76 69.101 Definitions.—As used in this part, the term:
 77 (1) "Foreign person" means a person or an entity that is
 78 not:
 79 (a) A citizen of the United States;
 80 (b) An alien lawfully admitted for permanent residence in
 81 the United States;
 82 (c) An unincorporated association, a majority of members
 83 of which are citizens of the United States or aliens lawfully
 84 admitted for permanent residence in the United States; or
 85 (d) A corporation that is incorporated in the United
 86 States.
 87 (2) "Foreign principal" means:
 88 (a) The government or a government official of any country
 89 other than the United States;
 90 (b) A political subdivision or political party of a
 91 country other than the United States; or
 92 (c) A partnership, association, corporation, organization,
 93 or other combination of persons organized under the laws of or
 94 having its principal place of business in a country other than
 95 the United States whose shares or other ownership interest is
 96 owned by the government or a government official of a country
 97 other than the United States or owned by a political subdivision
 98 or political party of a country other than the United States.
 99 (3) "Health care practitioner" has the same meaning as
 100 provided in s. 456.001.

101 (4) "Litigation financier" means a person engaged in the
 102 business of providing litigation financing.

103 (5) "Litigation financing agreement" or "litigation
 104 financing" means a transaction in which a litigation financier
 105 agrees to provide financing to a person who is a party to or
 106 counsel of record for a civil action, administrative proceeding,
 107 claim, or other legal proceeding in exchange for a right to
 108 receive payment, which right is contingent in any respect on the
 109 outcome of such action, claim, or proceeding or on the outcome
 110 of any matter within a portfolio that includes such action,
 111 claim, or proceeding and involves the same counsel or affiliated
 112 counsel. However, the terms do not apply to:

113 (a) An agreement wherein funds are provided for or to a
 114 party to a civil action, administrative proceeding, claim, or
 115 other legal proceeding for such person's use in paying his or
 116 her costs of living or other personal or familial expenses
 117 during the pendency of such action, claim, or proceeding and
 118 where such funds are not used to finance any litigation or other
 119 legal costs.

120 (b) An agreement wherein an attorney consents to provide
 121 legal services on a contingency fee basis or to advance his or
 122 her client's legal costs, and where such services or costs are
 123 provided by the attorney in accordance with the Florida Rules of
 124 Professional Conduct.

125 (c) An entity with a preexisting contractual obligation to

126 indemnify or defend a party to a civil action, administrative
 127 proceeding, claim, or other legal proceeding.

128 (d) A health insurer that has paid, or is obligated to
 129 pay, any sums for health care for an injured person under the
 130 terms of a health insurance plan or agreement.

131 (e) The repayment of a financial institution, as defined
 132 in s. 655.005, for loans made directly to a party to a civil
 133 action, administrative proceeding, claim, or other legal
 134 proceeding or such party's attorney when repayment of the loan
 135 is not contingent upon the outcome of such action, claim, or
 136 proceeding or on the outcome of any matter within a portfolio
 137 that includes such action, claim, or proceeding and involves the
 138 same counsel or affiliated counsel.

139 (f) Funding provided to a nonprofit organization, if the
 140 nonprofit organization uses the funding to seek only injunctive
 141 or equitable relief, whether as a party or on behalf of a client
 142 or member of the organization, and irrespective of whether the
 143 nonprofit organization seeks an award of costs or attorney fees
 144 in providing pro bono representation.

145 (g) Funding provided by a nonprofit organization exempt
 146 from federal income tax under s. 501(c)(3) of the United States
 147 Internal Revenue Code, by grant or otherwise, to support the
 148 pursuit of pro bono, no-cost litigation.

149 (6) "National security interests" means those interests
 150 relating to the national defense, foreign intelligence and

151 counterintelligence, international and domestic security, and
 152 foreign relations.

153 (7) "Proprietary information" means information developed,
 154 created, or discovered by a person, or which became known by or
 155 was conveyed to the person, which has commercial value in the
 156 person's business. The term includes, but is not limited to,
 157 domain names, trade secrets, copyrights, ideas, techniques,
 158 inventions, regardless of whether patentable, and other
 159 information of any type relating to designs, configurations,
 160 documentation, recorded data, schematics, circuits, mask works,
 161 layouts, source code, object code, master works, master
 162 databases, algorithms, flow charts, formulae, works of
 163 authorship, mechanisms, research, manufacture, improvements,
 164 assembly, installation, intellectual property including patents
 165 and patent applications, and information concerning the person's
 166 actual or anticipated business, research, or development or
 167 received in confidence by or for the person from any other
 168 source.

169 (8) "Sovereign wealth fund" means an investment fund owned
 170 or controlled by a foreign principal or an agent thereof.

171 69.103 Litigation financing agreement; representation of
 172 client interests.—A court may take the existence of a litigation
 173 financing agreement into account:

174 (1) In a class action lawsuit brought in the courts of
 175 this state when determining whether a class representative or

176 class counsel would adequately and fairly represent the
 177 interests of the class.

178 (2) In actions involving a common question of law or fact
 179 pending before the court which may be or have been consolidated
 180 when determining whether the lead counsel or any co-lead counsel
 181 would adequately and fairly represent the interests of the
 182 parties to such actions.

183 69.105 Prohibited conduct.—A litigation financier may not:

184 (1) Direct, or make any decisions with respect to, the
 185 course of any civil action, administrative proceeding, claim, or
 186 other legal proceeding for which the litigation financier has
 187 provided financing, or any settlement or other disposition
 188 thereof. This prohibition includes, but is not limited to,
 189 decisions in appointing or changing counsel, choice or use of
 190 expert witnesses, and litigation strategy. All rights to make
 191 decisions with respect to the course and settlement or other
 192 disposition of the subject civil action, administrative
 193 proceeding, claim, or other legal proceeding remain solely with
 194 the parties to such action, claim, or proceeding and their
 195 counsel of record.

196 (2) Contract for or receive, whether directly or
 197 indirectly, a larger share of the proceeds of a civil action,
 198 administrative proceeding, claim, or other legal proceeding
 199 financed by a litigation financing agreement than the share of
 200 the proceeds collectively recovered by the plaintiffs to any

201 such action, claim, or proceeding after the payment of any
 202 attorney fees and costs owed in connection to such action,
 203 claim, or proceeding.

204 (3) Assign or securitize a litigation financing agreement
 205 in whole or in part.

206 (4) Be assigned rights to or in a civil action,
 207 administrative proceeding, claim, or other legal proceeding for
 208 which the litigation financier provided financing, other than
 209 the right to receive a share of the proceeds of such action,
 210 claim, or proceeding pursuant to the litigation financing
 211 agreement.

212 69.107 Required disclosures; discovery obligations.-

213 (1)(a) A party to a civil action, administrative
 214 proceeding, claim, or other legal proceeding, or such party's
 215 counsel of record, must, except as otherwise stipulated to by
 216 the parties to such action, claim, or proceeding, or as
 217 otherwise ordered by a court of competent jurisdiction, disclose
 218 as prescribed in paragraph (b) the name, address, and
 219 citizenship or country of incorporation or registration of any
 220 foreign person, foreign principal, or sovereign wealth fund
 221 that, with respect to the action, claim, or proceeding:

222 1. Obtained or will obtain a right to receive any payment
 223 that is contingent in any respect on the outcome of such civil
 224 action, administrative proceeding, claim, or other legal
 225 proceeding, or on the outcome of any matter within a portfolio

226 that includes such civil action, administrative proceeding,
 227 claim, or other legal proceeding and involves the same counsel
 228 or affiliated counsel;

229 2. Provided or will provide funds, whether directly or
 230 indirectly, which funds have been or will be used to satisfy any
 231 term of a litigation financing agreement into which the party or
 232 the party's counsel of record has entered to finance such civil
 233 action, administrative proceeding, claim, or other legal
 234 proceeding; or

235 3. Has received or is entitled to receive proprietary
 236 information or information affecting national security interests
 237 obtained as a result of the financing of such civil action,
 238 administrative proceeding, claim, or other legal proceeding by a
 239 litigation financing agreement entered into by the party or the
 240 party's counsel of record.

241 (b) The disclosures required in paragraph (a) must be made
 242 to the following persons:

243 1. All parties to the civil action, administrative
 244 proceeding, claim, or other legal proceeding.

245 2. The court, agency, or tribunal in which the civil
 246 action, administrative proceeding, claim, or other legal
 247 proceeding is pending.

248 3. Any known person, including an insurer, with a
 249 preexisting contractual obligation to indemnify or defend a
 250 party to the civil action, administrative proceeding, claim, or

251 other legal proceeding.

252 4. The Department of Financial Services.

253 5. The Office of the Attorney General.

254 (2) The fact of the existence of any litigation financing
 255 agreement that is subject to any of the provisions of subsection
 256 (1), and the identities of all parties to such agreement, are
 257 discoverable in any civil action, administrative proceeding,
 258 claim, or other legal proceeding financed by such an agreement,
 259 unless the court, for good cause shown, determines otherwise.

260 (3) The disclosure obligations in this section are ongoing
 261 obligations. Thus, when a party to a civil action,
 262 administrative proceeding, claim, or other legal proceeding, or
 263 his or her counsel of record, obtains information on the
 264 involvement of a foreign person, foreign principal, or sovereign
 265 wealth fund after the commencement of such action, claim, or
 266 proceeding, which involvement would require disclosure under
 267 this section, the party or attorney has 30 days after the date
 268 of obtaining the information to comply with the disclosure
 269 obligations established herein.

270 69.109 Indemnification by litigation financiers.—In any
 271 litigation financing agreement, the litigation financier must
 272 agree to indemnify the plaintiffs to the civil action,
 273 administrative proceeding, claim, or other legal proceeding
 274 funded in the agreement and such plaintiffs' counsel of record
 275 against any adverse costs, attorney fees, damages, or sanctions

276 that may be ordered or awarded against such persons in such
 277 action, claim, or proceeding. However, indemnification is not
 278 required for those adverse costs, attorney fees, damages, or
 279 sanctions that the litigation financier can show resulted from
 280 the intentional misconduct of such plaintiffs or plaintiffs'
 281 counsel of record.

282 69.111 Violations; enforcement.-

283 (1) A litigation financing agreement executed in violation
 284 of this part is void and unenforceable.

285 (2) A violation of s. 69.105 or s. 69.109 by a litigation
 286 financier is a deceptive and unfair trade practice actionable
 287 under part II of chapter 501.

288 Section 3. Subsection (5), paragraphs (a) and (d) of
 289 subsection (6), and subsection (14) of section 768.28, Florida
 290 Statutes, are amended to read:

291 768.28 Waiver of sovereign immunity in tort actions;
 292 recovery limits; civil liability for damages caused during a
 293 riot; limitation on attorney fees; statute of limitations;
 294 exclusions; indemnification; risk management programs.-

295 (5)(a) The state and its agencies and subdivisions shall
 296 be liable for tort claims in the same manner and to the same
 297 extent as a private individual under like circumstances, but
 298 liability shall not include punitive damages or interest for the
 299 period before judgment. Neither the state nor its agencies or
 300 subdivisions shall be liable to pay a claim or a judgment by any

301 one person which exceeds the sum of \$400,000 ~~\$200,000~~ or any
 302 claim or judgment, or portions thereof, which, when totaled with
 303 all other claims or judgments paid by the state or its agencies
 304 or subdivisions arising out of the same incident or occurrence,
 305 exceeds the sum of \$600,000 ~~\$300,000~~. However, a judgment or
 306 judgments may be claimed and rendered in excess of these amounts
 307 ~~and may be settled~~ and paid pursuant to this act up to \$400,000
 308 or \$600,000 ~~\$200,000 or \$300,000~~, as the case may be; and that
 309 portion of the judgment that exceeds these amounts may be
 310 reported to the Legislature, and ~~but~~ may be paid in part or in
 311 whole ~~only~~ by further act of the Legislature.

312 (b) Notwithstanding the limited waiver of sovereign
 313 immunity provided in paragraph (a):

314 1. ~~herein~~, The state or an agency ~~or subdivision~~ thereof
 315 may agree, within the limits of insurance coverage provided, to
 316 settle a claim made or a judgment rendered against it in excess
 317 of the waiver provided in paragraph (a) without further action
 318 by the Legislature.

319 2. A subdivision of the state may agree to settle a claim
 320 made or a judgment rendered against it in excess of the waiver
 321 provided in paragraph (a) without further action by the
 322 Legislature.

323
 324 However, ~~but~~ the state or an agency or subdivision thereof shall
 325 not be deemed to have waived any defense of sovereign immunity

326 or to have increased the limits of its liability as a result of
 327 its obtaining insurance coverage for tortious acts in excess of
 328 the ~~\$200,000 or \$300,000~~ waiver provided in paragraph (a). An
 329 insurance policy may not condition the payment of benefits, in
 330 whole or in part, on the enactment of a claim bill above.

331 (c) The limitations of liability set forth in this
 332 subsection ~~shall~~ apply to the state and its agencies and
 333 subdivisions whether or not the state or its agencies or
 334 subdivisions possessed sovereign immunity before July 1, 1974.

335 (d)~~(b)~~ A municipality has a duty to allow the municipal
 336 law enforcement agency to respond appropriately to protect
 337 persons and property during a riot or an unlawful assembly based
 338 on the availability of adequate equipment to its municipal law
 339 enforcement officers and relevant state and federal laws. If the
 340 governing body of a municipality or a person authorized by the
 341 governing body of the municipality breaches that duty, the
 342 municipality is civilly liable for any damages, including
 343 damages arising from personal injury, wrongful death, or
 344 property damages proximately caused by the municipality's breach
 345 of duty. The sovereign immunity recovery limits in paragraph (a)
 346 do not apply to an action under this paragraph.

347 (e) When determining liability limits for a claim, the
 348 limitations of liability in effect on the date the claim accrues
 349 shall apply to the claim.

350 (6) (a) An action may not be instituted on a claim against

351 the state or one of its agencies or subdivisions unless the
 352 claimant presents the claim in writing to the appropriate
 353 agency, and also, except as to any claim against a municipality,
 354 county, or the Florida Space Authority, presents such claim in
 355 writing to the Department of Financial Services, within 18
 356 months ~~3 years~~ after such claim accrues and the Department of
 357 Financial Services or the appropriate agency denies the claim in
 358 writing; except that, if:

359 1. Such claim is for contribution pursuant to s. 768.31,
 360 it must be so presented within 6 months after the judgment
 361 against the tortfeasor seeking contribution has become final by
 362 lapse of time for appeal or after appellate review or, if there
 363 is no such judgment, within 6 months after the tortfeasor
 364 seeking contribution has either discharged the common liability
 365 by payment or agreed, while the action is pending against her or
 366 him, to discharge the common liability; or

367 2. Such action arises from a violation of s. 794.011
 368 involving a victim who was younger than the age of 16 at the
 369 time of the act, the claimant must present the claim in writing
 370 within 13 years after the victim reaches the age of majority.
 371 This subparagraph applies to any such action other than one
 372 which would have been time barred on or before July 1, 2010,
 373 under s. 95.11(9) is for wrongful death, the claimant must
 374 present the claim in writing to the Department of Financial
 375 Services within 2 years after the claim accrues.

376 (d) For purposes of this section, complete, accurate, and
 377 timely compliance with the requirements of paragraph (c) shall
 378 occur prior to settlement payment, close of discovery or
 379 commencement of trial, whichever is sooner; provided the ability
 380 to plead setoff is not precluded by the delay. This setoff shall
 381 apply only against that part of the settlement or judgment
 382 payable to the claimant, minus claimant's reasonable attorney's
 383 fees and costs. Incomplete or inaccurate disclosure of unpaid
 384 adjudicated claims due the state, its agency, officer, or
 385 subdivision, may be excused by the court upon a showing by the
 386 preponderance of the evidence of the claimant's lack of
 387 knowledge of an adjudicated claim and reasonable inquiry by, or
 388 on behalf of, the claimant to obtain the information from public
 389 records. Unless the appropriate agency had actual notice of the
 390 information required to be disclosed by paragraph (c) in time to
 391 assert a setoff, an unexcused failure to disclose shall, upon
 392 hearing and order of court, cause the claimant to be liable for
 393 double the original undisclosed judgment and, upon further
 394 motion, the court shall enter judgment for the agency in that
 395 amount. Except as provided otherwise in this subsection, the
 396 failure of the Department of Financial Services or the
 397 appropriate agency to make final disposition of a claim within 4
 398 ~~6~~ months after it is filed shall be deemed a final denial of the
 399 claim for purposes of this section. For purposes of this
 400 subsection, in medical malpractice actions and in wrongful death

401 actions, the failure of the Department of Financial Services or
 402 the appropriate agency to make final disposition of a claim
 403 within 90 days after it is filed shall be deemed a final denial
 404 of the claim. The statute of limitations ~~for medical malpractice~~
 405 ~~actions and wrongful death actions~~ is tolled as to all
 406 prospective defendants for the period of time taken by the
 407 Department of Financial Services or the appropriate agency to
 408 deny the claim. The provisions of this subsection do not apply
 409 to such claims as may be asserted by counterclaim pursuant to s.
 410 768.14.

411 (14) Every claim against the state or one of its agencies
 412 or subdivisions for damages for a negligent or wrongful act or
 413 omission pursuant to this section shall be forever barred unless
 414 the civil action is commenced by filing a complaint in the court
 415 of appropriate jurisdiction:

416 (a) Within 2 4 years for an action founded on negligence.

417 (b) Within the limitations provided in s. 768.31(4) for an
 418 action for contribution.

419 (c) Within the limitations provided in s. 95.11(4) for an
 420 action for damages arising from medical malpractice or wrongful
 421 death.

422 (d) Within 15 years after the victim reaches the age of
 423 majority for any action arising from acts constituting a
 424 violation of s. 794.011 involving a victim who was younger than
 425 the age of 16 at the time of the act. This paragraph applies to

426 any such action other than one which would have been time barred
 427 on or before July 1, 2010, under s. 95.11(9).

428 (e) Within 4 years for any other action not specified in
 429 this subsection after such claim accrues; except that an action
 430 for contribution must be commenced within the limitations
 431 provided in s. 768.31(4), and an action for damages arising from
 432 medical malpractice or wrongful death must be commenced within
 433 the limitations for such actions in s. 95.11(4).

434 Section 4. Paragraphs (d) and (e) of subsection (1) of
 435 section 768.1382, Florida Statutes, are amended to read:

436 768.1382 Streetlights, security lights, and other similar
 437 illumination; limitation on liability.—

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

439 (d) "Streetlight" means any streetlight, any outdoor
 440 security light, or any outdoor area light, including public
 441 safety equipment attached to any such lights, that is owned or
 442 maintained by or for a streetlight provider. The term
 443 "streetlight" does not include any customer-owned or customer-
 444 maintained streetlights, outdoor security lights, or outdoor
 445 area lights of any type, regardless of their location.

446 (e) "Streetlight provider" means the state or any of the
 447 state's officers, agencies, or instrumentalities, any political
 448 subdivision as defined in s. 1.01, any public utility as defined
 449 in s. 366.02(8), or any electric utility as defined in s.
 450 366.02(4) and affiliates of an electric utility, regardless of

451 whether the electric utility or its affiliates are providing
 452 streetlight services inside or outside of its regulated
 453 territory.

454 Section 5. Sections 45.061, 110.504, 111.071, 125.01015,
 455 163.01, 190.043, 213.015, 252.51, 252.89, 252.944, 260.0125,
 456 284.31, 284.38, 322.13, 337.19, 341.302, 351.03, 373.1395,
 457 375.251, 381.0056, 393.075, 394.9085, 395.1055, 403.706,
 458 409.175, 409.993, 420.504, 420.507, 455.221, 455.32, 456.009,
 459 456.076, 471.038, 472.006, 497.167, 513.118, 548.046, 556.106,
 460 589.19, 627.7491, 723.0611, 760.11, 766.1115, 766.112, 768.1355,
 461 768.1382, 768.295, 944.713, 946.5026, 946.514, 961.06, 1002.33,
 462 1002.333, 1002.34, 1002.351, 1002.37, 1002.55, 1002.83, 1002.88,
 463 1006.24, and 1006.261, Florida Statutes, are reenacted for the
 464 purpose of incorporating the amendments made by this act to s.
 465 768.28, Florida Statutes, in references thereto.

466 Section 6. If any provision of this act or its application
 467 to any person or circumstance is held invalid, the invalidity
 468 does not affect other provisions or applications of the act
 469 which can be given effect without the invalid provision or
 470 application, and to this end the provisions of this act are
 471 severable.

472 Section 7. The disclosure requirements in s. 69.107,
 473 Florida Statutes, as created by this act, apply to any civil
 474 action, administrative proceeding, claim, or other legal
 475 proceeding pending or commenced on or after October 1, 2024. Any

476 party to or counsel of record for a civil action, administrative
 477 proceeding, claim, or other legal proceeding pending on October
 478 1, 2024, who would have been required to make a disclosure under
 479 s. 69.107, Florida Statutes, had it been in effect at the time
 480 the relevant action occurred must make the disclosure under that
 481 section within 30 days after October 1, 2024.

482 Section 8. Except as otherwise provided herein, sections 1
 483 and 2 of this act apply to a litigation financing agreement
 484 entered into on or after October 1, 2024.

485 Section 9. Sections 3 and 4 of this act apply to claims
 486 accruing on or after October 1, 2024.

487 Section 10. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1093 Florida Uniform Fiduciary Income and Principal Act

SPONSOR(S): Caruso

TIED BILLS: IDEN./SIM. BILLS: SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mawn	Jones
2) Insurance & Banking Subcommittee	18 Y, 0 N	Fletcher	Lloyd
3) Judiciary Committee		Mawn	Kramer

SUMMARY ANALYSIS

A trust is a relationship in which one party, the “settlor,” gives another party, the “trustee,” the right to hold title to the settlor’s property or assets for a third party’s benefit (“beneficiary”). Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments (“income beneficiary”) or a share of trust principal when an income interest ended (“remainder beneficiary”). In such a scenario, the trustee’s allocation of receipts and expenditures to income or principal had a direct effect on a beneficiary’s financial interests, and the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.

In 1931, the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) adopted the first Uniform Principal and Income Act (“UPIA”), which, in pertinent part, governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust did not provide for such allocation. Forty-seven states, including Florida, subsequently adopted some form of the UPIA; Florida’s version, known as the Florida Uniform Principal and Income Act (“FUPIA”), is codified in ch. 738, F.S. However, in recent decades, the distinction between income and principal has become less important, for two reasons. First, the “modern portfolio theory” allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth. This has led to the rise in popularity of the “unitrust,” which has reduced the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds, as such a trust allows the income beneficiary to receive income from the trust at a set percentage of the trust’s fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends. Second, modern trusts are often drafted with more flexible terms, giving trustees discretion to accumulate income or invade principal when advantageous to further the trust’s purposes.

In 2018, the NCCUSL adopted the Uniform Fiduciary Income and Principal Act (“UFIPA”) to account for these more recent developments. In response to UFIPA’s adoption, the Real Property, Probate and Trust Law Section of the Florida Bar convened a committee (“Committee”) to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUPIA that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law. This proposed revision is the Florida Uniform Fiduciary Income and Principal Act (“FUFIPA”).

HB 1093 codifies FUFIPA into ch. 738, F.S., replacing FUPIA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing trust law generally:

- Allow for total-return investing under the “modern portfolio theory.”
- Provide for the conversion of an existing trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of January 1, 2025.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trusts

A trust is a relationship in which one party (the “settlor”)¹ gives another party (the “trustee”) the right to hold title to the settlor’s assets for a third party’s benefit (the “beneficiary”). A trust may be created and take effect during a settlor’s lifetime (“a living trust”) or may be created by a will and take effect when the settlor dies (“testamentary trust”).² A trust may also be revocable (so that the terms may be changed at any time before the settlor’s death) or irrevocable (so that the terms cannot be modified after the trust’s creation absent consent of the beneficiaries).³ Most trusts are generally governed by the Florida Trust Code, codified in chapter 736, F.S. However, additional provisions of Florida law may apply if the trust has special attributes.

Uniform Fiduciary Income and Principal Act

Traditionally, many trust beneficiaries were entitled to receive either income earned by trust investments (“income beneficiary”) or a share of trust principal when an income interest ended (“remainder beneficiary”).⁴ In such a scenario, the trustee’s allocation of receipts and disbursements to income or principal had a direct effect on a beneficiary’s financial interests, and, thus, the financial interests of an income beneficiary were often at odds with those of the remainder beneficiary.⁵

In 1931, the National Conference of Commissioners on Uniform State Laws, also known as the Uniform Law Commission (“ULC”)⁶ adopted the first Uniform Principal and Income Act (“UPIA”), which, in pertinent part, governed the allocation of trust and estate receipts and disbursements between income and principal where the terms of the trust or will did not provide for such allocation or give the fiduciary a discretionary power of administration. Forty-seven states, including Florida, subsequently adopted some form of UPIA; Florida’s version, adopted in 2002 and known as the Florida Uniform Principal and Income Act (“FUPIA”), is codified in ch. 738, F.S.

However, in recent decades, the distinction between income and principal has lost some significance, for two reasons. First, the “modern portfolio theory” allows trustees to invest for the maximum total return, whether the return is in the form of income or principal growth.⁷ This has led to the rise in popularity of the “unitrust,” which trust allows the income beneficiary to receive income from the trust at a set percentage of the trust’s fair market value while the remainder beneficiary receives a fair disbursement after the income interest ends, thereby reducing the likelihood that the financial interests of the income beneficiary and the remainder beneficiary will be at odds.⁸ In other words, under a unitrust, both the income beneficiary and remainder beneficiary benefit from an increase in the value of

¹ “Settlor” means a person, including a testator, who creates or contributes property to a trust. S. 736.0103(18), F.S.

² See “inter vivos trust” and “testamentary trust,” Black’s Law Dictionary (11th ed. 2019).

³ Greg Depersio, Investopedia (Apr. 30, 2023), *Revocable Trust v. Irrevocable Trust: What’s the Difference*, <https://www.investopedia.com/ask/answers/071615/what-difference-between-revocable-trust-and-living-trust.asp> (last visited Feb. 8, 2024).

⁴ For example, a trust may require that all trust income be distributed to the settlor’s surviving spouse, but that trust principal be held and accumulated for the settlor’s surviving children, to be paid after the surviving spouse’s death. Uniform Law Commission, *The Uniform Fiduciary Income and Principal Act: A Summary*, <https://www.uniformlaws.org/viewdocument/enactment-kit-74?CommunityKey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c&tab=librarydocuments> (last visited Feb. 8, 2024).

⁵ *Id.*

⁶ The NCCUSL is an association of commissioners appointed by each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands, that discusses and debates which areas of the law require uniformity among the states and territories and drafts uniform acts accordingly. Legal Information Institute, *National Conference of Commissioners on Uniform State Laws*, [https://www.law.cornell.edu/wex/national_conference_of_commissioners_on_uniform_state_laws_\(nccusl\)](https://www.law.cornell.edu/wex/national_conference_of_commissioners_on_uniform_state_laws_(nccusl)) (last visited Feb. 8, 2024).

⁷ Uniform Law Commission, *supra* note 4.

⁸ *Id.*; Rod Fluck, *What is a Unitrust and Why is it Used*, <http://buteralaw.com/newsletters/estate/what-is-a-unitrust-and-why-is-it-used/> (last visited Feb. 8, 2024).

a trust's assets.⁹ Second, modern trusts are often drafted with more flexible terms, thereby giving trustees discretion to accumulate income or invade principal when advantageous to further the trust's overall purposes.¹⁰

Thus, in 2018, the ULC adopted the Uniform Fiduciary Income and Principal Act ("UFIPA") to account for these developments, provide additional flexibility in tailoring individual trusts to meet a settlor's specific needs, provide for the conversion of older trusts into unitrusts, and provide a governing law section to help avoid jurisdictional disputes.¹¹ Seven states have since enacted some form of UFIPA.¹²

In response to UFIPA's adoption, the Real Property, Probate and Trust Law Section of the Florida Bar convened a Principal and Income Committee ("Committee") to review UFIPA and consider whether Florida should adopt the new model law. The Committee ultimately proposed a revision to FUIPA, known as the Florida Uniform Fiduciary Income and Principal Act ("FUFIPA"), that would incorporate UFIPA language wherever possible while preserving certain public policy choices found in existing Florida law that continue to make sense for the State.

Effect of Proposed Changes

HB 1093 codifies FUFIPA into ch. 738, F.S., replacing FUIPA as the law governing the allocation of trust and estate receipts and disbursements between principal and interest where a Florida trust does not provide its own terms for such an allocation. FUFIPA would, in addition to modernizing Florida trust law generally:

- Allow for total-return investing under the "modern portfolio theory."
- Provide for the conversion of an older trust into a unitrust.
- Provide flexibility for more individualized estate planning.
- Provide a governing law provision to reduce jurisdictional disputes.

Definitions

The bill revises s. 738.102, F.S., to modify existing definitions and provide new definitions to incorporate UFIPA terminology and concepts. Under the bill, the definitions of "accounting period," "income," "mandatory income interest," and "person" remain unchanged, while definitions for new terms, including "court," "estate," "personal representative," and "record," were added without impacting current policy. However, the bill modifies the following definitions in a substantive way:

- "Beneficiary" is redefined to distinguish between current income beneficiaries and current remainder beneficiaries, as well as to encompass persons holding life estates or term interests.
- "Fiduciary" is broadened to apply not only to the personal representative and trustee, as under current law, but also to those with a power to direct, those under a fiduciary's delegation, and those holding property for a successor beneficiary who may be impacted by principal or income allocations.
- "Income interest" is redefined as a right of a current income beneficiary and includes a current beneficiary's use of property held by a fiduciary.
- "Net income" is broadened to include application to a unitrust and an income to principal adjustment.
- "Principal" is modified from meaning that which is distributed to a remainder beneficiary to that which is held for distribution to, for production of income for, or for use by, a current or successor beneficiary.
- "Terms of the trust" is broadened to extend to wills, life estates, and term interests, and thus more closely follows the definition of the term in the Florida Trust Code.

⁹ Fluck, *supra* note 8.

¹⁰ Uniform Law Commission, *supra* note 4.

¹¹ *Id.*

¹² These states are Arkansas, California, Colorado, Kansas, Utah, Virginia, and Washington State. Uniform Law Commission, *Fiduciary Income and Principal Act: Legislative Bill Tracking*, <https://www.uniformlaws.org/committees/community-home?communitykey=1105f9bb-eb93-4d4d-a1ab-a535ef73de0c#LegBillTrackingAnchor> (last visited Feb. 8, 2024).

Additionally, the bill adds the following new definitions, which definitions modify Florida law in a substantive way:

- “Distribution,” meaning a payment or transfer by a fiduciary to a beneficiary in the beneficiary’s capacity as a beneficiary, without consideration other than the beneficiary’s right to receive the payment or transfer under the terms of the trust, will, life estate, or term interest.
- “Independent person,” meaning a person that is not:
 - For a trust, a qualified beneficiary; a settlor; an individual whose legal obligation to support a beneficiary may be satisfied by a trust distribution; or any trustee whom an interested distributee may remove and replace with a related or subordinate party.
 - For an estate, a beneficiary; a spouse, parent, brother, sister, or issue of specified persons; a corporation, partnership, limited liability company, or other entity in which specified persons have voting control; or an employee of a specified person.
- “Personal representative,” meaning an executor, administrator, successor personal representative, special administrator, or person that performs substantially the same function with respect to an estate under the law governing the person’s status.
- “Record,” meaning information that is inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form.
- “Settlor,” meaning a person, including a testator, that creates or contributes property to a trust.
- “Special tax benefit,” meaning the annual gift tax exclusion,¹³ qualified subchapter S status,¹⁴ federal marital tax deduction,¹⁵ and generation-skipping transfer tax exemption.¹⁶
- “Successive interest,” meaning the interest of a successor beneficiary.
- “Successor beneficiary,” meaning a person entitled to receive income or principal or to use property when an income interest or other current interest ends.
- “Trust,” meaning an express trust, whether private or charitable, with additions to the trust, wherever and however created, and a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust.
- “Trustee,” meaning a person, other than a personal representative, that owns or holds property for the benefit of a beneficiary.
- “Will,” meaning any testamentary instrument recognized by applicable law which makes a legally effective disposition of an individual’s property, effective at the individual’s death, and includes a codicil or other amendment to a testamentary instrument.

¹³ The Internal Revenue Service allows individuals to give away up to a specific amount of assets each year tax-free under the annual gift tax exclusion. Jean Gordon Carter and Janice L. Davies, Gift Tax, *the Annual Exclusion and Estate Planning*, <https://www.actec.org/resource-center/video/gift-tax-the-annual-exclusion-and-estate-planning/> (last visited Feb. 8, 2024)

¹⁴ A trust with qualified subchapter S status is eligible to own stock in an S corporation. A settlor can use this type of trust to make a gift of all or a part of the S corporation stock and retain voting power while the beneficiary receives the income and the tax burden. Rebecca C. Bowen, *Trusts as Eligible Shareholders of an S Corporation*, <https://www.t-m-law.com/commentary/trusts-as-eligible-shareholders-of-an-s-corporation/> (last visited Feb. 8, 2024).

¹⁵ The Internal Revenue Service allows a spouse to leave property of unlimited value to his or her surviving spouse tax-free. Such assets may be distributed by a direct transfer from the decedent to the surviving spouse or by an indirect transfer to a qualifying trust for the surviving spouse’s benefit. Peter B. von Stein, *Basic Estate Tax Planning for Married Couples: Opportunities for Use of Estate Tax Exemptions*, <https://www.wardandsmith.com/articles/basic-estate-tax-planning-married-couples-use-estate-tax-exemptions> (last visited Feb. 8, 2024).

¹⁶ The generation-skipping transfer tax is a federal tax on a gift or an inheritance that prevents the donor from avoiding estate taxes by skipping over children in favor of grandchildren. However, the Internal Revenue Service allows a person to give up to a certain amount to a qualified recipient to avoid this tax. Troy Segal, *What is the Generation-Skipping Transfer Tax*, Investopedia (Feb. 7, 2023), <https://www.investopedia.com/terms/g/generation-skipping-transfer-tax.asp> (last visited Feb. 8, 2024).

Scope

The bill amends s. 738.103, F.S., to provide FUFIPA's scope. Specifically, the bill states that, except as otherwise provided by the terms of a trust or FUFIPA, FUFIPA applies to a trust or estate and to a life estate or other term interest in which someone's interest will be succeeded by another's interest under s. 738.508, F.S.

Governing Law

The bill adds a new governing law provision to renumbered s. 738.104, F.S. Specifically, the bill provides that, if the principal place of administration of a trust or estate or the situs of property not held in trust or an estate is Florida, the trustee is governed by FUFIPA, except as otherwise provided in the terms of the trust or elsewhere in that chapter.

General Principles of Fiduciary Duties

The bill renumbers from s. 738.103, F.S., to s. 738.201, F.S., a provision setting forth a trustee's fiduciary duties, including the duty to administer a trust or estate impartially based on what is fair and reasonable to all beneficiaries. Current law also establishes the general principles for allocating receipts and disbursements to or between principal and income, specifying that, generally speaking, receipts and disbursements must be allocated to principal, and establishes a presumption that a determination made in accordance with ch. 738 is fair and reasonable.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Incorporates the revised definition of "terms of the trust."
- Adds an express requirement that a fiduciary act in good faith.
- Requires a fiduciary to add undistributed income to principal within a specified time period.
- Incorporates the factors currently set out in s. 738.104(2), F.S., applicable in exercising the adjustment power, and making such factors applicable to all fiduciary decisions under FUFIPA.

The factors incorporated from s. 738.104(2), F.S., remain largely the same as in current law, except that the bill substitutes the objective "terms of the trust" factor for the subjective "intent of the grantor" factor, in keeping with changes made by UFIPA.

Judicial Review

The bill renumbers from s. 738.105, F.S., to s. 738.202, F.S., a provision governing judicial review of a trustee's exercise of or failure to exercise any discretionary power under FUFIPA, as it relates to a decision to transfer principal to income, or vice versa. Under current law, a court may not determine that a trustee abused its discretion merely because the court would have exercised the discretion differently, but, once an abuse of discretion is found, the court must take certain actions to restore the beneficiaries to the positions they would have been in had the trustee not abused its discretion.

The bill substantially preserves current law, with four exceptions. Specifically, the bill:

- Updates the term "trustee" in this provision to "fiduciary," thus broadening this section's scope.
- Defines "fiduciary decisions" to expressly include the fiduciary's allocation between income and principal and the exercise or failure to exercise any power under FUFIPA.
- Expressly adds to the remedies available when a fiduciary abuses his or her discretion "all remedies authorized by law," including remedies and damages for breach of trust as set out in the Florida Trust Code in ss. 736.1001 and 736.1002, F.S.
- Removes an unnecessary provision prohibiting the court from substituting its discretion for that of the fiduciary.

Fiduciary's Adjustment Powers

The bill renumbers from s. 738.104, F.S., to s. 738.203, F.S., a provision authorizing a trustee to adjust between income and principal if specified conditions are met, including the consideration of enumerated factors, and a determination that an adjustment is necessary to administer the trust impartially, based on what is fair and reasonable. Under current law, a trustee is prohibited from exercising the adjustment power under certain circumstances where adverse tax consequences would result but may release all or part of the power for any time period. Further, current law expressly negates any inference of impropriety simply because a trustee declines to exercise the power.

The bill makes several changes to current law. Specifically, the bill:

- Expands the scope of this section from trustees to all fiduciaries.
- Relocates the conditions limiting when a fiduciary may adjust between principal and income to a different section, making such conditions applicable to all fiduciary decisions.
- Replaces the standard of “impossibility” with a standard of “assistance,” thereby authorizing a fiduciary to exercise the adjustment power if the fiduciary determines that doing so will assist the fiduciary in administering the trust or estate impartially.
- Authorizes the appointment of a co-fiduciary to exercise the adjustment power under specified circumstances.
- Includes a presumption that a release or delegation of the adjustment power is a release or delegation of the entire power, and that such a release or delegation is permanent.
- Clarifies that the exercise of the adjustment power may apply to the immediately preceding period, current period, and one or more subsequent periods.
- Adds new accountability procedures, including a requirement that the exercise of the adjustment power be included in the annual accounting report or communicated at least annually to the trust’s qualified beneficiaries.

Unitrusts

The bill replaces s. 738.1041, F.S., which specifically authorizes the express creation of a unitrust, provides that the unitrust amount is considered to be the trust’s net income for purposes of allowing or requiring income distributions, and provides for the conversion of an income trust to a unitrust, or vice versa, with ss. 738.301-738.310, F.S.

The bill makes several changes to current law. Specifically, the bill:

- Separates provisions relating to unitrusts into distinct sections, making them more visible.
- Specifies that these sections apply to estates only where a trust is a beneficiary of an estate.
- Adds definitions applicable to a unitrust, including “applicable value,” “express unitrust,” “net fair market value of a trust,” “unitrust,” “unitrust policy,” and “unitrust rate.”
- Modernizes but does not substantially alter provisions relating to a fiduciary’s authority and duties as they relate to unitrusts; the method for determining the unitrust rate; and the method for determining an asset’s fair market value for the purpose of determining the unitrust amount.
- Ensures that the unitrust provisions remain within the safe harbor standards of the Treasury Regulations (as they are under current law) but allows for future modification of the relevant provisions should the Treasury relax those standards.

Character of Receipts

The bill amends s. 738.401, F.S., which currently characterizes receipts from entities, applies a “lookback period”¹⁷ of unlimited duration, and establishes rules applicable to receipts from public entities; provisions regarding private trustees administering investment entities; treating as principal money received from specified sources; and treating as income dividends a fiduciary elects to reinvest. Current law favors objective calculations over the exercise of fiduciary discretion in such matters.

The bill modifies current law by:

¹⁷ Florida’s “lookback period” applies a portion of large receipts to income, at a rate of three percent per year.

- Limiting the lookback period to three accounting periods to simplify trust administration.
- Restructuring the law to more closely match UFIPA's overall organization.
- Amending or adding definitions, including "capital distribution," "entity," and "entity distribution," to clarify certain concepts incorporated into this section.

Allocations

Deferred Compensation Accounts, Annuities, and Similar Arrangements

The bill renumbers from s. 738.602, F.S., to s. 738.409, F.S., a section of law characterizing receipts from deferred compensation accounts, annuities, and other similar arrangements. Under current law, the "income of the fund" is determined in a specified manner, and such amount is compared to payments actually received from the fund; the lesser of such amounts is then allocated to income, while the remainder is allocated to principal.

The bill modifies this section by:

- Changing the phrase "income of the fund" to the more customary "internal income."
- Adding an accounting period concept to balance the allocation of intra-period receipts between principal and income.
- Specifically authorizing fiduciaries to transfer assets from principal to income as necessary to fully fund the internal income of the fund and distribute such income to the beneficiary.

Minerals, Water, and Other Natural Resources

The bill renumbers from s. 738.604, F.S., to s. 738.411, F.S., a provision allocating receipts from an interest in minerals, water, or other natural resources as 90 percent to principal and ten percent to income. The bill modifies this section by removing the 90/10 allocation standard and replacing it with a fact-specific standard.

Marital Deduction Property Not Productive of Income

The bill renumbers from s. 738.606, F.S., to s. 738.413, F.S., a provision providing a safe harbor to ensure that a trust intending to qualify for the estate tax marital deduction allows the surviving spouse to require the trustee to make property income-producing where the trust assets do not otherwise provide the spouse with sufficient income to qualify for the deduction. Current law also allows the surviving spouse to require the trustee to make property income-producing where trust assets have been used in whole or in part to satisfy the spouse's elective share under s. 732.2125, F.S.,¹⁸ and the property, in the aggregate, does not provide the spouse with sufficient income.

The bill substantially preserves current law but provides that this section may be overridden only if the terms of the trust explicitly reference this section.

Derivatives and Options

The bill renumbers from s. 738.607, F.S., to s. 738.414, F.S., a provision providing for the allocation of all amounts received from derivatives and options to principal. The bill also modifies this section to provide for the allocation of 10 percent of receipts from the transaction and 10 percent of disbursements made in connection with the transaction to income, with the remaining balance allocated to principal.

Asset-Backed Securities

¹⁸ This section allows the surviving spouse of a decedent to claim up to 30 percent of the decedent's estate, regardless of the terms of the decedent's will. Practically speaking, this prevents a surviving spouse from being disinherited and potentially left destitute.

The bill renumbers from s. 738.608, F.S., to s. 738.415, F.S., a provision for the allocation of payments received in exchange for the trust's or estate's entire interest in an asset-backed security¹⁹ during a single accounting period entirely to principal. Current law also provides that, for payments that are part of a series of payments that will result in the liquidation of the trust's or estate's interest in the security over more than a single accounting period, the fiduciary must allocate 10 percent of the payment to income and the balance to principal.²⁰

The bill modifies the definition of an "asset-backed security" to more closely align with the definition used by the Securities and Exchange Commission²¹ and extends the 90/10 distribution rule to all receipts from or related to such a security.

Other Financial Instruments or Arrangements

The bill creates s. 738.416, F.S., to be a "catch-all" provision for the allocation of receipts and disbursements arising from or related to financial instruments or arrangements not specifically mentioned in FUFIPA. Under the bill, allocation must be 90 percent to principal and 10 percent to income, making the allocation standard the same as for derivatives, options, and asset-backed securities.

Disbursements

Disbursements from Income and Principal

The bill amends s. 738.501, F.S., which currently directs that one-half of certain forms of compensation and expenses be disbursed from income, along with all of the ordinary expenses incurred in connection with a trust property that primarily concerns the income interest.

The bill modifies this section to address what happens where there is insufficient income to disburse the full amount charged and to give the fiduciary the discretion to disburse specified amounts charged if the fiduciary is an independent person and the disbursement would be in the beneficiaries' interest.

The bill also amends s. 738.502, F.S., which currently directs that the remaining one-half of certain forms of compensation and expenses be disbursed from principal, along with all of the trustee's compensation for preparing property for sale; payments on the principal of trust debt; and expenses of proceedings that primarily concern trust principal.

The bill modifies this section to provide that principal must be disbursed in an amount equal to the remaining balance of the compensation and expenses provided for in s. 738.501, F.S., and to allow a fiduciary to use income to disburse the balance of such amounts charged to income before using principal. Further, the bill incorporates certain tax provisions found elsewhere in current law into this section.

Transfers from Income to Principal for Depreciation

The bill amends s. 738.503, F.S., which currently allows a fiduciary to transfer a reasonable amount of the net cash receipts from a principal asset from income to principal, subject to depreciation to such principal, with restrictions.

The bill substantially preserves current law, with three exceptions. Specifically, the bill:

¹⁹ Under current law, an "asset-backed security" is an asset, the value of which is based upon the right given to the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. S. 738.608, F.S.

²⁰ See s. 738.608(3), F.S.

²¹ 17 C.F.R. Sec. 229.1101(c)(1) defines "asset-backed security" as a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases. See 17 C.F.R. Sec. 229.1101(c)(1)(2) for other conditions that must apply for a security to be considered an "asset-backed security."

- Replaces the term “fixed asset” with the term “tangible asset” to conform to changes made elsewhere in FUFIPA.
- Excludes depreciation for assets accounted for as a liquidating asset.
- Removes a safe harbor specifying that any amount of depreciation taken for an asset must be presumed to be a reasonable amount of depreciation.

Reimbursements

The bill amends s. 738.504, F.S., which currently relates to allocations from insurance policies and similar contracts, to create a provision authorizing a fiduciary to reimburse income from principal. Such reimbursement is not presently authorized under Florida law.

The bill also renumbers from s. 738.704, F.S., to s. 738.505, F.S., a provision authorizing a fiduciary to transfer an appropriate amount of income to principal to either reimburse or provide a reserve in specified situations. The bill modifies this section by clarifying that, when a current income interest of a principal asset ends and a successive income interest remains, the fiduciary may continue to transfer those appropriate amounts from income to principal as specified in this section. The bill also authorizes fiduciaries to transfer an appropriate amount from income to principal for the cost of an improvement to principal, whether a change to an existing asset or the construction of a new asset, and for a periodic payment on an obligation secured by a principal asset, in specified circumstances.

Income Taxes

The bill renumbers from s. 738.705, F.S., to s. 738.506, F.S., a provision specifying that, with respect to income tax, the fiduciary must disburse from income those amounts allocated to income and from principal those amounts allocated to principal. Current law also specifies that the same allocation rules must be followed on the trust’s or estate’s share of an entity’s taxable income, except that principal must be used to disburse amounts exceeding total receipts from the entity; however, the fiduciary must also adjust income or principal receipts, pursuant to a specified formula, to the extent the trust’s or estate’s income taxes are reduced, but not eliminated, due to a deduction for beneficiary payments.

The bill substantially retains current law but makes several changes. Specifically, the bill:

- Removes the phrase “but not eliminated,” as it created confusion.
- Removes the formula outlining the amount distributable to a beneficiary.
- Adds a provision allowing a fiduciary to reimburse the “owner” of a “grantor trust”²² for income taxes paid.

Adjustments Between Principal and Income Because of Taxes

The bill renumbers from s. 738.706, F.S., to s. 738.507, F.S., a provision authorizing a fiduciary to adjust between principal and income to offset the shifting of economic interests or tax benefits between income and remainder beneficiaries due to elections and decisions made by a fiduciary; a tax imposed on the fiduciary or beneficiary due to a distribution from the trust or estate; or the taxable income of an entity owned by the trust or estate includable in the taxable income of the trust, estate, or beneficiary. This section also provides that, when an estate tax marital deduction or charitable contribution deduction is reduced due to a fiduciary deducting an amount paid from principal for income tax purposes, resulting in the amount of income tax paid by the trust or estate decreasing, the income tax payor must reimburse principal for the amount of tax not paid, with limitations (“deduction adjustment”).

The bill substantially preserves current law but modifies this section to specify that a fiduciary that charges a beneficiary under the deduction adjustment may offset the charge by obtaining payment from

²² A “grantor trust” is a type of trust that allows the settlor, in this case known as the “grantor,” to retain some control over trust assets. For tax purposes, the grantor is considered the owner of the trust and is liable for any taxes on trust income. Christopher R. Callahan and Scott M. Snyder, *Foreign Grantor Trust Planning: A Flexible Planning Structure for U.S. Income Tax*, Fla. Bar Journal Vol. 97, No. 6 (Nov./Dec. 2023), <https://www.floridabar.org/the-florida-bar-journal/foreign-grantor-trust-planning-a-flexible-planning-structure-for-u-s-income-tax/> (last visited Feb. 8, 2024).

the beneficiary, withholding future distributions to the beneficiary, or adopting another method or combination of methods.

Apportionment when Income Interest Ends

The bill amends s. 738.703, F.S., to incorporate the substance of former s. 738.303, F.S., which provides for the apportionment of income after an income interest ends. The bill also removes a provision for the proration of the unitrust amount under this section, as this concept is covered elsewhere in FUFIPA.

Relation to Electronic Signatures in Global and National Commerce Act

The bill amends s. 738.802, F.S., to replace existing law relocated elsewhere in the bill with a provision, not found in current law, specifying that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (“GNCA”),²³ with exceptions, but does not authorize electronic delivery of specified notices described in the GNCA.

Non-Substantive Changes

The bill makes non-substantive, technical changes to what are now numbered as ss. 738.402, 738.403, 738.501, 738.502, 738.503, 738.504, 738.508, 738.601, 738.602, 738.603, 738.605, 738.701, 738.702, and 738.801, F.S.

Severability

The bill amends s. 738.803, F.S., to provide for severability. Specifically, the bill states that if any provision of FUFIPA or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of FUFIPA which can be given effect without the invalid provisions or application.

Applicability

The bill amends s. 738.804, F.S., to provide that, except as otherwise provided by a trust’s terms or the bill itself, the bill applies to any receipt or expense received or incurred and any disbursement made after January 1, 2025, by any trust or estate, regardless of when the trust or estate was established or the asset involved was acquired.

Effective Date

The bill provides an effective date of January 1, 2025.

B. SECTION DIRECTORY:

Section 1: Amends s. 738.101, F.S., relating to short title.

Section 2: Amends s. 738.102, F.S., relating to definitions.

Section 3: Amends s. 738.103, F.S., relating to fiduciary duties; general principles.

Section 4: Amends s. 738.104, F.S., relating to trustee’s power to adjust.

Section 5: Repeals s. 738.1041, F.S., relating to total return unitrust.

Section 6: Repeals s. 738.105, F.S., relating to judicial control of discretionary powers.

Section 7: Amends s. 738.201, F.S., relating to determination and distribution of net income.

Section 8: Amends s. 738.202, F.S., relating to distribution to residuary and remainder beneficiaries.

Section 9: Creates s. 738.203, F.S., relating to fiduciary’s power to adjust.

Section 10: Amends s. 738.301, F.S., relating to when right to income begins and ends.

²³ See 15. U.S.C. s. 7001(c). The GNCA provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing.

- Section 11:** Amends s. 738.302, F.S., relating to apportionment of receipts and disbursements when decedent dies or income interest begins.
- Section 12:** Amends s. 738.303, F.S., relating to apportionment when income interest ends.
- Section 13:** Creates s. 738.304, F.S., relating to notice.
- Section 14:** Creates s. 738.305, F.S., relating to unitrust policy.
- Section 15:** Creates s. 738.306, F.S., relating to unitrust rate.
- Section 16:** Creates s. 738.307, F.S., relating to applicable value.
- Section 17:** Creates s. 738.308, F.S., relating to period.
- Section 18:** Creates s. 738.309, F.S., relating to express unitrust.
- Section 19:** Creates s. 738.310, F.S., relating to other rules.
- Section 20:** Amends s. 738.401, F.S., relating to character of receipts.
- Section 21:** Amends s. 738.402, F.S., relating to distribution from trust or estate.
- Section 22:** Amends s. 738.403, F.S., relating to business and other activities conducted by fiduciary.
- Section 23:** Creates s. 738.404, F.S., relating to principal receipts.
- Section 24:** Creates s. 738.405, F.S., relating to rental property.
- Section 25:** Creates s. 738.406, F.S., relating to receipt on obligation to be paid in money.
- Section 26:** Creates s. 738.407, F.S., relating to insurance policy on contracts.
- Section 27:** Creates s. 738.408, F.S., relating to insubstantial allocation not required.
- Section 28:** Creates s. 738.409, F.S., relating to deferred compensation, annuity, or similar payment.
- Section 29:** Renumbers and amends s. 738.603, F.S., relating to liquidating asset.
- Section 30:** Renumbers and amends s. 738.604, F.S., relating to minerals, water, and other natural resources.
- Section 31:** Renumbers and amends s. 738.605, F.S., relating to timber.
- Section 32:** Renumbers and amends s. 738.606, F.S., relating to property not productive of income.
- Section 33:** Renumbers and amends s. 738.607, F.S., relating to derivatives and options.
- Section 34:** Renumbers and amends s. 738.608, F.S., relating to asset-backed securities.
- Section 35:** Creates s. 738.416, F.S., relating to other financial instrument or arrangement.
- Section 36:** Amends s. 738.501, F.S., relating to principal receipts.
- Section 37:** Amends s. 738.502, F.S., relating to rental property.
- Section 38:** Amends s. 738.503, F.S., relating to obligation to pay money.
- Section 39:** Amends s. 738.504, F.S., relating to insurance policies and similar contracts.
- Section 40:** Renumbers and amends s. 738.704, F.S., relating to transfers from income to reimburse principal.
- Section 41:** Renumbers and amends s. 738.705, F.S., relating to income taxes.
- Section 42:** Renumbers and amends s. 738.706, F.S., relating to adjustments between principal and income because of taxes.
- Section 43:** Creates s. 738.508, F.S., relating to apportionment of property expenses between tenant and remainderman.
- Section 44:** Amends s. 738.601, F.S., relating to insubstantial allocations not required.
- Section 45:** Amends s. 738.602, F.S., relating to payments from deferred compensation plans, annuities, and retirement plans or accounts.
- Section 46:** Amends s. 738.701, F.S., relating to disbursements from income.
- Section 47:** Amends s. 738.702, F.S., relating to disbursements from principal.
- Section 48:** Amends s. 738.703, F.S., relating to transfers from income to principal for depreciation.
- Section 49:** Amends s. 738.801, F.S., relating to apportionment of expenses; improvements.
- Section 50:** Amends s. 738.802, F.S., relating to uniformity of application and construction.
- Section 51:** Amends s. 738.803, F.S., relating to severability.

Section 52: Amends s. 738.804, F.S., relating to application.

Section 53: Provides an effective date of January 1, 2025.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have a positive economic impact on the private sector to the extent that it provides more flexibility for individualized estate planning, allows for total-return investing under the “modern portfolio theory,” and otherwise gives Floridians advantages that benefit their financial interests.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Federalism

The framers of the United States Constitution allocated power among the federal and state governments, seeking to establish a unified national government of limited powers while carving out for the states a distinct sphere of autonomy for the exercise of general police powers.²⁴ Although the Constitution does not clearly delineate many of the boundaries between federal and state government powers, the Supreme Court has invoked certain constitutional provisions when determining whether a government has exceeded its constitutional authority.²⁵

One such provision is the Supremacy Clause, found in Article IV of the United States Constitution, which clause gives federal law supremacy over state law where the laws conflict.²⁶ Put another way,

²⁴ Library of Congress, *Constitution Annotated: Federalism and the Constitution*, https://constitution.congress.gov/browse/essay/intro.7-3/ALDE_00000032/ (last visited Feb. 8, 2024).

²⁵ *Id.*

²⁶ *Id.*

under the Supremacy Clause, a federal law preempts any conflicting state laws.²⁷ Another such provision is the Commerce Clause, found in Article I, section 8, clause 3 of the United States Constitution, which clause gives Congress broad power to regulate interstate and foreign commerce and restricts the states from impairing such commerce through the enactment of state laws.²⁸

The bill amends s. 738.802, F.S., to specify that FUFIPA modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act (“GNCA”), using language similar to language already appearing elsewhere in Florida law. The GNCA is a federal law, codified at 15 U.S.C. s. 7001, which law provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce, allowing the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing. To the extent that, in a particular case, FUFIPA could conflict with the GNCA, or its application thereto otherwise could impair interstate or foreign commerce, a court may find the GNCA controls over the amendment to s. 738.802, F.S.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

²⁷ *Id.*

²⁸ Library of Congress, *Constitution Annotated: Overview of Commerce Clause*, https://constitution.congress.gov/browse/essay/artI-S8-C3-1/ALDE_00013403/ (last visited Feb. 8, 2024).

1 A bill to be entitled
 2 An act relating to the Florida Uniform Fiduciary
 3 Income and Principal Act; amending s. 738.101, F.S.;
 4 revising a short title; amending s. 738.102, F.S.;
 5 revising and providing definitions governing ch. 738,
 6 F.S.; amending s. 738.103, F.S.; specifying the scope
 7 of ch. 738, F.S.; amending s. 738.104, F.S.;
 8 specifying circumstances under which ch. 738, F.S.,
 9 applies to a trust; repealing s. 738.1041, F.S.,
 10 relating to total return unitrusts; repealing s.
 11 738.105, F.S., relating to judicial control of
 12 discretionary powers; amending s. 738.201, F.S.;
 13 specifying the duties of a fiduciary; providing that a
 14 fiduciary's allocation, determination, or exercise of
 15 discretion is presumed to be fair and reasonable to
 16 all beneficiaries; requiring a fiduciary to take
 17 specified actions; authorizing a fiduciary to exercise
 18 discretionary power of administration under specified
 19 circumstances; requiring the fiduciary to consider
 20 specified factors before exercising such discretionary
 21 power; providing for applicability; amending s.
 22 738.202, F.S.; defining the term "fiduciary decision";
 23 prohibiting a court from ordering a fiduciary to
 24 change his or her decision unless the decision was an
 25 abuse of discretionary power; prohibiting a court from

26 determining that a fiduciary abused its discretion
27 under specified conditions; authorizing a court to
28 order a specified remedy; authorizing a court to
29 determine whether a proposed fiduciary decision will
30 result in an abuse of discretion; providing that a
31 beneficiary who opposes a proposed decision has the
32 burden to establish that such decision is an abuse of
33 discretion; requiring that any attorney fees incurred
34 in defending an action related to the abuse of a
35 fiduciary's discretion be paid from trust assets;
36 creating s. 738.203, F.S.; authorizing a fiduciary to
37 adjust between income and principal if such adjustment
38 assists in administering the trust or estate
39 impartially; providing construction; providing that a
40 fiduciary is not liable to another for an adjustment,
41 or failure to adjust, between income and principal
42 made in good faith; requiring a fiduciary to consider
43 certain relevant factors when considering such
44 adjustment; prohibiting a fiduciary from exercising or
45 considering such adjustment if certain conditions
46 exist; revising applicability; authorizing a fiduciary
47 to release or delegate to a cofiduciary specified
48 powers to adjust under specified conditions; providing
49 requirements and powers for any such releases and
50 delegations; providing applicability; requiring that

51 the description of an exercise of the power to adjust
52 between income and principal contain specified
53 information; amending s. 738.301, F.S.; defining
54 terms; amending s. 738.302, F.S.; specifying
55 applicability of specified provisions; authorizing the
56 conversion of an income trust to a unitrust;
57 restricting provisions to trusts that are
58 beneficiaries of an estate; providing construction;
59 providing that a fiduciary acting in good faith is not
60 liable to a person affected by a certain action or
61 inaction; amending s. 738.303, F.S.; specifying the
62 authority of a fiduciary with respect to the
63 administration of certain trusts; providing the
64 circumstances under which a fiduciary may perform such
65 actions; authorizing a beneficiary or a fiduciary to
66 request the court to allow the beneficiary or
67 fiduciary to take a specified action; requiring a
68 fiduciary to inform specified persons of a decision to
69 take action; authorizing a beneficiary to request a
70 court to direct the fiduciary to take the requested
71 action under specified circumstances; requiring
72 fiduciaries to consider specified factors before
73 taking a certain action; authorizing a fiduciary to
74 release or delegate the power to take certain actions;
75 creating s. 738.304, F.S.; requiring a certain notice

76 | to be sent to specified parties; providing
77 | applicability; authorizing a person to consent to a
78 | specified action in a record; providing that such
79 | person does not need to be sent notice of such action;
80 | providing requirements for such notices; creating s.
81 | 738.305, F.S.; requiring a fiduciary of a unitrust to
82 | follow a certain policy; providing rules for a
83 | unitrust policy; providing additional actions a
84 | unitrust policy may contain; creating s. 738.306,
85 | F.S.; requiring a unitrust rate to be within a
86 | specified range; authorizing a unitrust policy to
87 | provide for specified limits within such range;
88 | requiring a fiduciary who is a non-independent person
89 | to use a specified unitrust rate; creating s. 738.307,
90 | F.S.; requiring a unitrust policy to provide a
91 | specified method for determining fair market value of
92 | an asset in determining a unitrust amount; authorizing
93 | specified unitrust policies to provide methods for
94 | determining a certain net fair market value;
95 | prohibiting certain property from being included in
96 | the determination of the value of a trust; creating s.
97 | 738.308, F.S.; requiring a unitrust policy to provide
98 | a specified period; specifying that such period must
99 | be a calendar year; authorizing a unitrust policy to
100 | provide certain standards for periods; creating s.

101 738.309, F.S.; providing applicability; authorizing a
102 trustee of an express unitrust to determine the
103 unitrust amount by reference to the net fair market
104 value of the unitrust's assets in a specified
105 timeframe; providing that distribution of a unitrust
106 amount is considered a distribution of all the net
107 income of an express unitrust and is considered an
108 income interest; specifying that the unitrust amount
109 is considered a reasonable apportionment of the total
110 return of the express unitrust; providing that an
111 express unitrust that allows a distribution in excess
112 of a specified unitrust rate is considered a
113 distribution of all of the income of the unitrust;
114 authorizing an express unitrust to provide a mechanism
115 for changing the unitrust rate and for conversion from
116 a unitrust to an income trust or from an income trust
117 to a unitrust; specifying that unless an express
118 unitrust prohibits the power to change the rate or
119 convert the trust, the trustee has such power;
120 authorizing the governing instrument of an express
121 unitrust to grant the trustee discretion to adopt a
122 certain practice; specifying that unless an express
123 unitrust provides otherwise, the distribution of an
124 amount is considered a distribution from specified
125 sources in a specified order of priority; authorizing

126 a governing instrument of an express unitrust to allow
127 exclusion of specified assets; providing that the use
128 of such assets may be considered equivalent to income
129 or to the unitrust amount; creating s. 738.310, F.S.;
130 requiring a trustee, after the conversion of an income
131 trust to a unitrust, to consider the unitrust amount
132 paid from certain sources in a specified order of
133 priority; amending s. 738.401, F.S.; defining terms;
134 specifying that an attribute or action of an entity
135 includes an attribute or action from any other entity
136 in which the initial entity has an ownership interest
137 or holds another interest; requiring a fiduciary to
138 allocate certain money and tangible personal property
139 to income; requiring a fiduciary to allocate specified
140 property and money to principal; providing that
141 certain money received in an entity distribution is a
142 capital distribution in specified circumstances;
143 specifying that in cases of capital distribution, the
144 amount received in an entity distribution must be
145 reduced to the extent that cumulative distributions
146 from the entity to the fiduciary are within certain
147 ranges; authorizing a fiduciary to consider additional
148 information before deciding to make or change a
149 decision to make a payment to a beneficiary; providing
150 that if a fiduciary receives specified additional

151 information after a distribution to a beneficiary, the
152 fiduciary is not required to change or recover the
153 payment; authorizing a fiduciary in such a situation
154 to exercise other specified powers; revising
155 definitions; requiring a fiduciary to allocate certain
156 money and property to principal; providing the
157 mechanism for such allocation; defining the term
158 "public entity"; conforming provisions to changes made
159 by the act; amending s. 738.402, F.S.; conforming
160 provisions to changes made by the act; amending s.
161 738.403, F.S.; providing applicability; authorizing a
162 fiduciary to make certain determinations separately
163 and differently from the decisions concerning
164 distributions of income or principal; conforming
165 provisions to changes made by the act; making
166 technical changes; creating s. 738.404, F.S.;
167 specifying receipts that a fiduciary must allocate to
168 principal; creating s. 738.405, F.S.; providing for
169 the allocation of income from rental property;
170 creating s. 738.406, F.S.; specifying applicability;
171 requiring a fiduciary to allocate to income certain
172 amounts received as interest; requiring a fiduciary to
173 allocate to income increments in value of certain
174 bonds or other obligations; creating s. 738.407, F.S.;
175 specifying applicability; requiring a fiduciary to

176 allocate proceeds from insurance policies or contracts
177 to principal in a specified manner; creating s.
178 738.408, F.S.; specifying circumstances under which a
179 fiduciary may allocate an insubstantial allocation to
180 principal, subject to certain conditions and
181 limitations; creating s. 738.409, F.S.; defining
182 terms; specifying the manner in which a fiduciary may
183 determine incomes of separate funds; providing duties
184 of a fiduciary of a marital trust and other trusts;
185 requiring a fiduciary of a nonseparate fund to
186 calculate internal income in a specified manner;
187 providing construction; transferring, renumbering, and
188 amending s. 738.603, F.S.; revising the definition of
189 the term "liquidating asset"; providing applicability;
190 requiring a fiduciary to allocate to income and
191 principal the receipts produced by liquidating assets
192 in a certain manner; transferring, renumbering, and
193 amending s. 738.604, F.S.; requiring a fiduciary to
194 allocate the receipts from interests in minerals,
195 water, or other natural resources to income,
196 principal, or between income and principal under
197 specified conditions; revising applicability;
198 providing that an allocation between income and
199 principal from a receipt from a natural resource is
200 presumed equitable under a specified condition;

201 providing construction; transferring, renumbering, and
202 amending s. 738.605, F.S.; requiring a fiduciary to
203 allocate receipts from timber to income, principal, or
204 between income and principal under specified
205 conditions; revising applicability; transferring,
206 renumbering, and amending s. 738.606, F.S.;
207 authorizing a settlor's spouse to require the trustee
208 of a trust that receives certain property to make such
209 property produce income under specified conditions;
210 authorizing the trustee to take specified actions if
211 directed by such spouse; providing that the trustee
212 decides whether to take one or a combination of such
213 actions; revising applicability; providing
214 construction; transferring, renumbering, and amending
215 s. 738.607, F.S.; revising the definition of the term
216 "derivative"; requiring a fiduciary to allocate
217 specified percentages of certain receipts and
218 disbursements to income and allocate the balance to
219 principal; providing construction; requiring certain
220 fiduciaries to allocate a specified percentage to
221 income and allocate the balance to principal of
222 certain amounts; transferring, renumbering, and
223 amending s. 738.608, F.S.; requiring a fiduciary to
224 allocate to income a receipt from or related to asset-
225 backed securities under a specified condition;

226 requiring a fiduciary to allocate to income a
227 specified percentage of receipts from the transaction
228 and the disbursement of a payment received as a result
229 of an interest in an asset-backed security; conforming
230 provisions to changes made by the act; creating s.
231 738.416, F.S.; requiring a fiduciary to make specified
232 allocations from receipts from other financial
233 instruments or arrangements; providing construction;
234 amending s. 738.501, F.S.; specifying the manner by
235 which a fiduciary must make disbursements from income;
236 amending s. 738.502, F.S.; specifying the manner by
237 which a fiduciary must make disbursements from
238 principal; amending s. 738.503, F.S.; defining the
239 term "depreciation"; specifying the manner by which a
240 fiduciary may make transfers from income to principal
241 to account for depreciation; amending s. 738.504,
242 F.S.; specifying the manner by which a fiduciary may
243 make transfers from principal to income for
244 reimbursements; transferring, renumbering, and
245 amending s. 738.704, F.S.; providing that a fiduciary
246 that makes or expects to make a certain principal
247 disbursement may transfer an appropriate amount from
248 income to principal in one or more accounting periods;
249 providing applicability; making technical changes;
250 deleting a provision relating to payments necessary to

251 avoid defaulting on a mortgage or security interest on
 252 certain property; transferring, renumbering, and
 253 amending s. 738.705, F.S.; revising the sources from
 254 which a fiduciary must pay a tax required by a share
 255 of an entity's taxable income; requiring a fiduciary
 256 to adjust income or principal receipts if the taxes
 257 paid are reduced due to a deduction for a payment made
 258 to a beneficiary; providing construction; making
 259 technical changes; transferring, renumbering, and
 260 amending s. 738.706, F.S.; revising the circumstances
 261 under which a fiduciary may make adjustments between
 262 income and principal to offset shifts in the economic
 263 interests or tax benefits of specified beneficiaries;
 264 requiring a fiduciary to charge a beneficiary to
 265 reimburse the principal if the beneficiary benefits
 266 from an applicable tax deduction; requiring the share
 267 of reimbursement for each fiduciary or beneficiary to
 268 be the same as its share of the decrease in income
 269 tax; authorizing such fiduciary to charge a
 270 beneficiary to offset the estate tax by obtaining
 271 payment from the beneficiary, withholding an amount
 272 from future distributions, or adopting another method
 273 or combination of methods; creating s. 738.508, F.S.;
 274 defining terms; specifying the manner by which
 275 property expenses are apportioned between a tenant and

276 remainderman; providing applicability and
277 construction; amending s. 738.601, F.S.; providing
278 applicability; specifying the manner by which a
279 fiduciary determines and distributes net income;
280 providing circumstances under which a fiduciary may
281 not reduce certain principal or income receipts;
282 amending s. 738.602, F.S.; providing that certain
283 beneficiaries of non-unitrusts are entitled to receive
284 a specified share of net income; providing that
285 certain requirements apply in determining a
286 beneficiary's share of net income; providing
287 construction; amending s. 738.701, F.S.; providing
288 that an income beneficiary is entitled to net income
289 when an asset is subject to a certain trust or
290 successive interest; providing that an asset becomes
291 subject to a specified trust on certain dates;
292 amending s. 738.702, F.S.; specifying the manner by
293 which a fiduciary allocates certain receipts and makes
294 disbursements when a decedent dies or income interest
295 begins; providing construction; amending s. 738.703,
296 F.S.; defining the term "undistributed income";
297 specifying the manner by which a fiduciary makes
298 allocations of undistributed income when income
299 interest ends; amending s. 738.801, F.S.; providing
300 for uniform application and construction of the act;

301 amending s. 738.802, F.S.; providing construction in
 302 relation to federal law; amending s. 738.803, F.S.;
 303 making a technical change; amending s. 738.804, F.S.;
 304 revising application of ch. 738, F.S., to conform to
 305 changes made by the act; providing an effective date.
 306

307 Be It Enacted by the Legislature of the State of Florida:
 308

309 Section 1. Section 738.101, Florida Statutes, is amended
 310 to read:

311 738.101 Short title.—This chapter may be cited as the
 312 "Florida Uniform Fiduciary Income and Principal ~~and Income~~ Act."

313 Section 2. Section 738.102, Florida Statutes, is amended
 314 to read:

315 738.102 Definitions.—As used in this chapter, the term:

316 (1) "Accounting period" means a calendar year unless
 317 ~~another 12-month period is selected by a fiduciary~~ selects
 318 another period of 12 calendar months or approximately 12
 319 calendar months. The term includes a part ~~portion~~ of a calendar
 320 year or another period of 12 calendar months or approximately 12
 321 calendar months which ~~other 12-month period that begins when an~~
 322 ~~income interest~~ begins or ends when an income interest ends.

323 (2) "Asset-backed security," as provided in s. 738.415,
 324 means a security that is serviced primarily by the cash flows of
 325 a discrete pool of fixed or revolving receivables or other

326 financial assets that by their terms convert to cash within a
 327 finite time. The term includes rights or other assets that
 328 ensure the servicing or timely distribution of proceeds to the
 329 holder of the asset-backed security. The term does not include
 330 an asset to which s. 738.401, s. 738.409, or s. 738.414 applies.

331 (3) "Beneficiary" includes:

332 (a) For a trust:

333 1. A current beneficiary, including a current income
 334 beneficiary and a beneficiary that may receive only principal;

335 2. A remainder beneficiary; and

336 3. Any other successor beneficiary;

337 (b) For an estate, an heir, and a devisee; and

338 (c) For a life estate or term interest, a person who holds
 339 a life estate, a term interest, or a remainder or other interest
 340 following a life estate or term interest means, in the case of a
 341 decedent's estate, an heir or devisee and, in the case of a
 342 trust, an income beneficiary or a remainder beneficiary.

343 (4)-(3) "Carrying value" means the fair market value at the
 344 time the assets are received by the fiduciary. For an estate and
 345 for a trust the estates of decedents and trusts described in s.
 346 733.707(3), after the grantor's death, the assets are considered
 347 received as of the date of the settlor's death. If there is a
 348 change in fiduciaries, a majority of the continuing fiduciaries
 349 may elect to adjust the carrying values to reflect the fair
 350 market value of the assets at the beginning of their

351 administration. If such election is made, it must be reflected
352 on the first accounting filed after the election. For assets
353 acquired during the administration of the estate or trust, the
354 carrying value is equal to the acquisition costs of the asset.
355 Carrying value of assets should not be arbitrarily "written up"
356 or "written down." In some circumstances, including, but not
357 limited to, those described in ss. 738.410 and 738.602, carrying
358 value may be adjusted with proper disclosure to reflect changes
359 in carrying value applied in a consistent manner.

360 (5) "Court" means a circuit court of this state.

361 (6) "Current income beneficiary" means a beneficiary to
362 which a fiduciary may distribute net income, regardless of
363 whether the fiduciary also distributes principal to the
364 beneficiary.

365 (7) "Distribution," "distribute," "distributed," or
366 "distributee" means a payment or transfer by a fiduciary to a
367 beneficiary in the beneficiary's capacity as a beneficiary,
368 without consideration other than the beneficiary's right to
369 receive the payment or transfer under the terms of the trust as
370 defined in this section, or in a will, a life estate, or a term
371 interest.

372 (8) "Estate" means a decedent's estate, including the
373 property of the decedent as the estate is originally constituted
374 and the property of the estate as it exists at any time during
375 administration.

376 (9)(4) "Fiduciary" includes means a trustee, a trust
 377 director as defined in s. 736.0103, or a personal
 378 representative, and a person acting under a delegation from a
 379 fiduciary or a trustee. The term also includes a person that
 380 holds property for a successor beneficiary whose interest may be
 381 affected by an allocation of receipts and expenditures between
 382 income and principal. If there are two or more cofiduciaries,
 383 the term includes all cofiduciaries acting under the terms of
 384 the trust and applicable law an executor, administrator,
 385 successor personal representative, special administrator, or a
 386 person performing substantially the same function.

387 (10)(5) "Income" means money or other property that a
 388 fiduciary receives as current return from a principal asset. The
 389 term includes a part portion of receipts from a sale, exchange,
 390 or liquidation of a principal asset, to the extent provided in
 391 ss. 738.401-738.416 ss. 738.401-738.403 and s. 738.503.

392 ~~(6) "Income beneficiary" means a person to whom net income~~
 393 ~~of a trust is or may be payable.~~

394 (11)(7) "Income interest" means the right of a current an
 395 income beneficiary to receive all or part of net income, whether
 396 the terms of the trust require the net income to be distributed
 397 or authorize the net income to be distributed in the fiduciary's
 398 trustee's discretion. The term includes the right of a current
 399 beneficiary to use property held by a fiduciary.

400 (12) "Independent person" means a person who is not:

401 (a) For a trust:
 402 1. A qualified beneficiary as defined in s. 736.0103;
 403 2. A settlor of the trust;
 404 3. An individual whose legal obligation to support a
 405 beneficiary may be satisfied by a distribution from the trust;
 406 or
 407 4. Any trustee whom an interested distributee has the
 408 power to remove and replace with a related or subordinate party.
 409 (b) For an estate, a beneficiary;
 410 (c) A spouse, a parent, a brother, a sister, or an issue
 411 of an individual described in paragraph (a) or paragraph (b);
 412 (d) A corporation, a partnership, a limited liability
 413 company, or another entity in which persons described in
 414 paragraphs (a), (b), and (c), in the aggregate, have voting
 415 control; or
 416 (e) An employee of a person described in paragraph (a),
 417 paragraph (b), paragraph (c), or paragraph (d).
 418 (13) "Internal Revenue Code" means the Internal Revenue
 419 Code of 1986, as amended.
 420 (14)-(8) "Mandatory income interest" means the right of a
 421 current ~~an~~ income beneficiary to receive net income that the
 422 terms of the trust require the fiduciary to distribute.
 423 (15)-(9) "Net income" means the total allocations ~~receipts~~
 424 ~~allocated to income~~ during an accounting period to income under
 425 the terms of a trust and this chapter minus the disbursements

426 ~~made from income~~ during the period, other than distributions,
427 allocated to income under the terms of the trust and this
428 chapter. To the extent that the trust is a unitrust under ss.
429 738.301-738.310, the term means the unitrust amount determined
430 under ss. 738.301-738.310. The term includes the amount of an
431 adjustment from principal to income under s. 738.203. The term
432 does not include the amount of an adjustment ~~plus or minus~~
433 ~~transfers under this chapter to or~~ from income to principal
434 under s. 738.203 ~~during the period.~~

435 ~~(16)-(10)~~ "Person" means an individual, a business or a
436 nonprofit entity, corporation, business trust, an estate, a
437 trust, partnership, limited liability company, association,
438 joint venture, a public corporation, or any other legal or
439 ~~commercial entity or~~ a government or governmental subdivision,
440 agency, or instrumentality, or other legal entity.

441 ~~(17)~~ "Personal representative" means an executor, an
442 administrator, a successor personal representative, a special
443 administrator, or a person that performs substantially the same
444 function with respect to an estate under the law governing the
445 person's status.

446 ~~(18)-(11)~~ "Principal" means property held in trust for
447 distribution to, production of income for, or use by a current
448 or successor ~~a remainder beneficiary when the trust terminates.~~

449 ~~(19)~~ "Record" means information inscribed on a tangible
450 medium or stored in an electronic or other medium and is

451 retrievable in perceivable form.

452 (20) "Settlor" means a person, including a testator, who
 453 creates or contributes property to a trust. If more than one
 454 person creates or contributes property to a trust, the term
 455 includes each person, to the extent of the trust property
 456 attributable to that person's contribution, except to the extent
 457 that another person has the power to revoke or withdraw that
 458 portion.

459 (21) "Special tax benefit" means:

460 (a) Exclusion of a transfer to a trust from gifts
 461 described in s. 2503(b) of the Internal Revenue Code because of
 462 the qualification of an income interest in the trust as a
 463 present interest in property;

464 (b) Status as a qualified subchapter S trust described in
 465 s. 1361(d) (3) of the Internal Revenue Code at a time the trust
 466 holds stock of an S corporation described in s. 1361(a) (1) of
 467 the Internal Revenue Code;

468 (c) An estate or gift tax marital deduction for a transfer
 469 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
 470 which depends or depended in whole or in part on the right of
 471 the settlor's spouse to receive the net income of the trust;

472 (d) Exemption in whole or in part of a trust from the
 473 federal generation-skipping transfer tax imposed by s. 2601 of
 474 the Internal Revenue Code because the trust was irrevocable on
 475 September 25, 1985, if there is any possibility that:

476 1. A taxable distribution as defined in s. 2612(b) of the
 477 Internal Revenue Code could be made from the trust; or

478 2. A taxable termination as defined in s. 2612(a) of the
 479 Internal Revenue Code could occur with respect to the trust; or

480 (e) An inclusion ratio as defined in s. 2642(a) of the
 481 Internal Revenue Code of the trust which is less than one, if
 482 there is any possibility that:

483 1. A taxable distribution as defined in s. 2612(b) of the
 484 Internal Revenue Code could be made from the trust; or

485 2. A taxable termination as defined in s. 2612(a) of the
 486 Internal Revenue Code could occur with respect to the trust.

487 (22) "Successive interest" means the interest of a
 488 successor beneficiary.

489 (23)-(12) "Successor ~~Remainder~~ beneficiary" means a person
 490 entitled to receive income or principal or to use property when
 491 an income interest or other current interest ends.

492 (24)-(13) "Terms of a trust" means:

493 (a) Except as otherwise provided in paragraph (b), the
 494 manifestation of the settlor's intent regarding a trust's
 495 provisions as:

496 1. Expressed in the will or trust instrument; or

497 2. Established by other evidence that would be admissible
 498 in a judicial proceeding.

499 (b) The trust's provisions as established, determined, or
 500 amended by:

501 1. A trustee or trust director in accordance with the
 502 applicable law;
 503 2. A court order; or
 504 3. A nonjudicial settlement agreement under s. 736.0111.
 505 (c) For an estate, a will; or
 506 (d) For a life estate or term interest, the corresponding
 507 manifestation of the rights of the beneficiaries to the extent
 508 provided in s. 738.508 ~~the manifestation of the intent of a~~
 509 ~~grantor or decedent with respect to the trust, expressed in a~~
 510 ~~manner that admits of its proof in a judicial proceeding,~~
 511 ~~whether by written or spoken words or by conduct.~~
 512 (25) "Trust" includes an express trust, whether private or
 513 charitable, with additions to the trust, wherever and however
 514 created; and a trust created or determined by a judgment or
 515 decree under which the trust is to be administered. The term
 516 does not include a constructive trust; a resulting trust; a
 517 conservatorship; a custodial arrangement under the Florida
 518 Uniform Transfers to Minors Act; a business trust providing for
 519 certificates to be issued to beneficiaries; a common trust fund;
 520 a land trust under s. 689.071; a trust created by the form of
 521 the account or by the deposit agreement at a financial
 522 institution; a voting trust; a security arrangement; a
 523 liquidation trust; a trust for the primary purpose of paying
 524 debts, dividends, interest, salaries, wages, profits, pensions,
 525 retirement benefits, or employee benefits of any kind; or an

526 arrangement under which a person is a nominee, an escrowee, or
 527 an agent for another.

528 ~~(26)-(14)~~ "Trustee" means a person, other than a personal
 529 representative, that owns or holds property for the benefit of a
 530 beneficiary. The term includes an original, additional, or
 531 successor trustee, regardless of whether they are ~~or not~~
 532 appointed or confirmed by a court.

533 (27) "Will" means any testamentary instrument recognized
 534 under applicable law which makes a legally effective disposition
 535 of an individual's property, effective at the individual's
 536 death. The term includes a codicil or other amendment to a
 537 testamentary instrument.

538 Section 3. Section 738.103, Florida Statutes, is amended
 539 to read:

540 (Substantial rewording of section. See
 541 s. 738.103, F.S., for present text.)

542 738.103 Scope.—Except as otherwise provided in the terms
 543 of a trust or this chapter, this chapter applies to all of the
 544 following:

545 (1) A trust or an estate.

546 (2) A life estate or other term interest in which the
 547 interest of one or more persons will be succeeded by the
 548 interest of one or more other persons to the extent provided in
 549 s. 738.508.

550 Section 4. Section 738.104, Florida Statutes, is amended

551 to read:

552 (Substantial rewording of section. See
 553 s. 738.104, F.S., for present text.)

554 738.104 Governing law.—Except as otherwise provided in the
 555 terms of a trust or this chapter, this chapter applies when this
 556 state is the principal place of administration of a trust or
 557 estate or the situs of property that is not held in a trust or
 558 estate and is subject to a life estate or other term interest
 559 described in s. 738.103(2). By accepting the trusteeship of a
 560 trust having its principal place of administration in this state
 561 or by moving the principal place of administration of a trust to
 562 this state, the trustee submits to the application of this
 563 chapter to any matter within the scope of this chapter involving
 564 the trust.

565 Section 5. Section 738.1041, Florida Statutes, is
 566 repealed.

567 Section 6. Section 738.105, Florida Statutes, is repealed.

568 Section 7. Section 738.201, Florida Statutes, is amended

569 to read:

570 (Substantial rewording of section. See
 571 s. 738.201, F.S., for present text.)

572 738.201 Fiduciary duties; general principles.—

573 (1) In making an allocation or determination or exercising
 574 discretion under this chapter, a fiduciary shall do all of the
 575 following:

- 576 (a) Act in good faith, based on what is a fair and
577 reasonable fee to all beneficiaries;
- 578 (b) Administer a trust or estate impartially, except to
579 the extent that the terms of the trust manifest an intent that
580 the fiduciary favors one or more beneficiaries;
- 581 (c) Administer the trust or estate in accordance with the
582 terms of the trust, even if there is a different provision in
583 this chapter.
- 584 (d) Administer the trust or estate in accordance with this
585 chapter, except to the extent that the terms of the trust
586 provide otherwise or authorize the fiduciary to determine
587 otherwise.
- 588 (2) A fiduciary's allocation, determination, or exercise
589 of discretion under this chapter is presumed to be fair and
590 reasonable to all beneficiaries. A fiduciary may exercise a
591 discretionary power of administration given to the fiduciary by
592 the terms of the trust, and an exercise of the power that
593 produces a result different from a result required or permitted
594 by this chapter does not create an inference that the fiduciary
595 abused the fiduciary's discretion.
- 596 (3) A fiduciary shall:
- 597 (a) Add a receipt to principal, to the extent that the
598 terms of the trust and this chapter do not allocate the receipt
599 between income and principal;
- 600 (b) Charge a disbursement to principal, to the extent that

601 the terms of the trust and this chapter do not allocate the
 602 disbursement between income and principal; and

603 (c) Within 65 days after the fiscal year ends, add any
 604 undistributed income to principal, unless otherwise provided by
 605 the terms of the trust.

606 (4) A fiduciary may exercise the power to adjust under s.
 607 738.203(1), convert an income trust to a unitrust under ss.
 608 738.301-738.310, change the percentage or method used to
 609 calculate a unitrust amount under ss. 738.301-738.310, or
 610 convert a unitrust to an income trust under ss. 738.301-738.310
 611 if the fiduciary determines the exercise of the power will
 612 assist the fiduciary to administer the trust or estate
 613 impartially.

614 (5) The fiduciary must consider the following factors in
 615 making the determination in subsection (4), including:

616 (a) The terms of the trust.

617 (b) The nature, distribution standards, and expected
 618 duration of the trust.

619 (c) The effect of the allocation rules, including specific
 620 adjustments between income and principal, under ss. 738.301-
 621 738.416.

622 (d) The desirability of liquidity and regularity of
 623 income.

624 (e) The desirability of the preservation and appreciation
 625 of principal.

626 (f) The extent to which an asset is used or may be used by
627 a beneficiary.

628 (g) The increase or decrease in the value of principal
629 assets, reasonably determined by the fiduciary.

630 (h) Whether and to what extent the terms of the trust give
631 the fiduciary power to accumulate income or invade principal or
632 prohibit the fiduciary from accumulating income or invading
633 principal.

634 (i) The extent to which the fiduciary has accumulated
635 income or invaded principal in preceding accounting periods.

636 (j) The effect of current and reasonably expected economic
637 conditions.

638 (k) The reasonably expected tax consequences of the
639 exercise of the power.

640 (l) The identities and circumstances of the beneficiaries.

641 (6) Except as provided in ss. 738.301-738.310, this
642 chapter pertains to the administration of a trust and is
643 applicable to any trust that is administered in this state or
644 under its law. This chapter also applies to any estate that is
645 administered in this state unless the provision is limited in
646 application to a trustee, rather than a fiduciary.

647 Section 8. Section 738.202, Florida Statutes, is amended
648 to read:

649 (Substantial rewording of section. See
650 s. 738.202, F.S., for present text.)

651 738.202 Judicial review of exercise of discretionary
652 power; request for instruction.-

653 (1) As used in this section, the term "fiduciary decision"
654 means any of the following:

655 (a) A fiduciary's allocation between income and principal
656 or other determination regarding income and principal required
657 or authorized by the terms of the trust or this chapter.

658 (b) The fiduciary's exercise or nonexercise of a
659 discretionary power regarding income and principal granted by
660 the terms of the trust or this chapter, including the power to
661 adjust under s. 738.203, convert an income trust to a unitrust
662 under ss. 738.301-738.310, change the percentage of method used
663 to calculate a unitrust amount under ss. 738.301-738.310,
664 convert a unitrust to an income trust under ss. 738.301-738.310,
665 or the method used to make property productive of income under
666 s. 738.413.

667 (c) The fiduciary's implementation of a decision described
668 in paragraph (a) or paragraph (b).

669 (2) The court may not order a fiduciary to change a
670 fiduciary decision unless the court determines that the
671 fiduciary decision was an abuse of the fiduciary's discretion. A
672 court may not determine that a fiduciary abused its discretion
673 merely because the court would have exercised the discretion in
674 a different manner or would not have exercised the discretion.

675 (3) If the court determines that a fiduciary decision was

676 an abuse of the fiduciary's discretion, the court may order a
677 remedy authorized by law, including those prescribed under ss.
678 736.1001 and 736.1002. Following such a determination by the
679 court, the remedy is to place the beneficiaries in the positions
680 the beneficiaries would have occupied if the fiduciary had not
681 abused its discretion, as follows:

682 (a) The court may order the fiduciary to exercise or
683 refrain from exercising the power to adjust under s. 738.203;

684 (b) The court may order the fiduciary to exercise or
685 refrain from exercising the power to convert an income trust to
686 a unitrust under ss. 738.301-738.310, change the percentage or
687 method used to calculate a unitrust amount under ss. 738.301-
688 738.310, or convert a unitrust to an income trust under ss.
689 738.301-738.310;

690 (c) The court may compel the fiduciary to take any of the
691 actions listed under s. 738.413;

692 (d) To the extent that the abuse of discretion has
693 resulted in no distribution to a beneficiary or a distribution
694 that is too small, the court shall require the fiduciary to
695 distribute from the trust to the beneficiary an amount the court
696 determines will restore the beneficiary, in whole or in part, to
697 his or her appropriate position;

698 (e) To the extent that the abuse of discretion has
699 resulted in a distribution to a beneficiary that is too large,
700 the court shall restore the beneficiaries, the trust, or both,

701 in whole or in part, to their appropriate positions by requiring
702 the fiduciary to withhold an amount from one or more future
703 distributions to the beneficiary who received the distribution
704 that was too large or requiring that beneficiary to return some
705 or all of the distribution to the trust; or

706 (f) To the extent that the court is unable, after applying
707 paragraphs (a)-(e), to restore the beneficiaries or the trust,
708 or both, to the positions they would have occupied if the
709 fiduciary had not abused its discretion, the court may require
710 the fiduciary to pay an appropriate amount from its own funds to
711 one or more of the beneficiaries or the trust or both.

712 (4) On petition by the fiduciary for instruction, the
713 court may determine whether a proposed fiduciary decision will
714 result in an abuse of the fiduciary's discretion. If the
715 petition describes the proposed decision, contains sufficient
716 information to inform the beneficiary of the reasons for making
717 the proposed decision and the facts on which the fiduciary
718 relies, and explains how the beneficiary will be affected by the
719 proposed decision, a beneficiary who opposes the proposed
720 decision has the burden to establish that it will result in an
721 abuse of the fiduciary's discretion.

722 (5) If an action is instituted alleging an abuse of
723 discretion in the exercise or nonexercise of the fiduciary's
724 discretion under this chapter and the court determines no abuse
725 of discretion has occurred, the fiduciary's costs and attorney

726 fees incurred in defending the action shall be paid from the
727 trust assets.

728 Section 9. Section 738.203, Florida Statutes, is created
729 to read:

730 738.203 Fiduciary's power to adjust.-

731 (1) Except as otherwise provided in the terms of a trust
732 or this section, a fiduciary, in a record without court
733 approval, may adjust between income and principal if the
734 fiduciary determines that the exercise of the power to adjust
735 will assist the fiduciary in administering the trust or estate
736 impartially.

737 (2) This section does not create a duty to exercise or
738 consider the power to adjust under subsection (1) or to inform a
739 beneficiary about the applicability of this section.

740 (3) A fiduciary that in good faith exercises or fails to
741 exercise the power to adjust under subsection (1) is not liable
742 to a person affected by the exercise or failure to exercise.

743 (4) In deciding whether and to what extent to exercise the
744 power to adjust under subsection (1), a fiduciary shall consider
745 all factors the fiduciary considers relevant, including relevant
746 factors in s. 738.201(5) and ss. 738.408 and 738.413.

747 (5) A fiduciary may not exercise the power under
748 subsection (1) to make an adjustment or under s. 738.408 to make
749 a determination that an allocation is insubstantial if:

750 (a) The adjustment or determination would reduce the

751 amount payable to a current income beneficiary from a trust that
752 qualifies for a special tax benefit, except to the extent that
753 the adjustment is made to provide for a reasonable apportionment
754 of the total return of the trust between the current income
755 beneficiary and successor beneficiaries;

756 (b) The adjustment or determination would change the
757 amount payable to a beneficiary, as a fixed annuity or a fixed
758 fraction of the value of the trust assets, under the terms of
759 the trust;

760 (c) The adjustment or determination would reduce an amount
761 that is permanently set aside for a charitable purpose under the
762 terms of the trust unless both income and principal are set
763 aside for the charitable purpose;

764 (d) Possessing or exercising the power would cause a
765 person to be treated as the owner of all or part of the trust
766 for federal income tax purposes and the person would not be
767 treated as the owner if the fiduciary did not possess the power
768 to adjust;

769 (e) Possessing or exercising the power would cause all or
770 part of the value of the trust assets to be included in the
771 gross estate of an individual for federal real estate tax
772 purposes and the assets would not be included in the gross
773 estate of the individual if the fiduciary did not possess the
774 power to adjust;

775 (f) Possessing or exercising the power would cause an

776 individual to be treated as making a gift for federal gift tax
 777 purposes;

778 (g) The fiduciary is not an independent person;

779 (h) The trust is irrevocable and provides for income to be
 780 paid to the settlor, and possessing or exercising the power
 781 would cause the adjusted principal or income to be considered an
 782 available resource or available income under a public-benefit
 783 program; or

784 (i) The trust is a unitrust under ss. 738.301-738.310.

785 (6) If paragraph (5)(d), paragraph (5)(e), paragraph
 786 (5)(f), or paragraph (5)(g) applies to a fiduciary:

787 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not
 788 apply may exercise the power to adjust, unless the exercise of
 789 the power by the remaining cofiduciary or cofiduciaries is not
 790 permitted by the terms of the trust or law other than this
 791 chapter; or

792 (b) If there is no cofiduciary to which paragraphs (5)(d)-
 793 (g) do not apply, the fiduciary may appoint a cofiduciary to
 794 which paragraphs (5)(d)-(g) do not apply which may be a special
 795 fiduciary with limited powers, and the appointed cofiduciary may
 796 exercise the power to adjust under subsection (1), unless the
 797 appointment of a cofiduciary or the exercise of the power by a
 798 cofiduciary is not permitted by the terms of the trust or law
 799 other than this chapter.

800 (7) A fiduciary may release or delegate to a cofiduciary

801 the power to adjust under subsection (1) if the fiduciary
802 determines that the fiduciary's possession or exercise of the
803 power will or may:

804 (a) Cause a result described in paragraph (5)(a),
805 paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph
806 (5)(e), paragraph (5)(f), or paragraph (5)(h); or

807 (b) Deprive the trust of a tax benefit or impose a tax
808 burden not described in paragraph (5)(a), paragraph (5)(b),
809 paragraph (5)(c), paragraph (5)(d), paragraph (5)(e), or
810 paragraph (5)(f).

811 (8) A fiduciary's release or delegation to a cofiduciary
812 under subsection (7) of the power to adjust under subsection
813 (1):

814 (a) Must be in a record;

815 (b) Applies to the entire power, unless the release or
816 delegation provides a limitation, which may be a limitation to
817 the power to adjust:

818 1. From income to principal;

819 2. From principal to income;

820 3. For specified property; or

821 4. In specified circumstances.

822 (c) For a delegation, may be modified by a redelegation
823 under this subsection by the cofiduciary to which the delegation
824 is made; and

825 (d) Subject to paragraph (c), is permanent, unless the

826 release or delegation provides a specified period, including a
827 period measured by the life of an individual or the lives of
828 more than one individual.

829 (9) Terms of a trust that deny or limit the power to
830 adjust between income and principal do not affect the
831 application of this section, unless the terms of the trust
832 expressly deny or limit the power to adjust under subsection
833 (1).

834 (10) The exercise of the power to adjust under subsection
835 (1) in any accounting period may apply to the current period,
836 the immediately preceding period, and one or more subsequent
837 periods.

838 (11) A description of the exercise of the power to adjust
839 under subsection (1) must be:

840 (a) Included in a report, if any, sent to beneficiaries
841 under s. 736.0813; or

842 (b) Communicated at least annually to the qualified
843 beneficiaries as defined in s. 736.0103 other than the Attorney
844 General.

845 (12) With respect to a trust in existence on January 1,
846 2003:

847 (a) A fiduciary may not have the power to adjust under
848 this section until the statement required in subsection (13) is
849 provided and either no objection is made or any objection which
850 is made has been terminated.

851 1. An objection is made if, within 60 days after the date
852 of the statement required in subsection (13), a super majority
853 of the eligible beneficiaries deliver to the fiduciary a written
854 objection to the application of this section to such trust. An
855 objection shall be deemed to be delivered to the fiduciary on
856 the date the objection is mailed to the mailing address listed
857 in the notice provided in subsection (13).

858 2. An objection is terminated upon the earlier of the
859 receipt of consent from a super majority of eligible
860 beneficiaries of the class that made the objection, or the
861 resolution of the objection under paragraph (c).

862 (b) An objection or consent under this section may be
863 executed by a legal representative or natural guardian of a
864 beneficiary without the filing of any proceeding or approval of
865 any court.

866 (c) If an objection is delivered to the fiduciary, then
867 the fiduciary may petition the circuit court for an order
868 quashing the objection and vesting in such fiduciary the power
869 to adjust under this section. The burden will be on the
870 objecting beneficiaries to prove that the power to adjust would
871 be inequitable, illegal, or otherwise in contravention of the
872 grantor's intent. The court may award costs and attorney fees
873 relating to the fiduciary's petition in the same manner as in
874 chancery actions. When costs and attorney fees are to be paid
875 out of the trust, the court may, in its discretion, direct from

876 which part of the trust they shall be paid.

877 (d) If no timely objection is made or if the fiduciary is
878 vested with the power to adjust by court order, the fiduciary
879 may thereafter exercise the power to adjust without providing
880 notice of its intent to do so unless, in vesting the fiduciary
881 with the power to adjust, the court determines that unusual
882 circumstances require otherwise.

883 (e)1. If a fiduciary makes a good faith effort to comply
884 with the notice provisions of subsection (13), but fails to
885 deliver notice to one or more beneficiaries entitled to such
886 notice, neither the validity of the notice required under this
887 subsection nor the fiduciary's power to adjust under this
888 section shall be affected until the fiduciary has actual notice
889 that one or more beneficiaries entitled to notice were not
890 notified. Until the fiduciary has actual notice of the notice
891 deficiency, the fiduciary shall have all of the powers and
892 protections granted a fiduciary with the power to adjust under
893 this chapter.

894 2. When the fiduciary has actual notice that one or more
895 beneficiaries entitled to notice under subsection (13) were not
896 notified, the fiduciary's power to adjust under this section
897 shall cease until all beneficiaries who are entitled to such
898 notice, including those who were previously provided with such
899 notice, are notified and given the opportunity to object as
900 provided for under this subsection.

901 (f) The objection of a super majority of eligible
902 beneficiaries under this subsection shall be valid for a period
903 of 1 year after the date of the notice set forth in subsection
904 (13). Upon expiration of the objection, the fiduciary may
905 thereafter give a new notice under subsection (13).

906 (g) This section is not intended to create or imply a duty
907 of the fiduciary of a trust existing on January 1, 2003, to seek
908 a power to adjust under this subsection or to give the notice
909 described in subsection (13) if the fiduciary does not desire to
910 have a power to adjust under this section, and no inference of
911 impropriety shall be made as the result of a fiduciary not
912 seeking a power to adjust under this subsection.

913 (13) (a) A fiduciary of a trust in existence on January 1,
914 2003, that is not prohibited under subsection (5) from
915 exercising the power to adjust shall, any time before initially
916 exercising the power, provide to all eligible beneficiaries a
917 statement containing the following:

918 1. The name, telephone number, street address, and mailing
919 address of the fiduciary and of any person who may be contacted
920 for further information;

921 2. A statement that unless a super majority of the
922 eligible beneficiaries objects to the application of this
923 section to the trust within 60 days after the date the statement
924 pursuant to this subsection was served, this section shall apply
925 to the trust; and

926 3. A statement that, if this section applies to the trust,
 927 the fiduciary will have the power to adjust between income and
 928 principal and that such a power may have an effect on the
 929 distributions to such beneficiary from the trust.

930 (b) The statement may contain information regarding a
 931 fiduciary's obligation with respect to the power to adjust
 932 between income and principal under this section.

933 (c) The statement shall be served informally, in the
 934 manner provided in the Florida Rules of Civil Procedure relating
 935 to service of pleadings subsequent to the initial pleading. The
 936 statement may be served on a legal representative or natural
 937 guardian of a beneficiary without the filing of any proceeding
 938 or approval of any court.

939 (14) For purposes of subsections (12) and (13), the term:

940 1. "Eligible beneficiaries" means:

941 a. If at the time the determination is made there are one
 942 or more beneficiaries described in s. 736.0103(19) (c), the
 943 beneficiaries described in s. 736.0103(19) (a) and (c); or

944 b. If there is no beneficiary described in s.
 945 736.0103(19) (c), the beneficiaries described in s.
 946 736.0103(19) (a) and (b).

947 2. "Super majority of the eligible beneficiaries" means:

948 a. If at the time the determination is made there are one
 949 or more beneficiaries described in s. 736.0103(19) (c), at least
 950 two-thirds in interest of the beneficiaries described in s.

951 736.0103(19) (a) or two-thirds in interest of the beneficiaries
 952 described in s. 736.0103(19) (c), if the interests of the
 953 beneficiaries are reasonably ascertainable; otherwise, it means
 954 two-thirds in number of either such class; or

955 b. If there is no beneficiary described in s.
 956 736.0103(19) (c), at least two-thirds in interest of the
 957 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
 958 interest of the beneficiaries described in s. 736.0103(19) (b),
 959 if the interests of the beneficiaries are reasonably
 960 ascertainable, otherwise, two-thirds in number of either such
 961 class.

962 (15) A trust exists on January 1, 2003, if it is not
 963 revocable on January 1, 2003. A trust is revocable if revocable
 964 by the grantor alone or in conjunction with any other person. A
 965 trust is not revocable for purposes of this section if revocable
 966 by the grantor only with the consent of all persons having a
 967 beneficial interest in the property.

968 Section 10. Section 738.301, Florida Statutes, is amended
 969 to read:

970 (Substantial rewording of section. See
 971 s. 738.301, F.S., for present text).

972 738.301 Definitions.—For purposes of this section and ss.
 973 738.302–738.310:

974 (1) "Applicable value" means the amount of the net fair
 975 market value of a trust taken into account under s. 738.307.

976 (2) "Express unitrust" means a trust for which, under the
 977 terms of the trust without regard to this section and ss.
 978 738.302-738.310, net income must be calculated as a unitrust
 979 amount.

980 (3) "Income trust" means a trust, created by an inter
 981 vivos or testamentary instrument, that directs or permits the
 982 trustee to distribute the net income of the trust to one or more
 983 persons, in fixed proportions or in amounts or proportions
 984 determined by the trustee and regardless of whether the trust
 985 directs or permits the trustee to distribute the principal of
 986 the trust to one or more such persons.

987 (4) "Net fair market value of a trust" means the fair
 988 market value of the assets of the trust, less the reasonably
 989 known noncontingent liabilities of the trust.

990 (5) "Unitrust" means a trust for which net income is a
 991 unitrust amount. The term includes an express unitrust.

992 (6) "Unitrust amount" means an amount computed by
 993 multiplying a determined value of a trust by a determined
 994 percentage. For a unitrust administered under a unitrust policy,
 995 the term means the applicable value multiplied by the unitrust
 996 rate.

997 (7) "Unitrust policy" means a policy described in ss.
 998 738.301-738.310 and adopted under s. 738.303.

999 (8) "Unitrust rate" means the rate used to compute the
 1000 unitrust amount for a unitrust administered under a unitrust

1001 policy.

1002 Section 11. Section 738.302, Florida Statutes, is amended

1003 to read:

1004 (Substantial rewording of section. See

1005 s. 738.302, F.S., for present text.)

1006 738.302 Applications; duties and remedies.—

1007 (1) Except as otherwise provided in subsection (2), ss.

1008 738.301-738.310 apply to all of the following:

1009 (a) An income trust, unless the terms of the trust

1010 expressly prohibit the use of ss. 738.301-738.310 by a specific

1011 reference to this paragraph or corresponding provision of prior

1012 law, or an explicit expression of intent that net income not be

1013 calculated as a unitrust amount.

1014 (b) An express unitrust, except to the extent that the

1015 terms of the trust explicitly:

1016 1. Prohibit the use of ss. 738.301-738.310 by a specific

1017 reference to this paragraph or corresponding provision of prior

1018 law;

1019 2. Prohibit conversion to an income trust; or

1020 3. Limit changes to the method of calculating the unitrust

1021 amount.

1022 (c) A unitrust that had been converted from an income

1023 trust.

1024 (2) The provisions of ss. 738.301-738.310 do not apply to

1025 a trust described in s. 170 (f) (2) (B), s. 642(c) (5), s. 664(d),

1026 s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
1027 Revenue Code.

1028 (3) An income trust to which ss. 738.301-738.310 apply
1029 under paragraph (1)(a) may be converted to a unitrust under ss.
1030 738.301-738.310 regardless of the terms of the trust concerning
1031 distributions. Conversion to a unitrust under ss. 738.301-
1032 738.310 does not affect other terms of the trust concerning
1033 distributions of income or principal.

1034 (4) Sections 738.301-738.310 apply to an estate only to
1035 the extent that a trust is a beneficiary of the estate. To the
1036 extent of the trust's interest in the estate, the estate may be
1037 administered as a unitrust, the administration of the estate as
1038 a unitrust may be discontinued, or the percentage or method used
1039 to calculate the unitrust amount may be changed, in the same
1040 manner as for a trust under those sections.

1041 (5) The provisions of ss. 738.301-738.310 do not create a
1042 duty to take or consider action under ss. 738.301-738.310 or to
1043 inform a beneficiary about the applicability of ss. 738.301-
1044 738.310.

1045 (6) A fiduciary that in good faith takes or fails to take
1046 an action under ss. 738.301-738.310 is not liable to a person
1047 affected by the action or inaction.

1048 Section 12. Section 738.303, Florida Statutes, is amended
1049 to read:

1050 (Substantial rewording of section. See

1051 s. 738.303, F.S., for present text.)

1052 738.303 Authority of fiduciary.—

1053 (1) By complying with subsections (2) and (6), and without
1054 court approval, a fiduciary may do any of the following:

1055 (a) Convert an income trust to a unitrust if the fiduciary
1056 adopts in a record a unitrust policy for the trust which
1057 provides:

1058 1. That in administering the trust, the net income of the
1059 trust will be a unitrust amount rather than net income
1060 determined without regard to ss. 738.301-738.310; and

1061 2. The percentage and method used to calculate the
1062 unitrust amount.

1063 (b) Change the percentage or method used to calculate a
1064 unitrust amount for a unitrust if the fiduciary adopts in a
1065 record a unitrust policy or an amendment or replacement of a
1066 unitrust policy providing charges in the percentage or method
1067 used to calculate the unitrust amount.

1068 (c) Convert a unitrust to an income trust if the fiduciary
1069 adopts in a record a determination that, in administering the
1070 trust, the net income of the trust will be net income determined
1071 without regard to ss. 738.301-738.310 rather than a unitrust
1072 amount.

1073 (2) A fiduciary may take an action under subsection (1) if
1074 all of the following apply:

1075 (a) The fiduciary determines that the action will assist

1076 the fiduciary to administer a trust impartially.

1077 (b) The fiduciary sends a notice in a record to the
 1078 qualified beneficiaries determined under ss. 736.0103 and
 1079 736.0110 in the manner required by s. 738.304, describing and
 1080 proposing to take the action.

1081 (c) The fiduciary sends a copy of the notice under
 1082 paragraph (b) to each settlor of the trust which is:

- 1083 1. If an individual, living; or
- 1084 2. If not an individual, in existence.

1085 (d) At least one member of each class of the qualified
 1086 beneficiaries determined under ss. 736.0103 and 736.0110, other
 1087 than the Attorney General, receiving the notice under paragraph
 1088 (b) is:

- 1089 1. If an individual, legally competent;
- 1090 2. If not an individual, in existence; or
- 1091 3. Represented in the manner provided in s. 738.304(2).

1092 (e) The fiduciary does not receive, by the date specified
 1093 in the notice under s. 738.304(4) (e), an objection in a record
 1094 to the action proposed under paragraph (b) from a person to
 1095 which the notice under paragraph (b) is sent.

1096 (3) If a fiduciary receives, not later than the date
 1097 stated in the notice under s. 738.304(4) (e), an objection in a
 1098 record described in s. 738.304(4) (d) to a proposed action, the
 1099 fiduciary or a beneficiary may request the court to have the
 1100 action taken as proposed, taken with modifications, or

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1101 prevented. A person described in s. 738.304(1) may oppose the
1102 proposed action in the proceeding under this subsection
1103 regardless of whether the person:

1104 (a) Consented under s. 738.304(3); or

1105 (b) Objected under s. 738.304(4) (d).

1106 (4) If, after sending a notice under paragraph (2) (b), a
1107 fiduciary decides not to take the action proposed in the notice,
1108 the fiduciary must notify in a record each person described in
1109 s. 738.304(1) of the decision not to take the action and the
1110 reasons for the decision.

1111 (5) If a beneficiary requests in a record that a fiduciary
1112 take an action described in subsection (1) and the fiduciary
1113 declines to act or does not act within 60 days after receiving
1114 the request, the beneficiary may request the court to direct the
1115 fiduciary to take the action requested.

1116 (6) In deciding whether and how to take an action
1117 authorized in subsection (1), or whether and how to respond to a
1118 request by a beneficiary under subsection (5), a fiduciary must
1119 consider all factors relevant to the trust and beneficiaries,
1120 including the relevant factors listed in s. 738.201(5).

1121 (7) A fiduciary may release or delegate the power to
1122 convert an income trust to a unitrust under paragraph (1) (a),
1123 change the percentage or method used to calculate a unitrust
1124 amount under paragraph (1) (b), or convert a unitrust to an
1125 income trust under paragraph (1) (c), for a reason described in

1126 s. 738.203(7) and in the manner described in s. 738.203(8).

1127 Section 13. Section 738.304, Florida Statutes, is created
1128 to read:

1129 738.304 Notice.—

1130 (1) A notice required by s. 738.303(2)(b) must be sent in
1131 a manner authorized under s. 736.0109 to all of the following:

1132 (a) The qualified beneficiaries as defined in s. 736.0103,
1133 other than the Attorney General.

1134 (b) Each person that is granted a power over the trust by
1135 the terms of the trust, to the extent that the power is
1136 exercisable when the person is not then serving as a trustee:

1137 1. Including all of the following:

1138 a. Power over the investment, management, or distribution
1139 of trust property or other matters of trust administration.

1140 b. Power to appoint or remove a trustee or person
1141 described in this paragraph.

1142 2. Excluding all of the following:

1143 a. Power of appointment.

1144 b. Power of a beneficiary over the trust, to the extent
1145 that the exercise or nonexercise of the power affects the
1146 beneficial interest of the beneficiary or another beneficiary
1147 represented by the beneficiary under ss. 736.0301-736.0306 with
1148 respect to the exercise or nonexercise of the power.

1149 c. Power over the trust if the terms of the trust provide
1150 that the power is held in a nonfiduciary capacity and the power

1151 must be held in a nonfiduciary capacity to achieve a tax
 1152 objective under the Internal Revenue Code.

1153 (c) Each person that is granted a power by the terms of
 1154 the trust to appoint or remove a trustee or person described in
 1155 paragraph (b) to the extent that the power is exercisable when
 1156 the person that exercises the power is not serving as a trustee
 1157 or person described in paragraph (b).

1158 (2) The representation provisions of ss. 736.0301-736.0306
 1159 apply to notice under this section.

1160 (3) A person may consent in a record at any time to action
 1161 proposed under s. 738.303(2) (b). A notice required by s.
 1162 738.303(2) (b) need not be sent to a person that consents under
 1163 this subsection.

1164 (4) A notice required under s. 738.303(2) (b) must include
 1165 all of the following:

1166 (a) The action proposed under s. 738.303(2) (b).

1167 (b) For a conversion of an income trust to a unitrust, a
 1168 copy of the unitrust policy adopted under s. 738.303(1) (a).

1169 (c) For a change in the percentage or method used to
 1170 calculate the unitrust amount, a copy of the unitrust policy or
 1171 amendment or replacement of the unitrust policy adopted under s.
 1172 738.303(1) (b).

1173 (d) A statement that the person to which the notice is
 1174 sent may object to the proposed action by stating in a record
 1175 the basis for the objection and sending or delivering the record

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1176 to the fiduciary.

1177 (e) The date by which an objection under paragraph (d)
1178 must be received by the fiduciary, which must be at least 30
1179 days after the date the notice is sent.

1180 (f) The date on which the action is proposed to be taken
1181 and the date on which the action is proposed to take effect.

1182 (g) The name and contact information of the fiduciary.

1183 (h) The name and contact information of a person that may
1184 be contacted for additional information.

1185 Section 14. Section 738.305, Florida Statutes, is created
1186 to read:

1187 738.305 Unitrust policy.—

1188 (1) In administering a unitrust under ss. 738.301-738.310,
1189 a fiduciary shall follow a unitrust policy adopted under s.
1190 738.303(1) (a) or (b) or amended or replaced under s.
1191 738.303(1) (b).

1192 (2) A unitrust policy must provide all of the following:

1193 (a) The unitrust rate or method for determining the
1194 unitrust rate under s. 738.306.

1195 (b) The method for determining the applicable value under
1196 s. 738.307.

1197 (c) The rules described in ss. 738.306-738.310 which apply
1198 in the administration of the unitrust, whether the rules are:

1199 1. Mandatory as provided in ss. 738.307(1) and (3),
1200 738.308(1), and 738.310; or

1201 2. Optional as provided in ss. 738.306, 738.307(2), and
 1202 738.308(2), to the extent that the fiduciary elects to adopt
 1203 those rules.

1204 (3) A unitrust policy may do any of the following:

1205 (a) Provide methods and standards for:

1206 1. Determining the timing of the distributions;

1207 2. Making distributions in cash or in kind or partly in
 1208 cash and partly in kind; or

1209 3. Correcting an underpayment or overpayment to a
 1210 beneficiary based on the unitrust amount if there is an error in
 1211 calculating the unitrust amount.

1212 (b) Specify sources and the order of sources, including
 1213 categories of income for federal income tax purposes, from which
 1214 distributions of a unitrust amount are paid.

1215 (c) Provide other standards and rules that the fiduciary
 1216 determines serve the interests of the beneficiaries.

1217 Section 15. Section 738.306, Florida Statutes, is created
 1218 to read:

1219 738.306 Unitrust rate.—

1220 (1) A unitrust rate must be at least 3 percent and not
 1221 more than 5 percent. Within those limits, the unitrust rate may
 1222 be:

1223 (a) A fixed unitrust rate; or

1224 (b)1. A unitrust rate that is determined for each period
 1225 using:

1226 a. A market index or other published data; or
 1227 b. A mathematical blend of market indices or other
 1228 published data over a stated number of preceding periods.
 1229 2. If the rate calculated under this paragraph would be
 1230 less than 3, the rate is 3; and if the rate calculated would be
 1231 more than 5, the rate is 5.
 1232 (2) Within the limits of subsection (1), a unitrust policy
 1233 may provide for any of the following:
 1234 (a) A limit on how much the unitrust rate determined under
 1235 paragraph (1)(b) may increase over the unitrust rate for the
 1236 preceding period or a mathematical blend of unitrust rates over
 1237 a stated number of preceding periods.
 1238 (b) A limit on how much the unitrust rate determined under
 1239 paragraph (1)(b) may decrease below the unitrust rate for the
 1240 preceding period or a mathematical blend of unitrust rates over
 1241 a stated number of preceding periods.
 1242 (c) A mathematical blend of any of the unitrust rates
 1243 determined under paragraph (1)(b) and paragraphs (a) and (b).
 1244 (3) If the fiduciary is not an independent person, the
 1245 percentage used to calculate the unitrust amount is the rate
 1246 determined under s. 7520(a)(2) of the Internal Revenue Code in
 1247 effect for the month the conversion under this section becomes
 1248 effective and for each January thereafter; however, if the rate
 1249 determined under s. 7520(a)(2) of the Internal Revenue Code
 1250 exceeds 5 percent, the unitrust rate is 5 percent, and if the

1251 rate determined under s. 7520(a) (2) of the Internal Revenue Code
 1252 is less than 3 percent, the unitrust rate is 3 percent.

1253 Section 16. Section 738.307, Florida Statutes, is created
 1254 to read:

1255 738.307 Applicable value.-

1256 (1) A unitrust policy must provide the method for
 1257 determining the fair market value of an asset for the purpose of
 1258 determining the unitrust amount, including all of the following:

1259 (a) The frequency of valuing the asset, which need not
 1260 require a valuation in every period.

1261 (b) The date for valuing the asset in each period in which
 1262 the asset is valued.

1263 (2) Except as otherwise provided in s. 738.309, a unitrust
 1264 policy may provide methods for determining the amount of the net
 1265 fair market value of the trust to take into account in
 1266 determining the applicable value, including any of the
 1267 following:

1268 (a) Obtaining an appraisal of an asset for which fair
 1269 market value is not readily available.

1270 (b) Excluding specific assets or groups or types of assets
 1271 in addition to those described in subsection (3).

1272 (c) Making other exceptions or modifications of the
 1273 treatment of specific assets or groups or types of assets.

1274 (d) Including identification and treatment of cash or
 1275 property held for distribution.

1276 (e) Using an average of fair market values over a stated
 1277 number of preceding periods, not to exceed 3 calendar years.

1278 (f) Determining the reasonable known liabilities of the
 1279 trust, including treatment of liabilities to conform with the
 1280 treatment of assets under paragraphs (a)-(e).

1281 (3) The following property may not be included in
 1282 determining the value of the trust:

1283 (a) Any residential property or any tangible personal
 1284 property that, as of the first business day of the current
 1285 valuation year, one or more current beneficiaries of the trust
 1286 have or have had the right to occupy or have or have had the
 1287 right to possess or control, other than in his or her capacity
 1288 as trustee of the trust. Instead, the right of occupancy or the
 1289 right to possession and control is the unitrust amount with
 1290 respect to such property; however, the unitrust amount must be
 1291 adjusted to take into account partial distributions from or
 1292 receipt into the trust of such property during the valuation
 1293 year;

1294 (b) Any asset specifically given to a beneficiary and the
 1295 return on investment on such property, which return on
 1296 investment must be distributable to the beneficiary; and

1297 (c) Any asset while held in an estate.

1298 Section 17. Section 738.308, Florida Statutes, is created
 1299 to read:

1300 738.308 Period.-

1301 (1) A unitrust policy must provide the period used under
 1302 ss. 738.306 and 738.307. The period must be the calendar year.

1303 (2) A unitrust policy may provide standards for:

1304 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
 1305 or (2)(a) or (b) if:

1306 1. The trust was not in existence in a preceding period;
 1307 or

1308 2. Market indices or other published data are not
 1309 available for a preceding period;

1310 (b) Using fewer preceding periods under 738.307(2)(e) if:

1311 1. The trust was not in existence in a preceding period;
 1312 or

1313 2. Fair market values are not available for a preceding
 1314 period; and

1315 (c) Prorating a unitrust amount on a daily basis for a
 1316 part of a period in which the trust or the administration of the
 1317 trust as a unitrust or the interest of any beneficiary commences
 1318 or terminates.

1319 Section 18. Section 738.309, Florida Statutes, is created
 1320 to read:

1321 738.309 Express unitrust.—

1322 (1) This section applies to a trust that, by its governing
 1323 instrument, requires or allows income or net income to be
 1324 calculated as a unitrust amount.

1325 (2) The trustee of an express unitrust may determine the

1326 unitrust amount by reference to the net fair market value of the
1327 unitrust's assets in 1 or more years.

1328 (3) Distribution of a unitrust amount is considered a
1329 distribution of all of the net income of an express unitrust and
1330 is considered to be an income interest.

1331 (4) The unitrust amount is considered to be a reasonable
1332 apportionment of the total return of an express unitrust.

1333 (5) An express unitrust that provides or allows a
1334 distribution based on a unitrust rate in excess of 5 percent per
1335 year of the net fair market value of the unitrust assets is
1336 considered a distribution of all of the income of the unitrust
1337 to the extent that the distribution exceeds 5 percent per year
1338 and a distribution of principal of the unitrust.

1339 (6) An express unitrust may provide a mechanism for
1340 changing the unitrust rate, similar to the mechanism provided
1341 under s. 738.306, based upon the factors noted in that section,
1342 and may provide for a conversion from a unitrust to an income
1343 trust or a reconversion of an income trust to a unitrust under
1344 s. 738.303.

1345 (7) If an express unitrust does not specifically or by
1346 reference to s. 738.306 prohibit a power to change the unitrust
1347 rate or to convert to an income trust under s. 738.303, the
1348 trustee must have such power.

1349 (8) The governing instrument of an express unitrust may
1350 grant the trustee discretion to adopt a consistent practice of

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1351 treating capital gains as part of the unitrust amount to the
1352 extent that the unitrust amount exceeds the income determined as
1353 if the trust were not an express unitrust, or the governing
1354 instrument may specify the ordering of classes of income.

1355 (9) Unless the terms of the express unitrust specifically
1356 provide otherwise as provided in subsection (8), the
1357 distribution of a unitrust amount is considered a distribution
1358 made from the following sources, which are listed in order of
1359 priority:

1360 (a) Net accounting income determined under this chapter as
1361 if the trust were not a unitrust;

1362 (b) Ordinary income not allocable to net accounting
1363 income;

1364 (c) Net realized short-term capital gains;

1365 (d) Net realized long-term capital gains; and

1366 (e) The principal of the trust.

1367 (10) The governing instrument of an express unitrust may
1368 provide that the trustee may exclude assets used by the
1369 unitrust's beneficiary, including, but not limited to, a
1370 residence property or tangible personal property, from the net
1371 fair market value of the unitrust's assets for the purposes of
1372 computing the unitrust amount. The use of these assets may be
1373 considered equivalent to income or to the unitrust amount.

1374 Section 19. Section 738.310, Florida Statutes, is created
1375 to read:

1376 738.310 Other rules.—Following the conversion of an income
 1377 trust to a unitrust, the trustee shall consider the unitrust
 1378 amount as paid from the following sources, which are listed in
 1379 order of priority:

1380 (1) Net accounting income determined under this chapter as
 1381 if the trust were not a unitrust;

1382 (2) Ordinary income not allocable to net accounting
 1383 income;

1384 (3) Net realized short-term capital gains;

1385 (4) Net realized long-term capital gains; and

1386 (5) The principal of the trust.

1387 Section 20. Section 738.401, Florida Statutes, is amended
 1388 to read:

1389 738.401 Character of receipts from entity.—

1390 (1) For purposes of this section, the term:

1391 (a) "Capital distribution" means an entity distribution of
 1392 money which is a:

1393 1. Return of capital; or

1394 2. Distribution in total or partial liquidation of the
 1395 entity.

1396 (b) "Entity":

1397 1. Means a corporation, partnership, limited liability
 1398 company, regulated investment company, real estate investment
 1399 trust, common trust fund, or any other organization or
 1400 arrangement in which a fiduciary owns or holds ~~has~~ an interest,

1401 regardless of whether the entity is a taxpayer for federal
 1402 income tax purposes; and
 1403 2. Does not include:
 1404 a. A trust or estate to which s. 738.402 applies;
 1405 b. A business or other activity to which s. 738.403
 1406 applies which is not conducted by an entity described in
 1407 subparagraph 1.;
 1408 c. An asset-backed security; or
 1409 d. An instrument or arrangement to which s. 738.416
 1410 applies ~~other than a trust or estate to which s. 738.402~~
 1411 ~~applies, a business or activity to which s. 738.403 applies, or~~
 1412 ~~an asset-backed security to which s. 738.608 applies.~~
 1413 (c) "Entity distribution" means a payment or transfer by
 1414 an entity to a person in the person's capacity as an owner or
 1415 holder of an interest in the entity.
 1416 (d) "Lookback period" means the accounting period and the
 1417 preceding two accounting periods or, if less, the number of
 1418 accounting periods, or portion of accounting periods, that the
 1419 interest in the entity has been held by the fiduciary.
 1420 (2) In this section, an attribute or action of an entity
 1421 includes an attribute or action of any other entity in which the
 1422 initial entity owns or holds an interest, including an interest
 1423 owned or held indirectly through another entity.
 1424 (3) Except as otherwise provided in paragraphs (4) (b),
 1425 (c), and (d) this section, a fiduciary shall allocate to income:

1426 (a) Money received in an entity distribution; and
 1427 (b) Tangible personal property of nominal value received
 1428 from the money received from an entity.

1429 ~~(4)-(3) Except as otherwise provided in this section, A~~
 1430 ~~fiduciary shall allocate the following receipts from an entity~~
 1431 ~~to principal:~~

1432 (a) Property received in an entity distribution which is
 1433 not:

- 1434 1. other than Money; or
- 1435 2. Tangible personal property of nominal value.

1436 (b) Money received in an entity ~~one~~ distribution ~~or a~~
 1437 ~~series of related distributions in an~~ exchange for part or all
 1438 of the fiduciary's ~~a trust's or estate's~~ interest in the entity
 1439 to the extent that the entity distribution reduces the
 1440 fiduciary's interest in the entity relative to the interest of
 1441 other persons that own or hold interests in the entity.

1442 (c) Money received in an entity distribution that is a
 1443 capital distribution, to the extent not allocated to income
 1444 ~~total or partial liquidation of the entity.~~

1445 (d) Money received in an entity distribution from an
 1446 entity that is a regulated investment company or a real estate
 1447 investment trust if the money received represents short-term or
 1448 long-term capital gain realized within the entity.

1449 ~~(e) Money received from an entity listed on a public stock~~
 1450 ~~exchange during any year of the trust or estate which exceeds 10~~

1451 ~~percent of the fair market value of the trust's or estate's~~
1452 ~~interest in the entity on the first day of that year. The amount~~
1453 ~~to be allocated to principal must be reduced to the extent that~~
1454 ~~the cumulative distributions from the entity to the trust or~~
1455 ~~estate allocated to income do not exceed a cumulative annual~~
1456 ~~return of 3 percent of the fair market value of the interest in~~
1457 ~~the entity at the beginning of each year or portion of a year~~
1458 ~~for the number of years or portion of years in the period that~~
1459 ~~the interest in the entity has been held by the trust or estate.~~
1460 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1461 ~~during any period the interest in the entity has been held by~~
1462 ~~the trust, the trustee, in determining the total income~~
1463 ~~distributions from that entity, must take into account the~~
1464 ~~extent to which the exercise of that power resulted in income to~~
1465 ~~the trust from that entity for that period. If the income of the~~
1466 ~~trust for any period has been computed under s. 738.1041, the~~
1467 ~~trustee, in determining the total income distributions from that~~
1468 ~~entity for that period, must take into account the portion of~~
1469 ~~the unitrust amount paid as a result of the ownership of the~~
1470 ~~trust's interest in the entity for that period.~~

1471 (5)~~(4)~~ If a fiduciary elects, or continues an election
1472 made by its predecessor, to reinvest dividends in shares of
1473 stock of a distributing corporation or fund, whether evidenced
1474 by new certificates or entries on the books of the distributing
1475 entity, the new shares retain their character as income.

1476 (6)-(5) Except as otherwise provided in subsections (10)
 1477 and (11), money received in an entity distribution is a capital
 1478 distribution ~~Money is received in partial liquidation:~~

1479 (a) To the extent that the entity, at or near the time of
 1480 the entity a distribution, indicates that such money is a
 1481 capital distribution ~~in partial liquidation; or~~

1482 (b) To the extent that the total amount of money and
 1483 property received by the fiduciary in the entity ~~in a~~
 1484 distribution or a series of related entity distributions is or
 1485 will be greater than ~~from an entity that is not listed on a~~
 1486 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
 1487 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
 1488 as shown by the entity's year-end financial statements
 1489 immediately preceding the initial receipt.

1490
 1491 ~~This subsection does not apply to an entity to which subsection~~
 1492 ~~(7) applies.~~

1493 (7)-(6) In the case of a capital distribution, the amount
 1494 received in an entity distribution allocated to principal must
 1495 be reduced to the extent that the cumulative distributions from
 1496 the entity to the fiduciary ~~Money may not be taken into account~~
 1497 ~~in determining any excess under paragraph (5) (b), to the extent~~
 1498 ~~that the cumulative distributions from the entity to the trust~~
 1499 ~~or the estate~~ allocated to income do not exceed the greater of:

1500 (a) A cumulative annual return of 3 percent of the

1501 entity's carrying value computed at the beginning of each
 1502 accounting period, or portion of an accounting period, during
 1503 ~~the lookback period for the number of years or portion of years~~
 1504 ~~that the entity was held by the fiduciary.~~ If a fiduciary
 1505 ~~trustee~~ has exercised a power to adjust under s. 738.203 during
 1506 the lookback period, the fiduciary s. 738.104 during any period
 1507 ~~the interest in the entity has been held by the trust, the~~
 1508 ~~trustee~~, in determining the total income distributions from that
 1509 entity, must take into account the extent to which the exercise
 1510 of the power resulted in income to the fiduciary trust from that
 1511 entity for that period. If the income of a fiduciary during the
 1512 lookback trust for any period has been computed under ss.
 1513 738.301-738.310, the fiduciary pursuant to s. 738.1041, the
 1514 ~~trustee~~, in determining the total income distributions from the
 1515 entity for that period, must take into account the portion of
 1516 the unitrust amount paid as a result of the ownership of the
 1517 trust's interest in the entity for that period; or
 1518 (b) In If the case of an entity is treated as a
 1519 partnership, subchapter S corporation, or ~~a~~ disregarded entity
 1520 under pursuant to the Internal Revenue Code ~~of 1986, as amended,~~
 1521 the amount of income tax attributable to the fiduciary's trust's
 1522 ~~or estate's~~ ownership share of the entity, based on its pro rata
 1523 share of the taxable income of the entity that distributes the
 1524 money, during the lookback period for the number of years or
 1525 ~~portion of years that the interest in the entity was held by the~~

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1526 ~~fiduciary~~, calculated as if all of ~~the that~~ tax was incurred by
1527 the fiduciary.

1528 (8) If a fiduciary receives additional information about
1529 the application of this section to an entity distribution before
1530 the fiduciary has paid part of the entity distribution to a
1531 beneficiary, the fiduciary may consider the additional
1532 information before making the payment to the beneficiary and may
1533 change a decision to make the payment to the beneficiary.

1534 (9) If a fiduciary receives additional information about
1535 the application of this section to an entity distribution after
1536 the fiduciary has paid part of the entity distribution to a
1537 beneficiary, the fiduciary is not required to change or recover
1538 the payment to the beneficiary but may consider that information
1539 in determining whether to exercise its other powers, including
1540 but not limited to the power to adjust under s. 738.203.

1541 ~~(10)-(7)~~ The following applies to money or property
1542 received by a private trustee as a distribution from an
1543 investment entity described in this subsection:

1544 (a) The trustee shall first treat as income of the trust
1545 all of the money or property received from the investment entity
1546 in the current accounting period ~~year~~ which would be considered
1547 income under this chapter if the trustee had directly held the
1548 trust's pro rata share of the assets of the investment entity.
1549 For this purpose, all distributions received in the current
1550 accounting period ~~year~~ must be aggregated.

1551 (b) The trustee shall next treat as income of the trust
 1552 any additional money or property received in the current
 1553 accounting period ~~year~~ which would have been considered income
 1554 in the prior 2 accounting periods ~~years~~ under paragraph (a) if
 1555 additional money or property had been received from the
 1556 investment entity in any of those prior 2 accounting periods
 1557 ~~years~~. The amount to be treated as income must ~~shall~~ be reduced
 1558 by any distributions of money or property made by the investment
 1559 entity to the trust during the current and the prior 2
 1560 accounting periods ~~years~~ which were treated as income under this
 1561 paragraph.

1562 (c) The remainder of the distribution, if any, is treated
 1563 as principal.

1564 (d) As used in this subsection, the term:

1565 1. "Investment entity" means an entity, other than a
 1566 business activity conducted by the trustee described in s.
 1567 738.403 or an entity that is listed on a public stock exchange,
 1568 which is treated as a partnership, subchapter S corporation, or
 1569 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
 1570 ~~of 1986, as amended,~~ and which normally derives 50 percent or
 1571 more of its annual cumulative net income from interest,
 1572 dividends, annuities, royalties, rental activity, or other
 1573 passive investments, including income from the sale or exchange
 1574 of such passive investments.

1575 2. "Private trustee" means a trustee who is a natural

1576 person, but is not an independent person as set forth in s.
1577 738.102 ~~only if the trustee is unable to use the power to adjust~~
1578 ~~between income and principal with respect to receipts from~~
1579 ~~entities described in this subsection pursuant to s. 738.104. A~~
1580 ~~bank, trust company, or other commercial trustee is not~~
1581 ~~considered a private trustee.~~

1582 (11) A fiduciary shall allocate to principal any money and
1583 property the fiduciary receives in a distribution or series of
1584 related distributions from a public entity which are greater
1585 than 10 percent of the fair market value of the fiduciary's
1586 interest in the public entity on the first day of the accounting
1587 period. The amount to be allocated to principal must be reduced
1588 to the extent that the cumulative distributions from the entity
1589 to the fiduciary allocated to income do not exceed a cumulative
1590 annual return of 3 percent of the fair market value of the
1591 interest in the entity at the beginning of each accounting
1592 period, or portion of an accounting period, during the lookback
1593 period. If a fiduciary has exercised a power to adjust under s.
1594 738.203 during the lookback period, the fiduciary, in
1595 determining the total income distributions from that entity,
1596 must take into account the extent to which the exercise of that
1597 power resulted in income to the fiduciary from that entity for
1598 that period. If the income of the fiduciary during the lookback
1599 period has been computed under ss. 738.301-738.310, the
1600 fiduciary, in determining the total income distribution from

1601 that entity for that period, must take into account the portion
 1602 of the unitrust amount paid as a result of the ownership of the
 1603 trust's interest in the entity for that period. As used in this
 1604 subsection, the term "public entity" means an entity listed on a
 1605 public stock exchange.

1606 (12)(8) This section must ~~shall~~ be applied before ss.
 1607 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
 1608 or change any of the provisions of those sections.

1609 Section 21. Section 738.402, Florida Statutes, is amended
 1610 to read:

1611 738.402 Distribution from trust or estate.—A fiduciary
 1612 shall allocate to income an amount received as a distribution of
 1613 income, including a unitrust distribution under ss. 738.301-
 1614 738.310, from a trust or an estate in which the fiduciary trust
 1615 has an interest, other than an interest a purchased in a trust
 1616 that is an investment entity, and shall ~~interest and~~ allocate to
 1617 principal an amount received as a distribution of principal from
 1618 the such a trust or estate. If a fiduciary purchases, or
 1619 receives from a settlor, an interest in a trust that is an
 1620 investment entity, ~~or a decedent or donor transfers an interest~~
 1621 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
 1622 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1623 Section 22. Section 738.403, Florida Statutes, is amended
 1624 to read:

1625 738.403 Business and other activity ~~activities~~ conducted

1626 | by fiduciary.—

1627 | (1) This section applies to ~~If a fiduciary who conducts a~~
 1628 | business or other activity conducted by a fiduciary if the
 1629 | fiduciary determines that it is in the best interests of
 1630 | ~~interest of all~~ the beneficiaries to account separately for the
 1631 | business or other activity instead of:

1632 | (a) Accounting for the business or other activity as part
 1633 | of the fiduciary's ~~trust's or estate's~~ general accounting
 1634 | records; or

1635 | (b) Conducting the business or other activity through an
 1636 | entity described in s. 738.401(1)(b). ~~the~~

1637 | (2) A fiduciary may account separately under this section
 1638 | ~~maintain separate accounting records~~ for the transactions of a
 1639 | ~~the~~ business or another ~~other~~ activity, regardless of whether ~~or~~
 1640 | ~~not the~~ assets of the ~~such~~ business or other activity are
 1641 | segregated from other ~~trust or estate~~ assets held by the
 1642 | fiduciary.

1643 | (3)~~(2)~~ A fiduciary who accounts separately under this
 1644 | section for a business or other activity:

1645 | (a) May determine:

1646 | 1. The extent to which the net cash receipts of the
 1647 | business or other activity must be retained for:

1648 | a. Working capital;

1649 | b. The acquisition or replacement of fixed assets; and

1650 | c. Other reasonably foreseeable needs of the business or

1651 other activity; and working capital, the acquisition or
1652 replacement of fixed assets, and other reasonably foreseeable
1653 needs of the business or activity, and

1654 2. The extent to which the remaining net cash receipts are
1655 accounted for as principal or income in the fiduciary's trust's
1656 or estate's general accounting records for the trust.

1657 (b) May make a determination under paragraph (a)
1658 separately and differently from the fiduciary's decisions
1659 concerning distributions of income or principal; and

1660 (c) Shall account for the net amount received from the
1661 sale of an asset of ~~If a fiduciary sells assets of~~ the business
1662 or other activity, other than a sale in the ordinary course of
1663 the business or other activity, ~~the fiduciary must account for~~
1664 ~~the net amount received~~ as principal in the fiduciary's trust's
1665 or estate's general accounting records for the trust, to the
1666 extent the fiduciary determines that the net amount received is
1667 no longer required in the conduct of the business or other
1668 activity.

1669 (4) ~~(3)~~ Activities for which a fiduciary may account
1670 separately under this section ~~maintain separate accounting~~
1671 ~~records~~ include:

1672 (a) Retail, manufacturing, service, and other traditional
1673 business activities.

1674 (b) Farming.

1675 (c) Raising and selling livestock and other animals.

1676 (d) ~~Managing~~ Management of rental properties.

1677 (e) ~~Extracting~~ Extraction of minerals and other natural
 1678 resources.

1679 (f) ~~Growing and cutting~~ timber operations.

1680 (g) ~~An activity~~ Activities to which s. 738.414, s.
 1681 738.415, or s. 738.416 ~~s. 738.607~~ applies.

1682 (h) Any other business conducted by the fiduciary.

1683 Section 23. Section 738.404, Florida Statutes, is created
 1684 to read:

1685 738.404 Principal receipts.—A fiduciary shall allocate to
 1686 principal:

1687 (1) To the extent not allocated to income under this
 1688 chapter, an asset received from any of the following:

1689 (a) An individual during the individual's lifetime.

1690 (b) An estate.

1691 (c) A trust on termination of an income interest.

1692 (d) A payor under a contract naming the fiduciary as
 1693 beneficiary.

1694 (2) Except as otherwise provided in ss. 738.401-738.416,
 1695 money or other property received from the sale, exchange,
 1696 liquidation, or change in the form of a principal asset.

1697 (3) An amount recovered from a third party to reimburse
 1698 the fiduciary because of a disbursement described in s.
 1699 738.502(1) or for another reason to the extent not based on the
 1700 loss of income.

1701 (4) Proceeds of property taken by eminent domain except
1702 that proceeds awarded for loss of income in an accounting period
1703 are income if a current income beneficiary had a mandatory
1704 income interest during the period.

1705 (5) Net income received in an accounting period during
1706 which there is no beneficiary to which a fiduciary may or must
1707 distribute income.

1708 (6) Other receipts as provided in ss. 738.408-738.416.

1709 Section 24. Section 738.405, Florida Statutes, is created
1710 to read:

1711 738.405 Rental property.—To the extent that a fiduciary
1712 does not account for the management of rental property as a
1713 business under s. 738.403, the fiduciary shall allocate to
1714 income an amount received as rent of real or personal property,
1715 including an amount received for cancellation or renewal of a
1716 lease. An amount received as a refundable deposit, including a
1717 security deposit or a deposit that is to be applied as rent for
1718 future periods:

1719 (1) Must be added to principal and held subject to the
1720 terms of the lease, except as otherwise provided by law other
1721 than this chapter; and

1722 (2) Is not allocated to income or available for
1723 distribution to a beneficiary until the fiduciary's contractual
1724 obligations have been satisfied with respect to that amount.

1725 Section 25. Section 738.406, Florida Statutes, is created

1726 to read:

1727 738.406 Receipt on obligation to be paid in money.-

1728 (1) This section does not apply to an obligation to which
 1729 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
 1730 738.415, or s. 738.416 applies.

1731 (2) A fiduciary shall allocate to income, without
 1732 provision for amortization of premium, an amount received as
 1733 interest on an obligation to pay money to the fiduciary,
 1734 including an amount received as consideration for prepaying
 1735 principal.

1736 (3) A fiduciary shall allocate to principal an amount
 1737 received from the sale, redemption, or other disposition of an
 1738 obligation to pay money to the fiduciary.

1739 (4) A fiduciary shall allocate to income the increment in
 1740 value of a bond or other obligation for the payment of money
 1741 bearing no stated interest but payable or redeemable, at
 1742 maturity or another future time, in an amount that exceeds the
 1743 amount in consideration of which it was issued. If the increment
 1744 in value accrues and becomes payable pursuant to a fixed
 1745 schedule of appreciation, it may be distributed to the
 1746 beneficiary who was the income beneficiary at the time of
 1747 increment from the first principal cash available or, if none is
 1748 available, when the increment is realized by sale, redemption,
 1749 or other disposition. If unrealized increment is distributed as
 1750 income but out of principal, the principal must be reimbursed

1751 for the increment when realized. If, in the reasonable judgment
1752 of the fiduciary, exercised in good faith, the ultimate payment
1753 of the bond principal is in doubt, the fiduciary may withhold
1754 the payment of incremental interest to the income beneficiary.

1755 Section 26. Section 738.407, Florida Statutes, is created
1756 to read:

1757 738.407 Insurance policy or contract.—

1758 (1) This section does not apply to a contract to which s.
1759 738.409 applies.

1760 (2) Except as otherwise provided in subsection (3), a
1761 fiduciary shall allocate to principal the proceeds of a life
1762 insurance policy or other contract received by the fiduciary as
1763 beneficiary, including a contract that insures against damage
1764 to, destruction of, or loss of title to an asset. The fiduciary
1765 shall allocate dividends on an insurance policy to income to the
1766 extent that premiums on the policy are paid from income and to
1767 principal to the extent premiums on the policy are paid from
1768 principal.

1769 (3) A fiduciary shall allocate to income proceeds of a
1770 contract that insures the fiduciary against loss of:

1771 (a) Occupancy or other use by a current income
1772 beneficiary;

1773 (b) Income; or

1774 (c) Subject to s. 738.403, profits from a business.

1775 Section 27. Section 738.408, Florida Statutes, is created

1776 to read:

1777 738.408 Insubstantial allocation not required.-

1778 (1) If a fiduciary determines that an allocation between

1779 income and principal required by s. 738.409, s. 738.410, s.

1780 738.411, s. 738.412, or s. 738.415 is insubstantial, the

1781 fiduciary may allocate the entire amount to principal, unless s.

1782 738.203(5) applies to the allocation.

1783 (2) A fiduciary may presume an allocation is insubstantial

1784 under subsection (1) if:

1785 (a) The amount of the allocation would increase or

1786 decrease net income in an accounting period, as determined

1787 before the allocation, by less than 10 percent; and

1788 (b) The asset producing the receipt to be allocated has a

1789 carrying value less than 10 percent of the total carrying value

1790 of the assets owned or held by the fiduciary at the beginning of

1791 the accounting period.

1792 (3) The power to make a determination under subsection (1)

1793 may be:

1794 (a) Exercised by a cofiduciary in the manner described in

1795 s. 738.203(6); or

1796 (b) Released or delegated for a reason described in s.

1797 738.203(7) and in the manner described in s. 738.203(8).

1798 Section 28. Section 738.409, Florida Statutes, is created

1799 to read:

1800 738.409 Deferred compensation, annuity, or similar

1801 payment.—

1802 (1) As used in this section, the term:

1803 (a) "Internal income of the separate fund" means the

1804 amount determined under subsection (2).

1805 (b) "Marital trust" means a trust:

1806 1. Of which the settlor's surviving spouse is the only

1807 current income beneficiary and is entitled to a distribution of

1808 all the current net income of the trust; and

1809 2. That qualifies for a marital deduction with respect to

1810 the settlor's estate under the Internal Revenue Code or

1811 comparable law of any state because:

1812 a. An election to qualify for a marital deduction under s.

1813 2056(b) (7) of the Internal Revenue Code has been made;

1814 b. The trust qualified for a marital deduction under s.

1815 2056(b) (5) of the Internal Revenue Code; or

1816 c. The trust otherwise qualifies for a marital deduction.

1817 (c) "Nonseparate fund" means an annuity, a deferred

1818 compensation plan, a pension plan, or other fund for which the

1819 value of the participant's or account owner's right to receive

1820 benefits can be determined only by the occurrence of a date or

1821 event as defined in the instrument governing the fund.

1822 (d) "Payment" means an amount a fiduciary may receive over

1823 a fixed number of years or during the life of one or more

1824 individuals because of services rendered or property transferred

1825 to the payor in exchange for future amounts the fiduciary may

1826 receive. The term includes an amount received in money or
1827 property from the payor's general assets or from a separate fund
1828 created by the payor.

1829 (e) "Percent calculated" means a percent equal to the rate
1830 determined under s. 7520 of the Internal Revenue Code in effect
1831 for the month preceding the beginning of the accounting period;
1832 however, if the percent calculated exceeds 5 percent, it must be
1833 reduced to 5 percent, and if the percent calculated is less than
1834 3 percent, it must be increased to 3 percent. Notwithstanding
1835 the preceding sentence, a fiduciary who is an independent person
1836 as defined in s. 738.102 may set the percent calculated at a
1837 percentage no less than 3 percent and no greater than 5 percent.

1838 (f) "Separate fund" includes a private or commercial
1839 annuity, an individual retirement account, and a pension,
1840 profit-sharing, stock-bonus, stock ownership plan, or other
1841 deferred compensation fund holding assets exclusively for the
1842 benefit of a participant or account owner.

1843 (2) For each accounting period, the following rules apply
1844 to a separate fund:

1845 (a) The fiduciary may determine the internal income of the
1846 separate fund as if the separate fund were a trust subject to
1847 this chapter.

1848 (b) Alternatively, the fiduciary may deem the internal
1849 income of the separate fund to equal the percent calculated of
1850 the value of the separate fund according to the most recent

1851 statement of value preceding the beginning of the accounting
1852 period. The fiduciary is not liable for good faith reliance upon
1853 any valuation supplied by the person or persons in possession of
1854 the fund. If the fiduciary makes or terminates an election under
1855 this paragraph, the fiduciary must make such disclosure in a
1856 trust disclosure document that satisfies the requirements of s.
1857 736.1008(4)(c).

1858 (c) If the fiduciary cannot determine the value of the
1859 separate fund under paragraph (b), the value of the separate
1860 fund is deemed to equal the present value of s. 7520 of the
1861 Internal Revenue Code for the month preceding the beginning of
1862 the accounting period for which the computation is made.

1863 (d) The fiduciary may elect the method of determining the
1864 income of the fund pursuant to this subsection and may change
1865 the method of determining income of the fund for any future
1866 accounting period.

1867 (3) A fiduciary shall allocate a payment received from a
1868 separate fund during an accounting period to income, to the
1869 extent of the internal income of the separate fund during the
1870 period, and allocate the balance to principal.

1871 (4) The fiduciary of a marital trust shall:

1872 (a) Withdraw from a separate fund the amount the current
1873 income beneficiary of the trust requests the fiduciary to
1874 withdraw, not greater than the amount by which the internal
1875 income of the separate fund during the accounting period exceeds

1876 the amount the fiduciary otherwise receives from the separate
1877 fund during the period.

1878 (b) Transfer from principal to income the amount the
1879 current income beneficiary requests the fiduciary to transfer,
1880 but not greater than the amount by which the internal income of
1881 the separate fund during the period exceeds the amount the
1882 fiduciary receives from the separate fund during the period
1883 after the application of paragraph (a).

1884 (c) Distribute to the current income beneficiary as
1885 income:

1886 1. The amount of the internal income of the separate fund
1887 received or withdrawn during the period; and

1888 2. The amount transferred from principal to income under
1889 paragraph (b).

1890 (5) For a trust, other than a marital trust, of which one
1891 or more current income beneficiaries are entitled to a
1892 distribution of all the current net income, the fiduciary shall
1893 transfer from principal to income the amount by which the
1894 internal income of the separate fund during the accounting
1895 period exceeds the amount the fiduciary receives from the
1896 separate fund during the period.

1897 (6) The fiduciary of a nonseparate fund shall calculate
1898 internal income of the fund as the percent calculated of the
1899 present value of the right to receive the remaining payments as
1900 determined under s. 7520(a)(2) of the Internal Revenue Code for

1901 the month preceding the beginning of the accounting period.

1902 (7) If a fiduciary owns a separate fund or a nonseparate
 1903 fund before January 1, 2025, the fiduciary may determine
 1904 internal income, allocate payments, and account for unwithdrawn
 1905 internal income as provided in this section or in the manner
 1906 used by the fiduciary before January 1, 2025. Such fiduciary is
 1907 not required to consider subsection (5). If the fiduciary
 1908 acquires a separate fund or a nonseparate fund on or after
 1909 January 1, 2025, the fiduciary must calculate internal income,
 1910 allocate payments, and account for unwithdrawn internal income
 1911 as provided in this section.

1912 Section 29. Section 738.603, Florida Statutes, is
 1913 transferred, renumbered as section 738.410, Florida Statutes,
 1914 and amended to read:

1915 738.410 ~~738.603~~ Liquidating asset.—

1916 (1) As used in ~~For purposes of~~ this section, the term
 1917 "liquidating asset" means an asset whose value ~~the value of~~
 1918 ~~which~~ will diminish or terminate because the asset is expected
 1919 to produce receipts for a ~~period of~~ limited time duration. The
 1920 term includes a leasehold, patent, copyright, royalty right, and
 1921 right to receive payments during a period of ~~for~~ more than 1
 1922 year under an arrangement that does not provide for the payment
 1923 of interest on the unpaid balance. ~~The term does not include a~~
 1924 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
 1925 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~

1926 | ~~an asset subject to s. 738.608, or any asset for which the~~
 1927 | ~~fiduciary establishes a reserve for depreciation under s.~~
 1928 | ~~738.703.~~

1929 | (2) This section does not apply to a receipt that is
 1930 | subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
 1931 | 738.414, s. 738.415, s. 738.416, or s. 738.503.

1932 | (3) A fiduciary shall allocate to income a receipt
 1933 | produced by a liquidating asset to the extent that the receipt
 1934 | does not exceed 5 percent of the receipts from the carrying
 1935 | value of the asset at the beginning of the accounting period and
 1936 | allocate a liquidating asset and the balance to principal the
 1937 | balance of the receipt.

1938 | (4) The amount ~~Amounts~~ allocated to principal shall reduce
 1939 | the carrying value of the liquidating asset, but not below zero.
 1940 | Amounts received in excess of the remaining carrying value must
 1941 | be allocated to principal.

1942 | Section 30. Section 738.604, Florida Statutes, is
 1943 | transferred, renumbered as section 738.411, Florida Statutes,
 1944 | and amended to read:

1945 | 738.411 ~~738.604~~ Minerals, water, and other natural
 1946 | resources.—

1947 | (1) To the extent that ~~If~~ a fiduciary does not account for
 1948 | a receipt ~~accounts for receipts~~ from an interest in minerals,
 1949 | water, or other natural resources as a business under s. 738.403
 1950 | ~~pursuant to this section,~~ the fiduciary shall allocate the

1951 receipt such receipts as follows:

1952 (a) To income, to the extent received:

1953 1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual

1954 rent on a lease;

1955 2. As a factor for interest or the equivalent of interest

1956 under an agreement creating a production payment; or

1957 3. On account of an interest in renewable water;~~a~~

1958 ~~receipt shall be allocated to income.~~

1959 (b) To principal, if received from a production payment, a

1960 ~~receipt shall be allocated to income if and to the extent that~~

1961 subparagraph (a)2. does not apply; or the agreement creating the

1962 production payment provides a factor for interest or its

1963 equivalent. The balance shall be allocated to principal.

1964 (c) Between income and principal equitably, to the extent

1965 received:

1966 1. On account of an interest in nonrenewable water;

1967 2. ~~If an amount received~~ As a royalty, shut-in-well

1968 payment, take-or-pay payment, or bonus; or,~~or delay rental is~~

1969 ~~more than nominal, 90 percent shall be allocated to principal~~

1970 ~~and the balance to income.~~

1971 3.~~(d)~~ ~~If an amount is received~~ From a working interest or

1972 any other interest not provided for in paragraph (a) or,

1973 paragraph (b) or subparagraph 1. or subparagraph 2.,~~or~~

1974 ~~paragraph (c), 90 percent of the net amount received shall be~~

1975 ~~allocated to principal and the balance to income.~~

1976 (2) ~~An amount received on account of an interest in water~~
 1977 ~~that is renewable shall be allocated to income. If the water is~~
 1978 ~~not renewable, 90 percent of the amount shall be allocated to~~
 1979 ~~principal and the balance to income.~~

1980 ~~(3) This~~ section chapter applies to an interest owned or
 1981 held by a fiduciary regardless of whether ~~or not~~ a settlor
 1982 ~~decedent or donor~~ was extracting minerals, water, or other
 1983 natural resources before the fiduciary owned or held the
 1984 ~~interest became subject to the trust or estate.~~

1985 (3) An allocation of a receipt under paragraph (1)(c) is
 1986 presumed to be equitable if the amount allocated to principal is
 1987 equal to the amount allowed by the Internal Revenue Code as a
 1988 deduction for depletion of the interest.

1989 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 1990 interest in minerals, water, or other natural resources before
 1991 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
 1992 receipts from the interest as provided in this section ~~chapter~~
 1993 or in the manner used by the fiduciary before January 1, 2025
 1994 ~~January 1, 2003~~. If the fiduciary ~~trust or estate~~ acquires an
 1995 interest in minerals, water, or other natural resources on or
 1996 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
 1997 allocate receipts from the interest as provided in this section
 1998 ~~chapter~~.

1999 Section 31. Section 738.605, Florida Statutes, is
 2000 transferred, renumbered as section 738.412, Florida Statutes,

2001 and amended to read:

2002 738.412 ~~738.605~~ Timber.—

2003 (1) To the extent that ~~If~~ a fiduciary does not account
 2004 ~~accounts~~ for receipts from the sale of timber and related
 2005 products as a business under s. 738.403 ~~pursuant to this~~
 2006 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts ~~as~~
 2007 ~~follows:~~

2008 (a) To income, to the extent that the amount of timber cut
 2009 ~~removed~~ from the land does not exceed the rate of growth of the
 2010 timber ~~during the accounting periods in which a beneficiary has~~
 2011 ~~a mandatory income interest;~~

2012 (b) To principal, to the extent that the amount of timber
 2013 cut ~~removed~~ from the land exceeds the rate of growth of the
 2014 timber or the net receipts are from the sale of standing timber;

2015 (c) ~~To or~~ Between income and principal if the net receipts
 2016 are from the lease of land used for growing and cutting timber
 2017 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
 2018 ~~trust or estate~~ by determining the amount of timber cut ~~removed~~
 2019 from the land under the lease or contract and applying the rules
 2020 in paragraphs (a) and (b); or

2021 (d) To principal, to the extent that advance payments,
 2022 bonuses, and other payments are not allocated under ~~pursuant to~~
 2023 paragraph (a), paragraph (b), or paragraph (c).

2024 (2) In determining net receipts to be allocated under
 2025 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and

2026 transfer to principal a reasonable amount for depletion.

2027 (3) This section ~~chapter~~ applies to land owned or held by
 2028 a fiduciary regardless of whether ~~or not~~ a settlor decedent or
 2029 ~~donor~~ was cutting harvesting timber from the land property
 2030 before the fiduciary owned or held the property ~~became subject~~
 2031 ~~to the trust or estate.~~

2032 (4) If a fiduciary ~~trust or estate~~ owns or holds an
 2033 interest in land used for growing and cutting timber before
 2034 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
 2035 allocate net receipts from the sale of timber and related
 2036 products as provided in this section ~~chapter~~ or in the manner
 2037 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
 2038 the fiduciary ~~trust or estate~~ acquires an interest in land used
 2039 for growing and cutting timber on or after January 1, 2025
 2040 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
 2041 allocate net receipts from the sale of timber and related
 2042 products as provided in this section ~~chapter~~.

2043 Section 32. Section 738.606, Florida Statutes, is
 2044 transferred, renumbered as section 738.413, Florida Statutes,
 2045 and amended to read:

2046 738.413 ~~738.606~~ Marital deduction property not productive
 2047 of income.—

2048 (1) If a trust received property for which a gift or
 2049 estate tax marital deduction was under the Internal Revenue Code
 2050 ~~or comparable law of any state is allowed,~~ for all or if part of

2051 a trust ~~received property satisfying, or if assets are~~
2052 ~~transferred to a trust that satisfies~~ the requirements of s.
2053 732.2025(2)(a) and (c), and such property has ~~assets have~~ been
2054 used in whole or in part to satisfy an election by a surviving
2055 spouse under s. 732.2125, and the settlor's spouse holds a
2056 mandatory income interest in the trust, the spouse may require
2057 the trustee, to the extent that the trust assets otherwise do
2058 ~~consist of property that, in the aggregate, does not~~ provide the
2059 spouse with sufficient income from or use of the trust assets to
2060 qualify for the deduction, or to satisfy an election by a
2061 surviving spouse under s. 732.2125, to make the property
2062 productive of income within a reasonable time. The trustee may:
2063 (a) Convert property to property productive of income
2064 within a reasonable time;
2065 (b) Exercise the power to adjust under s. 738.203;
2066 (c) Exercise the power to convert to or from a unitrust
2067 under s. 738.303; or
2068 (d) Exercise the fiduciary's authority under the terms of
2069 the trust to otherwise provide the surviving spouse with
2070 sufficient income from the trust assets, or the use of the trust
2071 assets, to qualify for the marital deduction, or to satisfy an
2072 election by a surviving spouse under s. 732.2125.
2073 (2) The trustee may decide which action or combination of
2074 actions listed in subsection (1) to take.
2075 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~

2076 ~~transfers from principal to income under s. 738.104 and~~
 2077 ~~distributes to the spouse from principal pursuant to the terms~~
 2078 ~~of the trust are insufficient to provide the spouse with the~~
 2079 ~~beneficial enjoyment required to obtain the marital deduction,~~
 2080 ~~even though, in the case of an elective share trust under s.~~
 2081 ~~732.2025(2), a marital deduction is not made or is only~~
 2082 ~~partially made, the spouse may require the trustee of such~~
 2083 ~~marital trust or elective share trust to make property~~
 2084 ~~productive of income, convert property within a reasonable time,~~
 2085 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

2086 (4) The terms of a trust as defined in s. 738.102 may not
 2087 supersede this section unless such terms explicitly reference
 2088 this section ~~The trustee may decide which action or combination~~
 2089 ~~of actions to take.~~

2090 ~~(2) In cases not governed by subsection (1), proceeds from~~
 2091 ~~the sale or other disposition of an asset are principal without~~
 2092 ~~regard to the amount of income the asset produces during any~~
 2093 ~~accounting period.~~

2094 Section 33. Section 738.607, Florida Statutes, is
 2095 transferred, renumbered as section 738.414, Florida Statutes,
 2096 and amended to read:

2097 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

2098 (1) As used in ~~For purposes of~~ this section, the term
 2099 "derivative" means a contract, an ~~or~~ financial instrument, or
 2100 other arrangement, or a combination of contracts, and ~~financial~~

2101 instruments, or other arrangements, of which the value, rights,
 2102 and obligations are, in whole or in part, dependent on or
 2103 derived from an underlying ~~which gives a trust the right or~~
 2104 ~~obligation to participate in some or all changes in the price of~~
 2105 ~~a tangible or intangible asset, a~~ ~~or~~ group of tangible or
 2106 intangible assets, an index, or an occurrence of an event. The
 2107 term includes stocks, fixed income securities, and financial
 2108 instruments and arrangements based on indices, commodities,
 2109 interest rates, weather-related events, and credit-default
 2110 events ~~assets, or changes in a rate, an index of prices or~~
 2111 ~~rates, or other market indicator for an asset or a group of~~
 2112 ~~assets.~~

2113 (2) To the extent that a fiduciary does not account for a
 2114 transaction in derivatives as a business under s. 738.403 ~~for~~
 2115 ~~transactions in derivatives,~~ the fiduciary shall allocate 10
 2116 percent of ~~to principal~~ receipts from the transaction and 10
 2117 percent of ~~and~~ disbursements made in connection with the
 2118 transaction to income and allocate the balance to principal
 2119 ~~those transactions.~~

2120 (3) Subsection (4) applies if:

2121 (a) A fiduciary:

2122 1. If a fiduciary Grants an option to buy property from a
 2123 ~~the trust, regardless of~~ ~~or~~ ~~estate~~ whether ~~or not~~ the trust ~~or~~
 2124 ~~estate~~ owns the property when the option is granted;;

2125 2. Grants an option that permits another person to sell

2126 | property to the trust; or
 2127 | 3. ~~estate, or~~ Acquires an option to buy property for the
 2128 | trust or ~~estate or~~ an option to sell an asset owned by the trust
 2129 | ~~or estate;~~ and
 2130 | (b) The fiduciary or other owner of the asset is required
 2131 | to deliver the asset if the option is exercised, ~~an amount~~
 2132 | ~~received for granting the option shall be allocated to~~
 2133 | ~~principal. An amount paid to acquire the option shall be paid~~
 2134 | ~~from principal.~~
 2135 | (4) If this subsection applies, the fiduciary must
 2136 | allocate 10 percent to income and allocate the balance to
 2137 | principal of the following amounts:
 2138 | (a) An amount received for granting the option;
 2139 | (b) An amount paid to acquire the option; and
 2140 | (c) A Gain or loss realized on ~~upon~~ the exercise,
 2141 | exchange, settlement, offset, closing, or expiration of the
 2142 | option of an option, including an option granted to a grantor of
 2143 | the trust or estate for services rendered, shall be allocated to
 2144 | principal.
 2145 | Section 34. Section 738.608, Florida Statutes, is
 2146 | transferred, renumbered as section 738.415, Florida Statutes,
 2147 | and amended to read:
 2148 | 738.415 738.608 Asset-backed securities.-
 2149 | (1) Except as otherwise provided in subsection (2), a
 2150 | fiduciary shall allocate to income a receipt from or related to

2151 an asset-backed security, as defined in s. 738.102, to the
2152 extent that the payor identifies the payment as being from ~~For~~
2153 ~~purposes of this section, "asset-backed security" means an asset~~
2154 ~~the value of which is based upon the right given the owner to~~
2155 ~~receive distributions from the proceeds of financial assets that~~
2156 ~~provide collateral for the security. The term includes an asset~~
2157 ~~that gives the owner the right to receive from the collateral~~
2158 ~~financial assets only the interest or other current return and~~
2159 allocate to principal the balance of the receipt ~~or only the~~
2160 ~~proceeds other than interest or current return. The term does~~
2161 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

2162 (2) If a fiduciary receives one or more payments in
2163 exchange for part or all of the fiduciary's interest in an
2164 asset-backed security, including a liquidation or redemption of
2165 the fiduciary's interest in the security ~~trust or estate~~
2166 ~~receives a payment from interest or other current return and~~
2167 ~~from other proceeds of the collateral financial assets, the~~
2168 ~~fiduciary must shall~~ allocate to income 10 percent of receipts
2169 from the transaction and 10 percent of disbursements made in
2170 connection with the transaction, and allocate to principal the
2171 ~~portion of the payment which the payor identifies as being from~~
2172 ~~interest or other current return and allocate the balance of the~~
2173 receipts and disbursements ~~payment to principal.~~

2174 ~~(3) If a trust or estate receives one or more payments in~~
2175 ~~exchange for the trust's or estate's entire interest in an~~

2176 ~~asset-backed security during a single accounting period, the~~
 2177 ~~fiduciary shall allocate the payments to principal. If a payment~~
 2178 ~~is one of a series of payments that will result in the~~
 2179 ~~liquidation of the trust's or estate's interest in the security~~
 2180 ~~over more than a single accounting period, the fiduciary shall~~
 2181 ~~allocate 10 percent of the payment to income and the balance to~~
 2182 ~~principal.~~

2183 Section 35. Section 738.416, Florida Statutes, is created
 2184 to read:

2185 738.416 Other financial instrument or arrangement.—A
 2186 fiduciary shall allocate receipts from or related to a financial
 2187 instrument or arrangement not otherwise addressed by this
 2188 chapter. The allocation must be consistent with ss. 738.414 and
 2189 738.415.

2190 Section 36. Section 738.501, Florida Statutes, is amended
 2191 to read:

2192 (Substantial rewording of section. See
 2193 s. 738.501, F.S., for present text.)

2194 738.501 Disbursement from income.—Subject to s. 738.504,
 2195 and except as otherwise provided in s. 738.601(3)(b) or (c), a
 2196 fiduciary shall disburse from income:

2197 (1) One-half of:

2198 (a) The regular compensation of the fiduciary and of any
 2199 person providing investment advisory, custodial, or other
 2200 services to the fiduciary to the extent that income is

2201 sufficient; and

2202 (b) An expense for an accounting, judicial or nonjudicial

2203 proceeding, or other matter that involves both income and

2204 successive interests to the extent income is sufficient.

2205 (2) The balance of the disbursements described in

2206 subsection (1), to the extent that a fiduciary who is an

2207 independent person determines that making those disbursements

2208 from income would be in the interests of the beneficiaries.

2209 (3) Any other ordinary expense incurred in connection with

2210 administration, management, or preservation of property and

2211 distribution of income, including interest, an ordinary repair,

2212 a regularly recurring tax assessed against principal, and an

2213 expense of an accounting, judicial or nonjudicial proceeding, or

2214 other matter that involves primarily an income interest, to the

2215 extent that income is sufficient.

2216 (4) A premium on insurance covering loss of a principal

2217 asset or income from or use of the asset.

2218 Section 37. Section 738.502, Florida Statutes, is amended

2219 to read:

2220 (Substantial rewording of section. See

2221 s. 738.502, F.S., for present text.)

2222 738.502 Disbursement from principal.-

2223 (1) Subject to s. 738.505, and except as otherwise

2224 provided in s. 738.601(3)(b), a fiduciary shall disburse all of

2225 the following from principal:

- 2226 (a) The balance of the disbursements described in s.
 2227 738.501(1) and (3), after application of s. 738.501(2).
- 2228 (b) The fiduciary's compensation calculated on principal
 2229 as a fee for acceptance, distribution, or termination.
- 2230 (c) A payment of an expense to prepare for or execute a
 2231 sale or other disposition of property.
- 2232 (d) A payment on the principal of a trust debt.
- 2233 (e) A payment of an expense of an accounting, judicial or
 2234 nonjudicial proceeding, or other matter that involves primarily
 2235 principal, including a proceeding to construe the terms of the
 2236 trust or protect property.
- 2237 (f) A payment of a premium for insurance, including title
 2238 insurance, not described in s. 738.501(4) of which the fiduciary
 2239 is the owner and beneficiary.
- 2240 (g) A payment of estate, inheritance, and other transfer
 2241 taxes, including penalties, apportioned to the trust.
- 2242 (h) A payment related to environmental matters including:
 2243 1. Reclamation;
 2244 2. Assessing environmental conditions;
 2245 3. Remedying and removing environmental contamination;
 2246 4. Monitoring remedial activities and the release of
 2247 substances;
 2248 5. Preventing future releases of substances;
 2249 6. Collecting amounts from persons liable or potentially
 2250 liable for the costs of the activities described in

2251 subparagraphs 1.-5.;

2252 7. Penalties imposed under environmental laws or
 2253 regulations;

2254 8. Other actions to comply with environmental laws or
 2255 regulations;

2256 9. Statutory or common law claims by third parties; and

2257 10 Defending claims based on environmental matters.

2258 (i) A payment of a premium for insurance for matters
 2259 described in paragraph (h).

2260 (2) If a principal asset is encumbered with an obligation
 2261 that requires income from the asset to be paid directly to a
 2262 creditor, the fiduciary must transfer from principal to income
 2263 an amount equal to the income paid to the creditor in reduction
 2264 of the principal balance of the obligation.

2265 Section 38. Section 738.503, Florida Statutes, is amended
 2266 to read:

2267 (Substantial rewording of section. See
 2268 s. 738.503, F.S., for present text.)

2269 738.503 Transfers from income to principal for
 2270 depreciation.—

2271 (1) For purposes of this section, "depreciation" means a
 2272 reduction in value due to wear, tear, decay, corrosion, or
 2273 gradual obsolescence of a tangible asset having a useful life of
 2274 more than 1 year.

2275 (2) A fiduciary may transfer to principal a reasonable

2276 amount of the net cash receipts from a principal asset that is
 2277 subject to depreciation but may not transfer any amount for
 2278 depreciation:

2279 (a) Of the part of real property used or available for use
 2280 by a beneficiary as a residence;

2281 (b) Of tangible personal property held or made available
 2282 for the personal use or enjoyment of a beneficiary; or

2283 (c) Under this section, to the extent that the fiduciary
 2284 accounts:

2285 1. Under s. 738.410 for the asset; or

2286 2. Under s. 738.403 for the business or other activity in
 2287 which the asset is used.

2288 (3) An amount transferred to principal under this section
 2289 need not be separately held.

2290 Section 39. Section 738.504, Florida Statutes, is amended
 2291 to read:

2292 (Substantial rewording of section. See
 2293 s. 738.504, F.S., for present text.)

2294 738.504 Reimbursement of income from principal.—

2295 (1) If a fiduciary makes or expects to make an income
 2296 disbursement described in subsection (2), the fiduciary may
 2297 transfer an appropriate amount from principal to income in one
 2298 or more accounting periods to reimburse income.

2299 (2) To the extent that the fiduciary has not been and does
 2300 not expect to be reimbursed by a third party, income

2301 disbursements to which subsection (1) applies include:
 2302 (a) An amount chargeable to principal but paid from income
 2303 because principal is illiquid;
 2304 (b) A disbursement made to prepare property for sale,
 2305 including improvements and commissions; and
 2306 (c) A disbursement described in s. 738.502(1).
 2307 (3) If an asset whose ownership gives rise to an income
 2308 disbursement becomes subject to a successive interest after an
 2309 income interest ends, the fiduciary may continue to make
 2310 transfers under subsection (1).

2311 Section 40. Section 738.704, is transferred, renumbered as
 2312 section 738.505, Florida Statutes, and amended to read:

2313 738.505 ~~738.704~~ Reimbursement of principal from income
 2314 ~~Transfers from income to reimburse principal.-~~

2315 (1) If a fiduciary makes or expects to make a principal a
 2316 ~~principal~~ disbursement described in subsection (2) ~~this section~~,
 2317 the fiduciary may transfer an appropriate amount from income to
 2318 principal in one or more accounting periods to reimburse
 2319 principal or to provide a reserve for future principal
 2320 disbursements.

2321 (2) ~~Principal disbursements to which subsection (1)~~
 2322 ~~applies include the following, but only~~ To the extent that a the
 2323 fiduciary has not been and does not expect to be reimbursed by a
 2324 third party, principal disbursements to which subsection (1)
 2325 applies include:

2326 (a) An amount chargeable to income but paid from principal
 2327 because income is not sufficient; ~~the amount is unusually large.~~

2328 (b) The cost of an improvement to principal, whether a
 2329 change to an existing asset or the construction of a new asset,
 2330 including a special assessment; ~~Disbursements made to prepare~~
 2331 ~~property for rental, including tenant allowances, leasehold~~
 2332 ~~improvements, and broker's commissions.~~

2333 (c) A disbursement made to prepare property for rental,
 2334 including tenant allowances, leasehold improvements, and
 2335 commissions; ~~Disbursements described in s. 738.702(1)(g).~~

2336 (d) A periodic payment on an obligation secured by a
 2337 principal asset, to the extent the amount transferred from
 2338 income to principal for depreciation is less than the periodic
 2339 payment; and

2340 (e) A disbursement described in s. 738.502(1).

2341 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of which~~ gives
 2342 rise to a principal disbursement ~~the disbursements~~ becomes
 2343 subject to a successive ~~income~~ interest after an income interest
 2344 ends, the ~~a~~ fiduciary may continue to make transfers under
 2345 ~~transfer amounts from income to principal as provided in~~
 2346 ~~subsection (1).~~

2347 (4) ~~To the extent principal cash is not sufficient to pay~~
 2348 ~~the principal balance of payments due on mortgaged property,~~
 2349 ~~income may be applied to such payment in order to avoid a~~
 2350 ~~default on any mortgage or security interest securing the~~

2351 ~~property. Income shall be reimbursed for such payments out of~~
 2352 ~~the first available principal cash. If the asset the ownership~~
 2353 ~~of which gives rise to the disbursements described in this~~
 2354 ~~subsection becomes subject to a successive income interest after~~
 2355 ~~an income interest ends, all rights of the initial income~~
 2356 ~~interest shall lapse, and amounts remaining due from principal~~
 2357 ~~shall not be a lien on the assets of the trust.~~

2358 Section 41. Section 738.705, Florida Statutes, is
 2359 transferred, renumbered as section 738.506, Florida Statutes,
 2360 and amended to read:

2361 738.506 ~~738.705~~ Income taxes.—

2362 (1) A tax required to be paid by a fiduciary which is
 2363 based on receipts allocated to income must ~~shall~~ be paid from
 2364 income.

2365 (2) A tax required to be paid by a fiduciary which is
 2366 based on receipts allocated to principal must ~~shall~~ be paid from
 2367 principal, even if the tax is called an income tax by the taxing
 2368 authority.

2369 (3) Subject to subsection (4) and ss. 738.504, 738.505,
 2370 and 738.507, a tax required to be paid by a fiduciary on a the
 2371 ~~trust's or estate's~~ share of an entity's taxable income in an
 2372 accounting period must ~~shall~~ be paid from ~~proportionately~~:

2373 (a) ~~From~~ Income and principal proportionately to the
 2374 allocation between income and principal of ~~to the extent~~
 2375 receipts from the entity in the period ~~are allocated to~~ income.

2376 (b) ~~From principal to the extent receipts from the entity~~
 2377 ~~are allocated to principal.~~

2378 ~~(c) From Principal to the extent that the tax exceeds the~~
 2379 ~~income taxes payable by the trust or estate exceed the total~~
 2380 ~~receipts from the entity in the period.~~

2381 (4) After applying subsections (1), (2), and (3), a
 2382 fiduciary shall adjust income or principal receipts, to the
 2383 extent the taxes that the fiduciary pays are reduced because of
 2384 a deduction for a payment made to a beneficiary.

2385 (5) Subject to the limitations and excluded assets
 2386 provided under s. 736.08145, a reimbursement of state or federal
 2387 income tax elected to be made by a fiduciary pursuant to s.
 2388 736.08145 must be allocated and paid under paragraphs (3)(a) and
 2389 ~~(b) After applying subsections (1)-(3), the fiduciary shall~~
 2390 ~~adjust income or principal receipts to the extent that the~~
 2391 ~~trust's or estate's income taxes are reduced, but not~~
 2392 ~~eliminated, because the trust or estate receives a deduction for~~
 2393 ~~payments made to a beneficiary. The amount distributable to that~~
 2394 ~~beneficiary as income as a result of this adjustment shall be~~
 2395 ~~equal to the cash received by the trust or estate, reduced, but~~
 2396 ~~not below zero, by the entity's taxable income allocable to the~~
 2397 ~~trust or estate multiplied by the trust's or estate's income tax~~
 2398 ~~rate. The reduced amount shall be divided by the difference~~
 2399 ~~between 1 and the trust's or estate's income tax rate in order~~
 2400 ~~to determine the amount distributable to that beneficiary as~~

2401 ~~income before giving effect to other receipts or disbursements~~
 2402 ~~allocable to that beneficiary's interest.~~

2403 Section 42. Section 738.706, Florida Statutes, is
 2404 transferred, renumbered as section 738.507, Florida Statutes,
 2405 and amended to read:

2406 738.507 ~~738.706~~ Adjustment ~~Adjustments~~ between principal
 2407 and income because of taxes.—

2408 (1) A fiduciary may make an adjustment ~~adjustments~~ between
 2409 ~~principal and income~~ and principal to offset the shifting of
 2410 economic interests or tax benefits between current income
 2411 beneficiaries and successor ~~remainder~~ beneficiaries which arises
 2412 ~~arise~~ from:

2413 (a) An election or decision ~~Elections and decisions, other~~
 2414 ~~than those described in paragraph (b), that~~ the fiduciary makes
 2415 ~~from time to time~~ regarding a tax matter, other than a decision
 2416 to claim an income tax deduction to which subsection (2) applies
 2417 ~~matters;~~

2418 (b) An income tax or ~~any~~ other tax ~~that is imposed on~~ upon
 2419 the fiduciary or a beneficiary as a result of a transaction
 2420 involving the fiduciary or a distribution by ~~from~~ the fiduciary
 2421 ~~estate or trust; or~~

2422 (c) ~~The~~ Ownership by the fiduciary ~~an estate or trust~~ of
 2423 an interest in an entity a part of whose taxable income,
 2424 regardless of whether ~~or not~~ distributed, is includable in the
 2425 taxable income of the fiduciary ~~estate, trust,~~ or a beneficiary;

2426 or
 2427 (d) An election or decision a fiduciary makes to reimburse
 2428 any tax under s. 736.08145.

2429 (2) If the amount of an estate tax marital ~~deduction~~ or
 2430 charitable ~~contribution~~ deduction is reduced because a fiduciary
 2431 deducts an amount paid from principal for income tax purposes
 2432 instead of deducting it ~~such amount~~ for estate tax purposes,
 2433 and, as a result, estate taxes paid from principal are increased
 2434 and income taxes paid by a fiduciary or a ~~an estate, trust, or~~
 2435 beneficiary are decreased, the fiduciary shall charge each
 2436 ~~estate, trust, or~~ beneficiary that benefits from the decrease in
 2437 income tax to ~~shall~~ reimburse the principal from which the
 2438 increase in estate tax is paid. The total reimbursement must
 2439 ~~shall~~ equal the increase in the estate tax, to the extent that
 2440 the principal used to pay the increase would have qualified for
 2441 a marital ~~deduction~~ or charitable ~~contribution~~ deduction but for
 2442 the payment. The ~~proportionate~~ share of the reimbursement for
 2443 each fiduciary estate, trust, or beneficiary whose income taxes
 2444 are reduced must ~~shall~~ be the same as its ~~such estate's,~~
 2445 ~~trust's, or beneficiary's~~ ~~proportionate~~ share of the total
 2446 decrease in income tax. ~~An estate or trust shall reimburse~~
 2447 ~~principal from income.~~

2448 (3) A fiduciary that charges a beneficiary under
 2449 subsection (2) may offset the charge by obtaining payment from
 2450 the beneficiary, withholding an amount from future distributions

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2451 to the beneficiary, or adopting another method or combination of
2452 methods.

2453 Section 43. Section 738.508, Florida Statutes, is created
2454 to read:

2455 738.508 Apportionment of property expenses between tenant
2456 and remainderman.—

2457 (1) For purposes of this section, the term:

2458 (a) "Remainderman" means the holder of the remainder
2459 interests after the expiration of a tenant's estate in property.

2460 (b) "Tenant" means the holder of an estate for life or
2461 term of years in real property or personal property, or both.

2462 (2) If a trust has not been created, expenses shall be
2463 apportioned between the tenant and remainderman as follows:

2464 (a) The following expenses are allocated to and shall be
2465 paid by the tenant:

2466 1. All ordinary expenses incurred in connection with the
2467 administration, management, or preservation of the property,
2468 including interest, ordinary repairs, regularly recurring taxes
2469 assessed against the property, and expenses of a proceeding or
2470 other matter that concerns primarily the tenant's estate or use
2471 of the property.

2472 2. Recurring premiums on insurance covering the loss of
2473 the property or the loss of income from or use of the property.

2474 3. Any of the expenses described in subparagraph (b) 3.
2475 which are attributable to the use of the property by the tenant.

2476 (b) The following expenses are allocated to and shall be
2477 paid by the remainderman:

2478 1. Payments on the principal of a debt secured by the
2479 property, except to the extent that the debt is for expenses
2480 allocated to the tenant.

2481 2. Expenses of a proceeding or other matter that concerns
2482 primarily the title to the property, other than title to the
2483 tenant's estate.

2484 3. Except as provided in subparagraph (a)3., expenses
2485 related to environmental matters, including reclamation,
2486 assessing environmental conditions, remedying and removing
2487 environmental contamination, monitoring remedial activities and
2488 the release of substances, preventing future releases of
2489 substances, collecting amounts from persons liable or
2490 potentially liable for the costs of such activities, penalties
2491 imposed under environmental laws or regulations and other
2492 payments made to comply with those laws or regulations,
2493 statutory or common law claims by third parties, and defending
2494 claims based on environmental matters.

2495 4. Extraordinary repairs.

2496 (c) If the tenant or remainderman incurred an expense for
2497 the benefit of his or her own estate without consent or
2498 agreement of the other, he or she must pay such expense in full.

2499 (d) Except as provided in paragraph (c), the cost of, or
2500 special taxes or assessments for, an improvement representing an

2501 addition of value to property forming part of the principal
 2502 shall be paid by the tenant if the improvement is not reasonably
 2503 expected to outlast the estate of the tenant. In all other
 2504 cases, only a part shall be paid by the tenant while the
 2505 remainder shall be paid by the remainderman. The part payable by
 2506 the tenant is ascertainable by taking that percentage of the
 2507 total that is found by dividing the present value of the
 2508 tenant's estate by the present value of an estate of the same
 2509 form as that of the tenant, except that it is limited for a
 2510 period corresponding to the reasonably expected duration of the
 2511 improvement. The computation of present values of the estates
 2512 shall be made by using the rate determined under s. 7520(a)(2)
 2513 of the Internal Revenue Code then in effect and, in the case of
 2514 an estate for life, the official mortality tables then in effect
 2515 under s. 7520 of the Internal Revenue Code. Other evidence of
 2516 duration or expectancy may not be considered.

2517 (3) This section does not apply to the extent that it is
 2518 inconsistent with the instrument creating the estates, the
 2519 agreement of the parties, or the specific direction of the
 2520 Internal Revenue Code taxing or other applicable law.

2521 (4) The common law applicable to tenants and remaindermen
 2522 supplements this section, except as modified by this section or
 2523 other laws.

2524 Section 44. Section 738.601, Florida Statutes, is amended
 2525 to read:

2526 (Substantial rewording of section. See
2527 s. 738.601, F.S., for present text.)
2528 738.601 Determination and distribution of net income.—
2529 (1) This section applies when:
2530 (a) The death of an individual results in the creation of
2531 an estate or trust; or
2532 (b) An income interest in a trust terminates, whether the
2533 trust continues or is distributed.
2534 (2) A fiduciary of an estate or trust with an income
2535 interest that terminates shall determine, under subsection (6)
2536 and ss. 738.401-738.508 and 738.701-738.703, the amount of net
2537 income and net principal receipts received from property
2538 specifically given to a beneficiary. The fiduciary shall
2539 distribute the net income and net principal receipts to the
2540 beneficiary who is to receive the specific property.
2541 (3) A fiduciary shall determine the income and net income
2542 of an estate or income interest in a trust which terminates,
2543 other than the amount of net income determined under subsection
2544 (2), under ss. 738.401-738.508 and 738.701-738.703, and by:
2545 (a) Including in net income all income from property used
2546 or sold to discharge liabilities.
2547 (b) Paying from income or principal, in the fiduciary's
2548 discretion, fees of attorneys, accountants, and fiduciaries;
2549 court costs and other expenses of administration; and interest
2550 on estate and inheritance taxes and other taxes imposed because

2551 of the decedent's death, but the fiduciary may pay the expenses
 2552 from income of property passing to a trust for which the
 2553 fiduciary claims an estate tax marital or charitable deduction
 2554 under the Internal Revenue Code or comparable law of any state
 2555 only to the extent that:

2556 1. The payment of the those expenses from income will not
 2557 cause the reduction or loss of the deduction; or

2558 2. The fiduciary makes an adjustment under s. 738.507(2);
 2559 and

2560 (c) Paying from principal other disbursements made or
 2561 incurred in connection with the settlement of the estate or the
 2562 winding up of an income interest that terminates, including:

2563 1. To the extent authorized by the decedent's will, the
 2564 terms of the trust, or applicable law, debts, funeral expenses,
 2565 disposition of remains, family allowances, estate and
 2566 inheritance taxes, and other taxes imposed because of the
 2567 decedent's death; and

2568 2. Related penalties apportioned by the decedent's will,
 2569 the terms of the trust, or applicable law to the estate or
 2570 income interest that terminates.

2571 (4) If a decedent's will or the terms of a trust provide
 2572 for the payment of interest or the equivalent of interest to a
 2573 beneficiary who receives a pecuniary amount outright, the
 2574 fiduciary shall make the payment from net income determined
 2575 under subsection (3) or from principal to the extent that net

2576 income is insufficient.

2577 (5) A fiduciary shall distribute net income remaining
2578 after payments required by subsection (4) in the manner
2579 described in s. 738.602 to all other beneficiaries, including a
2580 beneficiary who receives a pecuniary amount in trust, even if
2581 the beneficiary holds an unqualified power to withdraw assets
2582 from the trust or other presently exercisable general power of
2583 appointment over the trust.

2584 (6) A fiduciary may not reduce principal or income
2585 receipts from property described in subsection (2) because of a
2586 payment described in s. 738.501 or s. 738.502 to the extent that
2587 the decedent's will, the terms of the trust, or applicable law
2588 requires the fiduciary to make the payment from assets other
2589 than the property or that the fiduciary recovers or expects to
2590 recover the payment from a third party. The net income and
2591 principal receipts from the property must be determined by
2592 including the amount the fiduciary receives or pays regarding
2593 the property, whether the amount accrued or became due before,
2594 on, or after the date of the decedent's death or an income
2595 interest's terminating event, and making a reasonable provision
2596 for an amount the estate or income interest may become obligated
2597 to pay after the property is distributed.

2598 Section 45. Section 738.602, Florida Statutes, is amended
2599 to read:

2600 (Substantial rewording of section. See

2601 s. 738.602, F.S., for present text.)
 2602 738.602 Distribution to successor beneficiary.—
 2603 (1) Except to the extent that ss. 738.301-738.310 apply
 2604 for a beneficiary that is a trust, each beneficiary described in
 2605 s. 738.601(5) is entitled to receive a share of the net income
 2606 equal to the beneficiary's fractional interest in undistributed
 2607 principal assets, using carrying values as of the distribution
 2608 date. If a fiduciary makes more than one distribution of assets
 2609 to beneficiaries to which this section applies, each
 2610 beneficiary, including a beneficiary who does not receive part
 2611 of the distribution, is entitled, as of each distribution date,
 2612 to a share of the net income the fiduciary received after the
 2613 decedent's death, an income interest's other terminating event,
 2614 or the preceding distribution by the fiduciary.
 2615 (2) In determining a beneficiary's share of net income
 2616 under subsection (1), the following rules apply:
 2617 (a) The beneficiary is entitled to receive a share of the
 2618 net income equal to the beneficiary's fractional interest in the
 2619 undistributed principal assets immediately before the
 2620 distribution date.
 2621 (b) The beneficiary's fractional interest under paragraph
 2622 (a) must be calculated:
 2623 1. On the aggregate carrying value of the assets as of the
 2624 distribution date; and
 2625 2. Reduced by:

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- 2626 a. Any liabilities of the estate or trust;
2627 b. Property specifically given to a beneficiary under the
2628 decedent's will or the terms of the trust; and
2629 c. Property required to pay pecuniary amounts not in
2630 trust.
- 2631 (c) If a disproportionate distribution of principal is
2632 made to any beneficiary, the respective fractional interests of
2633 all beneficiaries in the undistributed principal assets must be
2634 recomputed by:
- 2635 1. Adjusting the carrying value of the principal assets to
2636 their fair market value before the distribution;
2637 2. Reducing the fractional interest of the recipient of
2638 the disproportionate distribution in the remaining principal
2639 assets by the fair market value of the principal distribution;
2640 and
- 2641 3. Recomputing the fractional interests of all
2642 beneficiaries in the remaining principal assets based upon the
2643 now restated carrying values.
- 2644 (d) The distribution date under paragraph (a) may be the
2645 date as of which the fiduciary calculates the value of the
2646 assets if that date is reasonably near the date on which the
2647 assets are distributed. All distributions to a beneficiary must
2648 be valued based on the assets' fair market value on the date of
2649 the distribution.
- 2650 (3) To the extent that a fiduciary does not distribute

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2651 under this section all the collected but undistributed net
2652 income to each beneficiary as of a distribution date, the
2653 fiduciary shall maintain records showing the interest of each
2654 beneficiary in the net income.

2655 (4) If this section applies to income from an asset, a
2656 fiduciary may apply the requirements in this section to net gain
2657 or loss realized from the disposition of the asset after the
2658 decedent's date of death, an income interest's terminating
2659 event, or the preceding distribution by the fiduciary.

2660 (5) The carrying value or fair market value of trust
2661 assets shall be determined on an asset-by-asset basis and is
2662 conclusive if reasonable and determined in good faith.
2663 Determinations of fair market value based on appraisals
2664 performed within 2 years before or after the valuation date are
2665 presumed reasonable. The values of trust assets are conclusively
2666 presumed to be reasonable and determined in good faith unless
2667 proven otherwise in a proceeding commenced by or on behalf of a
2668 person interested in the trust within the time provided in s.
2669 736.1008.

2670 Section 46. Section 738.701, Florida Statutes, is amended
2671 to read:

2672 (Substantial rewording of section. See
2673 s. 738.701, F.S., for present text.)

2674 738.701 When right to income begins and ends.—

2675 (1) An income beneficiary is entitled to net income in

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2676 accordance with the terms of the trust from the date an income
2677 interest begins. The income interest begins on the date
2678 specified in the terms of the trust or, if no date is specified,
2679 on the date an asset becomes subject to:

2680 (a) The trust for the current income beneficiary; or

2681 (b) A successive interest for a successor beneficiary.

2682 (2) An asset becomes subject to a trust under paragraph

2683 (1) (a):

2684 (a) For an asset that is transferred to the trust during
2685 the settlor's life, on the date the asset is transferred;

2686 (b) For an asset that becomes subject to the trust because
2687 of a decedent's death, on the date of the decedent's death, even
2688 if there is an intervening period of administration of the
2689 decedent's estate; or

2690 (c) For an asset that is transferred to a fiduciary by a
2691 third party because of a decedent's death, on the date of the
2692 decedent's death.

2693 (3) An asset becomes subject to a successive interest
2694 under paragraph (1) (b) on the day after the preceding income
2695 interest ends, as determined under subsection (4), even if there
2696 is an intervening period of administration to wind up the
2697 preceding income interest.

2698 (4) An income interest ends on the day before an income
2699 beneficiary dies or another terminating event occurs, or on the
2700 last day of a period during which there is no beneficiary to

2701 which a fiduciary may or must distribute income.

2702 Section 47. Section 738.702, Florida Statutes, is amended
2703 to read:

2704 (Substantial rewording of section. See
2705 s. 738.702, F.S., for present text.)

2706 738.702 Apportionment of receipts and disbursements when
2707 decedent dies or income interest begins.—

2708 (1) A fiduciary shall allocate an income receipt or
2709 disbursement, other than a receipt to which s. 738.601(2)
2710 applies, to principal if its due date occurs before the date on
2711 which:

2712 (a) For an estate, the decedent died; or

2713 (b) For a trust or successive interest, an income interest
2714 begins.

2715 (2) If the due date of a periodic income receipt or
2716 disbursement occurs on or after the date on which a decedent
2717 died or an income interest begins, a fiduciary must allocate the
2718 receipt or disbursement to income.

2719 (3) If an income receipt or disbursement is not periodic
2720 or has no due date, a fiduciary must treat the receipt or
2721 disbursement under this section as accruing from day to day. The
2722 fiduciary shall allocate to principal the portion of the receipt
2723 or disbursement accruing before the date on which a decedent
2724 died or an income interest begins, and shall allocate to income
2725 the balance.

2726 (4) A receipt or disbursement is periodic under
 2727 subsections (2) and (3) if:
 2728 (a) The receipt or disbursement must be paid at regular
 2729 intervals under an obligation to make payments; or
 2730 (b) The payor customarily makes payments at regular
 2731 intervals.
 2732 (5) An item of income or an obligation is due under this
 2733 section on the date the payor is required to make a payment. If
 2734 a payment date is not stated, there is no due date.
 2735 (6) Distributions to shareholders or other owners from an
 2736 entity to which s. 738.401 applies are due:
 2737 (a) On the date fixed by or on behalf of the entity for
 2738 determining the persons entitled to receive the distribution;
 2739 (b) If no date is fixed, on the date of the decision by or
 2740 on behalf of the entity to make the distribution; or
 2741 (c) If no date is fixed and the fiduciary does not know
 2742 the date of the decision by or on behalf of the entity to make
 2743 the distribution, on the date the fiduciary learns of the
 2744 decision.
 2745 (7) Section 733.817 controls over any provision of this
 2746 chapter to the contrary.
 2747 Section 48. Section 738.703, Florida Statutes, is amended
 2748 to read:
 2749 (Substantial rewording of section. See
 2750 s. 738.703, F.S., for present text.)

2751 738.703 Apportionment when income interest ends.—

2752 (1) As used in this section, the term "undistributed
2753 income" means net income received on or before the date on which
2754 an income interest ends. The term does not include an item of
2755 income or expense which is due or accrued or net income that has
2756 been added or is required to be added to principal under the
2757 terms of the trust.

2758 (2) Except as otherwise provided in subsection (3), when a
2759 mandatory income interest of a beneficiary ends, the fiduciary
2760 shall pay the beneficiary's share of the undistributed income
2761 that is not disposed of under the terms of the trust to the
2762 beneficiary or, if the beneficiary does not survive the date the
2763 interest ends, to the beneficiary's estate.

2764 (3) If a beneficiary has an unqualified power to withdraw
2765 more than 5 percent of the value of a trust immediately before
2766 an income interest ends:

2767 (a) The fiduciary shall allocate to principal the
2768 undistributed income from the portion of the trust which may be
2769 withdrawn; and

2770 (b) Subsection (2) applies only to the balance of the
2771 undistributed income.

2772 (4) When a fiduciary's obligation to pay a fixed annuity
2773 or a fixed fraction of the value of assets ends, the fiduciary
2774 shall prorate the final payment as required to preserve income
2775 tax, gift tax, estate tax, or other tax benefits.

2776 Section 49. Section 738.801, Florida Statutes, is amended
 2777 to read:

2778 (Substantial rewording of section. See
 2779 s. 738.801, F.S., for present text.)

2780 738.801 Uniformity of application and construction.—In
 2781 applying and construing this act, consideration shall be given
 2782 to the need to promote uniformity of the law with respect to its
 2783 subject matter among states that enact it.

2784 Section 50. Section 738.802, Florida Statutes, is amended
 2785 to read:

2786 (Substantial rewording of section. See
 2787 s. 738.802, F.S., for present text.)

2788 738.802 Relation to Electronic Signatures in Global and
 2789 National Commerce Act.—This chapter modifies, limits, or
 2790 supersedes the Electronic Signatures in Global and National
 2791 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,
 2792 limit, or supersede section 101(c) of that act, 15 U.S.C. s.
 2793 7001(c), or authorize electronic delivery of any of the notices
 2794 described in s. 103(b) of that act, 15 U.S.C. s. 7003(b). This
 2795 chapter does not modify, limit, or supersede s. 117.285.

2796 Section 51. Section 738.803, Florida Statutes, is amended
 2797 to read:

2798 738.803 Severability.—If any provision of this chapter or
 2799 its application to any person or circumstance is held invalid,
 2800 the invalidity does ~~shall~~ not affect other provisions or

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2801 applications of this chapter which can be given effect without
2802 the invalid provision or application, and to this end the
2803 provisions of this chapter are severable.

2804 Section 52. Section 738.804, Florida Statutes, is amended
2805 to read:

2806 738.804 Application.—Except as provided in the terms of
2807 the trust ~~instrument, the will,~~ or this chapter, this chapter
2808 shall apply to any receipt or expense received or incurred and
2809 any disbursement made after January 1, 2025 ~~January 1, 2003,~~ by
2810 any trust or ~~decedent's~~ estate, whether established before or
2811 after January 1, 2025 ~~January 1, 2003,~~ and whether the asset
2812 involved was acquired by the trustee or personal representative
2813 before or after January 1, 2025 ~~January 1, 2003.~~ Receipts or
2814 expenses received or incurred and disbursements made before
2815 January 1, 2025, ~~must January 1, 2003,~~ shall be governed by the
2816 law of this state in effect at the time of the event, except as
2817 otherwise expressly provided in the ~~will or~~ terms of the trust
2818 or in this chapter.

2819 Section 53. This act shall take effect January 1, 2025.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Caruso offered the following:

Amendment

Remove lines 346-2344 and insert:

6 733.707(3), after the settlor's ~~grantor's~~ death, the assets are
 7 considered received as of the date of the settlor's death. If
 8 there is a change in fiduciaries, a majority of the continuing
 9 fiduciaries may elect to adjust the carrying values to reflect
 10 the fair market value of the assets at the beginning of their
 11 administration. If such election is made, it must be reflected
 12 on the first accounting filed after the election. For assets
 13 acquired during the administration of the estate or trust, the
 14 carrying value is equal to the acquisition costs of the asset.
 15 Carrying value of assets should not be arbitrarily "written up"
 16 or "written down." In some circumstances, including, but not

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17 limited to, those described in ss. 738.410 and 738.602, carrying
18 value may be adjusted with proper disclosure to reflect changes
19 in carrying value applied in a consistent manner.

20 (5) "Court" means a circuit court of this state.

21 (6) "Current income beneficiary" means a beneficiary to
22 which a fiduciary may or must distribute net income, regardless
23 of whether the fiduciary also distributes principal to the
24 beneficiary.

25 (7) "Distribution" means a payment or transfer by a
26 fiduciary to a beneficiary in the beneficiary's capacity as a
27 beneficiary, without consideration other than the beneficiary's
28 right to receive the payment or transfer under the terms of the
29 trust as defined in this section, will, life estate, or term
30 interest. "Distribute," "distributed," and "distributee" have
31 corresponding meanings.

32 (8) "Estate" means a decedent's estate, including the
33 property of the decedent as the estate is originally constituted
34 and the property of the estate as it exists at any time during
35 administration.

36 (9)-(4) "Fiduciary" ~~includes~~ means a trustee, a trust
37 director as defined in s. 736.0103, or a personal
38 representative, and a person acting under a delegation from a
39 fiduciary ~~or a trustee~~. The term also includes a person that
40 holds property for a successor beneficiary whose interest may be
41 affected by an allocation of receipts and expenditures between

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42 income and principal. If there are two or more cofiduciaries,
43 the term includes all cofiduciaries acting under the terms of
44 the trust and applicable law an executor, administrator,
45 successor personal representative, special administrator, or a
46 person performing substantially the same function.

47 ~~(10)-(5)~~ "Income" means money or other property ~~that~~ a
48 fiduciary receives as current return from a principal asset. The
49 term includes a part ~~portion~~ of receipts from a sale, exchange,
50 or liquidation of a principal asset, to the extent provided in
51 ss. 738.401-738.416 ~~ss. 738.401-738.403 and s. 738.503.~~

52 ~~(6)~~ "Income beneficiary" ~~means a person to whom net income~~
53 ~~of a trust is or may be payable.~~

54 ~~(11)-(7)~~ "Income interest" means the right of a current ~~an~~
55 income beneficiary to receive all or part of net income, whether
56 the terms of the trust require the net income to be distributed
57 or authorize the net income to be distributed in the fiduciary's
58 ~~trustee's~~ discretion. The term includes the right of a current
59 beneficiary to use property held by a fiduciary.

60 (12) "Independent person" means a person who is not:

61 (a) For a trust:

62 1. A qualified beneficiary as defined in s. 736.0103;

63 2. A settlor of the trust;

64 3. An individual whose legal obligation to support a
65 beneficiary may be satisfied by a distribution from the trust;
66 or

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67 4. Any trustee whom an interested distributee has the
68 power to remove and replace with a related or subordinate party.

69 (b) For an estate, a beneficiary;

70 (c) A spouse, a parent, a brother, a sister, or an issue
71 of an individual described in paragraph (a) or paragraph (b);

72 (d) A corporation, a partnership, a limited liability
73 company, or another entity in which persons described in
74 paragraphs (a), (b), and (c), in the aggregate, have voting
75 control; or

76 (e) An employee of a person described in paragraph (a),
77 paragraph (b), paragraph (c), or paragraph (d).

78 (13) "Internal Revenue Code" means the Internal Revenue
79 Code of 1986, as amended.

80 (14)-(8) "Mandatory income interest" means the right of a
81 current ~~an~~ income beneficiary to receive net income that the
82 terms of the trust require the fiduciary to distribute.

83 (15)-(9) "Net income" means the total allocations ~~receipts~~
84 ~~allocated to income~~ during an accounting period to income under
85 the terms of a trust and this chapter minus the disbursements
86 ~~made from income~~ during the period, other than distributions,
87 allocated to income under the terms of the trust and this
88 chapter. To the extent that the trust is a unitrust under ss.
89 738.301-738.310, the term means the unitrust amount determined
90 under ss. 738.301-738.310. The term includes the amount of an
91 adjustment from principal to income under s. 738.203. The term

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92 does not include the amount of an adjustment ~~plus or minus~~
93 ~~transfers under this chapter to or from income to principal~~
94 ~~under s. 738.203 during the period.~~

95 (16) ~~(10)~~ "Person" means an individual, a business or a
96 nonprofit entity, corporation, business trust, an estate, a
97 trust, partnership, limited liability company, association,
98 joint venture, a public corporation, or any other legal or
99 commercial entity or a government or governmental subdivision,
100 agency, or instrumentality, or other legal entity.

101 (17) "Personal representative" means an executor, an
102 administrator, a successor personal representative, a special
103 administrator, or a person that performs substantially the same
104 function with respect to an estate under the law governing the
105 person's status.

106 (18) ~~(11)~~ "Principal" means property held in trust for
107 distribution to, production of income for, or use by a current
108 or successor a remainder beneficiary when the trust terminates.

109 (19) "Record" means information inscribed on a tangible
110 medium or stored in an electronic or other medium and is
111 retrievable in perceivable form.

112 (20) "Settlor" means a person, including a testator, who
113 creates or contributes property to a trust. If more than one
114 person creates or contributes property to a trust, the term
115 includes each person, to the extent of the trust property
116 attributable to that person's contribution, except to the extent

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117 that another person has the power to revoke or withdraw that
118 portion.

119 (21) "Special tax benefit" means:

120 (a) Exclusion of a transfer to a trust from gifts
121 described in s. 2503(b) of the Internal Revenue Code because of
122 the qualification of an income interest in the trust as a
123 present interest in property;

124 (b) Status as a qualified subchapter S trust described in
125 s. 1361(d)(3) of the Internal Revenue Code at a time the trust
126 holds stock of an S corporation described in s. 1361(a)(1) of
127 the Internal Revenue Code;

128 (c) An estate or gift tax marital deduction for a transfer
129 to a trust under s. 2056 or s. 2523 of the Internal Revenue Code
130 which depends or depended in whole or in part on the right of
131 the settlor's spouse to receive the net income of the trust;

132 (d) Exemption in whole or in part of a trust from the
133 federal generation-skipping transfer tax imposed by s. 2601 of
134 the Internal Revenue Code because the trust was irrevocable on
135 September 25, 1985, if there is any possibility that:

136 1. A taxable distribution as defined in s. 2612(b) of the
137 Internal Revenue Code could be made from the trust; or

138 2. A taxable termination as defined in s. 2612(a) of the
139 Internal Revenue Code could occur with respect to the trust; or

140 (e) An inclusion ratio as defined in s. 2642(a) of the
141 Internal Revenue Code of the trust which is less than one, if

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142 there is any possibility that:

143 1. A taxable distribution as defined in s. 2612(b) of the
144 Internal Revenue Code could be made from the trust; or

145 2. A taxable termination as defined in s. 2612(a) of the
146 Internal Revenue Code could occur with respect to the trust.

147 (22) "Successive interest" means the interest of a
148 successor beneficiary.

149 (23)-(12) "Successor ~~Remainder~~ beneficiary" means a person
150 entitled to receive income or principal or to use property when
151 an income interest or other current interest ends.

152 (24)-(13) "Terms of a trust" means:

153 (a) Except as otherwise provided in paragraph (b), the
154 manifestation of the settlor's intent regarding a trust's
155 provisions as:

156 1. Expressed in the will or trust instrument; or

157 2. Established by other evidence that would be admissible
158 in a judicial proceeding.

159 (b) The trust's provisions as established, determined, or
160 amended by:

161 1. A trustee or trust director in accordance with the
162 applicable law;

163 2. A court order; or

164 3. A nonjudicial settlement agreement under s. 736.0111.

165 (c) For an estate, a will; or

166 (d) For a life estate or term interest, the corresponding

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167 manifestation of the rights of the beneficiaries to the extent
168 provided in s. 738.508 ~~the manifestation of the intent of a~~
169 ~~grantor or decedent with respect to the trust, expressed in a~~
170 ~~manner that admits of its proof in a judicial proceeding,~~
171 ~~whether by written or spoken words or by conduct.~~

172 (25) "Trust" includes an express trust, whether private or
173 charitable, with additions to the trust, wherever and however
174 created; and a trust created or determined by a judgment or
175 decree under which the trust is to be administered in the manner
176 of an express trust. The term does not include a constructive
177 trust; a resulting trust; a conservatorship; a custodial
178 arrangement under the Florida Uniform Transfers to Minors Act; a
179 business trust providing for certificates to be issued to
180 beneficiaries; a common trust fund; a land trust under s.
181 689.071; a trust created by the form of the account or by the
182 deposit agreement at a financial institution; a voting trust; a
183 security arrangement; a liquidation trust; a trust for the
184 primary purpose of paying debts, dividends, interest, salaries,
185 wages, profits, pensions, retirement benefits, or employee
186 benefits of any kind; or an arrangement under which a person is
187 a nominee, an escrowee, or an agent for another.

188 (26)-(14) "Trustee" means a person, other than a personal
189 representative, that owns or holds property for the benefit of a
190 beneficiary. The term includes an original, additional, or
191 successor trustee, regardless of whether they are ~~or not~~

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192 appointed or confirmed by a court.

193 (27) "Will" means any testamentary instrument recognized
194 under applicable law which makes a legally effective disposition
195 of an individual's property, effective at the individual's
196 death. The term includes a codicil or other amendment to a
197 testamentary instrument.

198 Section 3. Section 738.103, Florida Statutes, is amended
199 to read:

200 (Substantial rewording of section. See
201 s. 738.103, F.S., for present text.)

202 738.103 Scope.—Except as otherwise provided in the terms
203 of a trust or this chapter, this chapter applies to all of the
204 following:

205 (1) A trust or an estate.

206 (2) A life estate or other term interest in which the
207 interest of one or more persons will be succeeded by the
208 interest of one or more other persons to the extent provided in
209 s. 738.508.

210 Section 4. Section 738.104, Florida Statutes, is amended
211 to read:

212 (Substantial rewording of section. See
213 s. 738.104, F.S., for present text.)

214 738.104 Governing law.—Except as otherwise provided in the
215 terms of a trust or this chapter, this chapter applies when this
216 state is the principal place of administration of a trust or

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217 estate or the situs of property that is not held in a trust or
218 estate and is subject to a life estate or other term interest
219 described in s. 738.103(2). By accepting the trusteeship of a
220 trust having its principal place of administration in this state
221 or by moving the principal place of administration of a trust to
222 this state, the trustee submits to the application of this
223 chapter to any matter within the scope of this chapter involving
224 the trust.

225 Section 5. Section 738.1041, Florida Statutes, is
226 repealed.

227 Section 6. Section 738.105, Florida Statutes, is repealed.

228 Section 7. Section 738.201, Florida Statutes, is amended
229 to read:

230 (Substantial rewording of section. See

231 s. 738.201, F.S., for present text.)

232 738.201 Fiduciary duties; general principles.-

233 (1) In making an allocation or determination or exercising
234 discretion under this chapter, a fiduciary shall do all of the
235 following:

236 (a) Act in good faith, based on what is a fair and
237 reasonable fee to all beneficiaries;

238 (b) Administer a trust or estate impartially, except to
239 the extent that the terms of the trust manifest an intent that
240 the fiduciary favors one or more beneficiaries;

241 (c) Administer the trust or estate in accordance with the

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242 terms of the trust, even if there is a different provision in
243 this chapter.

244 (d) Administer the trust or estate in accordance with this
245 chapter, except to the extent that the terms of the trust
246 provide otherwise or authorize the fiduciary to determine
247 otherwise.

248 (2) A fiduciary's allocation, determination, or exercise
249 of discretion under this chapter is presumed to be fair and
250 reasonable to all beneficiaries. A fiduciary may exercise a
251 discretionary power of administration given to the fiduciary by
252 the terms of the trust, and an exercise of the power that
253 produces a result different from a result required or permitted
254 by this chapter does not create an inference that the fiduciary
255 abused the fiduciary's discretion.

256 (3) A fiduciary shall:

257 (a) Add a receipt to principal, to the extent that the
258 terms of the trust and this chapter do not allocate the receipt
259 between income and principal;

260 (b) Charge a disbursement to principal, to the extent that
261 the terms of the trust and this chapter do not allocate the
262 disbursement between income and principal; and

263 (c) Within 65 days after the fiscal year ends, add any
264 undistributed income to principal, unless otherwise provided by
265 the terms of the trust.

266 (4) A fiduciary may exercise the power to adjust under s.

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267 738.203(1), convert an income trust to a unitrust under ss.
268 738.301-738.310, change the percentage or method used to
269 calculate a unitrust amount under ss. 738.301-738.310, or
270 convert a unitrust to an income trust under ss. 738.301-738.310
271 if the fiduciary determines the exercise of the power will
272 assist the fiduciary to administer the trust or estate
273 impartially.

274 (5) The fiduciary must consider the following factors in
275 making the determination in subsection (4), including:

276 (a) The terms of the trust.

277 (b) The nature, distribution standards, and expected
278 duration of the trust.

279 (c) The effect of the allocation rules, including specific
280 adjustments between income and principal, under ss. 738.301-
281 738.416.

282 (d) The desirability of liquidity and regularity of
283 income.

284 (e) The desirability of the preservation and appreciation
285 of principal.

286 (f) The extent to which an asset is used or may be used by
287 a beneficiary.

288 (g) The increase or decrease in the value of principal
289 assets, reasonably determined by the fiduciary.

290 (h) Whether and to what extent the terms of the trust give
291 the fiduciary power to accumulate income or invade principal or

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292 prohibit the fiduciary from accumulating income or invading
293 principal.

294 (i) The extent to which the fiduciary has accumulated
295 income or invaded principal in preceding accounting periods.

296 (j) The effect of current and reasonably expected economic
297 conditions.

298 (k) The reasonably expected tax consequences of the
299 exercise of the power.

300 (l) The identities and circumstances of the beneficiaries.

301 (6) Except as provided in ss. 738.301-738.310, this
302 chapter pertains to the administration of a trust and is
303 applicable to any trust that is administered in this state or
304 under its law. This chapter also applies to any estate that is
305 administered in this state unless the provision is limited in
306 application to a trustee, rather than a fiduciary.

307 Section 8. Section 738.202, Florida Statutes, is amended
308 to read:

309 (Substantial rewording of section. See
310 s. 738.202, F.S., for present text.)

311 738.202 Judicial review of exercise of discretionary
312 power; request for instruction.-

313 (1) As used in this section, the term "fiduciary decision"
314 means any of the following:

315 (a) A fiduciary's allocation between income and principal
316 or other determination regarding income and principal required

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317 or authorized by the terms of the trust or this chapter.

318 (b) The fiduciary's exercise or nonexercise of a
319 discretionary power regarding income and principal granted by
320 the terms of the trust or this chapter, including the power to
321 adjust under s. 738.203, convert an income trust to a unitrust
322 under ss. 738.301-738.310, change the percentage or method used
323 to calculate a unitrust amount under ss. 738.301-738.310,
324 convert a unitrust to an income trust under ss. 738.301-738.310,
325 or the method used to make property productive of income under
326 s. 738.413.

327 (c) The fiduciary's implementation of a decision described
328 in paragraph (a) or paragraph (b).

329 (2) The court may not order a fiduciary to change a
330 fiduciary decision unless the court determines that the
331 fiduciary decision was an abuse of the fiduciary's discretion. A
332 court may not determine that a fiduciary abused its discretion
333 merely because the court would have exercised the discretion in
334 a different manner or would not have exercised the discretion.

335 (3) If the court determines that a fiduciary decision was
336 an abuse of the fiduciary's discretion, the court may order a
337 remedy authorized by law, including those prescribed under ss.
338 736.1001 and 736.1002. Following such a determination by the
339 court, the remedy is to place the beneficiaries in the positions
340 the beneficiaries would have occupied if the fiduciary had not
341 abused its discretion, as follows:

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342 (a) The court may order the fiduciary to exercise or
343 refrain from exercising the power to adjust under s. 738.203;

344 (b) The court may order the fiduciary to exercise or
345 refrain from exercising the power to convert an income trust to
346 a unitrust under ss. 738.301-738.310, change the percentage or
347 method used to calculate a unitrust amount under ss. 738.301-
348 738.310, or convert a unitrust to an income trust under ss.
349 738.301-738.310;

350 (c) The court may compel the fiduciary to take any of the
351 actions listed under s. 738.413;

352 (d) To the extent that the abuse of discretion has
353 resulted in no distribution to a beneficiary or a distribution
354 that is too small, the court shall require the fiduciary to
355 distribute from the trust to the beneficiary an amount the court
356 determines will restore the beneficiary, in whole or in part, to
357 his or her appropriate position;

358 (e) To the extent that the abuse of discretion has
359 resulted in a distribution to a beneficiary that is too large,
360 the court shall restore the beneficiaries, the trust, or both,
361 in whole or in part, to their appropriate positions by requiring
362 the fiduciary to withhold an amount from one or more future
363 distributions to the beneficiary who received the distribution
364 that was too large or requiring that beneficiary to return some
365 or all of the distribution to the trust; or

366 (f) To the extent that the court is unable, after applying

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367 paragraphs (a)-(e), to restore the beneficiaries or the trust,
368 or both, to the positions they would have occupied if the
369 fiduciary had not abused its discretion, the court may require
370 the fiduciary to pay an appropriate amount from its own funds to
371 one or more of the beneficiaries or the trust or both.

372 (4) On petition by the fiduciary for instruction, the
373 court may determine whether a proposed fiduciary decision will
374 result in an abuse of the fiduciary's discretion. If the
375 petition describes the proposed decision, contains sufficient
376 information to inform the beneficiary of the reasons for making
377 the proposed decision and the facts on which the fiduciary
378 relies, and explains how the beneficiary will be affected by the
379 proposed decision, a beneficiary who opposes the proposed
380 decision has the burden to establish that it will result in an
381 abuse of the fiduciary's discretion.

382 (5) If an action is instituted alleging an abuse of
383 discretion in the exercise or nonexercise of the fiduciary's
384 discretion under this chapter and the court determines no abuse
385 of discretion has occurred, the fiduciary's costs and attorney
386 fees incurred in defending the action shall be paid from the
387 trust assets.

388 Section 9. Section 738.203, Florida Statutes, is created
389 to read:

390 738.203 Fiduciary's power to adjust.-

391 (1) Except as otherwise provided in the terms of a trust

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392 or this section, a fiduciary, in a record without court
393 approval, may adjust between income and principal if the
394 fiduciary determines that the exercise of the power to adjust
395 will assist the fiduciary in administering the trust or estate
396 impartially.

397 (2) This section does not create a duty to exercise or
398 consider the power to adjust under subsection (1) or to inform a
399 beneficiary about the applicability of this section.

400 (3) A fiduciary that in good faith exercises or fails to
401 exercise the power to adjust under subsection (1) is not liable
402 to a person affected by the exercise or failure to exercise.

403 (4) In deciding whether and to what extent to exercise the
404 power to adjust under subsection (1), a fiduciary shall consider
405 all factors the fiduciary considers relevant, including relevant
406 factors in s. 738.201(5) and the application of ss. 738.401(9),
407 738.408, and 738.413.

408 (5) A fiduciary may not exercise the power under
409 subsection (1) to make an adjustment or under s. 738.408 to make
410 a determination that an allocation is insubstantial if:

411 (a) The adjustment or determination would reduce the
412 amount payable to a current income beneficiary from a trust that
413 qualifies for a special tax benefit, except to the extent that
414 the adjustment is made to provide for a reasonable apportionment
415 of the total return of the trust between the current income
416 beneficiary and successor beneficiaries;

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417 (b) The adjustment or determination would change the
418 amount payable to a beneficiary, as a fixed annuity or a fixed
419 fraction of the value of the trust assets, under the terms of
420 the trust;

421 (c) The adjustment or determination would reduce an amount
422 that is permanently set aside for a charitable purpose under the
423 terms of the trust unless both income and principal are set
424 aside for the charitable purpose;

425 (d) Possessing or exercising the power would cause a
426 person to be treated as the owner of all or part of the trust
427 for federal income tax purposes and the person would not be
428 treated as the owner if the fiduciary did not possess the power
429 to adjust;

430 (e) Possessing or exercising the power would cause all or
431 part of the value of the trust assets to be included in the
432 gross estate of an individual for federal real estate tax
433 purposes and the assets would not be included in the gross
434 estate of the individual if the fiduciary did not possess the
435 power to adjust;

436 (f) Possessing or exercising the power would cause an
437 individual to be treated as making a gift for federal gift tax
438 purposes;

439 (g) The fiduciary is not an independent person;

440 (h) The trust is irrevocable and provides for income to be
441 paid to the settlor, and possessing or exercising the power

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442 would cause the adjusted principal or income to be considered an
443 available resource or available income under a public-benefit
444 program; or

445 (i) The trust is a unitrust under ss. 738.301-738.310.

446 (6) If paragraph (5)(d), paragraph (5)(e), paragraph
447 (5)(f), or paragraph (5)(g) applies to a fiduciary:

448 (a) A cofiduciary to which paragraphs (5)(d)-(g) do not
449 apply may exercise the power to adjust, unless the exercise of
450 the power by the remaining cofiduciary or cofiduciaries is not
451 permitted by the terms of the trust or law other than this
452 chapter; or

453 (b) If there is no cofiduciary to which paragraphs (5)(d)-
454 (g) do not apply, the fiduciary may appoint a cofiduciary to
455 which paragraphs (5)(d)-(g) do not apply which may be a special
456 fiduciary with limited powers, and the appointed cofiduciary may
457 exercise the power to adjust under subsection (1), unless the
458 appointment of a cofiduciary or the exercise of the power by a
459 cofiduciary is not permitted by the terms of the trust or law
460 other than this chapter.

461 (7) A fiduciary may release or delegate to a cofiduciary
462 the power to adjust under subsection (1) if the fiduciary
463 determines that the fiduciary's possession or exercise of the
464 power will or may:

465 (a) Cause a result described in paragraph (5)(a),
466 paragraph (5)(b), paragraph (5)(c), paragraph (5)(d), paragraph

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467 (5) (e), paragraph (5) (f), or paragraph (5) (h); or
468 (b) Deprive the trust of a tax benefit or impose a tax
469 burden not described in paragraph (5) (a), paragraph (5) (b),
470 paragraph (5) (c), paragraph (5) (d), paragraph (5) (e), or
471 paragraph (5) (f).
472 (8) A fiduciary's release or delegation to a cofiduciary
473 under subsection (7) of the power to adjust under subsection
474 (1):
475 (a) Must be in a record;
476 (b) Applies to the entire power, unless the release or
477 delegation provides a limitation, which may be a limitation to
478 the power to adjust:
479 1. From income to principal;
480 2. From principal to income;
481 3. For specified property; or
482 4. In specified circumstances.
483 (c) For a delegation, may be modified by a redelegation
484 under this subsection by the cofiduciary to which the delegation
485 is made; and
486 (d) Subject to paragraph (c), is permanent, unless the
487 release or delegation provides a specified period, including a
488 period measured by the life of an individual or the lives of
489 more than one individual.
490 (9) Terms of a trust that deny or limit the power to
491 adjust between income and principal do not affect the

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492 application of this section, unless the terms of the trust
493 expressly deny or limit the power to adjust under subsection
494 (1).

495 (10) The exercise of the power to adjust under subsection
496 (1) in any accounting period may apply to the current period,
497 the immediately preceding period, and one or more subsequent
498 periods.

499 (11) A description of the exercise of the power to adjust
500 under subsection (1) must be:

501 (a) Included in a report, if any, sent to beneficiaries
502 under s. 736.0813; or

503 (b) Communicated at least annually to the qualified
504 beneficiaries as defined in s. 736.0103 other than the Attorney
505 General.

506 (12) With respect to a trust in existence on January 1,
507 2003:

508 (a) A fiduciary may not have the power to adjust under
509 this section until the statement required in subsection (13) is
510 provided and either no objection is made or any objection which
511 is made has been terminated.

512 1. An objection is made if, within 60 days after the date
513 of the statement required in subsection (13), a super majority
514 of the eligible beneficiaries deliver to the fiduciary a written
515 objection to the application of this section to such trust. An
516 objection shall be deemed to be delivered to the fiduciary on

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517 the date the objection is mailed to the mailing address listed
518 in the notice provided in subsection (13).

519 2. An objection is terminated upon the earlier of the
520 receipt of consent from a super majority of eligible
521 beneficiaries of the class that made the objection, or the
522 resolution of the objection under paragraph (c).

523 (b) An objection or consent under this section may be
524 executed by a legal representative or natural guardian of a
525 beneficiary without the filing of any proceeding or approval of
526 any court.

527 (c) If an objection is delivered to the fiduciary, then
528 the fiduciary may petition the circuit court for an order
529 quashing the objection and vesting in such fiduciary the power
530 to adjust under this section. The burden will be on the
531 objecting beneficiaries to prove that the power to adjust would
532 be inequitable, illegal, or otherwise in contravention of the
533 settlor's intent. The court may award costs and attorney fees
534 relating to the fiduciary's petition in the same manner as in
535 chancery actions. When costs and attorney fees are to be paid
536 out of the trust, the court may, in its discretion, direct from
537 which part of the trust they shall be paid.

538 (d) If no timely objection is made or if the fiduciary is
539 vested with the power to adjust by court order, the fiduciary
540 may thereafter exercise the power to adjust without providing
541 notice of its intent to do so unless, in vesting the fiduciary

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542 with the power to adjust, the court determines that unusual
543 circumstances require otherwise.

544 (e)1. If a fiduciary makes a good faith effort to comply
545 with the notice provisions of subsection (13), but fails to
546 deliver notice to one or more beneficiaries entitled to such
547 notice, neither the validity of the notice required under this
548 subsection nor the fiduciary's power to adjust under this
549 section shall be affected until the fiduciary has actual notice
550 that one or more beneficiaries entitled to notice were not
551 notified. Until the fiduciary has actual notice of the notice
552 deficiency, the fiduciary shall have all of the powers and
553 protections granted a fiduciary with the power to adjust under
554 this chapter.

555 2. When the fiduciary has actual notice that one or more
556 beneficiaries entitled to notice under subsection (13) were not
557 notified, the fiduciary's power to adjust under this section
558 shall cease until all beneficiaries who are entitled to such
559 notice, including those who were previously provided with such
560 notice, are notified and given the opportunity to object as
561 provided for under this subsection.

562 (f) The objection of a super majority of eligible
563 beneficiaries under this subsection shall be valid for a period
564 of 1 year after the date of the notice set forth in subsection
565 (13). Upon expiration of the objection, the fiduciary may
566 thereafter give a new notice under subsection (13).

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567 (g) This section is not intended to create or imply a duty
568 of the fiduciary of a trust existing on January 1, 2003, to seek
569 a power to adjust under this subsection or to give the notice
570 described in subsection (13) if the fiduciary does not desire to
571 have a power to adjust under this section, and no inference of
572 impropriety shall be made as the result of a fiduciary not
573 seeking a power to adjust under this subsection.

574 (13) (a) A fiduciary of a trust in existence on January 1,
575 2003, that is not prohibited under subsection (5) from
576 exercising the power to adjust shall, any time before initially
577 exercising the power, provide to all eligible beneficiaries a
578 statement containing the following:

579 1. The name, telephone number, street address, and mailing
580 address of the fiduciary and of any person who may be contacted
581 for further information;

582 2. A statement that unless a super majority of the
583 eligible beneficiaries objects to the application of this
584 section to the trust within 60 days after the date the statement
585 pursuant to this subsection was served, this section shall apply
586 to the trust; and

587 3. A statement that, if this section applies to the trust,
588 the fiduciary will have the power to adjust between income and
589 principal and that such a power may have an effect on the
590 distributions to such beneficiary from the trust.

591 (b) The statement may contain information regarding a

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592 fiduciary's obligation with respect to the power to adjust
593 between income and principal under this section.

594 (c) The statement shall be served informally, in the
595 manner provided in the Florida Rules of Civil Procedure relating
596 to service of pleadings subsequent to the initial pleading. The
597 statement may be served on a legal representative or natural
598 guardian of a beneficiary without the filing of any proceeding
599 or approval of any court.

600 (14) For purposes of subsections (12) and (13), the term:

601 1. "Eligible beneficiaries" means:

602 a. If at the time the determination is made there are one
603 or more beneficiaries described in s. 736.0103(19) (c), the
604 beneficiaries described in s. 736.0103(19) (a) and (c); or

605 b. If there is no beneficiary described in s.
606 736.0103(19) (c), the beneficiaries described in s.
607 736.0103(19) (a) and (b).

608 2. "Super majority of the eligible beneficiaries" means:

609 a. If at the time the determination is made there are one
610 or more beneficiaries described in s. 736.0103(19) (c), at least
611 two-thirds in interest of the beneficiaries described in s.

612 736.0103(19) (a) or two-thirds in interest of the beneficiaries
613 described in s. 736.0103(19) (c), if the interests of the

614 beneficiaries are reasonably ascertainable; otherwise, it means
615 two-thirds in number of either such class; or

616 b. If there is no beneficiary described in s.

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617 736.0103(19) (c), at least two-thirds in interest of the
618 beneficiaries described in s. 736.0103(19) (a) or two-thirds in
619 interest of the beneficiaries described in s. 736.0103(19) (b),
620 if the interests of the beneficiaries are reasonably
621 ascertainable, otherwise, two-thirds in number of either such
622 class.

623 (15) A trust exists on January 1, 2003, if it is not
624 revocable on January 1, 2003. A trust is revocable if revocable
625 by the settlor alone or in conjunction with any other person. A
626 trust is not revocable for purposes of this section if revocable
627 by the settlor only with the consent of all persons having a
628 beneficial interest in the property.

629 Section 10. Section 738.301, Florida Statutes, is amended
630 to read:

631 (Substantial rewording of section. See
632 s. 738.301, F.S., for present text).

633 738.301 Definitions.—For purposes of this section and ss.
634 738.302–738.310:

635 (1) "Applicable value" means the amount of the net fair
636 market value of a trust taken into account under s. 738.307.

637 (2) "Express unitrust" means a trust for which, under the
638 terms of the trust without regard to this section and ss.
639 738.302–738.310, net income must be calculated as a unitrust
640 amount.

641 (3) "Income trust" means a trust, created by an inter

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642 vivos or testamentary instrument, that directs or permits the
643 trustee to distribute the net income of the trust to one or more
644 persons, in fixed proportions or in amounts or proportions
645 determined by the trustee and regardless of whether the trust
646 directs or permits the trustee to distribute the principal of
647 the trust to one or more such persons.

648 (4) "Net fair market value of a trust" means the fair
649 market value of the assets of the trust, less the reasonably
650 known noncontingent liabilities of the trust.

651 (5) "Unitrust" means a trust for which net income is a
652 unitrust amount. The term includes an express unitrust.

653 (6) "Unitrust amount" means an amount computed by
654 multiplying a determined value of a trust by a determined
655 percentage. For a unitrust administered under a unitrust policy,
656 the term means the applicable value multiplied by the unitrust
657 rate.

658 (7) "Unitrust policy" means a policy described in ss.
659 738.301-738.310 and adopted under s. 738.303.

660 (8) "Unitrust rate" means the rate used to compute the
661 unitrust amount for a unitrust administered under a unitrust
662 policy.

663 Section 11. Section 738.302, Florida Statutes, is amended
664 to read:

665 (Substantial rewording of section. See
666 s. 738.302, F.S., for present text.)

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667 738.302 Applications; duties and remedies.—
668 (1) Except as otherwise provided in subsection (2), ss.
669 738.301-738.310 apply to all of the following:
670 (a) An income trust, unless the terms of the trust
671 expressly prohibit the use of ss. 738.301-738.310 by a specific
672 reference to this paragraph or corresponding provision of prior
673 law, or an explicit expression of intent that net income not be
674 calculated as a unitrust amount.
675 (b) An express unitrust, except to the extent that the
676 terms of the trust explicitly:
677 1. Prohibit the use of ss. 738.301-738.310 by a specific
678 reference to this paragraph or corresponding provision of prior
679 law;
680 2. Prohibit conversion to an income trust; or
681 3. Limit changes to the method of calculating the unitrust
682 amount.
683 (c) A unitrust that had been converted from an income
684 trust.
685 (2) The provisions of ss. 738.301-738.310 do not apply to
686 a trust described in s. 170(f)(2)(B), s. 642(c)(5), s. 664(d),
687 s. 2702(a)(3)(A)(ii) or (iii), or s. 2702(b) of the Internal
688 Revenue Code.
689 (3) An income trust to which ss. 738.301-738.310 apply
690 under paragraph (1)(a) may be converted to a unitrust under ss.
691 738.301-738.310 regardless of the terms of the trust concerning

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692 distributions. Conversion to a unitrust under ss. 738.301-
693 738.310 does not affect other terms of the trust concerning
694 distributions of income or principal.

695 (4) Sections 738.301-738.310 apply to an estate only to
696 the extent that a trust is a beneficiary of the estate. To the
697 extent of the trust's interest in the estate, the estate may be
698 administered as a unitrust, the administration of the estate as
699 a unitrust may be discontinued, or the percentage or method used
700 to calculate the unitrust amount may be changed, in the same
701 manner as for a trust under those sections.

702 (5) The provisions of ss. 738.301-738.310 do not create a
703 duty to take or consider action under ss. 738.301-738.310 or to
704 inform a beneficiary about the applicability of ss. 738.301-
705 738.310.

706 (6) A fiduciary that in good faith takes or fails to take
707 an action under ss. 738.301-738.310 is not liable to a person
708 affected by the action or inaction.

709 Section 12. Section 738.303, Florida Statutes, is amended
710 to read:

711 (Substantial rewording of section. See
712 s. 738.303, F.S., for present text.)

713 738.303 Authority of fiduciary.-

714 (1) By complying with subsections (2) and (6), and without
715 court approval, a fiduciary may do any of the following:

716 (a) Convert an income trust to a unitrust if the fiduciary

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717 adopts in a record a unitrust policy for the trust which
718 provides:

719 1. That in administering the trust, the net income of the
720 trust will be a unitrust amount rather than net income
721 determined without regard to ss. 738.301-738.310; and

722 2. The percentage and method used to calculate the
723 unitrust amount.

724 (b) Change the percentage or method used to calculate a
725 unitrust amount for a unitrust if the fiduciary adopts in a
726 record a unitrust policy or an amendment or replacement of a
727 unitrust policy providing charges in the percentage or method
728 used to calculate the unitrust amount.

729 (c) Convert a unitrust to an income trust if the fiduciary
730 adopts in a record a determination that, in administering the
731 trust, the net income of the trust will be net income determined
732 without regard to ss. 738.301-738.310 rather than a unitrust
733 amount.

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

736 (a) The fiduciary determines that the action will assist
737 the fiduciary to administer a trust impartially.

738 (b) The fiduciary sends a notice in a record to the
739 qualified beneficiaries determined under ss. 736.0103 and
740 736.0110 in the manner required by s. 738.304, describing and
741 proposing to take the action.

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742 (c) The fiduciary sends a copy of the notice under
743 paragraph (b) to each settlor of the trust which is:

- 744 1. If an individual, living; or
745 2. If not an individual, in existence.

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

- 750 1. If an individual, legally competent;
751 2. If not an individual, in existence; or
752 3. Represented in the manner provided in s. 738.304(2).

753 (e) The fiduciary does not receive, by the date specified
754 in the notice under s. 738.304(4) (e), an objection in a record
755 to the action proposed under paragraph (b) from a person to
756 which the notice under paragraph (b) is sent.

757 (3) If a fiduciary receives, not later than the date
758 stated in the notice under s. 738.304(4) (e), an objection in a
759 record described in s. 738.304(4) (d) to a proposed action, the
760 fiduciary or a beneficiary may request the court to have the
761 action taken as proposed, taken with modifications, or
762 prevented. A person described in s. 738.304(1) may oppose the
763 proposed action in the proceeding under this subsection
764 regardless of whether the person:

- 765 (a) Consented under s. 738.304(3); or
766 (b) Objected under s. 738.304(4) (d).

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767 (4) If, after sending a notice under paragraph (2)(b), a
768 fiduciary decides not to take the action proposed in the notice,
769 the fiduciary must notify in a record each person described in
770 s. 738.304(1) of the decision not to take the action and the
771 reasons for the decision.

772 (5) If a beneficiary requests in a record that a fiduciary
773 take an action described in subsection (1) and the fiduciary
774 declines to act or does not act within 60 days after receiving
775 the request, the beneficiary may request the court to direct the
776 fiduciary to take the action requested.

777 (6) In deciding whether and how to take an action
778 authorized in subsection (1), or whether and how to respond to a
779 request by a beneficiary under subsection (5), a fiduciary must
780 consider all factors relevant to the trust and beneficiaries,
781 including the relevant factors listed in s. 738.201(5).

782 (7) A fiduciary may release or delegate the power to
783 convert an income trust to a unitrust under paragraph (1)(a),
784 change the percentage or method used to calculate a unitrust
785 amount under paragraph (1)(b), or convert a unitrust to an
786 income trust under paragraph (1)(c), for a reason described in
787 s. 738.203(7) and in the manner described in s. 738.203(8).

788 Section 13. Section 738.304, Florida Statutes, is created
789 to read:

790 738.304 Notice.-

791 (1) A notice required by s. 738.303(2)(b) must be sent in

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792 a manner authorized under s. 736.0109 to all of the following:

793 (a) The qualified beneficiaries determined under s.

794 736.0103, other than the Attorney General.

795 (b) Each person that is granted a power over the trust by

796 the terms of the trust, to the extent that the power is

797 exercisable when the person is not then serving as a trustee:

798 1. Including all of the following:

799 a. Power over the investment, management, or distribution

800 of trust property or other matters of trust administration.

801 b. Power to appoint or remove a trustee or person

802 described in this paragraph.

803 2. Excluding all of the following:

804 a. Power of appointment.

805 b. Power of a beneficiary over the trust, to the extent

806 that the exercise or nonexercise of the power affects the

807 beneficial interest of the beneficiary or another beneficiary

808 represented by the beneficiary under ss. 736.0301-736.0306 with

809 respect to the exercise or nonexercise of the power.

810 c. Power over the trust if the terms of the trust provide

811 that the power is held in a nonfiduciary capacity and the power

812 must be held in a nonfiduciary capacity to achieve a tax

813 objective under the Internal Revenue Code.

814 (c) Each person that is granted a power by the terms of

815 the trust to appoint or remove a trustee or person described in

816 paragraph (b) to the extent the power is exercisable when the

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817 person that exercises the power is not then serving as a trustee
818 or person described in paragraph (b).

819 (2) The representation provisions of ss. 736.0301-736.0306
820 apply to notice under this section.

821 (3) A person may consent in a record at any time to action
822 proposed under s. 738.303(2) (b). A notice required by s.
823 738.303(2) (b) need not be sent to a person that consents under
824 this subsection.

825 (4) A notice required under s. 738.303(2) (b) must include
826 all of the following:

827 (a) The action proposed under s. 738.303(2) (b) .

828 (b) For a conversion of an income trust to a unitrust, a
829 copy of the unitrust policy adopted under s. 738.303(1) (a) .

830 (c) For a change in the percentage or method used to
831 calculate the unitrust amount, a copy of the unitrust policy or
832 amendment or replacement of the unitrust policy adopted under s.
833 738.303(1) (b) .

834 (d) A statement that the person to which the notice is
835 sent may object to the proposed action by stating in a record
836 the basis for the objection and sending or delivering the record
837 to the fiduciary.

838 (e) The date by which an objection under paragraph (d)
839 must be received by the fiduciary, which must be at least 30
840 days after the date the notice is sent.

841 (f) The date on which the action is proposed to be taken

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842 and the date on which the action is proposed to take effect.

843 (g) The name and contact information of the fiduciary.

844 (h) The name and contact information of a person that may
845 be contacted for additional information.

846 Section 14. Section 738.305, Florida Statutes, is created
847 to read:

848 738.305 Unitrust policy.—

849 (1) In administering a unitrust under ss. 738.301-738.310,
850 a fiduciary shall follow a unitrust policy adopted under s.
851 738.303(1) (a) or (b) or amended or replaced under s.
852 738.303(1) (b).

853 (2) A unitrust policy must provide all of the following:

854 (a) The unitrust rate or method for determining the
855 unitrust rate under s. 738.306.

856 (b) The method for determining the applicable value under
857 s. 738.307.

858 (c) The rules described in ss. 738.306-738.310 which apply
859 in the administration of the unitrust, whether the rules are:

860 1. Mandatory as provided in ss. 738.307(1) and (3),
861 738.308(1), and 738.310; or

862 2. Optional as provided in ss. 738.306, 738.307(2), and
863 738.308(2), to the extent that the fiduciary elects to adopt
864 those rules.

865 (3) A unitrust policy may do any of the following:

866 (a) Provide methods and standards for:

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- 867 1. Determining the timing of the distributions;
868 2. Making distributions in cash or in kind or partly in
869 cash and partly in kind; or
870 3. Correcting an underpayment or overpayment to a
871 beneficiary based on the unitrust amount if there is an error in
872 calculating the unitrust amount.

873 (b) Specify sources and the order of sources, including
874 categories of income for federal income tax purposes, from which
875 distributions of a unitrust amount are paid.

876 (c) Provide other standards and rules that the fiduciary
877 determines serve the interests of the beneficiaries.

878 Section 15. Section 738.306, Florida Statutes, is created
879 to read:

880 738.306 Unitrust rate.—

881 (1) A unitrust rate must be at least 3 percent and not
882 more than 5 percent. Within those limits, the unitrust rate may
883 be:

884 (a) A fixed unitrust rate; or

885 (b)1. A unitrust rate that is determined for each period
886 using:

887 a. A market index or other published data; or

888 b. A mathematical blend of market indices or other
889 published data over a stated number of preceding periods.

890 2. If the rate calculated under this paragraph would be
891 less than 3, the rate is 3; and if the rate calculated would be

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892 more than 5, the rate is 5.

893 (2) Within the limits of subsection (1), a unitrust policy
894 may provide for any of the following:

895 (a) A limit on how much the unitrust rate determined under
896 paragraph (1)(b) may increase over the unitrust rate for the
897 preceding period or a mathematical blend of unitrust rates over
898 a stated number of preceding periods.

899 (b) A limit on how much the unitrust rate determined under
900 paragraph (1)(b) may decrease below the unitrust rate for the
901 preceding period or a mathematical blend of unitrust rates over
902 a stated number of preceding periods.

903 (c) A mathematical blend of any of the unitrust rates
904 determined under paragraph (1)(b) and paragraphs (a) and (b).

905 (3) If the fiduciary is not an independent person, the
906 percentage used to calculate the unitrust amount is the rate
907 determined under s. 7520(a)(2) of the Internal Revenue Code in
908 effect for the month the conversion under this section becomes
909 effective and for each January thereafter; however, if the rate
910 determined under s. 7520(a)(2) of the Internal Revenue Code
911 exceeds 5 percent, the unitrust rate is 5 percent, and if the
912 rate determined under s. 7520(a)(2) of the Internal Revenue Code
913 is less than 3 percent, the unitrust rate is 3 percent.

914 Section 16. Section 738.307, Florida Statutes, is created
915 to read:

916 738.307 Applicable value.-

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917 (1) A unitrust policy must provide the method for
918 determining the fair market value of an asset for the purpose of
919 determining the unitrust amount, including all of the following:

920 (a) The frequency of valuing the asset, which need not
921 require a valuation in every period.

922 (b) The date for valuing the asset in each period in which
923 the asset is valued.

924 (2) Except as otherwise provided in s. 738.309, a unitrust
925 policy may provide methods for determining the amount of the net
926 fair market value of the trust to take into account in
927 determining the applicable value, including any of the
928 following:

929 (a) Obtaining an appraisal of an asset for which fair
930 market value is not readily available.

931 (b) Excluding specific assets or groups or types of assets
932 in addition to those described in subsection (3).

933 (c) Making other exceptions or modifications of the
934 treatment of specific assets or groups or types of assets.

935 (d) Including identification and treatment of cash or
936 property held for distribution.

937 (e) Using an average of fair market values over a stated
938 number of preceding periods, not to exceed 3 calendar years.

939 (f) Determining the reasonable known liabilities of the
940 trust, including treatment of liabilities to conform with the
941 treatment of assets under paragraphs (a)-(e).

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942 (3) The following property may not be included in
943 determining the value of the trust:

944 (a) Any residential property or any tangible personal
945 property that, as of the first business day of the current
946 valuation year, one or more current beneficiaries of the trust
947 have or have had the right to occupy or have or have had the
948 right to possess or control, other than in his or her capacity
949 as trustee of the trust. Instead, the right of occupancy or the
950 right to possession and control is the unitrust amount with
951 respect to such property; however, the unitrust amount must be
952 adjusted to take into account partial distributions from or
953 receipt into the trust of such property during the valuation
954 year;

955 (b) Any asset specifically given to a beneficiary and the
956 return on investment on such property, which return on
957 investment must be distributable to the beneficiary; and

958 (c) Any asset while held in an estate.

959 Section 17. Section 738.308, Florida Statutes, is created
960 to read:

961 738.308 Period.—

962 (1) A unitrust policy must provide the period used under
963 ss. 738.306 and 738.307. The period must be the calendar year.

964 (2) A unitrust policy may provide standards for:

965 (a) Using fewer preceding periods under s. 738.306(1)(b)1.
966 or (2)(a) or (b) if:

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967 1. The trust was not in existence in a preceding period;
968 or

969 2. Market indices or other published data are not
970 available for a preceding period;

971 (b) Using fewer preceding periods under 738.307(2)(e) if:

972 1. The trust was not in existence in a preceding period;
973 or

974 2. Fair market values are not available for a preceding
975 period; and

976 (c) Prorating a unitrust amount on a daily basis for a
977 part of a period in which the trust or the administration of the
978 trust as a unitrust or the interest of any beneficiary commences
979 or terminates.

980 Section 18. Section 738.309, Florida Statutes, is created
981 to read:

982 738.309 Express unitrust.—

983 (1) This section applies to a trust that, by its governing
984 instrument, requires or allows income or net income to be
985 calculated as a unitrust amount.

986 (2) The trustee of an express unitrust may determine the
987 unitrust amount by reference to the net fair market value of the
988 unitrust's assets in 1 or more years.

989 (3) Distribution of a unitrust amount is considered a
990 distribution of all of the net income of an express unitrust and
991 is considered to be an income interest.

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992 (4) The unitrust amount is considered to be a reasonable
993 apportionment of the total return of an express unitrust.

994 (5) An express unitrust that provides or allows a
995 distribution based on a unitrust rate in excess of 5 percent per
996 year of the net fair market value of the unitrust assets is
997 considered a distribution of all of the income of the unitrust
998 and a distribution of principal of the unitrust to the extent
999 that the distribution exceeds 5 percent per year.

1000 (6) An express unitrust may provide a mechanism for
1001 changing the unitrust rate, similar to the mechanism provided
1002 under s. 738.306, based upon the factors noted in that section,
1003 and may provide for a conversion from a unitrust to an income
1004 trust or a reconversion of an income trust to a unitrust under
1005 s. 738.303.

1006 (7) If an express unitrust does not specifically or by
1007 reference to s. 738.306 prohibit a power to change the unitrust
1008 rate or to convert to an income trust under s. 738.303, the
1009 trustee must have such power.

1010 (8) The governing instrument of an express unitrust may
1011 grant the trustee discretion to adopt a consistent practice of
1012 treating capital gains as part of the unitrust amount to the
1013 extent that the unitrust amount exceeds the income determined as
1014 if the trust were not an express unitrust, or the governing
1015 instrument may specify the ordering of classes of income.

1016 (9) Unless the terms of the express unitrust specifically

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1017 provide otherwise as provided in subsection (8), the
1018 distribution of a unitrust amount is considered a distribution
1019 made from the following sources, which are listed in order of
1020 priority:

1021 (a) Net accounting income determined under this chapter as
1022 if the trust were not a unitrust;

1023 (b) Ordinary income not allocable to net accounting
1024 income;

1025 (c) Net realized short-term capital gains;

1026 (d) Net realized long-term capital gains; and

1027 (e) The principal of the trust.

1028 (10) The governing instrument of an express unitrust may
1029 provide that the trustee may exclude assets used by the
1030 unitrust's beneficiary, including, but not limited to, a
1031 residence property or tangible personal property, from the net
1032 fair market value of the unitrust's assets for the purposes of
1033 computing the unitrust amount. The use of these assets may be
1034 considered equivalent to income or to the unitrust amount.

1035 Section 19. Section 738.310, Florida Statutes, is created
1036 to read:

1037 738.310 Other rules.—Following the conversion of an income
1038 trust to a unitrust, the trustee shall consider the unitrust
1039 amount as paid from the following sources, which are listed in
1040 order of priority:

1041 (1) Net accounting income determined under this chapter as

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1042 if the trust were not a unitrust;
1043 (2) Ordinary income not allocable to net accounting
1044 income;
1045 (3) Net realized short-term capital gains;
1046 (4) Net realized long-term capital gains; and
1047 (5) The principal of the trust.
1048 Section 20. Section 738.401, Florida Statutes, is amended
1049 to read:
1050 738.401 Character of receipts from entity.-
1051 (1) For purposes of this section, the term:
1052 (a) "Capital distribution" means an entity distribution of
1053 money which is a:
1054 1. Return of capital; or
1055 2. Distribution in total or partial liquidation of the
1056 entity.
1057 (b) "Entity":
1058 1. Means a corporation, partnership, limited liability
1059 company, regulated investment company, real estate investment
1060 trust, common trust fund, or any other organization or
1061 arrangement in which a fiduciary owns or holds ~~has~~ an interest,
1062 regardless of whether the entity is a taxpayer for federal
1063 income tax purposes; and
1064 2. Does not include:
1065 a. A trust or estate to which s. 738.402 applies;
1066 b. A business or other activity to which s. 738.403

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1067 applies which is not conducted by an entity described in
1068 subparagraph 1.;

1069 c. An asset-backed security; or

1070 d. An instrument or arrangement to which s. 738.416
1071 applies other than a trust or estate to which s. 738.402
1072 applies, a business or activity to which s. 738.403 applies, or
1073 an asset-backed security to which s. 738.608 applies.

1074 (c) "Entity distribution" means a payment or transfer by
1075 an entity to a person in the person's capacity as an owner or
1076 holder of an interest in the entity.

1077 (d) "Lookback period" means the accounting period and the
1078 preceding two accounting periods or, if less, the number of
1079 accounting periods, or portion of accounting periods, that the
1080 interest in the entity has been held by the fiduciary.

1081 (2) In this section, an attribute or action of an entity
1082 includes an attribute or action of any other entity in which the
1083 initial entity owns or holds an interest, including an interest
1084 owned or held indirectly through another entity.

1085 (3) Except as otherwise provided in paragraphs (4) (b),
1086 (c), and (d) this section, a fiduciary shall allocate to income:

1087 (a) Money received in an entity distribution; and

1088 (b) Tangible personal property of nominal value received
1089 from the money received from an entity.

1090 (4)-(3) Except as otherwise provided in this section, A
1091 fiduciary shall allocate the following receipts from an entity

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1092 to principal:

1093 (a) Property received in an entity distribution which is
1094 not:

1095 1. other than Money; or

1096 2. Tangible personal property of nominal value.

1097 (b) Money received in an entity ~~one~~ distribution ~~or a~~
1098 ~~series of related distributions~~ in an exchange for part or all
1099 of the fiduciary's a trust's or estate's interest in the entity
1100 to the extent that the entity distribution reduces the
1101 fiduciary's interest in the entity relative to the interest of
1102 other persons that own or hold interests in the entity.

1103 (c) Money received in an entity distribution that is a
1104 capital distribution, to the extent not allocated to income
1105 ~~total or partial liquidation of the entity.~~

1106 (d) Money received in an entity distribution from an
1107 entity that is a regulated investment company or a real estate
1108 investment trust if the money received represents short-term or
1109 long-term capital gain realized within the entity.

1110 ~~(e) Money received from an entity listed on a public stock~~
1111 ~~exchange during any year of the trust or estate which exceeds 10~~
1112 ~~percent of the fair market value of the trust's or estate's~~
1113 ~~interest in the entity on the first day of that year. The amount~~
1114 ~~to be allocated to principal must be reduced to the extent that~~
1115 ~~the cumulative distributions from the entity to the trust or~~
1116 ~~estate allocated to income do not exceed a cumulative annual~~

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1117 ~~return of 3 percent of the fair market value of the interest in~~
1118 ~~the entity at the beginning of each year or portion of a year~~
1119 ~~for the number of years or portion of years in the period that~~
1120 ~~the interest in the entity has been held by the trust or estate.~~
1121 ~~If a trustee has exercised a power to adjust under s. 738.104~~
1122 ~~during any period the interest in the entity has been held by~~
1123 ~~the trust, the trustee, in determining the total income~~
1124 ~~distributions from that entity, must take into account the~~
1125 ~~extent to which the exercise of that power resulted in income to~~
1126 ~~the trust from that entity for that period. If the income of the~~
1127 ~~trust for any period has been computed under s. 738.1041, the~~
1128 ~~trustee, in determining the total income distributions from that~~
1129 ~~entity for that period, must take into account the portion of~~
1130 ~~the unitrust amount paid as a result of the ownership of the~~
1131 ~~trust's interest in the entity for that period.~~

1132 ~~(5)-(4)~~ If a fiduciary elects, or continues an election
1133 made by its predecessor, to reinvest dividends in shares of
1134 stock of a distributing corporation or fund, whether evidenced
1135 by new certificates or entries on the books of the distributing
1136 entity, the new shares retain their character as income.

1137 ~~(6)-(5)~~ Except as otherwise provided in subsections (10)
1138 and (11), money received in an entity distribution is a capital
1139 distribution ~~Money is received in partial liquidation:~~

1140 (a) To the extent that the entity, at or near the time of
1141 the entity a distribution, indicates that such money is a

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1142 ~~capital distribution in partial liquidation; or~~

1143 (b) To the extent that the total amount of money and
1144 property received by the fiduciary in the entity ~~in a~~
1145 distribution or a series of related entity distributions ~~is or~~
1146 will be greater than ~~from an entity that is not listed on a~~
1147 ~~public stock exchange exceeds~~ 20 percent of the fiduciary's
1148 ~~trust's or estate's~~ pro rata share of the entity's gross assets,
1149 as shown by the entity's year-end financial statements
1150 immediately preceding the initial receipt.

1151
1152 ~~This subsection does not apply to an entity to which subsection~~
1153 ~~(7) applies.~~

1154 (7)-(6) In the case of a capital distribution, the amount
1155 received in an entity distribution allocated to principal must
1156 be reduced to the extent that the cumulative distributions from
1157 the entity to the fiduciary ~~Money may not be taken into account~~
1158 ~~in determining any excess under paragraph (5) (b), to the extent~~
1159 ~~that the cumulative distributions from the entity to the trust~~
1160 ~~or the estate~~ allocated to income do not exceed the greater of:

1161 (a) A cumulative annual return of 3 percent of the
1162 entity's carrying value computed at the beginning of each
1163 accounting period, or portion of an accounting period, during
1164 the lookback period ~~for the number of years or portion of years~~
1165 ~~that the entity was held by the fiduciary.~~ If a fiduciary
1166 ~~trustee~~ has exercised a power to adjust under s. 738.203 during

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1167 ~~the lookback period, the fiduciary s. 738.104 during any period~~
1168 ~~the interest in the entity has been held by the trust, the~~
1169 ~~trustee, in determining the total income distributions from that~~
1170 ~~entity, must take into account the extent to which the exercise~~
1171 ~~of the power resulted in income to the fiduciary trust from that~~
1172 ~~entity for that period. If the income of a fiduciary during the~~
1173 ~~lookback trust for any period has been computed under ss.~~
1174 ~~738.301-738.310, the fiduciary pursuant to s. 738.1041, the~~
1175 ~~trustee, in determining the total income distributions from the~~
1176 ~~entity for that period, must take into account the portion of~~
1177 ~~the unitrust amount paid as a result of the ownership of the~~
1178 ~~trust's interest in the entity for that period; or~~

1179 (b) ~~In if the case of an entity ~~is~~ treated as a~~
1180 ~~partnership, subchapter S corporation, or a disregarded entity~~
1181 ~~under pursuant to the Internal Revenue Code ~~of 1986, as amended,~~~~
1182 ~~the amount of income tax attributable to the fiduciary's trust's~~
1183 ~~~~or estate's~~ ownership share of the entity, based on its pro rata~~
1184 ~~share of the taxable income of the entity that distributes the~~
1185 ~~money, during the lookback period for the number of years or~~
1186 ~~portion of years that the interest in the entity was held by the~~
1187 ~~fiduciary, calculated as if all of the that tax was incurred by~~
1188 ~~the fiduciary.~~

1189 (8) If a fiduciary receives additional information about
1190 the application of this section to an entity distribution before
1191 the fiduciary has paid part of the entity distribution to a

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1192 beneficiary, the fiduciary may consider the additional
1193 information before making the payment to the beneficiary and may
1194 change a decision to make the payment to the beneficiary.

1195 (9) If a fiduciary receives additional information about
1196 the application of this section to an entity distribution after
1197 the fiduciary has paid part of the entity distribution to a
1198 beneficiary, the fiduciary is not required to change or recover
1199 the payment to the beneficiary but may consider that information
1200 in determining whether to exercise its other powers, including
1201 but not limited to the power to adjust under s. 738.203.

1202 (10)-(7)- The following applies to money or property
1203 received by a private trustee as a distribution from an
1204 investment entity described in this subsection:

1205 (a) The trustee shall first treat as income of the trust
1206 all of the money or property received from the investment entity
1207 in the current accounting period ~~year~~ which would be considered
1208 income under this chapter if the trustee had directly held the
1209 trust's pro rata share of the assets of the investment entity.
1210 For this purpose, all distributions received in the current
1211 accounting period ~~year~~ must be aggregated.

1212 (b) The trustee shall next treat as income of the trust
1213 any additional money or property received in the current
1214 accounting period ~~year~~ which would have been considered income
1215 in the prior 2 accounting periods ~~years~~ under paragraph (a) if
1216 additional money or property had been received from the

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1217 investment entity in any of those prior 2 accounting periods
1218 ~~years~~. The amount to be treated as income must ~~shall~~ be reduced
1219 by any distributions of money or property made by the investment
1220 entity to the trust during the current and the prior 2
1221 accounting periods ~~years~~ which were treated as income under this
1222 paragraph.

1223 (c) The remainder of the distribution, if any, is treated
1224 as principal.

1225 (d) As used in this subsection, the term:

1226 1. "Investment entity" means an entity, other than a
1227 business activity conducted by the trustee described in s.
1228 738.403 or an entity that is listed on a public stock exchange,
1229 which is treated as a partnership, subchapter S corporation, or
1230 disregarded entity under ~~pursuant to~~ the Internal Revenue Code
1231 ~~of 1986, as amended,~~ and which normally derives 50 percent or
1232 more of its annual cumulative net income from interest,
1233 dividends, annuities, royalties, rental activity, or other
1234 passive investments, including income from the sale or exchange
1235 of such passive investments.

1236 2. "Private trustee" means a trustee who is a natural
1237 person, but is not an independent person as set forth in s.
1238 738.102 ~~only if the trustee is unable to use the power to adjust~~
1239 ~~between income and principal with respect to receipts from~~
1240 ~~entities described in this subsection pursuant to s. 738.104. A~~
1241 ~~bank, trust company, or other commercial trustee is not~~

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1242 ~~considered a private trustee.~~

1243 (11) A fiduciary shall allocate to principal any money and
1244 property the fiduciary receives in a distribution or series of
1245 related distributions from a public entity which are greater
1246 than 10 percent of the fair market value of the fiduciary's
1247 interest in the public entity on the first day of the accounting
1248 period. The amount to be allocated to principal must be reduced
1249 to the extent that the cumulative distributions from the entity
1250 to the fiduciary allocated to income do not exceed a cumulative
1251 annual return of 3 percent of the fair market value of the
1252 interest in the entity at the beginning of each accounting
1253 period, or portion of an accounting period, during the lookback
1254 period. If a fiduciary has exercised a power to adjust under s.
1255 738.203 during the lookback period, the fiduciary, in
1256 determining the total income distributions from that entity,
1257 must take into account the extent to which the exercise of that
1258 power resulted in income to the fiduciary from that entity for
1259 that period. If the income of the fiduciary during the lookback
1260 period has been computed under ss. 738.301-738.310, the
1261 fiduciary, in determining the total income distribution from
1262 that entity for that period, must take into account the portion
1263 of the unitrust amount paid as a result of the ownership of the
1264 trust's interest in the entity for that period. As used in this
1265 subsection, the term "public entity" means an entity listed on a
1266 public stock exchange.

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1267 (12)(8) This section must ~~shall~~ be applied before ss.
1268 738.506 and 738.507 ~~ss. 738.705 and 738.706~~ and does not modify
1269 or change any of the provisions of those sections.

1270 Section 21. Section 738.402, Florida Statutes, is amended
1271 to read:

1272 738.402 Distribution from trust or estate.—A fiduciary
1273 shall allocate to income an amount received as a distribution of
1274 income, including a unitrust distribution under ss. 738.301-
1275 738.310, from a trust or an estate in which the fiduciary trust
1276 has an interest, other than an interest a purchased in a trust
1277 that is an investment entity, and shall ~~interest and~~ allocate to
1278 principal an amount received as a distribution of principal from
1279 the such a trust or estate. If a fiduciary purchases, or
1280 receives from a settlor, an interest in a trust that is an
1281 investment entity, ~~or a decedent or donor transfers an interest~~
1282 ~~in such a trust to a fiduciary,~~ s. 738.401, s. 738.415, or s.
1283 738.416 ~~or s. 738.608~~ applies to a receipt from the trust.

1284 Section 22. Section 738.403, Florida Statutes, is amended
1285 to read:

1286 738.403 Business and other activity ~~activities~~ conducted
1287 by fiduciary.—

1288 (1) This section applies to ~~If a fiduciary who conducts a~~
1289 business or other activity conducted by a fiduciary if the
1290 fiduciary determines that it is in the best interests of
1291 ~~interest of all~~ the beneficiaries to account separately for the

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1292 business or other activity instead of:

1293 (a) Accounting for the business or other activity as part
1294 of the fiduciary's trust's or estate's general accounting
1295 records; or

1296 (b) Conducting the business or other activity through an
1297 entity described in s. 738.401(1)(b)., ~~the~~

1298 (2) A fiduciary may account separately under this section
1299 ~~maintain separate accounting records~~ for the transactions of a
1300 ~~the~~ business or another other activity, regardless of whether or
1301 ~~not the~~ assets of the such business or other activity are
1302 segregated from other ~~trust or estate~~ assets held by the
1303 fiduciary.

1304 (3)-(2) A fiduciary who accounts separately under this
1305 section for a business or other activity:

1306 (a) May determine:

1307 1. The extent to which the net cash receipts of the
1308 business or other activity must be retained for:

1309 a. Working capital;

1310 b. The acquisition or replacement of fixed assets; and

1311 c. Other reasonably foreseeable needs of the business or
1312 other activity; and working capital, the acquisition or
1313 ~~replacement of fixed assets, and other reasonably foreseeable~~
1314 ~~needs of the business or activity, and~~

1315 2. The extent to which the remaining net cash receipts are
1316 accounted for as principal or income in the fiduciary's trust's

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1317 ~~or estate's~~ general accounting records for the trust.

1318 (b) May make a determination under paragraph (a)
1319 separately and differently from the fiduciary's decisions
1320 concerning distributions of income or principal; and

1321 (c) Shall account for the net amount received from the
1322 sale of an asset of ~~If a fiduciary sells assets of~~ the business
1323 or other activity, other than a sale in the ordinary course of
1324 the business or other activity, ~~the fiduciary must account for~~
1325 ~~the net amount received~~ as principal in the fiduciary's trust's
1326 ~~or estate's~~ general accounting records for the trust, to the
1327 extent the fiduciary determines that the net amount received is
1328 no longer required in the conduct of the business or other
1329 activity.

1330 (4)(3) Activities for which a fiduciary may account
1331 separately under this section ~~maintain separate accounting~~
1332 ~~records~~ include:

1333 (a) Retail, manufacturing, service, and other traditional
1334 business activities.

1335 (b) Farming.

1336 (c) Raising and selling livestock and other animals.

1337 (d) Managing ~~Management of~~ rental properties.

1338 (e) Extracting ~~Extraction of~~ minerals and other natural
1339 resources.

1340 (f) Growing and cutting timber ~~operations.~~

1341 (g) An activity ~~Activities~~ to which s. 738.414, s.

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1342 738.415, or s. 738.416 s. 738.607 applies.

1343 (h) Any other business conducted by the fiduciary.

1344 Section 23. Section 738.404, Florida Statutes, is created
1345 to read:

1346 738.404 Principal receipts.—A fiduciary shall allocate to
1347 principal:

1348 (1) To the extent not allocated to income under this
1349 chapter, an asset received from any of the following:

1350 (a) An individual during the individual's lifetime.

1351 (b) An estate.

1352 (c) A trust on termination of an income interest.

1353 (d) A payor under a contract naming the fiduciary as
1354 beneficiary.

1355 (2) Except as otherwise provided in ss. 738.401-738.416,
1356 money or other property received from the sale, exchange,
1357 liquidation, or change in the form of a principal asset.

1358 (3) An amount recovered from a third party to reimburse
1359 the fiduciary because of a disbursement described in s.
1360 738.502(1) or for another reason to the extent not based on the
1361 loss of income.

1362 (4) Proceeds of property taken by eminent domain except
1363 that proceeds awarded for loss of income in an accounting period
1364 are income if a current income beneficiary had a mandatory
1365 income interest during the period.

1366 (5) Net income received in an accounting period during

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1367 which there is no beneficiary to which a fiduciary may or must
1368 distribute income.

1369 (6) Other receipts as provided in ss. 738.408-738.416.

1370 Section 24. Section 738.405, Florida Statutes, is created
1371 to read:

1372 738.405 Rental property.—To the extent that a fiduciary
1373 does not account for the management of rental property as a
1374 business under s. 738.403, the fiduciary shall allocate to
1375 income an amount received as rent of real or personal property,
1376 including an amount received for cancellation or renewal of a
1377 lease. An amount received as a refundable deposit, including a
1378 security deposit or a deposit that is to be applied as rent for
1379 future periods:

1380 (1) Must be added to principal and held subject to the
1381 terms of the lease, except as otherwise provided by law other
1382 than this chapter; and

1383 (2) Is not allocated to income or available for
1384 distribution to a beneficiary until the fiduciary's contractual
1385 obligations have been satisfied with respect to that amount.

1386 Section 25. Section 738.406, Florida Statutes, is created
1387 to read:

1388 738.406 Receipt on obligation to be paid in money.—

1389 (1) This section does not apply to an obligation to which
1390 s. 738.409, s. 738.410, s. 738.411, s. 738.412, s. 738.414, s.
1391 738.415, or s. 738.416 applies.

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1392 (2) A fiduciary shall allocate to income, without
1393 provision for amortization of premium, an amount received as
1394 interest on an obligation to pay money to the fiduciary,
1395 including an amount received as consideration for prepaying
1396 principal.

1397 (3) A fiduciary shall allocate to principal an amount
1398 received from the sale, redemption, or other disposition of an
1399 obligation to pay money to the fiduciary.

1400 (4) A fiduciary shall allocate to income the increment in
1401 value of a bond or other obligation for the payment of money
1402 bearing no stated interest but payable or redeemable, at
1403 maturity or another future time, in an amount that exceeds the
1404 amount in consideration of which it was issued. If the increment
1405 in value accrues and becomes payable pursuant to a fixed
1406 schedule of appreciation, it may be distributed to the
1407 beneficiary who was the income beneficiary at the time of
1408 increment from the first principal cash available or, if none is
1409 available, when the increment is realized by sale, redemption,
1410 or other disposition. If unrealized increment is distributed as
1411 income but out of principal, the principal must be reimbursed
1412 for the increment when realized. If, in the reasonable judgment
1413 of the fiduciary, exercised in good faith, the ultimate payment
1414 of the bond principal is in doubt, the fiduciary may withhold
1415 the payment of incremental interest to the income beneficiary.

1416 Section 26. Section 738.407, Florida Statutes, is created

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1417 to read:

1418 738.407 Insurance policy or contract.—

1419 (1) This section does not apply to a contract to which s.
1420 738.409 applies.

1421 (2) Except as otherwise provided in subsection (3), a
1422 fiduciary shall allocate to principal the proceeds of a life
1423 insurance policy or other contract received by the fiduciary as
1424 beneficiary, including a contract that insures against damage
1425 to, destruction of, or loss of title to an asset. The fiduciary
1426 shall allocate dividends on an insurance policy to income to the
1427 extent that premiums on the policy are paid from income and to
1428 principal to the extent premiums on the policy are paid from
1429 principal.

1430 (3) A fiduciary shall allocate to income proceeds of a
1431 contract that insures the fiduciary against loss of:

1432 (a) Occupancy or other use by a current income
1433 beneficiary;

1434 (b) Income; or

1435 (c) Subject to s. 738.403, profits from a business.

1436 Section 27. Section 738.408, Florida Statutes, is created
1437 to read:

1438 738.408 Insubstantial allocation not required.—

1439 (1) If a fiduciary determines that an allocation between
1440 income and principal required by s. 738.409, s. 738.410, s.
1441 738.411, s. 738.412, or s. 738.415 is insubstantial, the

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1442 fiduciary may allocate the entire amount to principal, unless s.
1443 738.203(5) applies to the allocation.

1444 (2) A fiduciary may presume an allocation is insubstantial
1445 under subsection (1) if:

1446 (a) The amount of the allocation would increase or
1447 decrease net income in an accounting period, as determined
1448 before the allocation, by less than 10 percent; and

1449 (b) The asset producing the receipt to be allocated has a
1450 carrying value less than 10 percent of the total carrying value
1451 of the assets owned or held by the fiduciary at the beginning of
1452 the accounting period.

1453 (3) The power to make a determination under subsection (1)
1454 may be:

1455 (a) Exercised by a cofiduciary in the manner described in
1456 s. 738.203(6); or

1457 (b) Released or delegated for a reason described in s.
1458 738.203(7) and in the manner described in s. 738.203(8).

1459 Section 28. Section 738.409, Florida Statutes, is created
1460 to read:

1461 738.409 Deferred compensation, annuity, or similar
1462 payment.—

1463 (1) As used in this section, the term:

1464 (a) "Internal income of the separate fund" means the
1465 amount determined under subsection (2).

1466 (b) "Marital trust" means a trust:

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1467 1. Of which the settlor's surviving spouse is the only
1468 current income beneficiary and is entitled to a distribution of
1469 all the current net income of the trust; and

1470 2. That qualifies for a marital deduction with respect to
1471 the settlor's estate under the Internal Revenue Code or
1472 comparable law of any state because:

1473 a. An election to qualify for a marital deduction under s.
1474 2056(b) (7) of the Internal Revenue Code has been made;

1475 b. The trust qualified for a marital deduction under s.
1476 2056(b) (5) of the Internal Revenue Code; or

1477 c. The trust otherwise qualifies for a marital deduction.

1478 (c) "Nonseparate fund" means an annuity, a deferred
1479 compensation plan, a pension plan, or other fund for which the
1480 value of the participant's or account owner's right to receive
1481 benefits can be determined only by the occurrence of a date or
1482 event as defined in the instrument governing the fund.

1483 (d) "Payment" means an amount a fiduciary may receive over
1484 a fixed number of years or during the life of one or more
1485 individuals because of services rendered or property transferred
1486 to the payor in exchange for future amounts the fiduciary may
1487 receive. The term includes an amount received in money or
1488 property from the payor's general assets or from a separate fund
1489 created by the payor.

1490 (e) "Percent calculated" means a percent equal to the rate
1491 determined under s. 7520 of the Internal Revenue Code in effect

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1492 for the month preceding the beginning of the accounting period;
1493 however, if the percent calculated exceeds 5 percent, it must be
1494 reduced to 5 percent, and if the percent calculated is less than
1495 3 percent, it must be increased to 3 percent. Notwithstanding
1496 the preceding sentence, a fiduciary who is an independent person
1497 as defined in s. 738.102 may set the percent calculated at a
1498 percentage no less than 3 percent and no greater than 5 percent.

1499 (f) "Separate fund" includes a private or commercial
1500 annuity, an individual retirement account, and a pension,
1501 profit-sharing, stock-bonus, stock ownership plan, or other
1502 deferred compensation fund holding assets exclusively for the
1503 benefit of a participant or account owner.

1504 (2) For each accounting period, the following rules apply
1505 to a separate fund:

1506 (a) The fiduciary may determine the internal income of the
1507 separate fund as if the separate fund were a trust subject to
1508 this chapter.

1509 (b) Alternatively, the fiduciary may deem the internal
1510 income of the separate fund to equal the percent calculated of
1511 the value of the separate fund according to the most recent
1512 statement of value preceding the beginning of the accounting
1513 period. The fiduciary is not liable for good faith reliance upon
1514 any valuation supplied by the person or persons in possession of
1515 the fund. If the fiduciary makes or terminates an election under
1516 this paragraph, the fiduciary must make such disclosure in a

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1517 trust disclosure document that satisfies the requirements of s.
1518 736.1008(4)(c).

1519 (c) If the fiduciary cannot determine the value of the
1520 separate fund under paragraph (b), the value of the separate
1521 fund is deemed to equal the present value of the expected future
1522 payments as determined under s. 7520 of the Internal Revenue
1523 Code for the month preceding the beginning of the accounting
1524 period for which the computation is made.

1525 (d) The fiduciary may elect the method of determining the
1526 income of the fund pursuant to this subsection and may change
1527 the method of determining income of the fund for any future
1528 accounting period.

1529 (3) A fiduciary shall allocate a payment received from a
1530 separate fund during an accounting period to income, to the
1531 extent of the internal income of the separate fund during the
1532 period, and allocate the balance to principal.

1533 (4) The fiduciary of a marital trust shall:

1534 (a) Withdraw from a separate fund the amount the current
1535 income beneficiary of the trust requests the fiduciary to
1536 withdraw, not greater than the amount by which the internal
1537 income of the separate fund during the accounting period exceeds
1538 the amount the fiduciary otherwise receives from the separate
1539 fund during the period.

1540 (b) Transfer from principal to income the amount the
1541 current income beneficiary requests the fiduciary to transfer,

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1542 but not greater than the amount by which the internal income of
1543 the separate fund during the period exceeds the amount the
1544 fiduciary receives from the separate fund during the period
1545 after the application of paragraph (a).

1546 (c) Distribute to the current income beneficiary as
1547 income:

1548 1. The amount of the internal income of the separate fund
1549 received or withdrawn during the period; and

1550 2. The amount transferred from principal to income under
1551 paragraph (b).

1552 (5) For a trust, other than a marital trust, of which one
1553 or more current income beneficiaries are entitled to a
1554 distribution of all the current net income, the fiduciary shall
1555 transfer from principal to income the amount by which the
1556 internal income of the separate fund during the accounting
1557 period exceeds the amount the fiduciary receives from the
1558 separate fund during the period.

1559 (6) The fiduciary of a nonseparate fund shall calculate
1560 internal income of the fund as the percent calculated of the
1561 present value of the right to receive the remaining payments as
1562 determined under s. 7520(a) (2) of the Internal Revenue Code for
1563 the month preceding the beginning of the accounting period.

1564 (7) If a fiduciary owns a separate fund or a nonseparate
1565 fund before January 1, 2025, the fiduciary may determine
1566 internal income, allocate payments, and account for unwithdrawn

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1567 internal income as provided in this section or in the manner
1568 used by the fiduciary before January 1, 2025. Such fiduciary is
1569 not required to consider subsection (5). If the fiduciary
1570 acquires a separate fund or a nonseparate fund on or after
1571 January 1, 2025, the fiduciary must calculate internal income,
1572 allocate payments, and account for unwithdrawn internal income
1573 as provided in this section.

1574 Section 29. Section 738.603, Florida Statutes, is
1575 transferred, renumbered as section 738.410, Florida Statutes,
1576 and amended to read:

1577 738.410 ~~738.603~~ Liquidating asset.—

1578 (1) As used in ~~For purposes of~~ this section, the term
1579 "liquidating asset" means an asset whose value ~~the value of~~
1580 ~~which~~ will diminish or terminate because the asset is expected
1581 to produce receipts for a ~~period of~~ limited time duration. The
1582 term includes a leasehold, patent, copyright, royalty right, and
1583 right to receive payments during a period of ~~for~~ more than 1
1584 year under an arrangement that does not provide for the payment
1585 of interest on the unpaid balance. ~~The term does not include a~~
1586 ~~payment subject to s. 738.602, resources subject to s. 738.604,~~
1587 ~~timber subject to s. 738.605, an activity subject to s. 738.607,~~
1588 ~~an asset subject to s. 738.608, or any asset for which the~~
1589 ~~fiduciary establishes a reserve for depreciation under s.~~
1590 ~~738.703.~~

1591 (2) This section does not apply to a receipt that is

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1592 subject to s. 738.401, s. 738.409, s. 738.411, s. 738.412, s.
1593 738.414, s. 738.415, s. 738.416, or s. 738.503.

1594 (3) A fiduciary shall allocate to income a receipt
1595 produced by a liquidating asset to the extent that the receipt
1596 does not exceed 5 percent of the receipts from the carrying
1597 value of the asset at the beginning of the accounting period and
1598 allocate a liquidating asset and the balance to principal the
1599 balance of the receipt.

1600 (4) The amount ~~Amounts~~ allocated to principal shall reduce
1601 the carrying value of the liquidating asset, but not below zero.
1602 Amounts received in excess of the remaining carrying value must
1603 be allocated to principal.

1604 Section 30. Section 738.604, Florida Statutes, is
1605 transferred, renumbered as section 738.411, Florida Statutes,
1606 and amended to read:

1607 738.411 ~~738.604~~ Minerals, water, and other natural
1608 resources.—

1609 (1) To the extent that ~~If~~ a fiduciary does not account for
1610 a receipt ~~accounts for receipts~~ from an interest in minerals,
1611 water, or other natural resources as a business under s. 738.403
1612 ~~pursuant to this section,~~ the fiduciary shall allocate the
1613 receipt ~~such receipts as follows:~~

1614 (a) To income, to the extent received:

1615 1. ~~If received~~ As ~~nominal~~ delay rental or ~~nominal~~ annual
1616 rent on a lease;

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1617 2. As a factor for interest or the equivalent of interest
1618 under an agreement creating a production payment; or

1619 3. On account of an interest in renewable water; ~~a~~
1620 ~~receipt shall be allocated to income.~~

1621 (b) To principal, if received from a production payment, a
1622 ~~receipt shall be allocated to income if and to the extent that~~
1623 ~~subparagraph (a)2. does not apply; or the agreement creating the~~
1624 ~~production payment provides a factor for interest or its~~
1625 ~~equivalent. The balance shall be allocated to principal.~~

1626 (c) Between income and principal equitably, to the extent
1627 received:

1628 1. On account of an interest in nonrenewable water;

1629 2. If an amount received As a royalty, shut-in-well
1630 payment, take-or-pay payment, or bonus; or, ~~or delay rental is~~
1631 ~~more than nominal, 90 percent shall be allocated to principal~~
1632 ~~and the balance to income.~~

1633 3.(d) If an amount is received From a working interest or
1634 any other interest not provided for in paragraph (a) or,
1635 paragraph (b) or subparagraph 1. or subparagraph 2., ~~or~~
1636 ~~paragraph (c), 90 percent of the net amount received shall be~~
1637 ~~allocated to principal and the balance to income.~~

1638 (2) ~~An amount received on account of an interest in water~~
1639 ~~that is renewable shall be allocated to income. If the water is~~
1640 ~~not renewable, 90 percent of the amount shall be allocated to~~
1641 ~~principal and the balance to income.~~

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1642 ~~(3) This section chapter applies to an interest owned or~~
1643 ~~held by a fiduciary regardless of whether ~~or not~~ a settlor~~
1644 ~~decedent or donor was extracting minerals, water, or other~~
1645 ~~natural resources before the fiduciary owned or held the~~
1646 ~~interest ~~became subject to the trust or estate.~~~~

1647 (3) An allocation of a receipt under paragraph (1)(c) is
1648 presumed to be equitable if the amount allocated to principal is
1649 equal to the amount allowed by the Internal Revenue Code as a
1650 deduction for depletion of the interest.

1651 (4) If a fiduciary ~~trust or estate~~ owns or holds an
1652 interest in minerals, water, or other natural resources before
1653 January 1, 2025 ~~on January 1, 2003~~, the fiduciary may allocate
1654 receipts from the interest as provided in this section chapter
1655 or in the manner used by the fiduciary before January 1, 2025
1656 January 1, 2003. If the fiduciary ~~trust or estate~~ acquires an
1657 interest in minerals, water, or other natural resources on or
1658 after January 1, 2025 ~~January 1, 2003~~, the fiduciary must ~~shall~~
1659 allocate receipts from the interest as provided in this section
1660 ~~chapter~~.

1661 Section 31. Section 738.605, Florida Statutes, is
1662 transferred, renumbered as section 738.412, Florida Statutes,
1663 and amended to read:

1664 738.412 ~~738.605~~ Timber.—

1665 (1) To the extent that ~~If~~ a fiduciary does not account
1666 ~~accounts~~ for receipts from the sale of timber and related

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1667 products as a business under s. 738.403 ~~pursuant to this~~
1668 ~~section,~~ the fiduciary shall allocate the ~~such~~ net receipts as
1669 ~~follows:~~

1670 (a) To income, to the extent that the amount of timber cut
1671 ~~removed~~ from the land does not exceed the rate of growth of the
1672 timber ~~during the accounting periods in which a beneficiary has~~
1673 ~~a mandatory income interest;~~

1674 (b) To principal, to the extent that the amount of timber
1675 cut removed from the land exceeds the rate of growth of the
1676 timber or the net receipts are from the sale of standing timber;

1677 (c) ~~To or~~ Between income and principal if the net receipts
1678 are from the lease of land used for growing and cutting timber
1679 ~~timberland~~ or from a contract to cut timber from land ~~owned by a~~
1680 ~~trust or estate~~ by determining the amount of timber cut removed
1681 from the land under the lease or contract and applying the rules
1682 in paragraphs (a) and (b); or

1683 (d) To principal, to the extent that advance payments,
1684 bonuses, and other payments are not allocated under ~~pursuant to~~
1685 paragraph (a), paragraph (b), or paragraph (c).

1686 (2) In determining net receipts to be allocated under
1687 ~~pursuant to~~ subsection (1), a fiduciary shall deduct and
1688 transfer to principal a reasonable amount for depletion.

1689 (3) This section ~~chapter~~ applies to land owned or held by
1690 a fiduciary regardless of whether or not a settlor decedent or
1691 ~~donor~~ was cutting harvesting timber from the land property

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1692 before the fiduciary owned or held the property ~~became subject~~
1693 ~~to the trust or estate.~~

1694 (4) If a fiduciary ~~trust or estate~~ owns or holds an
1695 interest in land used for growing and cutting timber before
1696 January 1, 2025 ~~timberland on January 1, 2003~~, the fiduciary may
1697 allocate net receipts from the sale of timber and related
1698 products as provided in this section ~~chapter~~ or in the manner
1699 used by the fiduciary before January 1, 2025 ~~January 1, 2003~~. If
1700 the fiduciary ~~trust or estate~~ acquires an interest in land used
1701 for growing and cutting timber on or after January 1, 2025
1702 ~~timberland after January 1, 2003~~, the fiduciary must ~~shall~~
1703 allocate net receipts from the sale of timber and related
1704 products as provided in this section ~~chapter~~.

1705 Section 32. Section 738.606, Florida Statutes, is
1706 transferred, renumbered as section 738.413, Florida Statutes,
1707 and amended to read:

1708 738.413 ~~738.606~~ Marital deduction property not productive
1709 of income.—

1710 (1) If a trust received property for which a gift or
1711 estate tax marital deduction was ~~under the Internal Revenue Code~~
1712 ~~or comparable law of any state is allowed, for all or if part of~~
1713 a trust received property satisfying, ~~or if assets are~~
1714 ~~transferred to a trust that satisfies~~ the requirements of s.
1715 732.2025(2)(a) and (c), and such property has ~~assets have~~ been
1716 used in whole or in part to satisfy an election by a surviving

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1717 spouse under s. 732.2125, and the settlor's spouse holds a
1718 mandatory income interest in the trust, the spouse may require
1719 the trustee, to the extent that the trust assets otherwise do
1720 ~~consist of property that, in the aggregate, does not provide the~~
1721 ~~spouse with sufficient income from or use of the trust assets to~~
1722 qualify for the deduction, or to satisfy an election by a
1723 surviving spouse under s. 732.2125, to make the property
1724 productive of income within a reasonable time. The trustee may:

- 1725 (a) Convert property to property productive of income
1726 within a reasonable time;
- 1727 (b) Exercise the power to adjust under s. 738.203;
- 1728 (c) Exercise the power to convert to or from a unitrust
1729 under s. 738.303; or
- 1730 (d) Exercise the fiduciary's authority under the terms of
1731 the trust to otherwise provide the surviving spouse with
1732 sufficient income from the trust assets, or the use of the trust
1733 assets, to qualify for the marital deduction, or to satisfy an
1734 election by a surviving spouse under s. 732.2125.

1735 (2) The trustee may decide which action or combination of
1736 actions listed in subsection (1) to take.

1737 (3) Subsection (1) shall apply, ~~and if amounts the trustee~~
1738 ~~transfers from principal to income under s. 738.104 and~~
1739 ~~distributes to the spouse from principal pursuant to the terms~~
1740 ~~of the trust are insufficient to provide the spouse with the~~
1741 ~~beneficial enjoyment required to obtain the marital deduction,~~

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1742 even though, in the case of an elective share trust under s.
1743 732.2025(2), a marital deduction is not made or is only
1744 partially made, ~~the spouse may require the trustee of such~~
1745 ~~marital trust or elective share trust to make property~~
1746 ~~productive of income, convert property within a reasonable time,~~
1747 ~~or exercise the power conferred by ss. 738.104 and 738.1041.~~

1748 (4) The terms of a trust as defined in s. 738.102 may not
1749 supersede this section unless such terms explicitly reference
1750 this section ~~The trustee may decide which action or combination~~
1751 ~~of actions to take.~~

1752 ~~(2) In cases not governed by subsection (1), proceeds from~~
1753 ~~the sale or other disposition of an asset are principal without~~
1754 ~~regard to the amount of income the asset produces during any~~
1755 ~~accounting period.~~

1756 Section 33. Section 738.607, Florida Statutes, is
1757 transferred, renumbered as section 738.414, Florida Statutes,
1758 and amended to read:

1759 738.414 ~~738.607~~ Derivatives or ~~and~~ options.—

1760 (1) As used in ~~For purposes of~~ this section, the term
1761 "derivative" means a contract, an ~~or financial~~ instrument, or
1762 other arrangement, or ~~a~~ combination of contracts, and financial
1763 instruments, or other arrangements, of which the value, rights,
1764 and obligations are, in whole or in part, dependent on or
1765 derived from an underlying ~~which gives a trust the right or~~
1766 ~~obligation to participate in some or all changes in the price of~~

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1767 a tangible or intangible asset, ~~a or~~ a group of tangible or
1768 intangible assets, an index, or an occurrence of an event. The
1769 term includes stocks, fixed income securities, and financial
1770 instruments and arrangements based on indices, commodities,
1771 interest rates, weather-related events, and credit-default
1772 events ~~assets, or changes in a rate, an index of prices or~~
1773 ~~rates, or other market indicator for an asset or a group of~~
1774 ~~assets.~~

1775 (2) To the extent that a fiduciary does not account for a
1776 transaction in derivatives as a business under s. 738.403 ~~for~~
1777 ~~transactions in derivatives~~, the fiduciary shall allocate 10
1778 percent of to principal receipts from the transaction and 10
1779 percent of and disbursements made in connection with the
1780 transaction to income and allocate the balance to principal
1781 ~~those transactions.~~

1782 (3) Subsection (4) applies if:

1783 (a) A fiduciary:

1784 1. If a fiduciary Grants an option to buy property from a
1785 ~~the trust, regardless of or estate~~ whether ~~or not~~ the trust ~~or~~
1786 ~~estate~~ owns the property when the option is granted;;

1787 2. Grants an option that permits another person to sell
1788 property to the trust; or

1789 3. estate, or Acquires an option to buy property for the
1790 ~~trust or estate or~~ an option to sell an asset owned by the trust
1791 ~~or estate;~~ and

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1792 (b) The fiduciary or other owner of the asset is required
1793 to deliver the asset if the option is exercised, ~~an amount~~
1794 ~~received for granting the option shall be allocated to~~
1795 ~~principal. An amount paid to acquire the option shall be paid~~
1796 ~~from principal.~~

1797 (4) If this subsection applies, the fiduciary must
1798 allocate 10 percent to income and allocate the balance to
1799 principal of the following amounts:

1800 (a) An amount received for granting the option;

1801 (b) An amount paid to acquire the option; and

1802 (c) A Gain or loss realized on ~~upon~~ the exercise,
1803 exchange, settlement, offset, closing, or expiration of the
1804 option of an option, including an option granted to a grantor of
1805 the trust or estate for services rendered, shall be allocated to
1806 principal.

1807 Section 34. Section 738.608, Florida Statutes, is
1808 transferred, renumbered as section 738.415, Florida Statutes,
1809 and amended to read:

1810 738.415 ~~738.608~~ Asset-backed securities.—

1811 (1) Except as otherwise provided in subsection (2), a
1812 fiduciary shall allocate to income a receipt from or related to
1813 an asset-backed security, as defined in s. 738.102, to the
1814 extent that the payor identifies the payment as being from ~~For~~
1815 ~~purposes of this section, "asset-backed security" means an asset~~
1816 ~~the value of which is based upon the right given the owner to~~

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1817 ~~receive distributions from the proceeds of financial assets that~~
1818 ~~provide collateral for the security. The term includes an asset~~
1819 ~~that gives the owner the right to receive from the collateral~~
1820 ~~financial assets only the interest or other current return and~~
1821 ~~allocate to principal the balance of the receipt or only the~~
1822 ~~proceeds other than interest or current return. The term does~~
1823 ~~not include an asset to which s. 738.401 or s. 738.602 applies.~~

1824 (2) If a fiduciary receives one or more payments in
1825 exchange for part or all of the fiduciary's interest in an
1826 asset-backed security, including a liquidation or redemption of
1827 the fiduciary's interest in the security trust or estate
1828 ~~receives a payment from interest or other current return and~~
1829 ~~from other proceeds of the collateral financial assets, the~~
1830 ~~fiduciary must shall allocate to income 10 percent of receipts~~
1831 ~~from the transaction and 10 percent of disbursements made in~~
1832 ~~connection with the transaction, and allocate to principal the~~
1833 ~~portion of the payment which the payor identifies as being from~~
1834 ~~interest or other current return and allocate the balance of the~~
1835 ~~receipts and disbursements payment to principal.~~

1836 ~~(3) If a trust or estate receives one or more payments in~~
1837 ~~exchange for the trust's or estate's entire interest in an~~
1838 ~~asset-backed security during a single accounting period, the~~
1839 ~~fiduciary shall allocate the payments to principal. If a payment~~
1840 ~~is one of a series of payments that will result in the~~
1841 ~~liquidation of the trust's or estate's interest in the security~~

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1842 ~~over more than a single accounting period, the fiduciary shall~~
1843 ~~allocate 10 percent of the payment to income and the balance to~~
1844 ~~principal.~~

1845 Section 35. Section 738.416, Florida Statutes, is created
1846 to read:

1847 738.416 Other financial instrument or arrangement.—A
1848 fiduciary shall allocate receipts from or related to a financial
1849 instrument or arrangement not otherwise addressed by this
1850 chapter. The allocation must be consistent with ss. 738.414 and
1851 738.415.

1852 Section 36. Section 738.501, Florida Statutes, is amended
1853 to read:

1854 (Substantial rewording of section. See
1855 s. 738.501, F.S., for present text.)

1856 738.501 Disbursement from income.—Subject to s. 738.504,
1857 and except as otherwise provided in s. 738.601(3)(b) or (c), a
1858 fiduciary shall disburse from income:

1859 (1) One-half of:

1860 (a) The regular compensation of the fiduciary and of any
1861 person providing investment advisory, custodial, or other
1862 services to the fiduciary to the extent that income is
1863 sufficient; and

1864 (b) An expense for an accounting, judicial or nonjudicial
1865 proceeding, or other matter that involves both income and
1866 successive interests to the extent income is sufficient.

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1867 (2) The balance of the disbursements described in
1868 subsection (1), to the extent that a fiduciary who is an
1869 independent person determines that making those disbursements
1870 from income would be in the interests of the beneficiaries.

1871 (3) Any other ordinary expense incurred in connection with
1872 administration, management, or preservation of property and
1873 distribution of income, including interest, an ordinary repair,
1874 a regularly recurring tax assessed against principal, and an
1875 expense of an accounting, judicial or nonjudicial proceeding, or
1876 other matter that involves primarily an income interest, to the
1877 extent that income is sufficient.

1878 (4) A premium on insurance covering loss of a principal
1879 asset or income from or use of the asset.

1880 Section 37. Section 738.502, Florida Statutes, is amended
1881 to read:

1882 (Substantial rewording of section. See
1883 s. 738.502, F.S., for present text.)

1884 738.502 Disbursement from principal.-

1885 (1) Subject to s. 738.505, and except as otherwise
1886 provided in s. 738.601(3)(b), a fiduciary shall disburse all of
1887 the following from principal:

1888 (a) The balance of the disbursements described in s.
1889 738.501(1) and (3), after application of s. 738.501(2).

1890 (b) The fiduciary's compensation calculated on principal
1891 as a fee for acceptance, distribution, or termination.

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1892 (c) A payment of an expense to prepare for or execute a
1893 sale or other disposition of property.

1894 (d) A payment on the principal of a trust debt.

1895 (e) A payment of an expense of an accounting, judicial or
1896 nonjudicial proceeding, or other matter that involves primarily
1897 principal, including a proceeding to construe the terms of the
1898 trust or protect property.

1899 (f) A payment of a premium for insurance, including title
1900 insurance, not described in s. 738.501(4) of which the fiduciary
1901 is the owner and beneficiary.

1902 (g) A payment of estate, inheritance, and other transfer
1903 taxes, including penalties, apportioned to the trust.

1904 (h) A payment related to environmental matters including:
1905 1. Reclamation;
1906 2. Assessing environmental conditions;
1907 3. Remedying and removing environmental contamination;
1908 4. Monitoring remedial activities and the release of
1909 substances;

1910 5. Preventing future releases of substances;

1911 6. Collecting amounts from persons liable or potentially
1912 liable for the costs of the activities described in
1913 subparagraphs 1.-5.;

1914 7. Penalties imposed under environmental laws or
1915 regulations;

1916 8. Other actions to comply with environmental laws or

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1917 regulations;

1918 9. Statutory or common law claims by third parties; and

1919 10 Defending claims based on environmental matters.

1920 (i) A payment of a premium for insurance for matters

1921 described in paragraph (h).

1922 (2) If a principal asset is encumbered with an obligation

1923 that requires income from the asset to be paid directly to a

1924 creditor, the fiduciary must transfer from principal to income

1925 an amount equal to the income paid to the creditor in reduction

1926 of the principal balance of the obligation.

1927 Section 38. Section 738.503, Florida Statutes, is amended

1928 to read:

1929 (Substantial rewording of section. See

1930 s. 738.503, F.S., for present text.)

1931 738.503 Transfers from income to principal for

1932 depreciation.—

1933 (1) For purposes of this section, "depreciation" means a

1934 reduction in value due to wear, tear, decay, corrosion, or

1935 gradual obsolescence of a tangible asset having a useful life of

1936 more than 1 year.

1937 (2) A fiduciary may transfer to principal a reasonable

1938 amount of the net cash receipts from a principal asset that is

1939 subject to depreciation but may not transfer any amount for

1940 depreciation:

1941 (a) Of the part of real property used or available for use

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1942 by a beneficiary as a residence;
1943 (b) Of tangible personal property held or made available
1944 for the personal use or enjoyment of a beneficiary; or
1945 (c) Under this section, to the extent that the fiduciary
1946 accounts:
1947 1. Under s. 738.410 for the asset; or
1948 2. Under s. 738.403 for the business or other activity in
1949 which the asset is used.
1950 (3) An amount transferred to principal under this section
1951 need not be separately held.
1952 Section 39. Section 738.504, Florida Statutes, is amended
1953 to read:
1954 (Substantial rewording of section. See
1955 s. 738.504, F.S., for present text.)
1956 738.504 Reimbursement of income from principal.-
1957 (1) If a fiduciary makes or expects to make an income
1958 disbursement described in subsection (2), the fiduciary may
1959 transfer an appropriate amount from principal to income in one
1960 or more accounting periods to reimburse income.
1961 (2) To the extent that the fiduciary has not been and does
1962 not expect to be reimbursed by a third party, income
1963 disbursements to which subsection (1) applies include:
1964 (a) An amount chargeable to principal but paid from income
1965 because principal is illiquid;
1966 (b) A disbursement made to prepare property for sale,

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1967 including improvements and commissions; and

1968 (c) A disbursement described in s. 738.502(1).

1969 (3) If an asset whose ownership gives rise to an income
1970 disbursement becomes subject to a successive interest after an
1971 income interest ends, the fiduciary may continue to make
1972 transfers under subsection (1).

1973 Section 40. Section 738.704, is transferred, renumbered as
1974 section 738.505, Florida Statutes, and amended to read:

1975 738.505 738.704 Reimbursement of principal from income
1976 ~~Transfers from income to reimburse principal.-~~

1977 (1) If a fiduciary makes or expects to make a principal a
1978 ~~principal~~ disbursement described in subsection (2) this section,
1979 the fiduciary may transfer an appropriate amount from income to
1980 principal in one or more accounting periods to reimburse
1981 principal or to provide a reserve for future principal
1982 disbursements.

1983 (2) ~~Principal disbursements to which subsection (1)~~
1984 ~~applies include the following, but only~~ To the extent that a the
1985 fiduciary has not been and does not expect to be reimbursed by a
1986 third party, principal disbursements to which subsection (1)
1987 applies include:

1988 (a) An amount chargeable to income but paid from principal
1989 because income is not sufficient; the amount is unusually large.

1990 (b) The cost of an improvement to principal, whether a
1991 change to an existing asset or the construction of a new asset,

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1992 including a special assessment; Disbursements made to prepare
1993 property for rental, including tenant allowances, leasehold
1994 improvements, and broker's commissions.

1995 (c) A disbursement made to prepare property for rental,
1996 including tenant allowances, leasehold improvements, and
1997 commissions; Disbursements described in s. 738.702(1)(g).

1998 (d) A periodic payment on an obligation secured by a
1999 principal asset, to the extent the amount transferred from
2000 income to principal for depreciation is less than the periodic
2001 payment; and

2002 (e) A disbursement described in s. 738.502(1).

2003 (3) If an ~~the~~ asset whose ~~the~~ ownership ~~of~~ ~~which~~ gives
2004 rise to a principal disbursement ~~the disbursements~~ becomes
2005 subject to a successive ~~income~~ interest after an income interest
2006 ends, the a fiduciary may continue to make transfers under

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1189 Corporate Actions

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Abbott

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Fletcher	Anstead
2) Judiciary Committee		Mawn	Kramer
3) Commerce Committee			

SUMMARY ANALYSIS

Corporations and other business entities that do business in Florida are generally governed by the requirements in the Florida Business Corporation Act, a law that is modeled after the Model Business Corporation Act promulgated by the American Bar Association in 1950, or by related provisions in Florida law.

The Department of State (DOS) is the state's central location responsible for receiving and maintaining a number of corporate records. Florida law requires certain documents to be filed with the Division of Corporations (division) of the DOS in order for a business to be organized as a corporation, partnership, limited liability company (LLC), or other business/commercial entity in Florida.

The bill provides a statutory ratification procedure for corporate actions that may not have been properly authorized and for shares that may have been improperly issued. These improperly authorized corporate actions, that would otherwise be proper, are called "defective corporate actions."

The statutory ratification process provided by the bill is intended to supplement common law ratification. Subsequent ratified defective corporate actions, under these proposed provisions, would remain subject to equitable review. The ratification procedure is intended to be available only where there is objective evidence that a corporate action was defectively implemented. The bill gives specified affected parties the ability to file motions in the circuit court of the applicable county.

The bill also provides a statutory mechanism for a registered agent to resign from more than one business entity at a time, if the specified entity has been dissolved for ten continuous years or longer, by filing a consolidated resignation statement with DOS. This mechanism applies to the following business entity types:

- Domestic and foreign LLCs;
- Domestic corporations; and
- Domestic corporations not for profit.

The bill keeps the fee to file the registered agent resignation the same for the above listed business entity types, even if filing to resign from more than one entity at a time using the consolidated resignation statement.

The bill does not appear to have a fiscal impact on local government expenses and revenues. However, the bill does appear to have an indeterminable negative fiscal impact on state government revenues and an indeterminate positive impact on the private sector.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Corporations and other business entities that do business within Florida are governed generally by the requirements in the Florida Business Corporation Act, a law that is modeled after the Model Business Corporation Act (MBCA) promulgated by the American Bar Association (ABA) in 1950, or by related provisions in Florida law.¹

Limited Liability Companies (Chapter 605)

A limited liability company (LLC) is a type of business entity recognized by and regulated under chapter 605, F.S., the Florida Revised Limited Liability Company Act. Benefits to forming a business as an LLC include a flexible tax structure and a vertical liability shield, which limits the personal liability of the LLC's members and managers for company obligations. Currently, LLCs are the most popular business entity in Florida, with over 2 million active LLCs as of 2023.²

Corporations for Profit (Chapter 607)

A for profit corporation is a type of business entity recognized by and regulated under chapter 607, F.S. In order for a for profit corporation to organize, the entity must file articles of incorporation with the Department of State (DOS), which articles must include specifics such as a corporate name, address, and number of shares, and, must designate a registered office and agent.³

Corporations Not for Profit (Chapter 617)

A corporation not for profit is a type of business entity recognized and regulated under chapter 617, F.S., the Florida Not For Profit Corporation Act. The structure of corporations not for profit is similar to that of for profit corporations, and the filing of articles of incorporation is required.

The Department of State

DOS is the state's central location responsible for receiving and maintaining a number of corporate records. Florida law requires certain documents to be filed with the Division of Corporations (division) of the DOS in order for a business to be organized as a corporation, partnership, LLC, or other business/commercial entity. Business entities can file these documents and check their status through an internet portal that is maintained by the division.

FEES

In order to help maintain these records, the DOS is statutorily allowed to collect fees. Florida's fee requirements for business entities are some of the most competitive in the United States; where a corporation in Delaware (the state with the most incorporations, because of their notoriously pro-business laws) will pay no less than \$175 and no more than \$200,000 in annual fees, Florida only requires an aggregate of \$150 in fees per year.⁴

¹ See generally Chapter 607, F.S.

² Florida Department of State, *Division of Corporations Yearly Statistics*, <https://dos.fl.gov/sunbiz/about-us/yearly-statistics/> (last visited Feb. 12, 2024).

³ Section 607.0202, F.S.

⁴ U.S. Securities and Exchange Commission, *Schedule 14-A, Saga Communications, Inc. Proxy Statement* (Apr. 16, 2020), https://www.sec.gov/Archives/edgar/data/0000886136/000110465921050534/tm2111304-1_def14a.htm, (last visited Feb. 12, 2024).

In 2013, the Legislature passed a law to make fees more uniform across the various business law chapters. The relevant fees, of which each respective business entity must be aware, are as follows:⁵

Corporation Fees	
New Florida/Foreign Corporation	
Filing Fees	\$35.00
Registered Agent Designation	\$35.00
Annual Reports	
Annual Report of a For Profit Corporation	\$150.00
Annual Report of Not For Profit Corporation	\$61.25
Resignation of Agent	
Resignation of Registered Agent of an Active Corporation	\$87.50
Resignation of Registered Agent of an Administratively Dissolved/Voluntarily Dissolved/Withdrawn Corporation/Inactive Corporation	\$35.00

Limited Liability Company Fees	
New Florida/Foreign LLC	
Filing Fee	\$100.00
Registered Agent Designation Fee	\$25.00
Annual Reports	
Annual Report	\$138.75
Resignation of Agent	
Resignation of Registered Agent for an active LLC	\$85.00
Resignation of Registered Agent for a dissolved/inactive LLC	\$25.00

Defective Corporate Actions

Under the Florida Business Corporation Act, there are certain requirements that a corporation must establish in order to be considered a valid and properly authorized corporation. For instance, a corporation must file its articles of incorporation with the DOS to transact business in the state. If a corporation does not file those articles of incorporation or does not include required information in the articles of incorporation, it may be considered an invalid corporation.⁶

Additionally, a corporation could have filed all documents correctly, but made an error in the appointment of their board of directors. Subsequent actions by the corporation, after that incorrect appointment of the board of directors, may be considered invalid. Another potential scenario of a defective corporate action may arise when a corporation issues shares but did not adhere to the correct share issuing guidelines. Any subsequent action, after that incorrect share issuance, may be considered invalid.

Being an invalid corporation can also be referred to as being a “defective corporation” or an “unauthorized corporation.” However, because of their nature, corporations and their agents, whether they be the incorporator, the board of directors, an officer, or the shareholders, can take corporate actions even though the corporation is technically defective, unauthorized, or invalid.

When an unauthorized or defective corporation takes a corporate action, such as improperly issuing shares, legal issues can arise. For example, a corporation that is trying to make a business deal with another entity or raise capital usually has to provide certain corporate records for the other parties’ due diligence, and discovering a defective corporate action can immediately halt a transaction or potential transaction. This is problematic where a business deal has already been agreed upon prior to the discovery of the defective corporate action.

⁵ The Florida Department of State, Division of Corporations, *Fees*, <https://dos.fl.gov/sunbiz/forms/fees/>, (last visited Feb. 12, 2024).

⁶ Section 607.0120(1), F.S.

Currently, disputed acts or defective share issuances that are carried out by a corporation are governed by common law in the court system.⁷ These disputes can cost business entities time and money to resolve, in addition to the time and resources that have to be allocated by the state to the court system.

Amending Articles of Incorporation

The articles of incorporation govern a corporation. A corporation can amend or add as many articles of incorporation as necessary.⁸ The amendment of an articles of incorporation must be adopted and approved. The adopting and approving can be done several ways, including through the provided method in the articles of incorporation, which method may be undertaken by shareholder action, or, where such action is not required, by either the incorporators or board of directors.⁹

Such an amendment can be made with one single amendment form, for a fee of \$35.00.¹⁰ This form, called the articles of amendment form, must be signed and delivered to the DOS, among other specific requirements laid out in statute.¹¹

Active vs Dissolved Business Entities

The division annually assigns an accompanying status (that is, “active” or “inactive”) to a business entity based on whether or not the business entity properly completed all of its filings and paid all applicable fees. When a business entity pays their filing fees and files their initial required filings, (for an LLC it is their articles of organization, and for a corporation it is their articles of incorporation) the division will review the filings and, if everything is satisfactory, the business entity will be assigned an “active” status.

After the initial filings, a business entity remains “active” if it files the statutorily-required annual report and pays the associated fee. Typically, in the fall, the division will go through all of their filings and determine if a business entity is up to date in all of their filings and fees. If the division does not have the required information and associated fee on record, it will assign the business entity an “inactive” status and the business entity will be administratively dissolved or its authority to operate will be administratively revoked.¹²

A business entity can determine its status by logging in to the online portal operated by the DOS, or it can file and pay a fee to have the DOS send them a certificate of status. Such fee is \$5 for an LLC and \$8.75 for a corporation.¹³

A business entity that is no longer “active” may file a reinstatement application, accompanied by the associated fee, to reactivate their business status and become an “active” business entity again.

Registered Agents

Generally, Florida law requires a business entity to designate a registered agent.¹⁴ A registered agent must be an individual who resides in Florida and whose business address is identical to the address of the registered office.¹⁵ The registered agent must also be available at that Florida address during normal business hours and promptly forward any significant legal or state documents to the business.

⁷ Florida Bar Business Law Section, *Chapter 607 White Paper: Summary of Ratification of Defective Corporate Actions and Resignation of Registered Agent Proposed Legislation* (2024).

⁸ Section 607.1001, F.S.

⁹ Section 607.1003(1-9), F.S., provides various methods for amending the articles of incorporation.

¹⁰ Florida Department of State, Division of Corporations, *Articles of Amendment form*, <https://form.sunbiz.org/pdf/cr2e011.pdf>, (last visited on Feb. 12, 2024).

¹¹ Section 607.1006, F.S.

¹² Note that a general partnership is not required to file an annual report or pay an annual report fee.

¹³ For LLCs see section 605.0213(12), F.S., and for Corporations see section 607.0122(19), F.S.

¹⁴ S. 607.0501, F.S.

¹⁵ *Id.*

Registered agents are required to serve as the contact for the business and receive service of process, legal notifications, and other official state documents for the business.

The DOS is required to maintain an accurate record of each business's registered agent and registered office for service of process, and must promptly furnish any such information upon request and payment of the required fee.¹⁶ An individual within the business may serve as the entity's registered agent. Additionally, a business entity with an active Florida filing or registration may serve as a registered agent; however, an entity cannot serve as its own registered agent. Further, where a business entity does not appoint and maintain a registered agent, the DOS may administratively dissolve that business entity.¹⁷

In Florida, a registered agent is required for the following business entities:

- LLCs;
- Corporation/Foreign Corporation (for profit);
- Corporation/Foreign Corporation (not for profit);
- Limited Partnerships (domestic and foreign); and
- Limited Liability Partnerships (domestic and foreign).¹⁸

In order for a registered agent to resign as the registered agent of the business entity, the registered agent must complete a specific form, accompanied by the payment of the required fee, and mail it in to the division. Currently, a registered agent serving as such for more than one business entity who wishes to resign from all such positions must pay a separate fee to resign as the registered agent of each individual business entity.

Effect of the Bill

Ratification of Defective Corporate Actions

The bill creates statutory procedures for ratifying a defective corporate action and provides a judicial process for contesting the validity of certain corporate actions or putative shares. Under the bill, a defective corporate action is not void or voidable if the defective corporate action was ratified in accordance with the ratification or validation requirements proposed by the bill. The bill also emphasizes that:

- The ratification or validation process is not the exclusive means of ratifying or validating any defective corporate action;
- The absence or failure of ratification will not, in and of itself, affect the validity or effectiveness of any corporate action properly ratified under common law or otherwise; and
- The ratification or validation process does not create a presumption that any such corporate action is or was a defective corporate action or is or was void or voidable.

DEFINITIONS

The bill defines certain terms, including:

¹⁶ *Id.*

¹⁷ For limited partnerships, s. 620.1809, F.S. governs.

¹⁸ *Note that a general partnership is not required to have a registered agent.* Section 620.8301, F.S., states that each general partner is an agent of the partnership. (Note that a general partnership can still designate a separate registered agent, through their initial general partnership registration form, but partners of the general partnership are deemed to be agents and therefore the statutes do not require a general partnership to have a registered agent.)

- “Corporate action,” meaning any action taken by or on behalf of a corporation, including any action taken by the incorporator or the corporation’s board of directors, committee, officer or agent, or shareholders.
- “Date of the defective corporate action,” meaning the date, or, if the exact date is unknown, the approximate date, on which the defective corporate action was purported to have been taken.
- “Defective corporate action,” meaning any corporate action purportedly taken which is, and at the time such corporate action was purportedly taken would have been, within the power of the corporation, but is void or voidable due to a failure of authorization or an overissue.
- “Failure of authorization,” meaning the failure to authorize, approve, or otherwise effect a corporate action in compliance with chapter 607, F.S., the corporation’s articles of incorporation or bylaws, a corporate resolution, or any plan or agreement to which the corporation is a party, if and to the extent such failure would render such corporate action void or voidable.
- “Overissue,” meaning the purported issuance of shares or a class or series of shares in excess of the number of shares of the class or series the corporation has the power to issue at the time of issuance or shares of any class or series that is not then authorized for issuance by the corporation’s articles of incorporation.
- “Putative shares,” meaning the shares of any class or series that were created or issued due to a defective corporate action and that would constitute valid shares but for any failure of authorization or cannot be determined by the board of directors to be valid shares.
- “Valid shares,” meaning the shares of any class or series that have been duly authorized and validly issued in accordance with chapter 607, F.S.
- “Validation effective time,” meaning:
 - The later of the date and time at which the ratification is approved by the shareholders, or if such approval is not required, the date and time the notice required by s. 607.0149, F.S., becomes effective;
 - If no articles of incorporation are required to be filed, the date and time at which the notice required by s. 607.0149, F.S., becomes effective; or
 - If articles of validation are required to be filed, the date and time at which the filed articles of validation become effective.¹⁹

PROCEDURE FOR REMEDYING AN OVERISSUE

The bill provides that an overissue can be remedied by the adoption of an amendment to the articles of incorporation or other corporate action that authorizes, designates, or creates the putative shares that resulted in the overissue. Under the bill, putative shares will be valid and effective as of the date originally issued or purportedly issued upon such amendment or action. This provision enables a corporation to cure an overissue occurring when shares have been duly authorized but are issued before articles of amendment are filed.

PROCEDURE FOR RATIFYING DEFECTIVE CORPORATION ACTIONS

The bill sets forth specific procedural requirements for the ratification of defective corporate actions. Specifically, the bill provides that, to ratify a defective corporate action, the corporation must act in accordance with s. 607.0148, F.S., and state all of the following:

- The defective corporate action to be ratified;
- The number and type of putative shares purportedly issued (if shares were issued);
- The date of the defective corporate action;
- The nature of the failure of authorization; and
- The approval of the ratification of the defective corporate action by the board of directors.

Where the defective corporate action to be ratified relates to the election of the initial board of directors of the corporation, the bill provides that a majority of the persons who, at the time of the ratification, are exercising the powers of directors must take an action stating all of the following:

¹⁹ Under the bill, the validation effective time will not be affected by the filing or pendency of a judicial proceeding under s. 607.0152, F.S., or any other law unless otherwise ordered by the court.

- The name of the person or persons who first took action in the corporation's name as the initial board of directors.
- The earlier of the date on which either such persons first took such action or were purported to have been elected to the initial board of directors.
- That the ratification of the election of such person or persons as the initial board of directors is approved.

Further, under the bill:

- If any provision of chapter 607, F.S., the corporation's articles of incorporation or bylaws, any corporate resolution, or any plan or agreement requires shareholder approval, or would have required such approval, at the date of the occurrence of the defective corporate action, the ratification approved in the action taken by the directors as specified above must be submitted to the shareholders for approval.
- Unless otherwise provided in the action taken by the board of directions, after such action has been taken and, if required, approved by the shareholders, the board may abandon the ratification at any time before the validation effective time without further shareholder action.

ACTION ON RATIFICATION

Under the bill, if the shareholders are meeting to ratify the election of a director, or if such ratification is to be made through written consent, the bill requires that it must be approved by a majority vote. The bill clarifies that putative shares existing on the record date are only entitled to notice of matters relating to ratification and that such shares are not:

- Entitled to vote,
- Counted for quorum purposes, nor
- Counted in any written consent and that to ratify putative shares, an amendment to the articles of incorporation must be approved.

Under the bill, the quorum and voting requirements applicable to a ratifying action by the board of directors are the quorum and voting requirements applicable to the corporate action proposed to be ratified at the time such ratifying action is taken. Further, with respect to the voting requirements to ratify the election of a director, any quorum and voting requirements applicable to the approval by the shareholders will be the quorum and voting requirements that are applicable, at the time of such shareholder approval, to the defective corporate action proposed to be ratified.

NOTICE REQUIREMENTS – SHAREHOLDER APPROVAL REQUIRED

The bill creates notice requirements where the ratification of the defective corporate action requires shareholder approval. Specifically, if shareholder approval is to be given at a meeting, the corporation must give notice of the meeting, which notice must state that the purpose of the meeting is to consider ratification of a defective corporate action, to each holder of valid and putative shares, regardless of whether entitled to vote, as of the record date for notice of the meeting and as of the date of the occurrence of the defective corporate action; however, the bill clarifies that such notice is not required to be given to holders of valid or putative shares whose identifies or addresses for notice cannot be determined from the corporation's records.

Further, if shareholder approval is instead to be given by written consent, the corporation must give notice of the action taken by such written consent, which notice must state that the purpose of the written consent was to ratify the defective corporate action, to each holder of valid and putative shares as of the record date of the action by written consent and as of the date of the occurrence of the defective corporate action, regardless of whether entitled to vote; however, notice is not required to be given to holders of valid or putative shares whose identities or addresses for notice cannot be determined from the corporation's records.

In either case, the notice must be accompanied by both of the following:

- Either:
 - A copy of the action taken by the board of directors under s. 607.0147(1); or

- The information required by chapter 607, F.S.; and
- A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares, should not be effective, or should only be effective on certain conditions, and must be brought, if at all, within 120 days after the applicable validation effective time.

NOTICE REQUIREMENTS – SHAREHOLDER APPROVAL NOT REQUIRED

The bill creates notice requirements where shareholder action to approve the ratification of a defective corporate action is not required. Specifically, the bill requires “prompt” notice to persons holding either valid or putative shares, regardless of whether entitled to vote, following the ratification of a corporate action by the board of directors. Under the bill, such notice must contain both of the following:

- Either:
 - A copy of the action taken by the board of directors under s. 607.0147(1); or
 - The information required by chapter 607, F.S.; and
- A statement that any claim asserting that the ratification of such defective corporate action, and any putative shares, should not be effective, or should only be effective on certain conditions, and must be brought, if at all, within 120 days after the applicable validation effective time.

The bill also:

- Provides that such notice is not required to be submitted to the holders of valid or putative shares if notice is given pursuant to other applicable law.
- Makes a disclaimer that such notice may be given in any manner authorized under s. 607.0141, F.S.
- Provides that, in the case of a public company, such notice may be given by the filing or furnishing of the notice with the United States Securities and Exchange Commission.

EFFECTS OF RATIFICATION

The bill specifies that the following provisions apply upon the validation effective time, without regard to the 120-day period during which a claim may be brought under s. 607.0152, F.S.:

- Each defective corporate action ratified is not void or voidable as a result of the failure of authorization set forth and identified in the action taken, and is deemed a valid corporate action effective as of the date of the defective corporate action.
- The issuance of each putative share or fraction of a putative share purportedly issued pursuant to a defective corporate action identified in the action taken is not void or voidable, and each such putative share is deemed to be an identical share or fraction of a valid share as of the time it was purportedly issued.
- Any corporate action taken subsequent to the defective corporate action ratified in reliance on such defective corporate action having been validly effected, and any subsequent defective corporate action resulting from such original defective corporate action, is valid as of the respective time such corporate action was taken.

FILING REQUIREMENTS

The bill establishes a new filing requirement (known as “articles of validation”) for ratified defective corporate actions that would have normally required a filing, regardless of whether or not the filing was properly made. The bill provides specific requirements for the content of the articles of validation, including that the articles of validation must be filed with the DOS, and provides that the articles of validation will serve to amend or be a substitute for any other filings related to the defective corporate action.

JUDICIAL PROCEEDINGS

The bill provides that a corporation or a director, shareholder, beneficial shareholder, or unrestricted voting trust beneficial owner thereof, or any other person claiming to be substantially and adversely affected by the ratification of a defective corporate action, may, within 120 days after the validation effective time, apply to the court for a determination of the:

- Validity of any corporate action or ratified defective corporate action.
- Validity of any ratification of any defective corporate action.
- Validity of any putative shares.

The bill also confers jurisdiction on the circuit court in the applicable county to hear and determine such claims and authorizes the court, upon such application, to:

- Modify or waive any of the ratification procedures; and
- Make such findings or issue such orders, and take into account a specified, non-exclusive list of factors or considerations, as it deems proper under the circumstances.

Further, the bill provides that service of process for any such proceedings should follow the same rules as set forth in ch. 48, F.S.,²⁰ for service on a corporation, and no other party need be joined in order for the court to adjudicate the matter. However, under the bill, in an action filed by the corporation, the court may require that notice of the action be provided to other persons specified by the court and permit such other persons to intervene in the action.

Resignation of a Registered Agent

RESIGNATION STATEMENTS

The bill creates a mechanism for a registered agent to resign as the registered agent from multiple dissolved business entities, if the entities in question are of a specified type and have each been dissolved for at least a continuous ten-year period, by filing a single composite resignation statement with DOS. Under the bill:

- Any such composite statement must contain, for each entity covered therein, the name of the respective entity and the date such entity's dissolution became effective.
- Such a mechanism may only be utilized where the entities from which the registered agent wishes to resign are:
 - Domestic or foreign LLCs;
 - Domestic corporations; or
 - Domestic corporations not for profit.

Further, the bill clarifies that any resignation statement must be delivered to the subject entity at its mailing address as it then appears in DOS records. However, under the bill, if a composite resignation statement is filed, the registered agent must promptly mail a copy of either the composite resignation statement or a separate resignation notice to each entity from which he or she is resigning, in each case using the respective mailing address of each such entity that then appears in DOS records.

FEES

The bill specifies that the fee charged to resign as a registered agent of a dissolved LLC, domestic corporation, or domestic corporation not for profit is the same as it under current law, regardless of whether the registered agent is resigning from one such business entity or multiple such entities using a composite resignation statement.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1: Creates s. 607.0145, F.S.; relating to definitions.
- Section 2: Creates s. 607.0146, F.S.; relating to defective corporate actions.
- Section 3: Creates s. 607.0147, F.S.; relating to ratification of defective corporate actions.
- Section 4: Creates s. 607.0148, F.S.; relating to action on ratification.

²⁰ Chapter 48, F.S., codifies Florida's Rules of Civil Procedure relating to process and service of process.

- Section 5: Creates s. 607.0149, F.S.; relating to notice requirements.
- Section 6: Creates s. 607.015, F.S.; relating to effects of ratification.
- Section 7: Creates s. 607.0151, F.S.; relating to filings.
- Section 8: Creates s. 607.0152, F.S.; relating to judicial proceedings regarding validity of corporate actions.
- Section 9: Amends s. 605.0115, F.S.; relating to resignation of registered agent.
- Section 10: Amends s. 607.0503, F.S.; relating to resignation of registered agent.
- Section 11: Amends s. 617.0502, F.S.; relating to resignation of corporation not for profit registered agents.
- Section 12: Amends s. 605.0213, F.S.; relating to fees of the department.
- Section 13: Amends s. 607.0122, F.S.; relating to fees for filing documents and issuing certificates.
- Section 14: Amends s. 617.0122, F.S.; relating to fees for filing documents and issuing certificates.
- Section 15: Reenacts s. 605.0207, F.S.; relating to effective date and time.
- Section 16: Reenacts s. 605.0113, F.S.; relating to registered agent.
- Section 17: Reenacts s. 658.23, F.S.; relating to submission of articles of incorporation; contents; form; approval; filing; commencement of corporate existence; bylaws.
- Section 18: Reenacts s. 607.0501, F.S.; relating to registered office and registered agent.
- Section 19: Reenacts s. 607.193, F.S.; relating to supplemental corporate fee.
- Section 20: Reenacts s. 39.8298, F.S.; relating to authority.
- Section 21: Reenacts s. 252.71, F.S.; relating to Florida Emergency Management Assistance Foundation.
- Section 22: Reenacts s. 288.012, F.S.; relating to State of Florida international offices; direct-support organization.
- Section 23: Reenacts s. 617.1807, F.S.; relating to conversion to corporation not for profit; authority of circuit judge.
- Section 24: Reenacts s. 617.2006, F.S.; relating to incorporation of labor unions or bodies.
- Section 25: Reenacts s. 617.0501, F.S.; relating to registered office and registered agent.
- Section 26: Reenacts s. 617.0503, F.S.; relating to registered agent; duties; confidentiality of investigation records.
- Section 27: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate negative fiscal impact on state government because the DOS may see a reduced amount in collected fees if a registered agent resigns from more than one corporation at a time by only paying one fee, as opposed to current law which requires a registered agent to pay a fee to resign from each corporation separately.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive economic impact on the private sector because registered agents will be able to resign from more than one corporation at a time by only paying one fee in specified circumstances, as opposed to current law which requires a registered agent to pay a fee to resign from each corporation separately.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not create rule-making authority nor require the promulgation of rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform & Economic Development Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment conformed the bill to the Senate bill, which is substantively identical to the House bill, with a few clarifying and technical changes.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

1 A bill to be entitled

2 An act relating to corporate actions; creating s.
3 607.0145, F.S.; defining terms; creating s. 607.0146,
4 F.S.; providing that a defective corporate action is
5 not void or voidable in certain circumstances;
6 providing that ratification or validation under
7 certain circumstances may not be deemed the exclusive
8 means of either ratifying or validating defective
9 corporate actions, and that the absence or failure to
10 ratify defective corporate actions does not affect the
11 validity or effectiveness of certain corporate actions
12 properly ratified; providing for a process whereby
13 putative shares can be validated in the event of an
14 overissue; creating s. 607.0147, F.S.; requiring the
15 board of directors to take certain action to ratify a
16 defective corporate action; authorizing those
17 exercising the powers of the directors to take certain
18 action when certain defective actions are related to
19 the ratification of the initial board of directors;
20 requiring members of the board of directors to seek
21 approval of the shareholders in connection with
22 ratifying a defective corporate action under certain
23 conditions; authorizing the board of directors to
24 abandon ratification at any time before the validation
25 effective time after action by the board and, if

26 required, approval of the shareholders; creating s.
27 607.0148, F.S.; providing quorum and voting
28 requirements for the ratification of certain defective
29 corporate actions; requiring the board, in connection
30 with a shareholder meeting held to ratify a defective
31 corporate action, to send notice to all identifiable
32 shareholders of a certain meeting date; requiring that
33 the notice state that a purpose of the meeting is to
34 consider ratification of a defective corporate action;
35 requiring the notice sent to be accompanied by certain
36 information; specifying the quorum and voting
37 requirements applicable to ratification of the
38 election of directors; requiring votes cast within the
39 voting group favoring ratification of the election of
40 a director to exceed the votes cast within the voting
41 group opposing such ratification; prohibiting holders
42 of putative shares from voting on ratification of any
43 defective corporate action and providing that they may
44 not be counted for quorum purposes or in certain
45 written consents; requiring approval of certain
46 amendments to the corporation's articles of
47 incorporation under certain circumstances; creating s.
48 607.0149, F.S.; requiring that notice be given to
49 shareholders of certain corporate action taken by the
50 board of directors; providing that notice is not

51 required for holders of certain shares whose
52 identities or addresses for notice cannot be
53 determined; providing requirements for such notice;
54 providing requirements for such notice for
55 corporations subject to certain federal reporting
56 requirements; creating s. 607.015, F.S.; specifying
57 the effects of ratification; creating s. 607.0151,
58 F.S.; requiring corporations to file articles of
59 validation under certain circumstances; providing
60 applicability; providing requirements for articles of
61 validation; creating s. 607.0152, F.S.; authorizing
62 certain persons and entities to file certain motions;
63 providing for service of process; requiring that
64 certain actions be filed within a specified timeframe;
65 authorizing the court to consider certain factors in
66 resolving certain issues; authorizing the courts to
67 take certain actions in cases involving defective
68 corporate actions; amending ss. 605.0115, 607.0503,
69 and 617.0502, F.S.; providing that a registered agent
70 may resign from certain limited liability companies or
71 foreign limited liability companies, certain dissolved
72 corporations, and certain active or dissolved
73 corporations, respectively, by delivering a specified
74 statement of resignation to the Department of State;
75 providing requirements for the statement; providing

76 | that a registered agent who is resigning from more
77 | than one such corporations or limited liability
78 | companies may elect to file a statement of resignation
79 | for each such company or corporation or a composite
80 | statement; providing requirements for composite
81 | statements; requiring that a copy of each of the
82 | statements of resignation or the composite statement
83 | be mailed to the address on file with the department
84 | for the company or corporation or companies or
85 | corporations, as applicable; amending ss. 605.0213,
86 | 607.0122, and 617.0122, F.S.; conforming provisions to
87 | changes made by the act; providing registered agents
88 | may pay one resignation fee regardless of whether
89 | resigning from one or multiple dissolved companies or
90 | corporations; reenacting ss. 605.0207 and
91 | 605.0113(3)(b), F.S., relating to effective dates and
92 | times and to registered agents, respectively, to
93 | incorporate the amendments made to s. 605.0115, F.S.,
94 | in references thereto; reenacting s. 658.23(1), F.S.,
95 | relating to submission of articles of incorporation,
96 | to incorporate the amendment made to s. 607.0122,
97 | F.S., in a reference thereto; reenacting s.
98 | 607.0501(4), F.S., relating to registered offices and
99 | registered agents, to incorporate the amendment made
100 | to s. 607.0503, F.S., in a reference thereto;

101 reenacting s. 607.193(2)(b), F.S., relating to
 102 supplemental corporate fees, to incorporate the
 103 amendments made to ss. 605.0213 and 607.0122, F.S., in
 104 references thereto; reenacting ss. 39.8298(1)(a),
 105 252.71(2)(a), 288.012(6)(a), 617.1807, and
 106 617.2006(4), F.S., relating to the Guardian Ad Litem
 107 direct-support organization, the Florida Emergency
 108 Management Assistance Foundation, State of Florida
 109 international offices, conversion to corporation not
 110 for profit, and incorporation of labor unions or
 111 bodies, respectively, to incorporate the amendment
 112 made to s. 617.0122, F.S., in references thereto;
 113 reenacting s. 617.0501(3) and 617.0503(1)(a), F.S.,
 114 relating to registered agents, to incorporate the
 115 amendment made to s. 617.0502, F.S., in references
 116 thereto; providing an effective date.

117

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

119

120 Section 1. Section 607.0145, Florida Statutes, is created
 121 to read:

122 607.0145 Definitions.—As used in ss. 607.0145-607.0152,
 123 the term:

124 (1) "Corporate action" means any action taken by or on
 125 behalf of a corporation, including any action taken by the

126 incorporator, the board of directors, a committee of the board
 127 of directors, an officer or agent of the corporation, or the
 128 shareholders.

129 (2) "Date of the defective corporate action" means the
 130 date, or, if the exact date is unknown, the approximate date, on
 131 which the defective corporate action was purported to have been
 132 taken.

133 (3) "Defective corporate action" means:

134 (a) Any corporate action purportedly taken which is, and
 135 at the time such corporate action was purportedly taken would
 136 have been, within the power of the corporation, but is void or
 137 voidable due to a failure of authorization; or

138 (b) An overissue.

139 (4) "Failure of authorization" means the failure to
 140 authorize, approve, or otherwise effect a corporate action in
 141 compliance with this chapter, the corporation's articles of
 142 incorporation or bylaws, a corporate resolution, or any plan or
 143 agreement to which the corporation is a party, if and to the
 144 extent such failure would render such corporate action void or
 145 voidable.

146 (5) "Overissue" means the purported issuance of:

147 (a) Shares of a class or series in excess of the number of
 148 shares of the class or series the corporation has the power to
 149 issue under s. 607.0601 at the time of such issuance; or

150 (b) Shares of any class or series that is not then

151 authorized for issuance by the corporation's articles of
152 incorporation.

153 (6) "Putative shares" means the shares of any class or
154 series, including shares issued upon exercise of rights,
155 options, warrants or other securities convertible into shares of
156 the corporation, or interests with respect to such shares, that
157 were created or issued as a result of a defective corporate
158 action and that:

159 (a) Would constitute valid shares but for any failure of
160 authorization; or

161 (b) Cannot be determined by the board of directors to be
162 valid shares.

163 (7) "Valid shares" means the shares of any class or series
164 that have been duly authorized and validly issued in accordance
165 with this chapter, including as a result of ratification or
166 validation under ss. 607.0145-607.0152.

167 (8)(a) "Validation effective time," with respect to any
168 defective corporate action ratified under ss. 607.0145-607.0152,
169 means the later of the following:

170 1. The date and time at which the ratification of the
171 defective corporate action is approved by the shareholders, or
172 if approval of shareholders is not required, the date and time
173 at which the notice required by s. 607.0149 becomes effective in
174 accordance with s. 607.0141;

175 2. If no articles of validation are required to be filed

176 in accordance with s. 607.0151, the date and time at which the
177 notice required by s. 607.0149 becomes effective in accordance
178 with s. 607.0141; or

179 3. If articles of validation are required to be filed in
180 accordance with s. 607.0151, the date and time at which the
181 articles of validation filed in accordance with s. 607.0151
182 become effective.

183 (b) The validation effective time will not be affected by
184 the filing or pendency of a judicial proceeding under s.
185 607.0152 or any other law unless otherwise ordered by the court.

186 Section 2. Section 607.0146, Florida Statutes, is created
187 to read:

188 607.0146 Defective corporate actions.—

189 (1) A defective corporate action is not void or voidable
190 if:

191 (a) The defective corporate action was ratified in
192 accordance with the requirements of s. 607.0147, including the
193 filing, if required, of articles of validation pursuant to s.
194 607.0151; or

195 (b) The defective corporate action was validated in
196 accordance with s. 607.0152.

197 (2) Ratification under s. 607.0147 or validation under s.
198 607.0152 may not be deemed to be the exclusive means of
199 ratifying or validating any defective corporate action, and the
200 absence or failure of ratification in accordance with ss.

201 607.0145-607.0152 will not, in and of itself, affect the
202 validity or effectiveness of any corporate action properly
203 ratified under common law or otherwise, and it does not create a
204 presumption that any such corporate action is or was a defective
205 corporate action or is or was void or voidable.

206 (3) In the case of an overissue, putative shares will be
207 valid shares effective as of the date originally issued or
208 purportedly issued upon:

209 (a) The effectiveness under ss. 607.0145-607.0152 and ss.
210 607.1001-607.1009 of an amendment to the articles of
211 incorporation authorizing, designating, or creating such shares;
212 or

213 (b) The effectiveness of any other corporate action taken
214 under ss. 607.0145-607.0152 ratifying the authorization,
215 designation, or creation of such shares.

216 Section 3. Section 607.0147, Florida Statutes, is created
217 to read:

218 607.0147 Ratification of defective corporate actions.—

219 (1) To ratify a defective corporate action under this
220 section, other than to ratify an election of the initial board
221 of directors under subsection (2), the board of directors must
222 take the action in accordance with s. 607.0148, stating all of
223 the following:

224 (a) The defective corporate action to be ratified and, if
225 the defective corporate action involved the issuance of putative

226 shares, the number and type of putative shares purportedly
227 issued.

228 (b) The date of the defective corporate action.

229 (c) The nature of the failure of authorization with
230 respect to the defective corporate action to be ratified.

231 (d) That the board of directors approves the ratification
232 of the defective corporate action.

233 (2) If a defective corporate action to be ratified relates
234 to the election of the initial board of directors of the
235 corporation under s. 607.0205(1) (b), a majority of the persons
236 who, at the time of the ratification, are exercising the powers
237 of directors must take an action stating all of the following:

238 (a) The name of the person or persons who first took
239 action in the name of the corporation as the initial board of
240 directors of the corporation.

241 (b) The earlier of the date on which either such persons
242 first took such action or were purported to have been elected to
243 the initial board of directors.

244 (c) That the ratification of the election of such person
245 or persons as the initial board of directors is approved.

246 (3) If any provision of this chapter, the corporation's
247 articles of incorporation or bylaws, any corporate resolution,
248 or any plan or agreement in effect at the time action to which
249 the corporation is a party under subsection (1) is taken
250 requires shareholder approval, or would have required

251 shareholder approval, at the date of the occurrence of the
252 defective corporate action, the ratification of the defective
253 corporate action approved in the action taken by the directors
254 under subsection (1) must be submitted to the shareholders for
255 approval in accordance with s. 607.0148.

256 (4) Unless otherwise provided in the action taken by the
257 board of directors under subsection (1), after the action by the
258 board of directors has been taken and, if required, approved by
259 the shareholders, the board of directors may abandon the
260 ratification at any time before the validation effective time
261 without further action of the shareholders.

262 Section 4. Section 607.0148, Florida Statutes, is created
263 to read:

264 607.0148 Action on ratification.—

265 (1) The quorum and voting requirements applicable to a
266 ratifying action by the board of directors under s. 607.0147(1)
267 are the quorum and voting requirements applicable to the
268 corporate action proposed to be ratified at the time such
269 ratifying action is taken.

270 (2)(a) If the ratification of the defective corporate
271 action requires approval by the shareholders under s.
272 607.0147(3), and if the approval is to be given at a meeting,
273 the corporation must give notice of the meeting to each holder
274 of valid and putative shares, regardless of whether entitled to
275 vote, as of the record date for notice of the meeting and as of

276 the date of the occurrence of the defective corporate action;
277 however, such notice is not required to be given to holders of
278 valid or putative shares whose identities or addresses for
279 notice cannot be determined from the records of the corporation.
280 The notice must state that the purpose, or one of the purposes,
281 of the meeting is to consider ratification of a defective
282 corporate action.

283 (b) If the ratification of the defective corporate action
284 requires approval by the shareholders under s. 607.0147(3), and
285 if the approval is to be ratified by one or more written
286 consents of the shareholders, the corporation must give notice
287 of the action taken by such written consent to each holder of
288 valid and putative shares as of the record date of the action by
289 written consent and as of the date of the occurrence of the
290 defective corporate action, regardless of whether entitled to
291 vote; however, notice is not required to be given to holders of
292 valid or putative shares whose identities or addresses for
293 notice cannot be determined from the records of the corporation.
294 The notice must state that the purpose, or one of the purposes,
295 of the written consent was to ratify the defective corporate
296 action.

297 (c) The notice must be accompanied by both of the
298 following:

299 1. Either:

300 a. A copy of the action taken by the board of directors in

301 accordance with s. 607.0147(1); or

302 b. The information required by s. 607.0147(1)(a)-(d).

303 2. A statement that any claim asserting that the
304 ratification of such defective corporate action, and any
305 putative shares issued as a result of such defective corporate
306 action, should not be effective, or should only be effective on
307 certain conditions, and must be brought, if at all, within 120
308 days after the applicable validation effective time.

309 (3) Except as provided in subsection (4) with respect to
310 the voting requirements to ratify the election of a director,
311 any quorum and voting requirements applicable to the approval by
312 the shareholders required by s. 607.0147(3) will be the quorum
313 and voting requirements that are applicable, at the time of such
314 shareholder approval, to the defective corporate action proposed
315 to be ratified.

316 (4) The approval by shareholders at a meeting to ratify
317 the election of a director requires that the votes cast within
318 the voting group favoring such ratification exceed the votes
319 cast within the voting group opposing such ratification of the
320 election at a meeting at which a quorum is present. Approval by
321 shareholders by written consent to ratify the election of a
322 director requires that the consents given within the voting
323 group favoring such ratification represent a majority of the
324 shares of the voting group.

325 (5) Putative shares on the record date for determining the

326 shareholders entitled to vote on any matter submitted to
327 shareholders under s. 607.0147(3), and without giving effect to
328 any ratification of putative shares that becomes effective as a
329 result of such vote, will not be entitled to vote or counted for
330 quorum purposes in any vote to approve the ratification of any
331 defective corporate action. Putative shares on the record date
332 for an action by written consent, and without giving effect to
333 any ratification of putative shares that becomes effective as a
334 result of such written consent, will not be entitled to be
335 counted in any written consent to approve the ratification of
336 any defective corporate action.

337 (6) If approval under this section of putative shares
338 would result in an overissue, in addition to the approval
339 required by s. 607.0147(3), approval of an amendment to the
340 corporation's articles of incorporation under ss. 607.1001-
341 607.1009 to increase the number of shares of an authorized class
342 or series or to authorize the creation of a class or series of
343 shares so there is no overissue will also be required.

344 Section 5. Section 607.0149, Florida Statutes, is created
345 to read:

346 607.0149 Notice requirements.-

347 (1) Unless shareholder approval is required under s.
348 607.0147(3), prompt notice of an action taken by the board of
349 directors under s. 607.0147 must be given to each holder of
350 valid shares and each holder of putative shares, regardless of

351 whether entitled to vote, that is a holder of valid shares or
 352 putative shares as of:

353 (a) The date of the action by the board of directors taken
 354 under s. 607.0147; and

355 (b) The date of the occurrence of the defective corporate
 356 action being ratified.

357 (2) Notice is not required to be given to those holders of
 358 valid shares or those holders of putative shares whose
 359 identities or addresses for notice cannot be determined from the
 360 records of the corporation.

361 (3) The notice must contain both of the following:

362 (a) Either:

363 1. A copy of the action taken by the board of directors
 364 pursuant to s. 607.0147(1); or

365 2. The information required by s. 607.0147(1)(a)-(d) or s.
 366 607.0147(2)(a), (b), and (c), as applicable.

367 (b) A statement that, in order to be considered, any claim
 368 asserting that the ratification of the defective corporate
 369 action, and any putative shares issued as a result of such
 370 defective corporate action, should not be effective, or should
 371 be effective only on certain conditions, and must be brought, if
 372 at all, within 120 days after the applicable validation
 373 effective time.

374 (4) Notice under this section is not required with respect
 375 to any action required to be submitted to shareholders for

376 approval pursuant s. 607.0147(3) if notice is given in
377 accordance with s. 607.0148(2).

378 (5) Notice required by this section may be given in any
379 manner permitted under s. 607.0141 and, for any corporation
380 subject to the reporting requirements of s. 13 or s. 15(d) of
381 the Securities Exchange Act of 1934, may be given by means of a
382 filing or furnishing of such notice with the United States
383 Securities and Exchange Commission.

384 Section 6. Section 607.015, Florida Statutes, is created
385 to read:

386 607.015 Effects of ratification.—The following provisions
387 apply from and after the validation effective time, without
388 regard to the 120-day period during which a claim may be brought
389 under s. 607.0152:

390 (1) Each defective corporate action ratified in accordance
391 with s. 607.0147 will not be void or voidable as a result of the
392 failure of authorization set forth and identified in the action
393 taken under s. 607.0147(1) or (2) and will be deemed a valid
394 corporate action effective as of the date of the defective
395 corporate action.

396 (2) The issuance of each putative share or fraction of a
397 putative share purportedly issued pursuant to a defective
398 corporate action identified in the action taken in accordance
399 with s. 607.0147 will not be void or voidable, and each such
400 putative share or fraction of a putative share will be deemed to

401 be an identical share or fraction of a valid share as of the
 402 time it was purportedly issued.

403 (3) Any corporate action taken subsequent to the defective
 404 corporate action ratified pursuant to ss. 607.0145-607.0152 in
 405 reliance on such defective corporate action having been validly
 406 effected, and any subsequent defective corporate action
 407 resulting directly or indirectly from such original defective
 408 corporate action, will be valid as of the respective time such
 409 corporate action was taken.

410 Section 7. Section 607.0151, Florida Statutes, is created
 411 to read:

412 607.0151 Filings.—

413 (1) If the defective corporate action ratified under ss.
 414 607.0145-607.0152 would have required a filing under this
 415 chapter and either:

416 (a) Any previous filing requires any change to the filing
 417 to give effect to the defective corporate action in accordance
 418 with this section, including, but not limited to, a change to
 419 the date and time of the effectiveness of such filing; or

420 (b) A filing was not previously filed in respect of the
 421 defective corporate action,

422
 423 In lieu of a filing otherwise required under this chapter, the
 424 corporation must file articles of validation in accordance with
 425 this section, and such articles of validation will serve to

426 amend or be a substitute for any other filing with respect to
427 such defective corporate action required by this chapter.

428 (2) The articles of validation must specify all of the
429 following:

430 (a) The defective corporate action that is the subject of
431 the articles of validation, including, in the case of any
432 defective corporate action involving the issuance of putative
433 shares, the number and type of putative shares issued and the
434 date or dates upon which such putative shares were purported to
435 have been issued.

436 (b) The date of the defective corporate action.

437 (c) The nature of the failure of authorization in respect
438 of the defective corporate action.

439 (d) A statement that the defective corporate action was
440 ratified in accordance with s. 607.0147, including the date on
441 which the board of directors ratified such defective corporate
442 action and, if applicable, the date on which the shareholders
443 approved the ratification of such defective corporate action.

444 (e)1. If a filing was previously made in respect of the
445 defective corporate action and such filing requires any change
446 to give effect to the ratification of such defective corporate
447 action pursuant to s. 607.0147:

448 a. The name, title, and filing date of the filing
449 previously made and any articles of correction for that filing;

450 b. A statement that a filing containing all of the

451 information required to be included under the applicable
452 provisions of this chapter to give effect to such defective
453 corporate action is attached as an exhibit to the articles of
454 validation; and

455 c. The date and time that such filing is deemed to have
456 become effective.

457 2. If a filing was not previously made in respect of the
458 defective corporate action and the defective corporate action
459 ratified pursuant to s. 607.0147 would have required a filing
460 under any other provision of this chapter:

461 a. A statement that a filing containing all of the
462 information required to be included under the applicable
463 provisions of this chapter to give effect to such defective
464 corporate action is attached as an exhibit to the articles of
465 validation; and

466 b. The date and time that such filing is deemed to have
467 become effective.

468 Section 8. Section 607.0152, Florida Statutes, is created
469 to read:

470 607.0152 Judicial proceedings regarding validity of
471 corporate actions.—

472 (1) Subject to subsection (4), upon application by the
473 corporation, any successor entity to the corporation; a director
474 of the corporation; any shareholder, beneficial shareholder, or
475 unrestricted voting trust beneficial owner of the corporation,

476 including any such shareholder, beneficial shareholder, or
477 unrestricted voting trust beneficial owner as of the date of the
478 defective corporate action ratified pursuant to s. 607.0147; or
479 any other person claiming to be substantially and adversely
480 affected by a ratification in accordance with s. 607.0147, the
481 circuit court in the applicable county may take any one or more
482 of the following actions:

483 (a) Determine the validity and effectiveness of any
484 corporate action or defective corporate action ratified pursuant
485 to s. 607.0147.

486 (b) Determine the validity and effectiveness of any
487 ratification of any defective corporate action pursuant to s.
488 607.0147.

489 (c) Determine the validity and effectiveness of any
490 defective corporate action not ratified or not ratified
491 effectively pursuant to s. 607.0147.

492 (d) Determine the validity of any putative shares.

493 (e) Modify or waive any of the procedures specified in s.
494 607.0147 or s. 607.0148 to ratify a defective corporate action.

495 (2) In connection with an action brought under this
496 section, the court may make such findings or issue such orders
497 and take into account any one or more factors or considerations
498 as it deems proper under the circumstances, including, but not
499 limited to, any one or more of the factors, considerations,
500 findings, and orders set forth in subsections (5) and (6).

501 (3) Service of process of the application under subsection
502 (1) on the corporation may be made in any manner provided in
503 chapter 48 for service on a corporation, and no other party need
504 be joined in order for the court to adjudicate the matter. In an
505 action filed by the corporation, the court may require that
506 notice of the action be provided to other persons specified by
507 the court and permit such other persons to intervene in the
508 action.

509 (4) Notwithstanding any other law to the contrary, any
510 action asserting that the ratification of a defective corporate
511 action, and any putative shares issued as a result of such
512 defective corporate action, should not be effective, or should
513 be effective only on certain conditions, must be brought, if at
514 all, within 120 days after the validation effective time.

515 (5) In connection with the resolution of matters under
516 subsection (2), the court may consider any of the following:

517 (a) Whether the defective corporate action was originally
518 approved or effectuated with the belief that the approval or
519 effectuation was in compliance with the provisions of this
520 chapter, the articles of incorporation, or the bylaws of the
521 corporation.

522 (b) Whether the corporation and board of directors have
523 treated the defective corporate action as a valid act or
524 transaction and whether any person has acted in reliance on the
525 public record that such defective corporate action was valid.

526 (c) Whether any person will be or was harmed by the
527 ratification or validation of the defective corporate action,
528 excluding any harm that would have resulted if the defective
529 corporate action had been valid when approved or effectuated.

530 (d) Whether any person will be harmed by the failure to
531 ratify or validate the defective corporate action.

532 (e) Whether the defective corporate action was a conflict
533 of interest transaction.

534 (f) Any other factors or considerations the court deems
535 just and equitable.

536 (6) In connection with an action under this section, the
537 court may do any one or more of the following:

538 (a) Declare that a ratification in accordance with and
539 pursuant to s. 607.0147 is not effective or shall only be
540 effective at a time or upon conditions established by the court.

541 (b) Validate and declare effective any defective corporate
542 action or putative shares and impose conditions upon such
543 validation.

544 (c) Require measures to remedy or avoid harm to any person
545 substantially and adversely affected by a ratification in
546 accordance with and pursuant to s. 607.0147 or by any order of
547 the court pursuant to this section, excluding any harm that
548 would have resulted if the defective corporate action had been
549 valid when approved or effectuated.

550 (d) Order the department to accept an instrument for

551 filing with an effective time specified by the court, which
552 effective time may be before or after the date and time of such
553 order, provided that the filing date of such instrument shall be
554 determined in accordance with s. 607.0123.

555 (e) Approve a stock ledger for the corporation that
556 includes any shares ratified or validated in accordance with
557 this section or s. 607.0147.

558 (f) Declare that the putative shares are valid shares or
559 require a corporation to issue and deliver valid shares in place
560 of any putative shares.

561 (g) Order that a meeting of holders of valid shares or
562 putative shares be held and exercise such powers as it deems
563 appropriate with respect to such a meeting.

564 (h) Declare that a defective corporate action validated by
565 the court shall be effective as of the date and time of the
566 defective corporate action or at such other date and time as
567 determined by the court.

568 (i) Declare that putative shares validated by the court
569 shall be deemed to be identical valid shares or fractions of
570 valid shares as of the date and time originally issued or
571 purportedly issued or at such other date and time as determined
572 by the court.

573 (j) Require payment by the corporation of reasonable
574 expenses, including attorney fees and costs, that the court
575 finds just and equitable under the circumstances.

576 (k) Issue other orders as it deems necessary and proper
577 under the circumstances.

578 Section 9. Subsection (2) of section 605.0115, Florida
579 Statutes, is amended, and subsection (6) is added to that
580 section, to read:

581 605.0115 Resignation of registered agent.—

582 (2) After delivering the statement of resignation to the
583 department for filing, the registered agent must promptly mail a
584 copy to the limited liability company's or foreign limited
585 liability company's current mailing address; provided, however,
586 that if a composite statement of resignation is being filed
587 pursuant to subsection (6), the registered agent must promptly
588 mail a copy of either the composite statement of resignation or
589 a separate notice of resignation for each respective limited
590 liability company, in each case using the respective mailing
591 address of the respective limited liability company that then
592 appears in the records of the department.

593 (6) (a) If a registered agent is resigning as registered
594 agent from more than one limited liability company that each has
595 been dissolved, either voluntarily, administratively, or by
596 court action, for a continuous period of 10 years or longer, the
597 registered agent may elect to file the statement of resignation
598 separately for each such limited liability company or may elect
599 to file a single composite statement of resignation covering two
600 or more limited liability companies. Any such composite

601 statement of resignation must set forth, for each such limited
602 liability company covered by the statement of resignation, the
603 name of the respective limited liability and the date
604 dissolution became effective for the respective limited
605 liability company.

606 (b) This subsection is applicable only to resignations
607 from limited liability companies as defined in this chapter.

608 Section 10. Subsection (2) of section 607.0503, Florida
609 Statutes, is amended, and subsection (6) is added to that
610 section, to read:

611 607.0503 Resignation of registered agent.—

612 (2) After delivering the statement of resignation to the
613 department for filing, the registered agent must promptly mail a
614 copy to the corporation at its current mailing address;
615 provided, however, that if a composite statement of resignation
616 is being filed pursuant to subsection (6), the registered agent
617 must promptly mail a copy of either the composite statement of
618 resignation or a separate notice of resignation for each
619 respective corporation, in each case using the respective
620 mailing address of the respective corporation that then appears
621 in the records of the department.

622 (6)(a) If a registered agent is resigning as registered
623 agent from more than one corporation that each has been
624 dissolved, either voluntarily, administratively, or by court
625 action, for a continuous period of 10 years or longer, the

626 registered agent may elect to file the statement of resignation
627 separately for each such corporation or may elect to file a
628 single composite statement of resignation covering two or more
629 corporations. Any such composite statement of resignation must
630 set forth, for each such corporation covered by the statement of
631 resignation, the name of the respective corporation and the date
632 that dissolution became effective for the respective
633 corporation.

634 (b) This subsection is applicable only to resignations by
635 registered agents from domestic corporations.

636 Section 11. Subsection (2) of section 617.0502, Florida
637 Statutes, is amended to read:

638 617.0502 Change of registered office or registered agent;
639 resignation of registered agent.—

640 (2)(a) Any registered agent may resign his or her agency
641 appointment by signing and delivering for filing with the
642 Department of State a statement of resignation and mailing a
643 copy of such statement to the corporation at its mailing address
644 as it then appears in the records of the Department of State;
645 provided, however, that if a composite statement of resignation
646 is being filed pursuant to paragraph (b), the registered agent
647 must promptly mail a copy of either the composite statement of
648 resignation or a separate notice of resignation for each
649 respective corporation, in each case using the respective
650 mailing address of the respective corporation that then appears

651 in the records of the Department of State ~~principal office~~
652 ~~address shown in its most recent annual report or, if none,~~
653 ~~filed in the articles of incorporation or other most recently~~
654 ~~filed document.~~ The statement of resignation shall state that a
655 copy of such statement of resignation or, if applicable, notice
656 of resignation, has been mailed to the corporation at the
657 address so stated. The agency is terminated as of the 31st day
658 after the date on which the statement was filed and unless
659 otherwise provided in the statement, termination of the agency
660 acts as a termination of the registered office.

661 (b) If a registered agent is resigning as registered agent
662 from one or more corporations that each has been dissolved,
663 either voluntarily, administratively, or by court action, for a
664 continuous period of 10 years or longer, the registered agent
665 may elect to file the statement of resignation separately for
666 each such corporation or may elect to file a single composite
667 statement of resignation covering two or more corporations. Any
668 such composite statement of resignation must set forth, for each
669 such corporation covered by the statement of resignation, the
670 name of the respective corporation and the date that dissolution
671 became effective for the respective corporation. This subsection
672 is applicable only to resignations by registered agents from
673 domestic corporations.

674 Section 12. Subsections (8) and (9) of section 605.0213,
675 Florida Statutes, are amended to read:

676 605.0213 Fees of the department.—The fees of the
677 department under this chapter are as follows:

678 (8) For filing a registered agent's statement of
679 resignation from a ~~an active~~ limited liability company that has
680 not been dissolved, \$85.

681 (9) For filing a registered agent's statement of
682 resignation from a dissolved limited liability company or a
683 composite statement of resignation from two or more dissolved
684 limited liability companies pursuant to s. 605.0115(6), \$25.

685 Section 13. Subsections (6) and (7) of section 607.0122,
686 Florida Statutes, are amended to read:

687 607.0122 Fees for filing documents and issuing
688 certificates.—The department shall collect the following fees
689 when the documents described in this section are delivered to
690 the department for filing:

691 (6) Agent's statement of resignation from a ~~active~~
692 corporation that has not been dissolved: \$87.50.

693 (7) Agent's statement of resignation from a dissolved ~~an~~
694 ~~inactive~~ corporation or a composite statement of resignation
695 from two or more dissolved corporations pursuant to s.
696 607.0502(6): \$35.

697 Section 14. Subsections (6) and (7) of section 617.0122,
698 Florida Statutes, are amended to read:

699 617.0122 Fees for filing documents and issuing
700 certificates.—The Department of State shall collect the

701 following fees on documents delivered to the department for
 702 filing:

703 (6) Agent's statement of resignation from a active
 704 corporation that has not been dissolved: \$87.50.

705 (7) Agent's statement of resignation from a dissolved
 706 ~~inactive~~ corporation or a composite statement of resignation
 707 from two or more dissolved corporations pursuant to s.
 708 617.0502(2)(b): \$35.

709
 710 Any citizen support organization that is required by rule of the
 711 Department of Environmental Protection to be formed as a
 712 nonprofit organization and is under contract with the department
 713 is exempt from any fees required for incorporation as a
 714 nonprofit organization, and the Secretary of State may not
 715 assess any such fees if the citizen support organization is
 716 certified by the Department of Environmental Protection to the
 717 Secretary of State as being under contract with the Department
 718 of Environmental Protection.

719 Section 15. For the purpose of incorporating the
 720 amendments made by this act to section 605.0115, Florida
 721 Statutes, in a reference thereto, section 605.0207, Florida
 722 Statutes, is reenacted to read:

723 605.0207 Effective date and time.—Except as otherwise
 724 provided in s. 605.0208, and subject to s. 605.0209(3), any
 725 document delivered to the department for filing under this

726 chapter may specify an effective time and a delayed effective
727 date. In the case of initial articles of organization, a prior
728 effective date may be specified in the articles of organization
729 if such date is within 5 business days before the date of
730 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
731 605.0209, a record filed by the department is effective:

732 (1) If the record filed does not specify an effective time
733 and does not specify a prior or a delayed effective date, on the
734 date and at the time the record is accepted as evidenced by the
735 department's endorsement of the date and time on the filing.

736 (2) If the record filed specifies an effective time, but
737 not a prior or delayed effective date, on the date the record is
738 accepted, as evidenced by the department's endorsement, and at
739 the time specified in the filing.

740 (3) If the record filed specifies a delayed effective
741 date, but not an effective time, at 12:01 a.m. on the earlier
742 of:

- 743 (a) The specified date; or
744 (b) The 90th day after the record is filed.

745 (4) If the record filed specifies a delayed effective date
746 and an effective time, at the specified time on or the earlier
747 of:

- 748 (a) The specified date; or
749 (b) The 90th day after the record is filed.
750 (5) If the record filed is the initial articles of

751 organization and specifies an effective date before the date of
752 the filing, but no effective time, at 12:01 a.m. on the later
753 of:

754 (a) The specified date; or

755 (b) The 5th business day before the record is filed.

756 (6) If the record filed is the initial articles of
757 organization and specifies an effective time and an effective
758 date before the date of the filing, at the specified time on the
759 later of:

760 (a) The specified date; or

761 (b) The 5th business day before the record is filed.

762 (7) If the record filed does not specify the time zone or
763 place at which the date or time, or both, is to be determined,
764 the date or time, or both, at which it becomes effective shall
765 be those prevailing at the place of filing in this state.

766 Section 16. For the purpose of incorporating the
767 amendments made by this act to section 605.0115, Florida
768 Statutes, in a reference thereto, paragraph (b) of subsection
769 (3) of section 605.0113, Florida Statutes, is reenacted to read:

770 605.0113 Registered agent.—

771 (3) The duties of a registered agent are as follows:

772 (b) If the registered agent resigns, to provide the notice
773 required under s. 605.0115(2) to the company or foreign limited
774 liability company at the address most recently supplied to the
775 agent by the company or foreign limited liability company.

776 Section 17. For the purpose of incorporating the amendment
 777 made by this act to section 607.0122, Florida Statutes, in a
 778 reference thereto, subsection (1) of section 658.23, Florida
 779 Statutes, is reenacted to read:

780 658.23 Submission of articles of incorporation; contents;
 781 form; approval; filing; commencement of corporate existence;
 782 bylaws.—

783 (1) Within 3 months after approval by the office and the
 784 appropriate federal regulatory agency, the applicant shall
 785 submit its duly executed articles of incorporation to the
 786 office, together with the filing fee due the Department of State
 787 under s. 607.0122.

788 Section 18. For the purpose of incorporating the amendment
 789 made by this act to section 607.0503, Florida Statutes, in a
 790 reference thereto, subsection (4) of section 607.0501, Florida
 791 Statutes, is reenacted to read:

792 607.0501 Registered office and registered agent.—

793 (4) The duties of a registered agent are:

794 (a) To forward to the corporation at the address most
 795 recently supplied to the registered agent by the corporation, a
 796 process, notice, or demand pertaining to the corporation which
 797 is served on or received by the registered agent; and

798 (b) If the registered agent resigns, to provide the notice
 799 required under s. 607.0503 to the corporation at the address
 800 most recently supplied to the registered agent by the

801 corporation.

802 Section 19. For the purpose of incorporating the
 803 amendments made by this act to sections 605.0213 and 607.0122,
 804 Florida Statutes, in references thereto, paragraph (b) of
 805 subsection (2) of section 607.193, Florida Statutes, is
 806 reenacted to read:

807 607.193 Supplemental corporate fee.—

808 (2)

809 (b) In addition to the fees levied under ss. 605.0213,
 810 607.0122, and 620.1109 and the supplemental corporate fee, a
 811 late charge of \$400 shall be imposed if the supplemental
 812 corporate fee is remitted after May 1 except in circumstances in
 813 which a business entity was administratively dissolved or its
 814 certificate of authority was revoked due to its failure to file
 815 an annual report and the entity subsequently applied for
 816 reinstatement and paid the applicable reinstatement fee.

817 Section 20. For the purpose of incorporating the amendment
 818 made by this act to section 617.0122, Florida Statutes, in a
 819 reference thereto, paragraph (a) of subsection (1) of section
 820 39.8298, Florida Statutes, is reenacted to read:

821 39.8298 Guardian Ad Litem direct-support organization.—

822 (1) AUTHORITY.—The Statewide Guardian Ad Litem Office
 823 created under s. 39.8296 is authorized to create a direct-
 824 support organization.

825 (a) The direct-support organization must be a Florida

826 corporation not for profit, incorporated under the provisions of
827 chapter 617. The direct-support organization shall be exempt
828 from paying fees under s. 617.0122.

829 Section 21. For the purpose of incorporating the amendment
830 made by this act to section 617.0122, Florida Statutes, in a
831 reference thereto, paragraph (a) of subsection (2) of section
832 252.71, Florida Statutes, is reenacted to read:

833 252.71 Florida Emergency Management Assistance
834 Foundation.—

835 (2) The foundation is hereby created as a direct-support
836 organization of the division to provide assistance, funding, and
837 support to the division in its disaster response, recovery, and
838 relief efforts for natural emergencies.

839 (a) The foundation must be an organization that is a
840 Florida nonprofit corporation incorporated under chapter 617,
841 approved by the Department of State, and recognized under s.
842 501(c)(3) of the Internal Revenue Code. The foundation is exempt
843 from paying fees under s. 617.0122.

844 Section 22. For the purpose of incorporating the amendment
845 made by this act to section 617.0122, Florida Statutes, in a
846 reference thereto, paragraph (a) of subsection (6) of section
847 288.012, Florida Statutes, is reenacted to read:

848 288.012 State of Florida international offices; direct-
849 support organization.—The Legislature finds that the expansion
850 of international trade and tourism is vital to the overall

851 health and growth of the economy of this state. This expansion
852 is hampered by the lack of technical and business assistance,
853 financial assistance, and information services for businesses in
854 this state. The Legislature finds that these businesses could be
855 assisted by providing these services at State of Florida
856 international offices. The Legislature further finds that the
857 accessibility and provision of services at these offices can be
858 enhanced through cooperative agreements or strategic alliances
859 between private businesses and state, local, and international
860 governmental entities.

861 (6) (a) The department shall establish and contract with a
862 direct-support organization, organized as a nonprofit under
863 chapter 617 and recognized under s. 501(c) (3) of the Internal
864 Revenue Code, to carry out the provisions of this section;
865 assist with the coordination of international trade development
866 efforts; and assist in development and planning related to
867 foreign investment, international partnerships, and other
868 international business and trade development. The organization
869 is exempt from paying fees under s. 617.0122.

870 Section 23. For the purpose of incorporating the amendment
871 made by this act to section 617.0122, Florida Statutes, in a
872 reference thereto, section 617.1807, Florida Statutes, is
873 reenacted to read:

874 617.1807 Conversion to corporation not for profit;
875 authority of circuit judge.—If the circuit judge to whom the

876 petition and proposed articles of incorporation are presented
877 finds that the petition and proposed articles are in proper
878 form, he or she shall approve the articles of incorporation and
879 endorse his or her approval thereon; such approval shall provide
880 that all of the property of the petitioning corporation shall
881 become the property of the successor corporation not for profit,
882 subject to all indebtedness and liabilities of the petitioning
883 corporation. The articles of incorporation with such
884 endorsements thereupon shall be sent to the Department of State,
885 which shall, upon receipt thereof and upon payment of all taxes
886 due the state by the petitioning corporation, if any, issue a
887 certificate showing the receipt of the articles of incorporation
888 with the endorsement of approval thereon and of the payment of
889 all taxes to the state. Upon payment of the filing fees
890 specified in s. 617.0122, the Department of State shall file the
891 articles of incorporation, and from thenceforth the petitioning
892 corporation shall become a corporation not for profit under the
893 name adopted in the articles of incorporation and subject to all
894 the rights, powers, immunities, duties, and liabilities of
895 corporations not for profit under state law, and its rights,
896 powers, immunities, duties, and liabilities as a corporation for
897 profit shall cease and determine.

898 Section 24. For the purpose of incorporating the amendment
899 made by this act to section 617.0122, Florida Statutes, in a
900 reference thereto, subsection (4) of section 617.2006, Florida

901 Statutes, is reenacted to read:

902 617.2006 Incorporation of labor unions or bodies.—Any
 903 group or combination of groups of workers or wage earners,
 904 bearing the name labor, organized labor, federation of labor,
 905 brotherhood of labor, union labor, union labor committee, trade
 906 union, trades union, union labor council, building trades
 907 council, building trades union, allied trades union, central
 908 labor body, central labor union, federated trades council, local
 909 union, state union, national union, international union,
 910 district labor council, district labor union, American
 911 Federation of Labor, Florida Federation of Labor, or any
 912 component parts or significant words of such terms, whether the
 913 same be used in juxtaposition or with interspace, may be
 914 incorporated under this act.

915 (4) Upon the filing of the articles of incorporation and
 916 the petition, and the giving of such notice, the circuit judge
 917 to whom such petition may be addressed shall, upon the date
 918 stated in such notice, take testimony and inquire into the
 919 admissions and purposes of such organization and the necessity
 920 therefor, and upon such hearing, if the circuit judge shall be
 921 satisfied that the allegations set forth in the petition and
 922 articles of incorporation have been substantiated, and shall
 923 find that such organization will not be harmful to the community
 924 in which it proposes to operate, or to the state, and that it is
 925 intended in good faith to carry out the purposes and objects set

926 | forth in the articles of incorporation, and that there is a
 927 | necessity therefor, the judge shall approve the articles of
 928 | incorporation and endorse his or her approval thereon. Upon the
 929 | filing of the articles of incorporation with its endorsements
 930 | thereupon with the Department of State and payment of the filing
 931 | fees specified in s. 617.0122, the subscribers and their
 932 | associates and successors shall be a corporation by the name
 933 | given.

934 | Section 25. For the purpose of incorporating the amendment
 935 | made by this act to section 617.0502, Florida Statutes, in a
 936 | reference thereto, subsection (3) of section 617.0501, Florida
 937 | Statutes, is reenacted to read:

938 | 617.0501 Registered office and registered agent.—

939 | (3) A registered agent appointed pursuant to this section
 940 | or a successor registered agent appointed pursuant to s.
 941 | 617.0502 on whom process may be served shall each file a
 942 | statement in writing with the Department of State, in such form
 943 | and manner as shall be prescribed by the department, accepting
 944 | the appointment as a registered agent simultaneously with his or
 945 | her being designated. Such statement of acceptance shall state
 946 | that the registered agent is familiar with, and accepts, the
 947 | obligations of that position.

948 | Section 26. For the purpose of incorporating the amendment
 949 | made by this act to section 617.0502, Florida Statutes, in a
 950 | reference thereto, paragraph (a) of subsection (1) of section

951 617.0503, Florida Statutes, is reenacted to read:

952 617.0503 Registered agent; duties; confidentiality of
 953 investigation records.—

954 (1)(a) Each corporation, foreign corporation, or alien
 955 business organization that owns real property located in this
 956 state, that owns a mortgage on real property located in this
 957 state, or that transacts business in this state shall have and
 958 continuously maintain in this state a registered office and a
 959 registered agent and shall file with the Department of State
 960 notice of the registered office and registered agent as provided
 961 in ss. 617.0501 and 617.0502. The appointment of a registered
 962 agent in compliance with s. 617.0501 or s. 617.0502 is
 963 sufficient for purposes of this section if the registered agent
 964 so appointed files, in the form and manner prescribed by the
 965 Department of State, an acceptance of the obligations provided
 966 for in this section.

967 Section 27. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1241 Probation and Community Control Violations

SPONSOR(S): Criminal Justice Subcommittee, Snyder

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
2) Judiciary Committee		Padgett	Kramer

SUMMARY ANALYSIS

Probation is a form of community supervision requiring an offender to maintain specified contacts with a probation officer and complete other terms and conditions. Several standard conditions of probation apply automatically, including requirements to report to a probation officer as directed and to live without violating any law. The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs. Failure to meet any condition of supervision is a violation of probation. Generally, upon a finding that an offender violated probation, the court may revoke, modify, or continue supervision. If the court chooses to revoke supervision, it may impose any sentence that was permissible at the offender's initial sentencing.

In 2019, the Legislature passed legislation to address technical violations of probation more proportionally than had traditionally been authorized through court processes. A technical violation is any alleged violation of probation that is not a new felony, misdemeanor, or criminal traffic offense. Section 948.06(9)(h), F.S., requires each judicial circuit to establish an alternative sanctioning program (ASP), allowing the Department of Corrections to enforce technical violations with court approval, ensuring a swift and certain response without initiating the court process or arresting and booking the offender. Additionally, the law required a court to modify, rather than revoke, probation and imposed a 90-day jail cap for specified probationers committing a low-risk, technical violation.

CS/HB 1241 amends s. 948.06, F.S., to revise provisions related to probation and the ASP. Specifically, the bill:

- Requires a court to modify, rather than revoke probation, if a probationer meets specified criteria and has fewer than two previous violations of probation resolved by the court and limits the jail sentence a court may impose for a violation to 90 days for a first violation and 120 days for a second violation; and
- Requires a court to hold a hearing on a violation of probation within 30 days after a probationer's or offender's arrest or to release the probationer or offender without bail unless the court determines that the hearing was not held in the applicable time frame due to circumstances attributable to the probationer or offender.

The bill amends s. 921.0024, F.S., to prohibit a community sanction violation that was resolved through the ASP from being used when determining an offender's sentence for a violation of probation if probation is revoked.

The bill prohibits community sanction points from being assessed if a probationer or offender resolves a violation of probation through the ASP; requires a court to modify, rather than revoke, a person's probation if he or she commits a second violation of probation and meets specified criteria and caps a probationer's jail sentence if a person commits such a violation at 120 days; and requires a probationer or offender who commits a low-risk violation to be released within 30 days of arrest if a violation hearing does not occur. Thus, the bill may have a negative indeterminate jail and prison bed impact to the extent such probationers or offenders would otherwise be sentenced to a longer term of incarceration for committing a community sanction or probation violation or would otherwise be required to remain in jail for committing a violation of probation until a hearing on the violation occurs.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probation and Community Control

At sentencing for a criminal conviction, a judge may place an offender on probation or community control in lieu of or in addition to incarceration.¹ Probation is a form of community supervision requiring specified contacts with a probation officer and other terms and conditions.² Community control is a more intensive form of supervision involving an individualized program that restricts the offender's movement within the community, home, or residential placement.³ Several standard conditions of probation or community control apply automatically, including requirements to report to a probation officer as directed and to live without violating any law.⁴ The court may also impose special conditions, such as community service hours, regular drug or alcohol testing, no contact orders, and treatment programs.⁵ Failure to meet any condition of supervision is a violation of probation or community control (VOP).

Generally, upon a finding that an offender violated probation or community control, the court may revoke, modify, or continue supervision.⁶ If the court chooses to revoke supervision, it may impose any sentence that was permissible at the offender's initial sentencing.⁷ Upon revocation of supervision, the court is bound by the sentencing guidelines under the Criminal Punishment Code.⁸ The sentencing guidelines provide a formula for computation of the lowest permissible prison sentence, based on a number of factors such as the offender's current and prior offenses. If an offender's probation is revoked and the court sentences the offender under the sentencing guidelines, the violation of probation and any successive violations that an offender has committed are factored into the sentencing formula as a "community sanction violation."⁹ The court must make written findings, contemporaneous with sentencing for the revocation of supervision, to justify a downward departure and sentence an offender to less than the lowest permissible sentence.¹⁰

If an offender qualifies as a violent felony offender of special concern (VFOSC) and violates probation, the court must revoke supervision, unless it makes written findings that the VFOSC does not pose a danger to the community.¹¹ A VFOSC is a person who is on felony supervision:

- Related to a qualifying offense¹² committed on or after March 12, 2007.

¹ S. 948.01, F.S.

² S. 948.001(8), F.S.

³ S. 948.001(3), F.S.

⁴ S. 948.03(1), F.S.

⁵ S. 948.03(2), F.S.

⁶ S. 948.06(2)(b), F.S.

⁷ *Id.*

⁸ S. 921.0022, F.S.

⁹ S. 921.0024, F.S.

¹⁰ *State v. Roman*, 634 So. 2d 291 (Fla. 1st DCA 1994).

¹¹ S. 948.06(8)(e)2.b., F.S.

¹² Section 948.06(8)(c), F.S., defines qualifying offense to include any of the following: kidnapping or attempted kidnapping, s. 787.01, F.S.; false imprisonment of a child under the age of 13, s. 787.02(3), F.S.; luring or enticing a child, s. 787.025(2)(b) or (b), F.S.; murder or attempted murder, s. 782.04, F.S.; attempted felony murder, s. 782.051, F.S.; manslaughter, s. 782.07, F.S.; aggravated battery or attempt, s. 784.045, F.S.; sexual battery or attempt, s. 794.011(2), (3), (4), or (8)(b) or (c), F.S.; lewd and lascivious battery or attempt, s. 800.04(4); lewd and lascivious molestation, s. 800.04(5)(b) or (c), F.S.; lewd and lascivious conduct, s. 800.04(6)(b), F.S.; lewd and lascivious exhibition, s. 800.04(7)(b); lewd and lascivious exhibition on computer, s. 847.0135(5)(b); robbery or attempt, s. 812.13, F.S.; carjacking or attempt, s. 812.133, F.S.; home invasion robbery or attempt, s. 812.135, F.S.; lewd and lascivious offense upon or in the presence of an elderly person or attempt, s. 825.1025, F.S.; sexual performance by a child or attempt, s. 827.071, F.S.; computer pornography, s. 847.0135(2) or (3), F.S.; transmission of child pornography, s. 847.0137, F.S.; selling or buying of minors, s. 847.0145, F.S.; poisoning food or water, s. 859.01, F.S.; abuse of a dead human body, s. 872.06, F.S.; any burglary offense that is a first or second degree felony, s. 810.02(2) or (3), F.S.; arson or attempt, s. 806.01(1), F.S.; aggravated assault, s. 784.021, F.S.; aggravated stalking, s. 784.048(3), (4), (5), or (7), F.S.; aircraft piracy, s. 860.16, F.S.; throwing a deadly missile, s. 790.161(2), (3), or (4), F.S.; and treason, s. 876.32, F.S.

- For any offense committed on or after March 12, 2007, and has previously been convicted of a qualifying offense.
- For any offense committed on or after March 12, 2007, and is found to have violated that supervision by committing a qualifying offense.
- After previously being found by a court to be a habitual violent felony offender,¹³ three-time violent offender,¹⁴ or sexual predator,¹⁵ and has committed a qualifying offense on or after March 12, 2007.¹⁶

When a person is arrested for committing a crime, he or she is generally entitled to pretrial release on reasonable conditions under the Florida Constitution.¹⁷ However, a person taken into custody for a VOP does not have a constitutional right to release pending the disposition of the VOP.¹⁸ If the offender qualifies as a VFOSC, the court is prohibited from granting pretrial release.¹⁹

Alternative Sanctioning Program

In 2019, the Legislature standardized a statewide alternative sanctioning program (ASP), allowing the Department of Corrections to enforce technical violations with court approval.²⁰ A technical violation is any alleged VOP that is not a new felony, misdemeanor, or criminal traffic offense. The ASP ensures a swift and certain response to technical violations without initiating the court process or arresting and booking the offender. After receiving written notice of an alleged technical violation and disclosure of the evidence supporting the violation, an offender who is eligible for the ASP may either elect to participate in the program or waive participation.²¹ If the offender waives participation, the violation proceeds through the court resolution process.²² A court may also disqualify a person from the ASP when initially sentencing him or her to probation.

The ASP identifies eligible offenders, eligible violations, and permissible sanctions. Eligible violations are classified as either low- or moderate-risk.

Low-risk violations only apply to probationers, not offenders on community control, and include:

- A positive drug or alcohol test result;
- Failure to report to the probation office;
- Failure to report a change in address or other required information;
- Failure to attend a required class, treatment or counseling session, or meeting;
- Failure to submit to a drug or alcohol test;
- Violation of curfew;
- Failure to meet a monthly quota for any required probation condition, including making restitution payments, paying court costs, and completing community service hours;
- Leaving the county without permission;
- Failure to report a change in employment;
- Associating with people engaged in criminal activity; or
- Any other violation as determined by administrative order of the chief judge of the circuit.²³

Moderate-risk violations include:

- Any violation classified as low-risk when committed by an offender on community control;
- Failure to remain at an approved residence by an offender on community control;

¹³ S. 775.084(1)(b), F.S.

¹⁴ S. 775.084(1)(c), F.S.

¹⁵ S. 775.21, F.S.

¹⁶ S. 948.06(8)(b), F.S.

¹⁷ Art. I, s. 14, Fla. Const. Exceptions include when a person is charged with a capital offense or offense punishable by life and the proof of guilt is evident or the presumption is great, or if no conditions can reasonably protect the community from risk of physical harm.

¹⁸ *Bernhardt v. State*, 288 So. 2d 490, 497 (Fla. 1974).

¹⁹ S. 903.0351, F.S.

²⁰ S. 948.06(9), F.S.

²¹ S. 948.06(9)(g), F.S.

²² S. 948.06(9)(h)1.a., F.S.

²³ S. 948.06(9)(b), F.S.

- A third low-risk violation by a probationer; or
- Any other violation as determined by administrative order of the chief judge of the circuit.²⁴

The permissible sanctions correspond to the violation risk level. For example, a probation officer may impose sanctions such as additional community service hours, counseling or treatment, drug testing, or curfew in response to a low-risk violation.²⁵ In response to a moderate-risk violation, examples of additional sanctions include residential treatment or electronic monitoring for up to 90 days or a maximum jail sentence of up to 21 days.²⁶ Such responses are designed to be proportional to the severity of the technical violation and to directly respond to the nature of the technical violation.

Offenders are disqualified from alternative sanctioning under any of the following circumstances:

- The offender is a violent felony offender of special concern;
- The violation is a felony, misdemeanor, or criminal traffic offense;
- The violation is absconding;
- The violation is of a stay-away order or no-contact order;
- The violation is not identified as low- or moderate-risk by statute or administrative order;
- The offender has a prior moderate-risk level violation during the same term of supervision;
- The offender has three prior low-risk level violations during the same term of supervision;
- The term of probation is scheduled to terminate in less than 90 days; or
- The terms of the sentence prohibit alternative sanctioning.²⁷

The ASP is voluntary, and the offender may withdraw from participation at any time. Successful completion of an ASP does not affect an offender's withheld adjudication. If the offender withdraws or fails to complete a sanction within either 90 days or a timeframe determined in the agreed-upon sanction, the original VOP proceeds to the court resolution process.

Mandatory Modification of Probation and Jail Cap

Section 948.06(2)(f), F.S., requires a court to modify, rather than revoke, probation and imposes a 90-day jail cap for specified probationers appearing before a court for committing a low-risk technical violation. Unless waived by a defendant, a court is required to modify or continue, rather than revoke, a probationary term, when all of the following apply:

- The term of supervision is probation, rather than community control.
- The probationer does not qualify as a violent felony offender of special concern.
- The violation is a low-risk technical violation.
- The court has not previously found the probationer in violation of probation during the current term of supervision.

If a probationer has less than 90 days of supervision remaining on his or her term of probation and meets the criteria for mandatory modification of probation, a court may revoke probation and sentence the probationer to 90 days in county jail.²⁸

Effect of Proposed Changes

Assessment of Points for a Community Sanction Violation

²⁴ S. 948.06(9)(c), F.S.

²⁵ S. 948.06(9)(e), F.S.

²⁶ S. 948.06(9)(f), F.S.

²⁷ S. 948.06(9)(d), F.S.

²⁸ S. 948.06(2)(f)3., F.S.

CS/HB 1241 amends s. 921.0024, F.S., to prohibit any violation of probation that was resolved through the ASP from being assessed as community sanction violations points and being used in determining an offender's lowest permissible sentence of incarceration if the offender's probation has been revoked.

Mandatory Modification of Probation and Jail Cap

The bill amends s. 948.06, F.S., to require a court to modify, rather than revoke probation, if a person otherwise meets the criteria for modification under s. 948.06(2)(f), F.S., and a court has not, on *two or more* separate occasions, found the probationer in violation of his or her probation. Current law excludes a person who has previously been found by a court to be in violation of his or her probation from qualifying for mandatory modification of probation.

Under the bill, if a court previously found a probationer in violation of probation and modified probation by sentencing a probationer to up to 90 days in county jail as a special condition or probation, the court may only sentence the probationer to up to 120 days in county jail as a special condition of probation for a second violation of probation. If a probationer has less time remaining on supervision than the number of days to which he or she could be sentenced, the court may revoke probation and sentence the probationer to a maximum of either 90 days or 120 days in county jail, as applicable.

Resolution of Violations

Under the bill, if a probationer or offender is arrested for committing a low-risk violation, a court must, within 30 days of such arrest, give the probationer or offender an opportunity to be fully heard on his or her behalf in person or by counsel. If a hearing is not held within 30 days after arrest, the court must release the probationer or offender without bail unless the court finds that a hearing was not held in the applicable time frame due to circumstances attributable to the probationer or offender. Under the bill, a court may impose nonmonetary conditions of release if the probationer or offender is released without bail.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 921.0024, F.S., relating to Criminal Punishment Code; worksheet computations; scoresheets.

Section 2: Amends s. 948.06, F.S., relating to violation of probation or community control; revocation; modification; continuance; failure to pay restitution or cost of supervision.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill prohibits community sanction points from being assessed if a probationer or offender resolves a violation of probation through the ASP; requires a court to modify, rather than revoke, a person's probation if he or she commits a second violation of probation and meets specified criteria and caps a probationer's jail sentence if a person commits such a violation at 120 days; and requires a probationer or offender who commits a low-risk violation to be released within 30 days of arrest if a violation hearing does not occur. Thus, the bill may have a negative indeterminate jail and prison bed impact to the extent such probationers or offenders would otherwise be sentenced to a longer term of incarceration for committing a community sanction or probation violation or would otherwise be required to remain in jail for committing a violation of probation until a hearing on the violation occurs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Restored a provision in current law that prohibits a sentencing court from multiplying the assessment of community sanction violation points if multiple community sanction violations are before such court;
- Limited a provision that required a court to hold a violation of probation hearing within 30 days after a probationer's or offender's arrest, or after counsel appears for the probationer or offender, whichever

occurs later, to only require the court to hold such a hearing within 30 days of the probationer's or offender's arrest.

- Made technical changes to remove duplicative language and improve the organization of the bill.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to probation and community control
 3 violations; amending s. 921.0024, F.S.; revising the
 4 sentencing score sheet to reflect the absence of
 5 community sanction points assessed in certain
 6 circumstances; amending s. 948.06, F.S.; revising
 7 sanctions for probation violations; providing for
 8 hearings within a specified time period for low-risk
 9 probation or community control violations; providing
 10 for the release of offenders in certain circumstances
 11 if a hearing is not held; providing for nonmonetary
 12 conditions of release; making technical changes;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (b) of subsection (1) of section
 18 921.0024, Florida Statutes, is amended to read:

19 921.0024 Criminal Punishment Code; worksheet computations;
 20 scoresheets.—

21 (1)

22 (b) WORKSHEET KEY:

23 Legal status points are assessed when any form of legal status
 24 existed at the time the offender committed an offense before the
 25 court for sentencing. Four (4) sentence points are assessed for

26 | an offender's legal status.

27 |

28 | Community sanction violation points are assessed when a
29 | community sanction violation is before the court for sentencing.
30 | Six (6) sentence points are assessed for each community sanction
31 | violation and each successive community sanction violation,
32 | unless any of the following apply:

33 | 1. If the community sanction violation includes a new
34 | felony conviction before the sentencing court, twelve (12)
35 | community sanction violation points are assessed for the
36 | violation, and for each successive community sanction violation
37 | involving a new felony conviction.

38 | 2. If the community sanction violation is committed by a
39 | violent felony offender of special concern as defined in s.
40 | 948.06:

41 | a. Twelve (12) community sanction violation points are
42 | assessed for the violation and for each successive violation of
43 | felony probation or community control where:

44 | I. The violation does not include a new felony conviction;
45 | and

46 | II. The community sanction violation is not based solely
47 | on the probationer or offender's failure to pay costs or fines
48 | or make restitution payments.

49 | b. Twenty-four (24) community sanction violation points
50 | are assessed for the violation and for each successive violation

51 of felony probation or community control where the violation
52 includes a new felony conviction.

53

54 Multiple counts of community sanction violations before the
55 sentencing court shall not be a basis for multiplying the
56 assessment of community sanction violation points.

57

58 If the community sanction violation is resolved through the
59 alternative sanctioning program under s. 948.06(9), no points
60 are assessed. If a community sanction violation not resolved
61 through the alternative sanctioning program is before the court,
62 no points are assessed for prior violations that were resolved
63 through the alternative sanctioning program.

64

65 Prior serious felony points: If the offender has a primary
66 offense or any additional offense ranked in level 8, level 9, or
67 level 10, and one or more prior serious felonies, a single
68 assessment of thirty (30) points shall be added. For purposes of
69 this section, a prior serious felony is an offense in the
70 offender's prior record that is ranked in level 8, level 9, or
71 level 10 under s. 921.0022 or s. 921.0023 and for which the
72 offender is serving a sentence of confinement, supervision, or
73 other sanction or for which the offender's date of release from
74 confinement, supervision, or other sanction, whichever is later,
75 is within 3 years before the date the primary offense or any

76 | additional offense was committed.

77 |

78 | Prior capital felony points: If the offender has one or more
79 | prior capital felonies in the offender's criminal record, points
80 | shall be added to the subtotal sentence points of the offender
81 | equal to twice the number of points the offender receives for
82 | the primary offense and any additional offense. A prior capital
83 | felony in the offender's criminal record is a previous capital
84 | felony offense for which the offender has entered a plea of nolo
85 | contendere or guilty or has been found guilty; or a felony in
86 | another jurisdiction which is a capital felony in that
87 | jurisdiction, or would be a capital felony if the offense were
88 | committed in this state.

89 |

90 | Possession of a firearm, semiautomatic firearm, or machine gun:
91 | If the offender is convicted of committing or attempting to
92 | commit any felony other than those enumerated in s. 775.087(2)
93 | while having in his or her possession: a firearm as defined in
94 | s. 790.001, an additional eighteen (18) sentence points are
95 | assessed; or if the offender is convicted of committing or
96 | attempting to commit any felony other than those enumerated in
97 | s. 775.087(3) while having in his or her possession a
98 | semiautomatic firearm as defined in s. 775.087(3) or a machine
99 | gun as defined in s. 790.001, an additional twenty-five (25)
100 | sentence points are assessed.

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Sentencing multipliers:

Drug trafficking: If the primary offense is drug trafficking under s. 893.135, the subtotal sentence points are multiplied, at the discretion of the court, for a level 7 or level 8 offense, by 1.5. The state attorney may move the sentencing court to reduce or suspend the sentence of a person convicted of a level 7 or level 8 offense, if the offender provides substantial assistance as described in s. 893.135(4).

Violent offenses committed against specified justice system personnel: If the primary offense is a violation of s. 775.0823(2), (3), or (4), the subtotal sentence points are multiplied by 2.5. If the primary offense is a violation of s. 775.0823(5), (6), (7), (8), or (9), the subtotal sentence points are multiplied by 2.0. If the primary offense is a violation of s. 784.07(3) or s. 775.0875(1), or s. 775.0823(10) or (11), the subtotal sentence points are multiplied by 1.5.

Grand theft of a motor vehicle: If the primary offense is grand theft of the third degree involving a motor vehicle and in the offender's prior record, there are three or more grand thefts of the third degree involving a motor vehicle, the subtotal sentence points are multiplied by 1.5.

126
127 Offense related to a criminal gang: If the offender is convicted
128 of the primary offense and committed that offense for the
129 purpose of benefiting, promoting, or furthering the interests of
130 a criminal gang as defined in s. 874.03, the subtotal sentence
131 points are multiplied by 1.5. If applying the multiplier results
132 in the lowest permissible sentence exceeding the statutory
133 maximum sentence for the primary offense under chapter 775, the
134 court may not apply the multiplier and must sentence the
135 defendant to the statutory maximum sentence.

136
137 Domestic violence in the presence of a child: If the offender is
138 convicted of the primary offense and the primary offense is a
139 crime of domestic violence, as defined in s. 741.28, which was
140 committed in the presence of a child under 16 years of age who
141 is a family or household member as defined in s. 741.28(3) with
142 the victim or perpetrator, the subtotal sentence points are
143 multiplied by 1.5.

144
145 Adult-on-minor sex offense: If the offender was 18 years of age
146 or older and the victim was younger than 18 years of age at the
147 time the offender committed the primary offense, and if the
148 primary offense was an offense committed on or after October 1,
149 2014, and is a violation of s. 787.01(2) or s. 787.02(2), if the
150 violation involved a victim who was a minor and, in the course

151 of committing that violation, the defendant committed a sexual
 152 battery under chapter 794 or a lewd act under s. 800.04 or s.
 153 847.0135(5) against the minor; s. 787.01(3)(a)2. or 3.; s.
 154 787.02(3)(a)2. or 3.; s. 794.011, excluding s. 794.011(10); s.
 155 800.04; or s. 847.0135(5), the subtotal sentence points are
 156 multiplied by 2.0. If applying the multiplier results in the
 157 lowest permissible sentence exceeding the statutory maximum
 158 sentence for the primary offense under chapter 775, the court
 159 may not apply the multiplier and must sentence the defendant to
 160 the statutory maximum sentence.

161 Section 2. Paragraph (f) of subsection (2) and subsection
 162 (4) of section 948.06, Florida Statutes, are amended to read:

163 948.06 Violation of probation or community control;
 164 revocation; modification; continuance; failure to pay
 165 restitution or cost of supervision.—

166 (2)

167 (f)1. Except as provided in subparagraph 3. or upon waiver
 168 by the probationer, the court shall modify or continue a
 169 probationary term upon finding a probationer in violation when
 170 all of the following apply:

171 a. The term of supervision is probation.

172 b. The probationer does not qualify as a violent felony
 173 offender of special concern, as defined in paragraph (8)(b).

174 c. The violation is a low-risk technical violation, as
 175 defined in paragraph (9)(b).

176 d. The court has not, on two or more separate occasions,
177 previously found the probationer in violation of his or her
178 probation pursuant to a filed violation of probation affidavit
179 during the current term of supervision. A probationer who has
180 successfully completed sanctions through the alternative
181 sanctioning program is eligible for mandatory modification or
182 continuation of his or her probation.

183 2. Upon modifying probation under subparagraph 1., the
184 court may include in the sentence a maximum of 90 days in county
185 jail as a special condition of probation. If the court has
186 previously found the probationer in violation of his or her
187 probation and modified probation with up to 90 days in county
188 jail as a special condition of probation, it may, upon
189 modification of probation under subparagraph 1., include in the
190 sentence a maximum of 120 days in county jail as a special
191 condition of probation.

192 3. Notwithstanding s. 921.0024, if a probationer meets the
193 criteria for mandatory modification in subparagraph 1. but has
194 less time on supervision remaining than the number of days in
195 jail authorized in subparagraph 2. ~~than 90 days of supervision~~
196 ~~remaining on his or her term of probation and meets the criteria~~
197 ~~for mandatory modification or continuation in subparagraph 1.,~~
198 the court may revoke probation and sentence the probationer to a
199 maximum of 90 or 120 days in county jail as provided in
200 subparagraph 2.

201 4. For purposes of imposing a jail sentence under this
202 paragraph only, the court may grant credit only for time served
203 in the county jail since the probationer's most recent arrest
204 for the violation. However, the court may not order the
205 probationer to a total term of incarceration greater than the
206 maximum provided by s. 775.082.

207 (4) Notwithstanding any other provision of this section, a
208 felony probationer or an offender in community control who is
209 arrested for violating his or her probation or community control
210 in a material respect may be taken before the court in the
211 county or circuit in which the probationer or offender was
212 arrested. That court shall advise him or her of the charge of a
213 violation and, if such charge is admitted, shall cause him or
214 her to be brought before the court that granted the probation or
215 community control. If the violation is not admitted by the
216 probationer or offender, the court may commit him or her or
217 release him or her with or without bail to await further
218 hearing. However, if the probationer or offender is under
219 supervision for any criminal offense proscribed in chapter 794,
220 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
221 registered sexual predator or a registered sexual offender, or
222 is under supervision for a criminal offense for which he or she
223 would meet the registration criteria in s. 775.21, s. 943.0435,
224 or s. 944.607 but for the effective date of those sections, the
225 court must make a finding that the probationer or offender is

226 not a danger to the public prior to release with or without
227 bail. In determining the danger posed by the offender's or
228 probationer's release, the court may consider the nature and
229 circumstances of the violation and any new offenses charged; the
230 offender's or probationer's past and present conduct, including
231 convictions of crimes; any record of arrests without conviction
232 for crimes involving violence or sexual crimes; any other
233 evidence of allegations of unlawful sexual conduct or the use of
234 violence by the offender or probationer; the offender's or
235 probationer's family ties, length of residence in the community,
236 employment history, and mental condition; his or her history and
237 conduct during the probation or community control supervision
238 from which the violation arises and any other previous
239 supervisions, including disciplinary records of previous
240 incarcerations; the likelihood that the offender or probationer
241 will engage again in a criminal course of conduct; the weight of
242 the evidence against the offender or probationer; and any other
243 facts the court considers relevant. The court, as soon as is
244 practicable, shall give the probationer or offender an
245 opportunity to be fully heard on his or her behalf in person or
246 by counsel. If the alleged violation is a low-risk violation, as
247 defined in paragraph (9)(b), the court shall, within 30 days
248 after the probationer's or offender's arrest, give the
249 probationer or offender an opportunity to be fully heard on his
250 or her behalf in person or by counsel. If a hearing is not held

251 within 30 days after such arrest, the court must release the
252 probationer or offender without bail unless the court finds that
253 a hearing was not held in the applicable timeframe due to
254 circumstances attributable to the probationer or offender. If
255 the probationer or offender is released, the court may impose
256 nonmonetary conditions of release. After the hearing, the court
257 shall make findings of fact and forward the findings to the
258 court that granted the probation or community control and to the
259 probationer or offender or his or her attorney. The findings of
260 fact by the hearing court are binding on the court that granted
261 the probation or community control. Upon the probationer or
262 offender being brought before it, the court that granted the
263 probation or community control may revoke, modify, or continue
264 the probation or community control or may place the probationer
265 into community control as provided in this section. However, the
266 probationer or offender shall not be released and shall not be
267 admitted to bail, but shall be brought before the court that
268 granted the probation or community control if any violation of
269 felony probation or community control other than a failure to
270 pay costs or fines or make restitution payments is alleged to
271 have been committed by:

272 (a) A violent felony offender of special concern, as
273 defined in this section;

274 (b) A person who is on felony probation or community
275 control for any offense committed on or after March 12, 2007,

CS/HB 1241

2024

276 | ~~the effective date of this act~~ and who is arrested for a
277 | qualifying offense as defined in this section; or
278 | (c) A person who is on felony probation or community
279 | control and has previously been found by a court to be a
280 | habitual violent felony offender as defined in s. 775.084(1) (b),
281 | a three-time violent felony offender as defined in s.
282 | 775.084(1) (c), or a sexual predator under s. 775.21, and who is
283 | arrested for committing a qualifying offense as defined in this
284 | section on or after March 12, 2007 ~~the effective date of this~~
285 | ~~act~~.
286 | Section 3. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Snyder offered the following:

Amendment (with title amendment)

Remove lines 207-278 and insert:

6 (4) (a) Notwithstanding any other provision of this
7 section, a felony probationer or an offender in community
8 control who is arrested for violating his or her probation or
9 community control in a material respect may be taken before the
10 court in the county or circuit in which the probationer or
11 offender was arrested. That court shall advise him or her of the
12 charge of a violation and, if such charge is admitted, shall
13 cause him or her to be brought before the court that granted the
14 probation or community control. If the violation is not admitted
15 by the probationer or offender, the court may commit him or her
16 or release him or her with or without bail to await further

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1241 (2024)

Amendment No. 1

17 hearing. However, if the probationer or offender is under
18 supervision for any criminal offense proscribed in chapter 794,
19 s. 800.04(4), (5), (6), s. 827.071, or s. 847.0145, or is a
20 registered sexual predator or a registered sexual offender, or
21 is under supervision for a criminal offense for which he or she
22 would meet the registration criteria in s. 775.21, s. 943.0435,
23 or s. 944.607 but for the effective date of those sections, the
24 court must make a finding that the probationer or offender is
25 not a danger to the public prior to release with or without
26 bail. In determining the danger posed by the offender's or
27 probationer's release, the court may consider the nature and
28 circumstances of the violation and any new offenses charged; the
29 offender's or probationer's past and present conduct, including
30 convictions of crimes; any record of arrests without conviction
31 for crimes involving violence or sexual crimes; any other
32 evidence of allegations of unlawful sexual conduct or the use of
33 violence by the offender or probationer; the offender's or
34 probationer's family ties, length of residence in the community,
35 employment history, and mental condition; his or her history and
36 conduct during the probation or community control supervision
37 from which the violation arises and any other previous
38 supervisions, including disciplinary records of previous
39 incarcerations; the likelihood that the offender or probationer
40 will engage again in a criminal course of conduct; the weight of
41 the evidence against the offender or probationer; and any other

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Amendment No. 1

42 facts the court considers relevant. The court, as soon as is
43 practicable, shall give the probationer or offender an
44 opportunity to be fully heard on his or her behalf in person or
45 by counsel. If a felony probationer is alleged to have committed
46 a low-risk violation, as defined in paragraph (9)(b), the court
47 shall, within 30 days after the probationer's arrest, give the
48 probationer an opportunity to be fully heard on his or her
49 behalf in person or by counsel. If a hearing is not held within
50 30 days after such arrest, the court must release the
51 probationer without bail unless the court finds that a hearing
52 was not held in the applicable timeframe due to circumstances
53 attributable to the probationer. If the probationer is released,
54 the court may impose nonmonetary conditions of release.

55 (b) After the hearing, the court shall make findings of
56 fact and forward the findings to the court that granted the
57 probation or community control and to the probationer or
58 offender or his or her attorney. The findings of fact by the
59 hearing court are binding on the court that granted the
60 probation or community control. Upon the probationer or offender
61 being brought before it, the court that granted the probation or
62 community control may revoke, modify, or continue the probation
63 or community control or may place the probationer into community
64 control as provided in this section. However, the probationer or
65 offender shall not be released and shall not be admitted to
66 bail, but shall be brought before the court that granted the

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Published On: 2/13/2024 9:00:01 AM

Amendment No. 1

67 probation or community control if any violation of felony
68 probation or community control other than a failure to pay costs
69 or fines or make restitution payments is alleged to have been
70 committed by:

71 1.(a) A violent felony offender of special concern, as
72 defined in this section;

73 2.(b) A person who is on felony probation or community
74 control for any offense committed on or after March 12, 2007 ~~the~~
75 ~~effective date of this act~~ and who is arrested for a qualifying
76 offense as defined in this section; or

77 3.(e) A person who is on felony probation or community
78

79 -----

80 **T I T L E A M E N D M E N T**

81 Remove line 10 and insert:
82 for the release of probationers in certain
83 circumstances

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1243 Homeowners' Associations

SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Porras and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Larkin	Anstead
2) Judiciary Committee		Mawn	Kramer
3) Commerce Committee			

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. In addition, Florida law requires officers and directors of an HOA to comply with certain requirements.

The bill provides educational requirements for community association managers (CAMs) and HOA directors.

The bill requires a CAM that is authorized by contract to provide an HOA community association management services to meet certain conditions.

Related to official records, the bill:

- Requires every HOA, by January 1, 2025, to post a current digital copy of the official records on its website or make such documents available through an application.
- Requires an HOA to ensure that the private information and records that are not allowed to be accessible to parcel owners are not posted on the website or application or are redacted.
- Provides that if an HOA receives a subpoena for records from a law enforcement agency, the HOA must provide a copy of such records or otherwise make the records available to the agency for inspection and copying within 5 business days unless otherwise directed by the agency.

The bill requires an HOA that has 2,500 members or more to:

- Use an independent certified public accountant to prepare the HOA's annual budget.
- Retain an attorney to advise the HOA and its members on procedural matters relating to the annual budget and to foster communications between the board and the HOA members.

The bill provides that an HOA officer, director, or manager that accepts a thing or service of value or kickback that is:

- Valued at \$25 or more but not more than \$1,000 commits a first-degree misdemeanor.
- Valued at \$1,000 or more commits a third-degree felony and is subject to monetary damages.

The bill requires an HOA or its specified committees to:

- Uniformly apply and enforce on all parcel owners the architectural and construction improvement standards set forth in the governing documents.
- Provide specified written notice to a parcel owner whose improvement request was denied.

The bill may have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Association Managers- Current Situation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR) pursuant to part VIII of ch. 468, F.S., and the seven-member Regulatory Council of Community Association Managers (council) housed within DBPR.¹

Section 468.431(2), F.S., defines “community association management” to mean any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of \$100,000:

- Controlling or disbursing funds of a community association;
- Preparing budgets or other financial documents for a community association;
- Assisting in the noticing or conduct of community association meetings; and
- Coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A CAM license is not required for a person who:

- Performs clerical or ministerial functions under the direct supervision and control of a licensed CAM, or
- Performs only the maintenance of a community association and does not assist in any of the management services.²

To become licensed as a CAM, a license applicant must:

- Submit to a background check for a good moral character determination by DBPR,
- Attend a DBPR-approved in-person training prior to taking the licensure examination, and
- Pass the licensure examination.³

CAMs must also complete not more than 10 hours of continuing education hours as approved by the council to renew and maintain their licenses.⁴

Section 468.4334, F.S., outlines the professional practice standards for CAMs and CAM firms, including the duty to “discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees.”

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including:

- Committing acts of gross misconduct or gross negligence in connection with the profession.
- Contracting, on behalf of an association, with any entity in which the CAM has a financial interest that is not disclosed.
- Violating any provision of chapter 718 (relating to condominiums), chapter 719 (relating to cooperatives), or chapter 720 (relating to homeowners’ associations) during the course of performing community association management services pursuant to a contract with a community association.⁵

¹ S. 468.4315(1), F.S.

² S. 468.431(2), F.S.

³ S. 468.433, F.S.

⁴ S. 468.4336 and 468.4337, F.S.

⁵ S. 468.436(2)(b)5.-7., F.S.

Community Association Managers- Effect of the Bill

The bill requires CAMs and CAM firms authorized by a contract to provide community association management to a homeowners' association (HOA) to:

- Attend in person at least one HOA member meeting or board meeting annually;
- Provide HOA members:
 - The name and contact information for each CAM or representative of the CAM firm assigned to the HOA.
 - The CAM's or representative's hours of availability.
 - A summary of the duties for which the CAM or representative is responsible.

The bill requires that the HOA post this information on the HOA website or application. The bill requires that a CAM or CAM firm must update the HOA and its members within 14 business days after any change to such information.

A CAM or CAM firm is required to provide to any HOA member the contract between the HOA and the CAM or CAM firm upon the member's request, and include such contract with the HOA's governing documents.

The bill mandates that, every two years, a CAM that provides services to an HOA must complete at least 5 hours of continuing education that pertains specifically to HOAs, 3 hours of which must relate to recordkeeping.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, membership is a mandatory condition of parcel ownership, and the association is authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁶ In Florida, approximately 45 percent of homes are part of an HOA.⁷

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the HOA's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.⁸

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but a member does not have authority to act for the HOA by virtue of being a member.⁹

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes (division), within DBPR, for certain election and recall disputes.¹⁰

⁶ S. 720.301(9), F.S.

⁷ Patrick Regan, "45% of Florida Homes Are Part of an HOA, the Highest Percentage in the Nation." *South Florida Agent Magazine*, Apr. 21, 2023, <https://southfloridaagentmagazine.com/2023/04/20/45-of-florida-homes-are-part-of-an-hoa-the-highest-percentage-in-the-nation/> (last visited Feb. 8, 2024).

⁸ See generally ch. 720, F.S.

⁹ S. 720.303(1), F.S.

¹⁰ S. 720.311, F.S.

HOA Governing Documents

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.¹¹

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.¹² The articles of incorporation establish the HOA's existence, basic structure, and governance.¹³ The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.¹⁴

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.¹⁵ Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.¹⁶

Official Records- Current Situation

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:¹⁷

- A copy of the HOA's governing documents, as follows:
 - the declaration of covenants and each amendment,
 - bylaws and each amendment,
 - articles of incorporation and each amendment, and
 - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the HOA requesting that a different mailing address be used for all required notices.
 - The HOA shall also maintain the e-mail addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the HOA requesting that a different e-mail address be used for all required notices. The e-mail addresses and facsimile numbers provided by members to receive notice by electronic transmission must be removed from HOA records when the member revokes consent to receive notice by electronic transmission.
- All of the HOA's insurance policies, which must be retained for at least 7 years.

¹¹ S. 720.301(8), F.S.

¹² Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), <https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/> (last visited Feb. 8, 2024).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ S. 720.306(1), F.S.

¹⁶ *Id.*

¹⁷ S. 720.303(4), F.S.

- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility.
 - Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
 - Accurate, itemized, and detailed records of all receipts and expenditures.
 - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
 - All tax returns, financial statements, and financial reports of the HOA.
 - Any other records that identify, measure, record, or communicate financial information.
- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3., F.S.
- All other written records of the HOA which are related to the operation of the HOA.

The HOA bylaws must require the HOA to post all notices of board meetings in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency.¹⁸

The official records must be maintained within the state for at least 7 years and be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the HOA is located within 10 business days after receipt by the board or its designee of a written request. An HOA may comply with these requirements by having a copy of the official records available for inspection or copying in the community or, at the option of the HOA, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

If the HOA has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. However, an HOA may impose fees to cover the costs of providing copies of the official records.¹⁹ An HOA must allow a member or authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of providing the member or authorized representative with a copy of such records. The HOA may not charge a fee to a member or his or her authorized representative for the use of a portable device.²⁰

The failure of an HOA to provide access to the records within 10 business days after receipt of a written request submitted by certified mail, return receipt requested, creates a rebuttable presumption that the HOA willfully failed to comply with this requirement.²¹

A member who is denied access to official records is entitled to his or her actual damages or minimum damages, as established in law, for the HOA's willful failure to comply with this requirement.²² The

¹⁸ S. 720.303(2)(c), F.S.

¹⁹ The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed \$20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. S. 720.303(5)(c), F.S.

²⁰ S. 720.303(5), F.S.

²¹ S. 720.303(5)(a), F.S.

minimum damages are to be \$50 per calendar day up to 10 days, with the calculation to begin on the 11th business day after receipt of the written request.²³

The HOA may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month.²⁴

The following records are not accessible to members or parcel owners:²⁵

- Any record protected by the lawyer-client privilege as described in s. 90.502, F.S., and any record protected by the work-product privilege.²⁶
- Information obtained in connection with the approval of the lease, sale, or other transfer of a parcel.
- Information obtained in a gated community in connection with guests' visits to parcel owners or community residents.
- Personnel records of HOA or management company employees.
- Medical records of parcel owners or community residents.
- Personal identifying information of a parcel owner other than as provided for HOA notice requirements, excluding the person's name, parcel designation, mailing address, and property address.
- Any electronic security measure that is used to safeguard data, including passwords.
- The software and operating system which allows the manipulation of data; however, the data is part of the official records.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.

Official Records- Effect of the Bill

The bill mandates that the HOA adopt written rules governing the method of retaining official records and length of such retention and clarifies that the 10-day response time is triggered only upon receipt of a written request by a parcel owner.

The bill requires every HOA, by January 1, 2025, to post a current digital copy of the official records on its website, or make such documents available through an application that can be downloaded on a mobile device. Such application or website must be accessible through the Internet and have a subpage or portal inaccessible to the general public, and that is accessible only to HOA parcel owners and employees, and the HOA must provide a parcel owner a username and password giving the parcel owner access to the restricted subpage or portal, upon the parcel owner's written request.

The bill provides that if an HOA receives a subpoena for records from a law enforcement agency, the HOA must provide a copy of such records or otherwise make the records available to the agency within 5 business days after receipt of the subpoena, unless directed otherwise by the agency. The bill also requires that an HOA must assist a law enforcement agency in its investigation to the extent permissible by law.

Further, the bill requires an HOA to ensure that the information and records which are not allowed to be accessible to parcel owners are not posted on the HOA's website or application, and that, if protected or restricted information is included in documents that must be posted on the HOA's website or

²² "Actual damages" are those damages a party actually suffered. Legal Information Institute, *Actual Damages*, https://www.law.cornell.edu/wex/actual_damages (last visited Feb. 8, 2024).

²³ S. 720.303(5)(b), F.S.

²⁴ S. 720.303(5)(c), F.S.

²⁵ S. 720.303(5)(c)1.-9., F.S.

²⁶ The "work-product privilege" protects from disclosure documents and tangible things prepared in anticipation of litigation or for trial, in order to protect an attorney's mental impressions, conclusions, opinions, or legal theories. Legal Information Institute, *Attorney Work Product Privilege*, https://www.law.cornell.edu/wex/attorney_work_product_privilege (last visited Feb. 8, 2024).

application, the information is redacted before the documents are posted. However, the bill provides that the HOA is not liable for disclosing protected or restricted information unless such disclosure was made with a knowing or intentional disregard of the information's protected or restricted nature.

Finally, the bill appears to authorize an HOA to shorten the amount of time that records must be retained to some time less than 7 years if such shorter time is specified in the governing documents, but elsewhere preserves the requirement that the records be retained for at least 7 years.

Budget- Current Situation

Every HOA is required to prepare an annual budget that sets out the HOA's annual operating expenses. The budget must:²⁷

- Reflect the HOA's estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year.
- Set out separately all fees or charges paid for by the HOA for recreational amenities, whether owned by the HOA, the developer, or another person.

The HOA must provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member. In addition to annual operating expenses, the budget may include reserve accounts for capital expenditures and deferred maintenance for which the HOA is responsible.²⁸ Depending on the HOA's governing documents, an HOA's budget may not provide for reserve accounts.²⁹ Upon approval by the HOA membership, the board of directors must include the required reserve accounts in the budget in the next fiscal year following the approval, and each year thereafter.³⁰

Budget- Effect of the Bill

The bill requires an HOA that has 2,500 members or more to:

- Use an independent certified public accountant (CPA) to prepare the HOA's annual budget.
- Retain an attorney to advise the HOA and its members on procedural matters relating to the annual budget and to foster communications between the board and the HOA members.

The bill provides that such CPA and attorney may not be:

- The CAM or an employee of the CAM firm providing community association management services to the HOA; or
- An officer or director of the HOA or an immediate family member thereof.

Powers and Duties of Officers and Directors- Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.³¹

Within 90 days after being elected or appointed to the board, each director shall either:

- Certify in writing to the secretary of the HOA that:
 - he or she has read the HOA's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies;
 - he or she will work to uphold such documents and policies to the best of his or her ability; and
 - he or she will faithfully discharge his or her fiduciary responsibility to the HOA members;or

²⁷ S. 720.303(6)(a), F.S.

²⁸ S. 720.303(6)(b), F.S.

²⁹ S. 720.303(6)(d), F.S.

³⁰ S. 720.303(6)(c)(1), F.S.

³¹ S. 720.303(1), F.S.

- Submit a certification showing satisfactory completion of the educational curriculum administered by a division-approved education provider within 1 year before or 90 days after the date of election or appointment.

The written certification or educational certificate is valid for the uninterrupted tenure of the director on the board. A director who does not timely file the written certification or educational certificate shall be suspended from the board until he or she complies with the requirement, and the board may temporarily fill the vacancy during the period of suspension.

The HOA must retain each director's written certification or educational certificate for inspection by the members for 5 years after the director's election. However, the failure to have the written certification or educational certificate on file does not affect the validity of any board action.³²

An HOA officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family from any person providing or proposing to provide goods or services to the HOA is subject to monetary damages.³³ If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than \$25 per individual or a service or good received in connection with trade fairs or education programs.³⁴

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, or association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:³⁵

- Comply with the requirements for conflicts of interest in a corporation not for profit.³⁶
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

The directors and officers of an HOA who are appointed by the developer must disclose to the HOA their relationship to the developer each calendar year in which they serve as a director or an officer.³⁷ A developer's appointment of an officer or director does not create a presumption that the officer or director has a conflict of interest with regard to the performance of his or her official duties.

Directors and officers of an HOA are required to disclose to the HOA any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the HOA:³⁸

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the HOA.

³² S. 720.3033(1)(a)-(c), F.S.

³³ Monetary damages are provided for in s. 617.0834, F.S.

³⁴ S. 720.3033(3), F.S.

³⁵ S. 720.3033(2), F.S.

³⁶ A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

³⁷ S. 720.3033(6)(a), F.S.

³⁸ S. 720.3033(6)(b), F.S.

- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability company, partnership, limited liability partnership, or other business entity that conducts business with the HOA or proposes to enter into a contract or other transaction with the HOA.

Powers and Duties of Officers and Directors- Effect of the Bill

HOA Director Education Requirements

The bill:

- Eliminates the option for a newly elected or appointed director to submit a written certification stating that he or she has read the governing documents, thus only allowing such director to, within 90 days after being elected or appointed, submit a certificate showing satisfactory completion of the educational curriculum administered by a DBPR-approved education provider (certificate of completion).
- Provides that such educational curriculum, specific to newly elected or appointed directors, must include training relating to financial literacy and transparency, recordkeeping, levying of fines, and notice and meeting requirements.
- Provides that the certificate of completion is valid up to four years.
- Requires a director to retake the DBPR-approved education curriculum every 4 years.

In addition to completing the educational curriculum, the bill requires a director of an association that:

- has **fewer than 2,500** members to complete at least **4 hours** of continuing education annually.
- has **2,500 members or more** to complete at least **8 hours** of continuing education annually.

The bill also requires DBPR to adopt rules to implement and administer the aforementioned educational curriculum and continuing education requirements.

Prohibition of Kickbacks

The bill prohibits an HOA officer, director, or manager from soliciting, offering to accept, accepting, or receiving any thing or service of value or kickback, as follows:

- If the thing or service of value or kickback is valued at \$25 or more but not more than \$1,000, the knowing solicitation, offer to accept, acceptance, or receipt thereof is a first-degree misdemeanor.³⁹
- If the thing or service of value or kickback is valued at \$1,000 or more, the knowing solicitation, offer to accept, acceptance, or receipt thereof is a third-degree felony⁴⁰ and the offender is subject to monetary damages.

HOA Architectural and Construction Improvement Covenants and Rules- Current Situation

If the governing documents allow it, an HOA or its architectural review, construction improvement, or other similar committee (committee) may:⁴¹

- Require a review and approval of plans and specifications for the location, size, type, or appearance of any structure or other improvement on a parcel before a parcel owner makes such improvement.
- Enforce standards for the external appearance of any structure or improvement located on a parcel.

³⁹ A first-degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

⁴⁰ A third-degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁴¹ S. 720.3035(1), F.S.

The HOA or committee may not restrict the right of a parcel owner to select from any options given in the governing documents for the use of material, the size of the structure or improvement, the design of the structure or improvement, or the location of the structure or improvement on the parcel.⁴²

Each parcel owner is entitled to the rights and privileges set forth in the governing documents concerning the architectural use of the parcel, and the construction of permitted structures and improvements on the parcel, and such rights and privileges may not be unreasonably infringed upon or impaired by the HOA or committee. If an HOA or committee unreasonably, knowingly, and willfully infringes upon or impairs such rights and privileges, the adversely affected parcel owner may recover damages, including any costs and reasonable attorney's fees.⁴³

An HOA or committee may not enforce any policy or restriction that is inconsistent with the rights and privileges of a parcel owner set forth in the governing documents, whether uniformly applied or not.⁴⁴

HOA Architectural and Construction Improvement Covenants and Rules- The Effect of Bill

The bill provides that:

- An HOA or its committee must reasonably and equitably apply and enforce on all parcel owners the architectural and construction improvement standards authorized by the HOA governing documents.
- If the HOA or its committee denies a parcel owner's request or application for the construction of a structure or other improvement on a parcel, the HOA or its committee must provide written notice to the parcel owner stating with specificity the rule or covenant on which the HOA or its committee relied when denying the request or application.

Effective Date

The bill provides an effective date of July 1, 2024.

⁴² S. 720. 3035(2), F.S.

⁴³ S. 720.3035(4), F.S.

⁴⁴ S. 720.3035(5), F.

B. SECTION DIRECTORY:

Section 1: Amending s. 468.4334, F.S. relating to professional practice standards; liability.

Section 2: Amending s. 468.4337, F.S., relating to continuing education.

Section 3: Amending s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 4: Amending s. 720.3033, F.S., relating to officers and directors.

Section 5: Amending s. 720.3035, F.S., relating to architectural control covenants; parcel owner improvements; rights and privileges.

Section 6: Amending s. 720.3085, F.S., relating to payments for assessments; lien claims.

Section 7: Providing an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government to the extent that it increases criminal prosecutions in the state court system and thereby reduces the amount of available prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on local governments to the extent that it leads to increased criminal prosecutions and thereby reduces the amount of available jail beds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Protections put in place preventing HOA board members from soliciting, offering to accept, accepting, or receiving things or services of value or kickbacks, and requiring large HOAs to employ a CPA and an attorney in specified circumstances, may prevent unlawful behavior from occurring, and, thus, save HOAs money. However, some HOAs may have to spend money to develop a website and HOAs that have 2,500 members or more may have an increase in expenditures related to retaining a CPA and an attorney. The bill may also have a negative financial impact on HOA board members charged with crimes created by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DBPR is given rule-making authority to adopt rules to implement and administer an educational curriculum and continuing education requirements for HOA directors.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 24, 2024, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarifies that a newly elected or appointed HOA director must take the educational curriculum approved by the department at least every four years.
- Clarifies that, in addition to the educational curriculum, directors are also responsible for completing annual continuing education as follows:
 - 4 hours for directors in communities with less than 2,500 members.
 - 8 hours for directors in communities with 2,500 or more members.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

1 A bill to be entitled
2 An act relating to homeowners' associations; amending
3 s. 468.4334, F.S.; providing requirements for certain
4 community association managers and community
5 association management firms; amending s. 468.4337,
6 F.S.; requiring certain community association managers
7 to take a specific number of hours of continuing
8 education biennially; amending s. 720.303, F.S.;
9 requiring official records of a homeowners'
10 association to be maintained for a certain number of
11 years; requiring an association to post certain
12 documents on its website or make such documents
13 available through an application by a date certain;
14 providing requirements for an association's website or
15 application; requiring an association to provide
16 certain information to parcel owners upon request;
17 requiring an association to ensure certain information
18 and records are not accessible on the website or
19 application; providing that an association or its
20 agent is not liable for the disclosure of certain
21 information; requiring an association to adopt certain
22 rules; requiring an association to provide or make
23 available subpoenaed records within a certain
24 timeframe; requiring an association to assist in a law
25 enforcement investigation as allowed by law; requiring

26 | that certain associations use an independent certified
 27 | public accountant to prepare its annual budget;
 28 | requiring certain associations to retain an attorney
 29 | for certain purposes; prohibiting certain persons from
 30 | acting as the accountant or attorney; amending s.
 31 | 720.3033, F.S.; providing education requirements for
 32 | newly elected or appointed directors; providing
 33 | requirements for the educational curriculum; requiring
 34 | certain directors to complete a certain number of
 35 | hours of continuing education annually; requiring the
 36 | Department of Business and Professional Regulation to
 37 | adopt certain rules; providing criminal penalties for
 38 | certain actions by an officer, a director, or a
 39 | manager of an association; amending s. 720.3035, F.S.;
 40 | requiring an association or any architectural,
 41 | construction improvement, or other such similar
 42 | committee of an association to apply and enforce
 43 | certain standards reasonably and equitably; requiring
 44 | an association or any architectural, construction
 45 | improvement, or other such similar committee of an
 46 | association to provide certain written notice to a
 47 | parcel owner; amending s. 720.3085, F.S.; conforming a
 48 | cross-reference; providing an effective date.

49 |
 50 | Be It Enacted by the Legislature of the State of Florida:

51
52 Section 1. Subsection (3) is added to section 468.4334,
53 Florida Statutes, to read:

54 468.4334 Professional practice standards; liability;
55 community association manager requirements.-

56 (3) A community association manager or community
57 association management firm that is authorized by contract to
58 provide community association management services to a
59 homeowners' association must do all of the following:

60 (a) Attend in person at least one member meeting or board
61 meeting of the homeowners' association annually.

62 (b) Provide to the members of the homeowners' association
63 the name and contact information for each community association
64 manager or representative of a community association management
65 firm assigned to the homeowners' association, the manager's or
66 representative's hours of availability, and a summary of the
67 duties for which the manager or representative is responsible.
68 The homeowners' association must also post this information on
69 the association's website or application required under s.
70 720.303(4)(b). The community association manager or community
71 association management firm must update the homeowners'
72 association and its members within 14 business days after any
73 change to such information.

74 (c) Provide to any member upon request a copy of the
75 contract between the community association manager or community

76 association management firm and the homeowners' association and
 77 include such contract with association's governing documents.

78 Section 2. Section 468.4337, Florida Statutes, is amended
 79 to read:

80 468.4337 Continuing education.—The department may not
 81 renew a license until the licensee submits proof that the
 82 licensee has completed the requisite hours of continuing
 83 education. ~~No more than 10 hours of continuing education~~
 84 ~~annually shall be required for renewal of a license.~~ The number
 85 of continuing education hours, criteria, and course content
 86 shall be approved by the council by rule. The council may not
 87 require more than 10 hours of continuing education annually for
 88 renewal of a license. A community association manager who
 89 provides community association management services to a
 90 homeowners' association must biennially complete at least 5
 91 hours of continuing education that pertains specifically to
 92 homeowners' associations, 3 hours of which must relate to
 93 recordkeeping.

94 Section 3. Subsections (4) and (5) and paragraphs (a),
 95 (d), and (f) of subsection (6) of section 720.303, Florida
 96 Statutes, are amended to read:

97 720.303 Association powers and duties; meetings of board;
 98 official records; budgets; financial reporting; association
 99 funds; recalls.—

100 (4) OFFICIAL RECORDS.—

101 (a) The association shall maintain each of the following
 102 items, when applicable, for at least 7 years, unless the
 103 governing documents of the association require a longer period
 104 of time, which constitute the official records of the
 105 association:

106 1.(a) Copies of any plans, specifications, permits, and
 107 warranties related to improvements constructed on the common
 108 areas or other property that the association is obligated to
 109 maintain, repair, or replace.

110 2.(b) A copy of the bylaws of the association and of each
 111 amendment to the bylaws.

112 3.(c) A copy of the articles of incorporation of the
 113 association and of each amendment thereto.

114 4.(d) A copy of the declaration of covenants and a copy of
 115 each amendment thereto.

116 5.(e) A copy of the current rules of the homeowners'
 117 association.

118 6.(f) The minutes of all meetings of the board of
 119 directors and of the members, ~~which minutes must be retained for~~
 120 ~~at least 7 years.~~

121 7.(g) A current roster of all members and their designated
 122 mailing addresses and parcel identifications. A member's
 123 designated mailing address is the member's property address,
 124 unless the member has sent written notice to the association
 125 requesting that a different mailing address be used for all

126 required notices. The association shall also maintain the e-mail
127 addresses and the facsimile numbers designated by members for
128 receiving notice sent by electronic transmission of those
129 members consenting to receive notice by electronic transmission.
130 A member's e-mail address is the e-mail address the member
131 provided when consenting in writing to receiving notice by
132 electronic transmission, unless the member has sent written
133 notice to the association requesting that a different e-mail
134 address be used for all required notices. The e-mail addresses
135 and facsimile numbers provided by members to receive notice by
136 electronic transmission must be removed from association records
137 when the member revokes consent to receive notice by electronic
138 transmission. However, the association is not liable for an
139 erroneous disclosure of the e-mail address or the facsimile
140 number for receiving electronic transmission of notices.

141 8.~~(h)~~ All of the association's insurance policies or a
142 copy thereof, ~~which policies must be retained for at least 7~~
143 ~~years.~~

144 9.~~(i)~~ A current copy of all contracts to which the
145 association is a party, including, without limitation, any
146 management agreement, lease, or other contract under which the
147 association has any obligation or responsibility. Bids received
148 by the association for work to be performed are ~~must also be~~
149 considered official records and must be kept for a period of 1
150 year.

151 10.~~(j)~~ The financial and accounting records of the
152 association, kept according to good accounting practices. ~~All~~
153 ~~financial and accounting records must be maintained for a period~~
154 ~~of at least 7 years.~~ The financial and accounting records must
155 include:

156 a.1. Accurate, itemized, and detailed records of all
157 receipts and expenditures.

158 b.2. A current account and a periodic statement of the
159 account for each member, designating the name and current
160 address of each member who is obligated to pay assessments, the
161 due date and amount of each assessment or other charge against
162 the member, the date and amount of each payment on the account,
163 and the balance due.

164 c.3. All tax returns, financial statements, and financial
165 reports of the association.

166 d.4. Any other records that identify, measure, record, or
167 communicate financial information.

168 11.~~(k)~~ A copy of the disclosure summary described in s.
169 720.401(1).

170 12.~~(l)~~ Ballots, sign-in sheets, voting proxies, and all
171 other papers and electronic records relating to voting by parcel
172 owners, which must be maintained for at least 1 year after the
173 date of the election, vote, or meeting.

174 13.~~(m)~~ All affirmative acknowledgments made pursuant to s.
175 720.3085(3)(c)3.

176 ~~14.(n)~~ All other written records of the association not
177 specifically included in this subsection which are related to
178 the operation of the association.

179 (b)1. By January 1, 2025, an association shall post a
180 current digital copy of the documents specified in paragraph (a)
181 on its website or make such documents available through an
182 application that can be downloaded on a mobile device.

183 2. The association's website or application must be
184 accessible through the Internet and must contain a subpage, web
185 portal, or other protected electronic location that is
186 inaccessible to the general public and accessible only to parcel
187 owners and employees of the association.

188 3. Upon written request by a parcel owner, the association
189 must provide the parcel owner with a username and password and
190 access to the protected sections of the association's website or
191 application which contains the official documents of the
192 association.

193 4. The association shall ensure that the information and
194 records described in paragraph (5)(d), which are not allowed to
195 be accessible to parcel owners, are not posted on the
196 association's website or application. If protected information
197 or information restricted from being accessible to parcel owners
198 is included in documents that are required to be posted on the
199 association's website or application, the association must
200 ensure the information is redacted before posting the documents.

201 Notwithstanding the foregoing, the association or its authorized
 202 agent is not liable for disclosing information that is protected
 203 or restricted under paragraph (5) (d) unless such disclosure was
 204 made with a knowing or intentional disregard of the protected or
 205 restricted nature of such information.

206 (c) The association shall adopt written rules governing
 207 the method or policy by which the official records of the
 208 association are to be retained and for how long such records
 209 must be retained. Such information must be made available to the
 210 parcel owners through the association's website or application.

211 (5) INSPECTION AND COPYING OF RECORDS.—Unless otherwise
 212 provided by law or the governing documents of the association,
 213 the official records must ~~shall~~ be maintained within the state
 214 for at least 7 years and ~~shall~~ be made available to a parcel
 215 owner for inspection or photocopying within 45 miles of the
 216 community or within the county in which the association is
 217 located within 10 business days after receipt by the board or
 218 its designee of a written request from the parcel owner. This
 219 subsection may be complied with by having a copy of the official
 220 records available for inspection or copying in the community or
 221 ~~at the option of the association,~~ by making the records
 222 available to a parcel owner electronically via the association's
 223 website or application ~~Internet~~ or by allowing the records to be
 224 viewed in electronic format on a computer screen and printed
 225 upon request. If the association has a photocopy machine

226 available where the records are maintained, it must provide
227 parcel owners with copies on request during the inspection if
228 the entire request is limited to no more than 25 pages. An
229 association shall allow a member or his or her authorized
230 representative to use a portable device, including a smartphone,
231 tablet, portable scanner, or any other technology capable of
232 scanning or taking photographs, to make an electronic copy of
233 the official records in lieu of the association's providing the
234 member or his or her authorized representative with a copy of
235 such records. The association may not charge a fee to a member
236 or his or her authorized representative for the use of a
237 portable device.

238 (a) The failure of an association to provide access to the
239 records within 10 business days after receipt of a written
240 request submitted by certified mail, return receipt requested,
241 creates a rebuttable presumption that the association willfully
242 failed to comply with this subsection.

243 (b) A member who is denied access to official records is
244 entitled to the actual damages or minimum damages for the
245 association's willful failure to comply with this subsection.
246 The minimum damages are to be \$50 per calendar day up to 10
247 days, the calculation to begin on the 11th business day after
248 receipt of the written request.

249 (c) The association may adopt reasonable written rules
250 governing the frequency, time, location, notice, records to be

251 inspected, and manner of inspections, but may not require a
 252 parcel owner to demonstrate any proper purpose for the
 253 inspection, state any reason for the inspection, or limit a
 254 parcel owner's right to inspect records to less than one 8-hour
 255 business day per month. The association may impose fees to cover
 256 the costs of providing copies of the official records, including
 257 the costs of copying and the costs required for personnel to
 258 retrieve and copy the records if the time spent retrieving and
 259 copying the records exceeds one-half hour and if the personnel
 260 costs do not exceed \$20 per hour. Personnel costs may not be
 261 charged for records requests that result in the copying of 25 or
 262 fewer pages. The association may charge up to 25 cents per page
 263 for copies made on the association's photocopier. If the
 264 association does not have a photocopy machine available where
 265 the records are kept, or if the records requested to be copied
 266 exceed 25 pages in length, the association may have copies made
 267 by an outside duplicating service and may charge the actual cost
 268 of copying, as supported by the vendor invoice. The association
 269 shall maintain an adequate number of copies of the recorded
 270 governing documents, to ensure their availability to members and
 271 prospective members.

272 (d) Notwithstanding this subsection ~~paragraph~~, the
 273 following records are not accessible to members or parcel
 274 owners:

- 275 1. Any record protected by the lawyer-client privilege as

276 described in s. 90.502 and any record protected by the work-
277 product privilege, including, but not limited to, a record
278 prepared by an association attorney or prepared at the
279 attorney's express direction which reflects a mental impression,
280 conclusion, litigation strategy, or legal theory of the attorney
281 or the association and which was prepared exclusively for civil
282 or criminal litigation or for adversarial administrative
283 proceedings or which was prepared in anticipation of such
284 litigation or proceedings until the conclusion of the litigation
285 or proceedings.

286 2. Information obtained by an association in connection
287 with the approval of the lease, sale, or other transfer of a
288 parcel.

289 3. Information an association obtains in a gated community
290 in connection with guests' visits to parcel owners or community
291 residents.

292 4. Personnel records of association or management company
293 employees, including, but not limited to, disciplinary, payroll,
294 health, and insurance records. For purposes of this
295 subparagraph, the term "personnel records" does not include
296 written employment agreements with an association or management
297 company employee or budgetary or financial records that indicate
298 the compensation paid to an association or management company
299 employee.

300 5. Medical records of parcel owners or community

301 residents.

302 6. Social security numbers, driver license numbers, credit
303 card numbers, electronic mailing addresses, telephone numbers,
304 facsimile numbers, emergency contact information, any addresses
305 for a parcel owner other than as provided for association notice
306 requirements, and other personal identifying information of any
307 person, excluding the person's name, parcel designation, mailing
308 address, and property address. Notwithstanding the restrictions
309 in this subparagraph, an association may print and distribute to
310 parcel owners a directory containing the name, parcel address,
311 and all telephone numbers of each parcel owner. However, an
312 owner may exclude his or her telephone numbers from the
313 directory by so requesting in writing to the association. An
314 owner may consent in writing to the disclosure of other contact
315 information described in this subparagraph. The association is
316 not liable for the disclosure of information that is protected
317 under this subparagraph if the information is included in an
318 official record of the association and is voluntarily provided
319 by an owner and not requested by the association.

320 7. Any electronic security measure that is used by the
321 association to safeguard data, including passwords.

322 8. The software and operating system used by the
323 association which allows the manipulation of data, even if the
324 owner owns a copy of the same software used by the association.
325 The data is part of the official records of the association.

326 9. All affirmative acknowledgments made pursuant to s.
 327 720.3085(3)(c)3.

328 ~~(e)-(d)~~ The association or its authorized agent is not
 329 required to provide a prospective purchaser or lienholder with
 330 information about the residential subdivision or the association
 331 other than information or documents required by this chapter to
 332 be made available or disclosed. The association or its
 333 authorized agent may charge a reasonable fee to the prospective
 334 purchaser or lienholder or the current parcel owner or member
 335 for providing good faith responses to requests for information
 336 by or on behalf of a prospective purchaser or lienholder, other
 337 than that required by law, if the fee does not exceed \$150 plus
 338 the reasonable cost of photocopying and any attorney fees
 339 incurred by the association in connection with the response.

340 (f) If an association receives a subpoena for records from
 341 a law enforcement agency, the association must provide a copy of
 342 such records or otherwise make the records available for
 343 inspection and copying to a law enforcement agency within 5
 344 business days after receipt of the subpoena, unless otherwise
 345 specified by the law enforcement agency or subpoena. An
 346 association must assist a law enforcement agency in its
 347 investigation to the extent permissible by law.

348 (6) BUDGETS.—

349 (a)1. The association shall prepare an annual budget that
 350 sets out the annual operating expenses. The budget must reflect

351 the estimated revenues and expenses for that year and the
352 estimated surplus or deficit as of the end of the current year.
353 The budget must set out separately all fees or charges paid for
354 by the association for recreational amenities, whether owned by
355 the association, the developer, or another person. The
356 association shall provide each member with a copy of the annual
357 budget or a written notice that a copy of the budget is
358 available upon request at no charge to the member. The copy must
359 be provided to the member within the time limits set forth in
360 subsection (5).

361 2. An association that has 2,500 members or more must use
362 an independent certified public accountant to prepare the
363 association's annual budget. Such association must also retain
364 an attorney to advise the association and its members on
365 procedural matters relating to the annual budget and to foster
366 communications between the board and the members of the
367 association. The independent certified public accountant or
368 attorney required under this subparagraph may not be:

369 a. The community association manager or an employee of the
370 community association management firm providing community
371 association management services to the association; or

372 b. An officer or a director of the association or an
373 immediate family member of an officer or a director.

374 (d) An association is deemed to have provided for reserve
375 accounts upon the affirmative approval of a majority of the

376 total voting interests of the association. Such approval may be
377 obtained by vote of the members at a duly called meeting of the
378 membership or by the written consent of a majority of the total
379 voting interests of the association. The approval action of the
380 membership must state that reserve accounts shall be provided
381 for in the budget and must designate the components for which
382 the reserve accounts are to be established. Upon approval by the
383 membership, the board of directors or the independent certified
384 public accountant, if required under paragraph (a), shall
385 include the required reserve accounts in the budget in the next
386 fiscal year following the approval and each year thereafter.
387 Once established as provided in this subsection, the reserve
388 accounts must be funded or maintained or have their funding
389 waived in the manner provided in paragraph (f).

390 (f) After one or more reserve accounts are established,
391 the membership of the association, upon a majority vote at a
392 meeting at which a quorum is present, may provide for no
393 reserves or less reserves than required by this section. If a
394 meeting of the parcel ~~unit~~ owners has been called to determine
395 whether to waive or reduce the funding of reserves and such
396 result is not achieved or a quorum is not present, the reserves
397 as included in the budget go into effect. After the turnover,
398 the developer may vote its voting interest to waive or reduce
399 the funding of reserves. Any vote taken pursuant to this
400 subsection to waive or reduce reserves is applicable only to one

401 budget year.

402 Section 4. Subsections (1) and (3) of section 720.3033,
 403 Florida Statutes, are amended to read:

404 720.3033 Officers and directors.—

405 (1)(a) Within 90 days after being elected or appointed to
 406 the board, each ~~director shall certify in writing to the~~
 407 ~~secretary of the association that he or she has read the~~
 408 ~~association's declaration of covenants, articles of~~
 409 ~~incorporation, bylaws, and current written rules and policies;~~
 410 ~~that he or she will work to uphold such documents and policies~~
 411 ~~to the best of his or her ability; and that he or she will~~
 412 ~~faithfully discharge his or her fiduciary responsibility to the~~
 413 ~~association's members. Within 90 days after being elected or~~
 414 ~~appointed to the board, in lieu of such written certification,~~
 415 the newly elected or appointed director must ~~may~~ submit a
 416 certificate of having satisfactorily completed the educational
 417 curriculum administered by a department-approved division-
 418 ~~approved~~ education provider.

419 1. The newly elected or appointed director must complete
 420 the department-approved education for newly elected or appointed
 421 directors within 90 days after being elected or appointed.

422 2. The certificate of completion is valid for a maximum of
 423 4 years.

424 3. A director must complete the education specific to
 425 newly elected or appointed directors at least every 4 years.

426 4. The department-approved educational curriculum specific
 427 to newly elected or appointed directors must include training
 428 relating to financial literacy and transparency, recordkeeping,
 429 levying of fines, and notice and meeting requirements.

430 5. In addition to the educational curriculum specific to
 431 newly elected or appointed directors:

432 a. A director of an association that has fewer than 2,500
 433 members must complete at least 4 hours of continuing education
 434 annually.

435 b. A director of an association that has 2,500 members or
 436 more must complete at least 8 hours of continuing education
 437 annually within 1 year before or 90 days after the date of
 438 election or appointment.

439 (b) ~~The written certification or educational certificate~~
 440 ~~is valid for the uninterrupted tenure of the director on the~~
 441 ~~board.~~ A director who does not timely file the ~~written~~
 442 ~~certification or educational certificate~~ is ~~shall be~~ suspended
 443 from the board until he or she complies with the requirement.
 444 The board may temporarily fill the vacancy during the period of
 445 suspension.

446 (c) The association shall retain each director's ~~written~~
 447 ~~certification or educational certificate~~ for inspection by the
 448 members for 5 years after the director's election. However, the
 449 failure to have the written certification or educational
 450 certificate on file does not affect the validity of any board

451 action.

452 (d) The department shall adopt rules to implement and
453 administer the educational curriculum and continuing education
454 requirements under this subsection.

455 (3) An officer, a director, or a manager may not solicit,
456 offer to accept, ~~or~~ accept, or receive any thing or service of
457 value for which consideration has not been provided for his or
458 her benefit or for the benefit of a member of his or her
459 immediate family from any person providing or proposing to
460 provide goods or services to the association. An officer, a
461 director, or a manager who knowingly solicits, offers to accept,
462 ~~or~~ accepts, or receives any thing or service of value or
463 kickback that is at least \$25 but not more than \$1,000 for which
464 consideration has not been provided for his or her own benefit
465 or that of his or her immediate family from any person providing
466 or proposing to provide goods or services to the association
467 commits a misdemeanor of the first degree, punishable as
468 provided in s. 775.082 or s. 775.083 and is subject to monetary
469 damages under s. 617.0834. If such thing or kickback is valued
470 at \$1,000 or more, the officer, director, or manager commits a
471 felony of the third degree, punishable as provided in s.
472 775.082, s. 775.083, or s. 775.084 and is subject to monetary
473 damages under s. 617.0834. If the board finds that an officer or
474 a director has violated this subsection, the board shall
475 immediately remove the officer or director from office. The

476 vacancy shall be filled according to law until the end of the
 477 officer's or director's term of office. However, an officer, a
 478 director, or a manager may accept food to be consumed at a
 479 business meeting with a value of less than \$25 per individual or
 480 a service or good received in connection with trade fairs or
 481 education programs.

482 Section 5. Subsections (1) and (4) of section 720.3035,
 483 Florida Statutes, are amended to read:

484 720.3035 Architectural control covenants; parcel owner
 485 improvements; rights and privileges.—

486 (1) The authority of an association or any architectural,
 487 construction improvement, or other such similar committee of an
 488 association to review and approve plans and specifications for
 489 the location, size, type, or appearance of any structure or
 490 other improvement on a parcel, or to enforce standards for the
 491 external appearance of any structure or improvement located on a
 492 parcel, ~~is shall be~~ permitted only to the extent that the
 493 authority is specifically stated or reasonably inferred as to
 494 such location, size, type, or appearance in the declaration of
 495 covenants or other published guidelines and standards authorized
 496 by the declaration of covenants. An association or any
 497 architectural, construction improvement, or similar committee of
 498 an association must reasonably and equitably apply and enforce
 499 on all parcel owners the architectural and construction
 500 improvement standards authorized by the declaration of covenants

501 or other published guidelines and standards authorized by the
 502 declaration of covenants.

503 (4) Each parcel owner ~~is shall be~~ entitled to the rights
 504 and privileges set forth in the declaration of covenants or
 505 other published guidelines and standards authorized by the
 506 declaration of covenants concerning the architectural use of the
 507 parcel, and the construction of permitted structures and
 508 improvements on the parcel and such rights and privileges may
 509 ~~shall~~ not be unreasonably infringed upon or impaired by the
 510 association or any architectural, construction improvement, or
 511 other such similar committee of the association. If the
 512 association or any architectural, construction improvement, or
 513 other such similar committee of the association denies a parcel
 514 owner's request or application for the construction of a
 515 structure or other improvement on a parcel, the association or
 516 committee must provide written notice to the parcel owner
 517 stating with specificity the rule or covenant on which the
 518 association or committee relied when denying the request or
 519 application and the specific aspect or part of the proposed
 520 improvement that does not conform to such rule or covenant. If
 521 the association or any architectural, construction improvement,
 522 or other such similar committee of the association should
 523 unreasonably, knowingly, and willfully infringe upon or impair
 524 the rights and privileges set forth in the declaration of
 525 covenants or other published guidelines and standards authorized

526 | by the declaration of covenants, the adversely affected parcel
 527 | owner is ~~shall be~~ entitled to recover damages caused by such
 528 | infringement or impairment, including any costs and reasonable
 529 | attorney ~~attorney's~~ fees incurred in preserving or restoring the
 530 | rights and privileges of the parcel owner set forth in the
 531 | declaration of covenants or other published guidelines and
 532 | standards authorized by the declaration of covenants.

533 | Section 6. Paragraph (c) of subsection (3) of section
 534 | 720.3085, Florida Statutes, is amended to read:

535 | 720.3085 Payment for assessments; lien claims.—

536 | (3) Assessments and installments on assessments that are
 537 | not paid when due bear interest from the due date until paid at
 538 | the rate provided in the declaration of covenants or the bylaws
 539 | of the association, which rate may not exceed the rate allowed
 540 | by law. If no rate is provided in the declaration or bylaws,
 541 | interest accrues at the rate of 18 percent per year.

542 | (c)1. If an association sends out an invoice for
 543 | assessments or a parcel's statement of the account described in
 544 | s. 720.303(4)(a)10.b. ~~s. 720.303(4)(j)2.~~, the invoice for
 545 | assessments or the parcel's statement of account must be
 546 | delivered to the parcel owner by first-class United States mail
 547 | or by electronic transmission to the parcel owner's e-mail
 548 | address maintained in the association's official records.

549 | 2. Before changing the method of delivery for an invoice
 550 | for assessments or the statement of the account, the association

551 must deliver a written notice of such change to each parcel
552 owner. The written notice must be delivered to the parcel owner
553 at least 30 days before the association sends the invoice for
554 assessments or the statement of the account by the new delivery
555 method. The notice must be sent by first-class United States
556 mail to the owner at his or her last address as reflected in the
557 association's records and, if such address is not the parcel
558 address, must be sent by first-class United States mail to the
559 parcel address. Notice is deemed to have been delivered upon
560 mailing as required by this subparagraph.

561 3. A parcel owner must affirmatively acknowledge his or
562 her understanding that the association will change its method of
563 delivery of the invoice for assessments or the statement of the
564 account before the association may change the method of
565 delivering an invoice for assessments or the statement of
566 account. The parcel owner may make the affirmative
567 acknowledgment electronically or in writing.

568 Section 7. This act shall take effect July 1, 2024.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Porras offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove lines 179-481 and insert:

6 (b)1. By January 1, 2025, an association that has 100
7 parcels or more shall post a current digital copy of the
8 documents specified in subparagraph 3. on its website or make
9 such documents available through an application that can be
10 downloaded on a mobile device.

11 2. The association's website or application must be
12 accessible through the Internet and must contain a subpage, web
13 portal, or other protected electronic location that is
14 inaccessible to the general public and accessible only to parcel
15 owners and employees of the association.

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16 3. A current copy of the following documents must be
17 posted in digital format on the association's website or
18 application:

19 a. The articles of incorporation of the association and
20 each amendment thereto.

21 b. The recorded bylaws of the association and each
22 amendment thereto.

23 c. The declaration of covenants and a copy of each
24 amendment thereto.

25 d. The current rules of the association.

26 e. A list of all current executory contracts or documents
27 to which the association is a party or under which the
28 association or the parcel owners have an obligation or
29 responsibility and, after bidding for the related materials,
30 equipment, or services has closed, a list of bids received by
31 the association within the past year.

32 f. The annual budget required by subsection (6) and any
33 proposed budget to be considered at the annual meeting.

34 g. The financial report required by subsection (7) and any
35 monthly income or expense statement to be considered at a
36 meeting.

37 h. The association's current insurance policies.

38 i. The certification of each director as required by s.
39 720.3033(1) (a) .

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40 j. All contracts or transactions between the association
41 and any director, officer, corporation, firm, or association
42 that is not an affiliated homeowners' association or any other
43 entity in which a director of an association is also a director
44 or officer and has a financial interest.

45 k. Any contract or document regarding a conflict of
46 interest or possible conflict of interest as provided in ss.
47 468.436(2)(b)6. and 720.3033(2).

48 l. Notice of any scheduled meeting of members and the
49 agenda for the meeting, as required by s. 720.306, no later than
50 14 days before such meeting. The notice must be posted in plain
51 view on the homepage of the website or application, or on a
52 separate subpage of the website or application labeled "Notices"
53 which is conspicuously visible and linked from the homepage. The
54 association must also post on its website or application any
55 document to be considered and voted on by the members during the
56 meeting or any document listed on the meeting agenda at least 7
57 days before the meeting at which such document or information
58 within the document will be considered.

59 m. Notice of any board meeting, the agenda, and any other
60 document required for such meeting as required by subsection
61 (3), which must be posted on the website or application no later
62 than the date required for notice under subsection (3).

63 4. Upon written request by a parcel owner, the association
64 must provide the parcel owner with a username and password and

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65 access to the protected sections of the association's website or
66 application which contains the official documents of the
67 association.

68 5. The association shall ensure that the information and
69 records described in paragraph (5)(d), which are not allowed to
70 be accessible to parcel owners, are not posted on the
71 association's website or application. If protected information
72 or information restricted from being accessible to parcel owners
73 is included in documents that are required to be posted on the
74 association's website or application, the association must
75 ensure the information is redacted before posting the documents.
76 Notwithstanding the foregoing, the association or its authorized
77 agent is not liable for disclosing information that is protected
78 or restricted under paragraph (5)(d) unless such disclosure was
79 made with a knowing or intentional disregard of the protected or
80 restricted nature of such information.

81 (c) The association shall adopt written rules governing
82 the method or policy by which the official records of the
83 association are to be retained and for how long such records
84 must be retained pursuant to paragraph (a). Such information
85 must be made available to the parcel owners through the
86 association's website or application.

87 (5) INSPECTION AND COPYING OF RECORDS.—

88 (a) Unless otherwise provided by law or the governing
89 documents of the association, the official records must ~~shall~~ be

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90 maintained within the state for at least 7 years and ~~shall~~ be
91 made available to a parcel owner for inspection or photocopying
92 within 45 miles of the community or within the county in which
93 the association is located within 10 business days after receipt
94 by the board or its designee of a written request from the
95 parcel owner. This subsection may be complied with by having a
96 copy of the official records available for inspection or copying
97 in the community or, ~~at the option of the association,~~ by making
98 the records available to a parcel owner electronically via the
99 Internet or by allowing the records to be viewed in electronic
100 format on a computer screen and printed upon request. If the
101 association has a photocopy machine available where the records
102 are maintained, it must provide parcel owners with copies on
103 request during the inspection if the entire request is limited
104 to no more than 25 pages. An association shall allow a member or
105 his or her authorized representative to use a portable device,
106 including a smartphone, tablet, portable scanner, or any other
107 technology capable of scanning or taking photographs, to make an
108 electronic copy of the official records in lieu of the
109 association's providing the member or his or her authorized
110 representative with a copy of such records. The association may
111 not charge a fee to a member or his or her authorized
112 representative for the use of a portable device.

113 (b)-(a) The failure of an association to provide access to
114 the records within 10 business days after receipt of a written

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115 request submitted by certified mail, return receipt requested,
116 creates a rebuttable presumption that the association willfully
117 failed to comply with this subsection.

118 (c) ~~(b)~~ A member who is denied access to official records
119 is entitled to the actual damages or minimum damages for the
120 association's willful failure to comply with this subsection.
121 The minimum damages are to be \$50 per calendar day up to 10
122 days, the calculation to begin on the 11th business day after
123 receipt of the written request.

124 (d) Any director or member of the board or association or
125 a community association manager who knowingly, willfully, and
126 repeatedly violates paragraph (a), with the intent of causing
127 harm to the association or one or more of its members, commits a
128 misdemeanor of the second degree, punishable as provided in s.
129 775.082 or s. 775.083. For purposes of this paragraph, the term
130 "repeatedly" means two or more violations within a 12-month
131 period.

132 (e) Any person who knowingly and intentionally defaces or
133 destroys accounting records during the period in which such
134 records are required to be maintained, or who knowingly or
135 intentionally fails to create or maintain accounting records
136 that are required to be created or maintained, with the intent
137 of causing harm to the association or one or more of its
138 members, commits a misdemeanor of the first degree, punishable
139 as provided in s. 775.082 or s. 775.083.

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140 (f) Any person who willfully and knowingly refuses to
141 release or otherwise produce association records with the intent
142 to avoid or escape detection, arrest, trial, or punishment for
143 the commission of a crime, or to assist another person with such
144 avoidance or escape, commits a felony of the third degree,
145 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

146 (g)-(e) The association may adopt reasonable written rules
147 governing the frequency, time, location, notice, records to be
148 inspected, and manner of inspections, but may not require a
149 parcel owner to demonstrate any proper purpose for the
150 inspection, state any reason for the inspection, or limit a
151 parcel owner's right to inspect records to less than one 8-hour
152 business day per month. The association may impose fees to cover
153 the costs of providing copies of the official records, including
154 the costs of copying and the costs required for personnel to
155 retrieve and copy the records if the time spent retrieving and
156 copying the records exceeds one-half hour and if the personnel
157 costs do not exceed \$20 per hour. Personnel costs may not be
158 charged for records requests that result in the copying of 25 or
159 fewer pages. The association may charge up to 25 cents per page
160 for copies made on the association's photocopier. If the
161 association does not have a photocopy machine available where
162 the records are kept, or if the records requested to be copied
163 exceed 25 pages in length, the association may have copies made
164 by an outside duplicating service and may charge the actual cost

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165 of copying, as supported by the vendor invoice. The association
166 shall maintain an adequate number of copies of the recorded
167 governing documents, to ensure their availability to members and
168 prospective members. Notwithstanding this subsection ~~paragraph~~,
169 the following records are not accessible to members or parcel
170 owners:

171 1. Any record protected by the lawyer-client privilege as
172 described in s. 90.502 and any record protected by the work-
173 product privilege, including, but not limited to, a record
174 prepared by an association attorney or prepared at the
175 attorney's express direction which reflects a mental impression,
176 conclusion, litigation strategy, or legal theory of the attorney
177 or the association and which was prepared exclusively for civil
178 or criminal litigation or for adversarial administrative
179 proceedings or which was prepared in anticipation of such
180 litigation or proceedings until the conclusion of the litigation
181 or proceedings.

182 2. Information obtained by an association in connection
183 with the approval of the lease, sale, or other transfer of a
184 parcel.

185 3. Information an association obtains in a gated community
186 in connection with guests' visits to parcel owners or community
187 residents.

188 4. Personnel records of association or management company
189 employees, including, but not limited to, disciplinary, payroll,

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190 health, and insurance records. For purposes of this
191 subparagraph, the term "personnel records" does not include
192 written employment agreements with an association or management
193 company employee or budgetary or financial records that indicate
194 the compensation paid to an association or management company
195 employee.

196 5. Medical records of parcel owners or community
197 residents.

198 6. Social security numbers, driver license numbers, credit
199 card numbers, electronic mailing addresses, telephone numbers,
200 facsimile numbers, emergency contact information, any addresses
201 for a parcel owner other than as provided for association notice
202 requirements, and other personal identifying information of any
203 person, excluding the person's name, parcel designation, mailing
204 address, and property address. Notwithstanding the restrictions
205 in this subparagraph, an association may print and distribute to
206 parcel owners a directory containing the name, parcel address,
207 and all telephone numbers of each parcel owner. However, an
208 owner may exclude his or her telephone numbers from the
209 directory by so requesting in writing to the association. An
210 owner may consent in writing to the disclosure of other contact
211 information described in this subparagraph. The association is
212 not liable for the disclosure of information that is protected
213 under this subparagraph if the information is included in an

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214 official record of the association and is voluntarily provided
215 by an owner and not requested by the association.

216 7. Any electronic security measure that is used by the
217 association to safeguard data, including passwords.

218 8. The software and operating system used by the
219 association which allows the manipulation of data, even if the
220 owner owns a copy of the same software used by the association.
221 The data is part of the official records of the association.

222 9. All affirmative acknowledgments made pursuant to s.
223 720.3085(3)(c)3.

224 (h)~~(d)~~ The association or its authorized agent is not
225 required to provide a prospective purchaser or lienholder with
226 information about the residential subdivision or the association
227 other than information or documents required by this chapter to
228 be made available or disclosed. The association or its
229 authorized agent may charge a reasonable fee to the prospective
230 purchaser or lienholder or the current parcel owner or member
231 for providing good faith responses to requests for information
232 by or on behalf of a prospective purchaser or lienholder, other
233 than that required by law, if the fee does not exceed \$150 plus
234 the reasonable cost of photocopying and any attorney fees
235 incurred by the association in connection with the response.

236 (i) If an association receives a subpoena for records from
237 a law enforcement agency, the association must provide a copy of
238 such records or otherwise make the records available for

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239 inspection and copying to a law enforcement agency within 5
240 business days after receipt of the subpoena, unless otherwise
241 specified by the law enforcement agency or subpoena. An
242 association must assist a law enforcement agency in its
243 investigation to the extent permissible by law.

244 (6) BUDGETS.—

245 (f) After one or more reserve accounts are established,
246 the membership of the association, upon a majority vote at a
247 meeting at which a quorum is present, may provide for no
248 reserves or less reserves than required by this section. If a
249 meeting of the parcel unit owners has been called to determine
250 whether to waive or reduce the funding of reserves and such
251 result is not achieved or a quorum is not present, the reserves
252 as included in the budget go into effect. After the turnover,
253 the developer may vote its voting interest to waive or reduce
254 the funding of reserves. Any vote taken pursuant to this
255 subsection to waive or reduce reserves is applicable only to one
256 budget year.

257 (7) FINANCIAL REPORTING.—Within 90 days after the end of
258 the fiscal year, or annually on the date provided in the bylaws,
259 the association shall prepare and complete, or contract with a
260 third party for the preparation and completion of, a financial
261 report for the preceding fiscal year. Within 21 days after the
262 final financial report is completed by the association or
263 received from the third party, but not later than 120 days after

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264 the end of the fiscal year or other date as provided in the
265 bylaws, the association shall, within the time limits set forth
266 in subsection (5), provide each member with a copy of the annual
267 financial report or a written notice that a copy of the
268 financial report is available upon request at no charge to the
269 member. Financial reports shall be prepared as follows:

270 (a) An association that meets the criteria of this
271 paragraph shall prepare or cause to be prepared a complete set
272 of financial statements in accordance with generally accepted
273 accounting principles as adopted by the Board of Accountancy.
274 The financial statements shall be based upon the association's
275 total annual revenues, as follows:

276 1. An association with total annual revenues of \$150,000
277 or more, but less than \$300,000, shall prepare compiled
278 financial statements.

279 2. An association with total annual revenues of at least
280 \$300,000, but less than \$500,000, shall prepare reviewed
281 financial statements.

282 3. An association with total annual revenues of \$500,000
283 or more shall prepare audited financial statements.

284 4. An association with 1,000 parcels or more shall prepare
285 audited financial statements, notwithstanding the association's
286 total annual revenues.

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287 (d) If approved by a majority of the voting interests
288 present at a properly called meeting of the association, an
289 association may prepare or cause to be prepared:

290 1. A report of cash receipts and expenditures in lieu of a
291 compiled, reviewed, or audited financial statement;

292 2. A report of cash receipts and expenditures or a
293 compiled financial statement in lieu of a reviewed or audited
294 financial statement; or

295 3. A report of cash receipts and expenditures, a compiled
296 financial statement, or a reviewed financial statement in lieu
297 of an audited financial statement.

298

299 An association may not prepare a financial statement pursuant to
300 this paragraph for consecutive fiscal years.

301 (13) DEBIT CARDS.-

302 (a) An association and its officers, directors, employees,
303 and agents may not use a debit card issued in the name of the
304 association, or billed directly to the association, for the
305 payment of any association expenses.

306 (b) A person who uses a debit card issued in the name of
307 the association, or billed directly to the association, for any
308 expense that is not a lawful obligation of the association
309 commits theft as provided under s. 812.014.

310

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311 For the purposes of this subsection, the term "lawful obligation
312 of the association" means an obligation that has been properly
313 preapproved by the board and is reflected in the meeting minutes
314 or the written budget.

315 Section 4. Subsections (1) and (3) and paragraph (a) of
316 subsection (4) of section 720.3033, Florida Statutes, are
317 amended to read:

318 720.3033 Officers and directors.—

319 (1)(a) Within 90 days after being elected or appointed to
320 the board, each director ~~shall certify in writing to the~~
321 ~~secretary of the association that he or she has read the~~
322 ~~association's declaration of covenants, articles of~~
323 ~~incorporation, bylaws, and current written rules and policies;~~
324 ~~that he or she will work to uphold such documents and policies~~
325 ~~to the best of his or her ability; and that he or she will~~
326 ~~faithfully discharge his or her fiduciary responsibility to the~~
327 ~~association's members. Within 90 days after being elected or~~
328 ~~appointed to the board, in lieu of such written certification,~~
329 ~~the newly elected or appointed director must may~~ submit a
330 certificate of having satisfactorily completed the educational
331 curriculum administered by a department-approved division-
332 approved education provider.

333 1. The newly elected or appointed director must complete
334 the department-approved education for newly elected or appointed
335 directors within 90 days after being elected or appointed.

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336 2. The certificate of completion is valid for a maximum of
337 4 years.

338 3. At least every 4 years, a director must complete the
339 education specific to newly elected or appointed directors.

340 4. The department-approved educational curriculum specific
341 to newly elected or appointed directors must include training
342 relating to financial literacy and transparency, recordkeeping,
343 levying of fines, and notice and meeting requirements.

344 5. In addition to the educational curriculum specific to
345 newly elected or appointed directors:

346 a. A director of an association that has fewer than 2,500
347 parcels must complete at least 4 hours of continuing education
348 annually.

349 b. A director of an association that has 2,500 parcels or
350 more must complete at least 8 hours of continuing education
351 annually within 1 year before or 90 days after the date of
352 election or appointment.

353 ~~(b) The written certification or educational certificate~~
354 ~~is valid for the uninterrupted tenure of the director on the~~
355 ~~board. A director who does not timely file the written~~
356 ~~certification or educational certificate is shall be suspended~~
357 ~~from the board until he or she complies with the requirement.~~
358 ~~The board may temporarily fill the vacancy during the period of~~
359 ~~suspension.~~

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360 (c) The association shall retain each director's ~~written~~
361 ~~certification or~~ educational certificate for inspection by the
362 members for 5 years after the director's election. However, the
363 failure to have the written certification or educational
364 certificate on file does not affect the validity of any board
365 action.

366 (d) The department shall adopt rules to implement and
367 administer the educational curriculum and continuing education
368 requirements under this subsection.

369 (3) An officer, a director, or a manager may not solicit,
370 offer to accept, or accept a kickback. As used in this
371 subsection, the term "kickback" means any thing or service of
372 value for which consideration has not been provided for an
373 officer's, a director's, or a manager's ~~his or her~~ benefit or
374 for the benefit of a member of his or her immediate family from
375 any person providing or proposing to provide goods or services
376 to the association. An officer, a director, or a manager who
377 knowingly solicits, offers to accept, or accepts a ~~any thing or~~
378 ~~service of value or~~ kickback commits a felony of the third
379 degree, punishable as provided in s. 775.082, s. 775.083, or s.
380 775.084, and for which consideration has not been provided for
381 ~~his or her own benefit or that of his or her immediate family~~
382 ~~from any person providing or proposing to provide goods or~~
383 ~~services to the association~~ is subject to monetary damages under
384 s. 617.0834. If the board finds that an officer or a director

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385 | has violated this subsection, the board shall immediately remove
386 | the officer or director from office. The vacancy shall be filled
387 | according to law until the end of the officer's or director's
388 | term of office. However, an officer, a director, or a manager
389 | may accept food to be consumed at a business meeting with a
390 | value of less than \$25 per individual or a service or good
391 | received in connection with trade fairs or education programs.

392 | (4) (a) A director or an officer charged by information or
393 | indictment with any of the following crimes must be removed from
394 | office and a vacancy declared:

395 | 1. Forgery of a ballot envelope or voting certificate used
396 | in a homeowners' association election as provided in s. 831.01.

397 | 2. Theft or embezzlement involving the association's funds
398 | or property as provided in s. 812.014.

399 | 3. Destruction of or the refusal to allow inspection or
400 | copying of an official record of a homeowners' association which
401 | is accessible to parcel owners within the time periods required
402 | by general law, in furtherance of any crime. Such act
403 | constitutes tampering with physical evidence as provided in s.
404 | 918.13.

405 | 4. Obstruction of justice as provided in chapter 843.

406 | 5. Any criminal violation under this chapter.

407 |
408 | -----

409 | **D I R E C T O R Y A M E N D M E N T**

Amendment No. 1

410 Remove lines 94-96 and insert:

411 Section 3. Subsections (4) and (5), paragraph (f) of
412 subsection (6), and paragraphs (a) and (d) of subsection (7) of
413 section 720.303, Florida Statutes, are amended, and subsection
414 (13) is added to that section, to read:

415

416 -----

417 **T I T L E A M E N D M E N T**

418 Remove lines 11-39 and insert:

419 years; requiring a certain association to post certain
420 documents on its website or make such documents
421 available through an application by a date certain;
422 providing requirements for an association's website or
423 application; providing requirements for notices posted
424 on an association's website or application; requiring
425 an association to provide certain information to
426 parcel owners upon request; requiring an association
427 to ensure certain information and records are not
428 accessible on the website or application; providing
429 that an association or its agent is not liable for the
430 disclosure of certain information; requiring an
431 association to adopt certain rules; providing criminal
432 penalties; requiring an association to provide or make
433 available subpoenaed records within a certain
434 timeframe; requiring an association to assist in a law

Amendment No. 1

435 enforcement investigation as allowed by law; requiring
436 certain associations to prepare audited financial
437 statements; prohibiting associations from preparing
438 financial statements for consecutive fiscal years;
439 prohibiting certain persons from using a debit card
440 issued in the name of the association for certain
441 purposes; providing a criminal penalty; defining the
442 term "lawful obligation of the association"; amending
443 s. 720.3033, F.S.; providing education requirements
444 for newly elected or appointed directors; providing
445 requirements for the educational curriculum; requiring
446 certain directors to complete a certain number of
447 hours of continuing education annually; requiring the
448 Department of Business and Professional Regulation to
449 adopt certain rules; providing criminal penalties for
450 certain actions by an officer, a director, or a
451 manager of an association; defining the term
452 "kickback"; requiring a vacancy to be declared if a
453 director or an officer is charged by information for
454 any criminal violation under the chapter; amending s.
455 720.3035, F.S.;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Porras offered the following:

Amendment (with title amendment)

Between lines 567 and 568, insert:

Section 7. Section 720.317, Florida Statutes, is amended to read:

720.317 Electronic voting.—

(1) The association may conduct elections and other membership votes through an Internet-based online voting system if a member consents, electronically or in writing, to online voting and if the following requirements are met:

(a)~~(1)~~ The association provides each member with:

1.~~(a)~~ A method to authenticate the member's identity to the online voting system.

Amendment No. 2

16 ~~2.(b)~~ A method to confirm, at least 14 days before the
17 voting deadline, that the member's electronic device can
18 successfully communicate with the online voting system.

19 ~~3.(e)~~ A method that is consistent with the election and
20 voting procedures in the association's bylaws.

21 ~~(b)(2)~~ The association uses an online voting system that
22 is:

23 ~~1.(a)~~ Able to authenticate the member's identity.

24 ~~2.(b)~~ Able to authenticate the validity of each electronic
25 vote to ensure that the vote is not altered in transit.

26 ~~3.(e)~~ Able to transmit a receipt from the online voting
27 system to each member who casts an electronic vote.

28 ~~4.(d)~~ Able to permanently separate any authentication or
29 identifying information from the electronic election ballot,
30 rendering it impossible to tie an election ballot to a specific
31 member. This paragraph only applies if the association's bylaws
32 provide for secret ballots for the election of directors.

33 ~~5.(e)~~ Able to store and keep electronic ballots accessible
34 to election officials for recount, inspection, and review
35 purposes.

36 ~~(2)(3)~~ A member voting electronically pursuant to this
37 section shall be counted as being in attendance at the meeting
38 for purposes of determining a quorum.

39 ~~(3)(4)~~ This section applies to an association that
40 provides for and authorizes an online voting system pursuant to

Amendment No. 2

41 this section by a board resolution. The board resolution must
42 provide that members receive notice of the opportunity to vote
43 through an online voting system, must establish reasonable
44 procedures and deadlines for members to consent, electronically
45 or in writing, to online voting, and must establish reasonable
46 procedures and deadlines for members to opt out of online voting
47 after giving consent. Written notice of a meeting at which the
48 board resolution regarding online voting will be considered must
49 be mailed, delivered, or electronically transmitted to the unit
50 owners and posted conspicuously on the condominium property or
51 association property at least 14 days before the meeting.
52 Evidence of compliance with the 14-day notice requirement must
53 be made by an affidavit executed by the person providing the
54 notice and filed with the official records of the association.

55 ~~(4)-(5)~~ A member's consent to online voting is valid until
56 the member opts out of online voting pursuant to the procedures
57 established by the board of administration pursuant to
58 subsection (3) ~~(4)~~.

59 ~~(5)-(6)~~ This section may apply to any matter that requires
60 a vote of the members.

61
62 -----

63 **T I T L E A M E N D M E N T**

64 Remove line 48 and insert:

Amendment No. 2

65 | cross-reference; amending s. 720.317, F.S.; providing
66 | that a homeowner may consent to online voting
67 | electronically, as well as in writing, and that
68 | association boards must establish reasonable
69 | procedures for giving such consent; providing an
70 | effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1367 Asbestos and Silica Claims

SPONSOR(S): Brackett

TIED BILLS: **IDEN./SIM. BILLS:** SB 720

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 3 N	Mathews	Jones
2) Judiciary Committee		Mathews	Jones

SUMMARY ANALYSIS

Asbestos is the name given to six naturally-occurring fibrous minerals resistant to chemical, thermal, and electricity damage historically used in construction, manufacturing, and fireproofing. When handled, asbestos separates into microscopic particles, exposure to which may cause cancer and other diseases, including lung cancer, mesothelioma, and asbestosis, which can take 20 to 40 years to develop following initial exposure.

Lawsuits against asbestos manufacturers and distributors began in the 1970s, and by the 1990s, these corporations began filing for reorganization under Chapter 11 of the United States Bankruptcy Code in the hopes of escaping their asbestos injury liability. In 1994, Congress enacted 11 U.S.C. s. 524(g) to create a comprehensive, statutory mechanism for addressing asbestos liabilities in bankruptcy reorganization proceedings.

Florida’s Asbestos and Silica Compensation Fairness Act (Act) allows the filing of an asbestos lawsuit against a solvent defendant in the state if the claimant is domiciled in Florida or the asbestos exposure that substantially contributed to the exposed person’s physical impairment occurred in the state. The statute of limitations to file an asbestos lawsuit does not begin to run until the exposed person discovers, or through exercising reasonable diligence should have discovered, his or her asbestos-related physical impairment.

HB 1367 amends s. 774.205, F.S., to require that all asbestos or silica related claims filed on or after July 1, 2024, include additional information on the sworn information form. The sworn information form must include the specific evidence that provides the basis for each claim against each named defendant. However, the bill shields the information provided in the sworn information form from being admissible at trial. The bill provides additional specified information, which must be included in the sworn information form, the failure of which to include may result in a dismissal of the case without prejudice.

The bill is unlikely to have any fiscal impact on state or local governments.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Asbestos

Asbestos is the commercial name given to six naturally-occurring fibrous minerals resistant to chemical, thermal, and electricity damage historically used in consumer goods including textiles, paper, toys, brake pads, shoes, and home appliances, and used by the construction and ship-building industries as roofing, flooring, wallboard, insulation, and fireproofing.¹ When handled, asbestos separates into microscopic, circulating particles, exposure² to which may cause cancer and other diseases, including lung cancer, mesothelioma,³ and asbestosis,⁴ which can take 20 to 40 years to develop following initial exposure.⁵

As early as the 1930s, some asbestos industry executives apparently knew of the occupational hazard that asbestos exposure posed.⁶ However, given the prolonged latency period of asbestos-related diseases and the fact that the average working-class American of the day would not expect to live past 60 years of age, the executives did not give the risks serious attention.⁷ Further, given the legal standards of the day,⁸ the executives had little reason to contemplate corporate liability for harms occurring decades into the future, and thus did not advertise what they knew.⁹

By 1970, however, published medical evidence conclusively showed that some workers exposed to asbestos would, over time, contract asbestosis, lung cancer, or mesothelioma and be increasingly disabled by these conditions.¹⁰ After 1973, asbestos use declined sharply as knowledge of the exposure risks spread and the new Occupational Safety and Health Administration (“OSHA”)¹¹ called for its removal. Despite the decline in use, a leading epidemiological study found that, by 1979, at least 27.5 million Americans had suffered asbestos exposure.¹²

Asbestos Litigation

¹ Centers for Disease Control and Prevention: National Institute for Occupational Safety and Health (NIOSH), *Asbestos*, <https://www.cdc.gov/niosh/topics/asbestos/default.html> (last visited Jan. 25, 2024).

² Asbestos exposure can be occupational or non-occupational. Non-occupational exposure includes domestic exposure, common in family members of a person occupationally exposed. See Nonhlanhla Tlotleng, et al., *The Significance of Non-Occupational Asbestos Exposure in Women with Mesothelioma*, *Respirology Case Reports*, Vol. 7 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6246071/> (last visited Jan. 25, 2024).

³ Mesothelioma is an aggressive cancer occurring in the thin tissue layer covering the majority of the internal organs, known as the mesothelium. Mesothelioma most often affects the tissue surrounding the lungs. See Mayo Clinic, *Mesothelioma*, <https://www.mayoclinic.org/diseases-conditions/mesothelioma/symptoms-causes/syc-20375022> (last visited Jan. 25, 2024).

⁴ Asbestosis is a chronic lung disease caused by inhaling asbestos fibers characterized by lung tissue scarring and shortness of breath. As asbestosis progresses, lung tissue scarring prevents lungs from contracting and expanding normally. See Mayo Clinic, *Asbestosis*, <https://www.mayoclinic.org/diseases-conditions/asbestosis/symptoms-causes/syc-20354637> (last visited Jan. 25, 2024).

⁵ CDC, *supra* note 1.

⁶ Paul D. Carrington, *Asbestos Lessons: The Unattended Consequences of Asbestos Litigation*, *The Review of Litigation*, Vol. 26 (2007), https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2343&context=faculty_scholarship (last visited Jan. 25, 2024).

⁷ *Id.*

⁸ Tort law was not yet recognized as the primary means of discouraging management from consciously taking employee health and safety risks, and courts interpreted applicable statutes of limitation as starting to run when the harm occurred. It was only after 1960 that tort law began to predominantly govern the relationship between employees and corporations, and courts began to interpret statutes of limitation to start running only when the victim discovers the harm. *Id.*

⁹ Carrington, *supra* note 6.

¹⁰ *Id.*

¹¹ Congress created the Occupational Safety and Health Administration (OSHA) with the Occupational Safety and Health Act of 1970 to ensure safe working conditions for American workers by setting and enforcing workplace standards and providing training, outreach, education, and assistance. See United States Department of Labor, Occupational Safety and Health Administration, *About OSHA*, <https://www.osha.gov/aboutosha> (last visited Jan. 25, 2024).

¹² See Carrington, *supra* note 6, citing William Nicholson, et al., *Occupational Exposure to Asbestos: Population at Risk and Projected Mortality 1980-2030*, 3 *Am. Jur. Indus. Med.* 259 (1982).

In 1972, an insulation worker disabled by asbestosis and mesothelioma sued his employer, a building materials manufacturer, for failing to warn him of asbestos exposure risks.¹³ The evidence showed that the defendant knew of the risks but had not informed the claimant, and the jury awarded the claimant a \$68,000 verdict, finding the defendant strictly liable on the basis of s. 402A of the Restatement (Second) of Torts.¹⁴ The Fifth Circuit affirmed the trial court's opinion, finding that the defendant's failure to give "adequate warnings of the known or knowable dangers involved [in asbestos exposure]" made asbestos an "unreasonably dangerous" product.¹⁵

Asbestos Bankruptcy Trusts

In 1982, the Johns-Manville Corporation filed an asbestos-related bankruptcy petition, and five years later, the Manville Personal Injury Settlement Trust was the first asbestos bankruptcy trust established.¹⁶ A dramatic surge in asbestos manufacturing corporations filing for bankruptcy followed the creation of the Manville Trust, but bankruptcy courts lacked express statutory authority for the trust scheme.¹⁷ In 1994, Congress enacted 11 U.S.C. s. 524(g) to create a comprehensive, statutory mechanism for addressing asbestos liabilities in bankruptcy reorganization proceedings.¹⁸ This section authorizes bankruptcy courts to transfer a debtor corporation's asbestos liability to an independent trust funded by the reorganized company, allowing the reorganized company to operate free from present and future asbestos liability claims.¹⁹ Since 1994, over 60 such asbestos bankruptcy trusts have been established, paying over \$17.5 billion on millions of asbestos injury claims.²⁰

Generally, a claimant seeking compensation from an asbestos trust must file a claim form with an injury statement and information establishing asbestos exposure linked to the trust's predecessor.²¹ A claimant must also submit asbestos exposure evidence, such as employment and social security records, deposition testimony, and medical reports or records supporting a diagnosis of the specific disease claimed.²² A trust claim is then reviewed by a trust committee and paid when the claimant meets exposure requirements and suffers from an asbestos-related injury linked to such exposure.²³ Payment schedules established by each trust determine the amount of compensation a claimant will receive for a specific medical condition, and claimants may make claims from multiple trusts for a single injury as each trust operates independently.²⁴

Florida Asbestos Litigation Law

Initiating a Lawsuit

Florida's Asbestos and Silica Compensation Fairness Act²⁵ ("the Act") allows the filing of an asbestos lawsuit against a solvent defendant in the state if the claimant is domiciled in Florida²⁶ or the asbestos

¹³ *Borel v. Fibreboard Paper Prods. Corp.*, 493 F.2d 1076 (5th Cir. 1973).

¹⁴ *Id.*; Restatement (Second) Of Torts § 402A (1965) ("One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer...").

¹⁵ *Borel*, *supra* note 13.

¹⁶ Lloyd Dixon, et al., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, Rand Institute for Civil Justice, https://www.rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.pdf (last visited Jan. 25, 2024).

¹⁷ *Id.*

¹⁸ United States Department of Justice, Office of Public Affairs, *Justice Department Files Statement of Interest in New Asbestos Trust Proposal* (Sept. 13, 2018), <https://www.justice.gov/opa/pr/justice-department-files-statement-interest-new-asbestos-trust-proposal> (last visited Jan. 25, 2024).

¹⁹ See Dixon, *supra* note 16.

²⁰ *Id.*

²¹ Mark A. Behrens, *Asbestos Trust Transparency*, 81 Fordham L Rev. 107 (2018), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=5540&context=flr> (last visited Jan. 25, 2024).

²² *Id.*

²³ See Dixon, *supra* note 16.

²⁴ *Id.*; See Behrens, *supra* note 21.

²⁵ Ch. 774, Part II, F.S.

²⁶ A person domiciled in Florida has his or her true, principal, and permanent home in this state. Such a person physically lives in the state, regards it as home, and intends to return even if currently residing elsewhere. See Legal Information Institute, *Domicile*, <https://www.law.cornell.edu/wex/domicile> (last visited Jan. 25, 2024).

exposure that substantially contributed to the exposed person's²⁷ physical impairment²⁸ occurred in the state.²⁹ The statute of limitations³⁰ to file an asbestos lawsuit does not begin to run until the exposed person discovers, or through exercising reasonable diligence should have discovered, his or her asbestos-related physical impairment.³¹ An asbestos lawsuit alleging a non-cancerous injury is a separate cause of action from an asbestos lawsuit alleging asbestos-related cancer, and settlement of a non-cancerous asbestos injury claim may not require as a condition of settlement the release of any future asbestos-related cancer claim, meaning that a claimant who sues for a non-cancerous injury may sue the same defendant again if he or she develops asbestos-related cancer in the future.³²

Discovery

A claimant bringing an asbestos lawsuit must include a written report and supporting test results with the complaint constituting prima facie evidence³³ of the exposed person's asbestos-related impairment.³⁴ The defendant has an opportunity to challenge the evidence's adequacy, and the court must dismiss the asbestos lawsuit without prejudice³⁵ if the claimant fails to make the required prima facie showing.³⁶ In addition to the written report, a claimant must file a sworn information form containing:

- The claimant's name, date of birth, and marital status;³⁷
- The name, address, date of birth, and marital status of each index person;³⁸
- The specific exposure locations;³⁹
- The alleged exposure's beginning and ending dates;⁴⁰
- The exposed person's occupation and employer name at the time of the alleged exposure;⁴¹
- The specific asbestos-related condition alleged;⁴² and
- Any supporting documentation related to the asbestos lawsuit.⁴³

Effect of Proposed Changes

HB 1367 amends s. 774.205, F.S., to require that the sworn information form for all asbestos or silica related claims filed on or after July 1, 2024, must specify the specific evidence that provides the basis for each claim against each named defendant. Further, the sworn information must include all of the following, in addition to current requirements:

- The exposed person's smoking history;
- The name and address of each person who is knowledgeable regarding the exposed person's exposure to asbestos or silica;

²⁷ "Exposed person" means a person whose asbestos exposure is the basis for an asbestos lawsuit or trust claim. S. 774.203(13), F.S.

²⁸ Physical impairment, to which asbestos exposure was a substantial contributing factor, is an essential element of an asbestos lawsuit. A prima facie showing of physical impairment must include evidence verifying that a qualified physician took the exposed person's detailed occupational and exposure history, including identification of all of the exposed person's principal employment places and exposures to airborne contaminants, and a detailed medical and smoking history, including a thorough review of the exposed person's past and present medical problems and their most likely cause. S. 774.204(2)(a) and (b), F.S.

²⁹ S. 774.205(1), F.S.

³⁰ A statute of limitations bars the filing of a civil or criminal cause of action after a certain period of time following an injury or offense. See Legal Information Institute, *Statute of Limitations*, https://www.law.cornell.edu/wex/statute_of_limitations (last visited Jan. 25, 2024).

³¹ S. 774.206(1), F.S.

³² S. 774.206(2), F.S.

³³ Prima facie evidence is evidence sufficient to establish a fact or raise a presumption unless disproved or rebutted. See Legal Information Institute, *Prima Facie*, https://www.law.cornell.edu/wex/prima_facie (last visited Jan. 25, 2024).

³⁴ S. 774.205(2), F.S.

³⁵ When a case is dismissed without prejudice, the plaintiff is free to file another lawsuit based on the same grounds. See Legal Information Institute, *Dismissal Without Prejudice*, https://www.law.cornell.edu/wex/dismissal_without_prejudice (last visited Jan. 25, 2024).

³⁶ S. 774.205(1), F.S.

³⁷ S. 774.205(3)(a), F.S.

³⁸ An index person is the person by which a plaintiff claims asbestos exposure if alleging such exposure through another's testimony or by other than direct or bystander exposure to a product. S. 774.205(3)(b), F.S.

³⁹ S. 774.205(3)(c), F.S.

⁴⁰ S. 774.205(3)(d), F.S.

⁴¹ S. 774.205(3)(e), F.S.

⁴² S. 774.205(3)(f), F.S.

⁴³ S. 774.205(3)(g), F.S.

- The specific type of product, such as insulation, asbestos fiber, or an automotive friction product, and specific location of each alleged exposure for each defendant;
- The occupation and employer of the exposed person and each index person at the time of the alleged exposure; and
- Any supporting documentation of the condition claimed to exist in the possession of the claimant at the time the sworn information is filed.

The bill provides that the contents of the sworn information form are not admissible as evidence at trial and may not be relied on by a witness, including an expert witness at trial. .

The bill further provides that a court must dismiss a claimant's asbestos or silica claim without prejudice:

- As to the specific defendant if the named defendant's product or premises is not specifically identified in the sworn information form; and
- As to a moving defendant or all defendants if the claimant fails to comply with the requirements of the sworn information form and the written report required under s. 774.205(2), F.S.

Under the bill, the motion to dismiss must include a certification that the movant, in good faith, has conferred, or attempted to confer, with the claimant's counsel, or the self-represented claimant if no counsel is retained, to have the challenged claim dismissed or to have the sworn information remedied to include the required information without court action.

The bill has an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 774.205, F.S., relating to claimant proceedings.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a fiscal impact on the private sector by making it more difficult for an injured party to bring a claim against a defendant for an alleged asbestos or silica related injury. The bill requires the claimant to provide extensive and detailed information when initiating the lawsuit, which may serve as a bar to litigation for some claimants.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to asbestos and silica claims;
 3 amending s. 774.205, F.S.; revising the information
 4 required to be included in a sworn information form
 5 for asbestos or silica claims filed after a specified
 6 date; specifying that such a form is inadmissible in
 7 evidence at trial; requiring courts to dismiss certain
 8 claims upon a motion by a defendant; requiring motions
 9 to dismiss to include certain certifications;
 10 providing an effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (3) of section 774.205, Florida
 15 Statutes, is amended, and subsection (4) is added to that
 16 section, to read:

17 774.205 Claimant proceedings.—

18 (3) All asbestos claims and silica claims filed in this
 19 state on or after July 1, 2024, ~~the effective date of this act~~
 20 must include, in addition to the written report described in
 21 subsection (2) and the information required by s. 774.207(2), a
 22 sworn information form.

23 (a) The sworn information form must specify the evidence
 24 that provides the basis for each claim against each defendant
 25 and must contain all of ~~containing~~ the following information:

26 1.(a) The exposed person's claimant's name, address, date
27 of birth, ~~and~~ marital status, and smoking history, and the name
28 and address of each person who is knowledgeable regarding the
29 exposed person's exposure to asbestos or silica.†

30 2.(b) If the exposed person claimant alleges exposure to
31 asbestos or silica through the testimony of another person or
32 alleges other than direct or bystander exposure to a product,
33 the name, address, date of birth, and marital status for each
34 person by which the exposed person claimant alleges exposure,
35 hereinafter the "index person," and the exposed person's
36 claimant's relationship to each such person.†

37 3.(e) The specific type of product, such as insulation,
38 asbestos fiber, or an automotive friction product, and specific
39 location of each alleged exposure for each defendant.†

40 4.(d) The beginning and ending dates of each alleged
41 exposure as to each asbestos product or silica product for each
42 location at which exposure allegedly took place for the exposed
43 person plaintiff and each index person.†

44 5.(e) The occupation and ~~name of the~~ employer of the
45 exposed person and each index person at the time of each alleged
46 exposure.†

47 6.(f) The specific condition related to asbestos or silica
48 claimed to exist.† ~~and~~

49 7.(g) Any supporting documentation of the condition
50 claimed to exist in the possession of the claimant at the time

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51 the sworn information form is filed.

52 (b) The sworn information form is inadmissible in evidence
53 at trial and may not be relied upon by a witness, including an
54 expert witness, at trial.

55 (4) (a) A court, upon motion by a defendant, shall dismiss
56 a claimant's asbestos or silica claim without prejudice as to:

57 1. Any defendant whose product or premises is not
58 specifically identified in the sworn information form submitted
59 pursuant to subsection (3); and

60 2. The moving defendant or all defendants, as applicable,
61 if the claimant fails to comply with this section.

62 (b) The motion to dismiss must include a certification
63 that the movant, in good faith, has conferred or attempted to
64 confer with the claimant's counsel or the self-represented
65 claimant, as applicable, to have the challenged claim dismissed
66 or to have the challenged sworn information form appropriately
67 corrected without court action.

68 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1389 Digital Voyeurism
SPONSOR(S): Criminal Justice Subcommittee, Cassel and others
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 1604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Butcher	Hall
2) Judiciary Committee		Butcher	Kramer

SUMMARY ANALYSIS

Section 810.145, F.S., prohibits video voyeurism, video voyeurism dissemination, and commercial video voyeurism dissemination. Generally, a person commits video voyeurism if he or she intentionally uses or installs, or permits the use or installation of, an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy. Generally, a person who is under 19 years of age and who commits any video voyeurism offense commits a first degree misdemeanor; a person who is 19 years of age or older and commits any video voyeurism offense commits a third degree felony; and a person who commits any second or subsequent video voyeurism offense commits a second degree felony, regardless of his or her age. Currently, a first video voyeurism offense is not listed on the offense severity ranking chart (OSRC), so the penalty for any first offense is the same regardless of conduct.

CS/HB 1389 amends s. 810.145, F.S., to rename the offense from "video voyeurism" to "digital voyeurism" and revise the penalty scheme for digital voyeurism offenses. Under the bill, for a first offense of digital voyeurism, a person under 19 years of age commits a first degree misdemeanor and a person 19 years of age or older commits a third degree felony, ranked as a Level 3 offense on the OSRC. A person, regardless of age, commits a third degree felony for a first offense of digital voyeurism dissemination, ranked as a Level 4 offense on the OSRC, and a third degree felony for a first offense of commercial digital voyeurism dissemination, ranked as a Level 5 offense on the OSRC. A person, regardless of age, commits a second degree felony for a second or subsequent digital voyeurism offense, ranked as a Level 5 offense on the OSRC, and a second degree felony for a digital voyeurism offense against a specified minor victim, ranked as a Level 5 offense on the OSRC.

Under the bill, the penalty for a digital voyeurism offense is reclassified to the next highest felony level and OSRC level if a person is 19 years of age or older and:

- Is a family or household member of the victim; or
- Holds a position of authority or trust with the victim.

The bill specifies that each instance of the viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of s. 810.145, F.S., is a separate offense for which a separate penalty is authorized. The bill also makes other conforming changes.

The bill may have an indeterminate positive impact on the jail and prison bed population by making digital voyeurism dissemination and commercial digital voyeurism dissemination a felony, regardless of the offender's age, increasing the OSRC ranking for specified digital voyeurism offenses, and providing for reclassification of specified digital voyeurism offenses, which may result in increased admissions to and jail and prison facilities and offenders serving longer terms of incarceration in such facilities.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voyeurism

Under section 810.14, F.S., a person commits voyeurism when he or she, with lewd, lascivious, or indecent intent:

- Secretly observes another person when the other person is located in a dwelling, structure, or conveyance and such location provides a reasonable expectation of privacy; or
- Secretly observes another person's intimate areas¹ in which the person has a reasonable expectation of privacy, when the other person is located in a public or private dwelling, structure, or conveyance.

A first or second voyeurism offense is punishable as a first degree misdemeanor² and a third or subsequent offense is punishable as a third degree felony.³

Video Voyeurism

Generally, under s. 810.145(2), F.S., a person commits video voyeurism if that person, for amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally:

- Uses or installs an imaging device⁴ to secretly view, broadcast,⁵ or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body,⁶ at a place and time when that person has a reasonable expectation of privacy;⁷
- Permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- Uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.⁸

Video Voyeurism Dissemination

Under s. 810.145(3), F.S., a person commits video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner prohibited under s. 810.145, F.S., intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

¹ "Intimate area" means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view.

² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

³ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

⁴ "Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person. S. 810.145(1)(b), F.S.

⁵ "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person. S. 810.145(1)(a), F.S.

⁶ "Privately exposing the body" means exposing a sexual organ. S. 810.145(1)(d), F.S.

⁷ "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth. S. 810.145(1)(c), F.S.

⁸ S. 810.145(2)(a)-(c), F.S.

Commercial Video Voyeurism Dissemination

Under s. 810.145(4), F.S., a person commits commercial video voyeurism dissemination if that person:

- Knowing or having reason to believe that an image was created a manner prohibited under s. 810.145, F.S., sells the image for consideration to another person; or
- Having created the image in a manner prohibited under s. 810.145, F.S., disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

Video Voyeurism Penalties

Generally, a person who commits video voyeurism, video voyeurism dissemination, or commercial digital voyeurism dissemination under s. 810.145, F.S., commits a:

- First degree misdemeanor if he or she is under 19 years of age.
- Third degree felony if he or she is 19 years of age or older.
- Second degree felony⁹ if he or she commits a violation and has previously been convicted of or adjudicated delinquent for any violation of s. 810.145, F.S., regardless of his or her age.¹⁰

A person commits a second degree felony if he or she commits any video voyeurism offense and is:

- 18 years of age or older and commits the offense against a child younger than 16 years of age whose welfare he or she is responsible for, regardless of whether he or she knows or has reason to know the child's age;
- 18 years of age or older, and employed at a private school as defined in s. 1002.01, F.S.;¹¹ a school as defined in s. 1003.01, F.S.;¹² or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c), F.S.,¹³ and commits the offense against a student of the school; or
- 24 years of age or older and commits the offense against a child younger than 16 years of age, regardless of whether he or she knows or has reason to know the child's age.¹⁴

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹⁵ are listed in a single offense severity ranking chart (OSRC),¹⁶ which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{17,18} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{19,20} The final score

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ S. 810.145(6)-(7), F.S.

¹¹ A "private school" is a nonpublic school defined as an individual, association, copartnership, or corporation, or department, division, or section of such organizations, that designates itself as an educational center that includes kindergarten or a higher grade or as an elementary, secondary, business, technical, or trade school below college level or any organization that provides instructional services that meet the intent of s. 1003.01(16), F.S., or that gives preemployment or supplementary training in technology or in fields of trade or industry or that offers academic, literary, or career training below college level, or any combination of the above, including an institution that performs the functions of the above schools through correspondence or extension, except those licensed under the provisions of chapter 1005, F.S. A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs conducted in accordance with s. 1002.41, F.S.

¹² "School" means an organization of students for instructional purposes on an elementary, middle or junior high school, secondary or high school, or other public school level authorized under rules of the State Board of Education.

¹³ These programs include a: (a) school-year prekindergarten program delivered by a private prekindergarten provider under s. 1002.55, F.S.; (b) summer prekindergarten program delivered by a public school or private prekindergarten provider under s. 1002.61, F.S.; and (c) school-year prekindergarten program delivered by a public school.

¹⁴ S. 810.145(8)(a)1.-3., F.S.

¹⁵ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

¹⁶ S. 921.0022, F.S.

¹⁷ S. 921.0022(2), F.S.

¹⁸ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

¹⁹ Ss. 921.0022 and 921.0024, F.S.

calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.²¹

Current Rankings for Video Voyeurism Offenses

Current OSRC rankings for felony offenses under s. 810.145, F.S., are as follows:

- Video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a third degree felony defaults to a Level 1 offense if committed by a person 19 years of age or older;
- A second or subsequent conviction for video voyeurism under s. 810.145(2)-(4), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, regardless of the offender's age;²² and
- Video voyeurism committed by a specified person against a specified child or student under s. 810.145(8)(a), F.S., is unranked and as a second degree felony defaults to a Level 4 offense, for a first time offense, and is ranked as a Level 6 offense if the offender has a prior violation of any video voyeurism offense.

Effect of Proposed Changes

CS/HB 1389 amends s. 810.145, F.S., to rename the offense from “video voyeurism” to “digital voyeurism.”

The bill revises the penalty scheme for digital voyeurism offenses. Under the bill:

- A person under 19 years of age commits a first degree misdemeanor for a first offense of digital voyeurism.
- A person 19 years of age or older commits a third degree felony for a first offense of digital voyeurism, ranked as a Level 3 offense on the OSRC.
 - As such, the bill increases the OSRC ranking from a Level 1 to a Level 3 offense.
- A person, regardless of age, commits a third degree felony for a first offense of digital voyeurism dissemination, ranked as a Level 4 offense on the OSRC.
 - As such, the bill increases the OSRC ranking from a Level 1 to a Level 4 offense.
- A person, regardless of age, commits a third degree felony for a first offense of commercial digital voyeurism dissemination, ranked as a Level 5 offense on the OSRC.
 - As such, the bill increases the OSRC ranking from a Level 1 to a Level 5 offense.
- A person, regardless of age, commits a second degree felony for a second or subsequent digital voyeurism offense, ranked as a Level 5 offense on the OSRC.
 - As such, the bill increases the OSRC ranking from a Level 4 to a Level 5 offense.
- A person commits a second degree felony for a violation of s. 810.145(8)(a), F.S.,²³ ranked as a Level 5 offense on the OSRC.
 - As such, the bill increases the OSRC ranking from a Level 4 to a Level 5 offense.

Under the bill, the penalty for a digital voyeurism offense is reclassified from a third degree felony to a second degree felony, and from a second degree felony to a first degree felony, if the offender is 19 years of age or older and:

- Is a family or household member of the victim; or
- Holds a position of authority or trust with the victim.²⁴

The bill defines “family or household member” as spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the

²⁰ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

²¹ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

²² S. 810.145(7), F.S.

²³ *Supra* note 14.

²⁴ Under the bill, for purposes of sentencing under chapter 921, F.S., and incentive gain-time eligibility under chapter 944, a reclassified felony is ranked one level above the ranking under s. 921.0022 of the felony offense committed.

past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

The bill defines a “position of authority or trust” as a position occupied by a person 18 years of age or older who is a relative, caregiver, coach, employer, or other person who, by reason of his or her relationship with the victim, is able to exercise undue influence over him or her or exploit his or her trust.

The bill specifies that each instance of the viewing, broadcasting, recording, disseminating, distributing, or transferring of an image or recording made in violation of this section is a separate offense for which a separate penalty is authorized.

The bill amends the definition of “broadcast” under s. 810.145(1)(a), F.S., to include “visual recording” in addition to a visual image and adds “exploiting” another person to the list of prohibited purposes for which specified conduct will constitute digital voyeurism.

The bill also makes conforming changes to other provisions of law that reference s. 810.145, F.S.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 810.145, F.S., relating to video voyeurism.

Section 2: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3: Amends s. 397.417, F.S., relating to peer specialists.

Section 4: Amends s. 435.04, F.S., relating to level 2 screening standards.

Section 5: Amends s. 456.074, F.S., relating to certain health care practitioners; immediate suspension of license.

Section 6: Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 7: Amends s. 943.0584, F.S., relating to criminal history records ineligible for court-ordered expunction or court-ordered sealing.

Section 8: Amends s. 1012.315, F.S., relating to screening standards.

Section 9: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on the jail and prison bed population by making digital voyeurism dissemination and commercial digital voyeurism dissemination a felony, regardless of the offender's age, increasing the OSRC for specified digital voyeurism offenses, and providing for reclassification for specified digital voyeurism offenses, which may result in increased admissions to jail and prison facilities and offenders serving longer terms of incarceration in such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the definition of "position of authority or trust."
- Changed a standard digital voyeurism offense by a person 19 years of age or older from a Level 4 to a Level 3 offense on the OSRC.
- Made digital voyeurism dissemination a third degree felony, regardless of the offender's age, ranked as a Level 4 offense on the OSRC.
- Made commercial digital voyeurism dissemination a third degree felony, regardless of the offender's age, ranked as a Level 5 offense on the OSRC.
- Ranked a second or subsequent digital voyeurism offense as a Level 5 offense on the OSRC.
- Ranked a violation of s. 810.145(8)(a), F.S., as a Level 5 offense.
- Restored s. 810.145(8), F.S., to current law.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to digital voyeurism; amending s.
3 810.145, F.S.; providing definitions; redesignating
4 the offense of "video voyeurism" as "digital
5 voyeurism"; revising the elements of the offense;
6 providing criminal penalties; providing reduced
7 criminal penalties for certain violations by persons
8 who are under 19 years of age; redesignating the
9 offense of "video voyeurism dissemination" as "digital
10 voyeurism dissemination"; revising the elements of the
11 offense; providing criminal penalties; specifying that
12 each instance of certain violations is a separate
13 offense; providing for reclassification of certain
14 violations by certain persons; amending s. 921.0022,
15 F.S.; ranking offenses on the offense severity ranking
16 chart of the Criminal Punishment Code; amending ss.
17 397.417, 435.04, 456.074, 775.15, 943.0584, and
18 1012.315, F.S.; conforming provisions to changes made
19 by the act; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Section 810.145, Florida Statutes, is amended
24 to read:

25 810.145 Digital ~~Video~~ voyeurism.—

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

27 (a) "Broadcast" means electronically transmitting a visual
 28 image or visual recording with the intent that it be viewed by
 29 another person.

30 (b) "Family or household member" has the same meaning as
 31 in s. 741.28.

32 ~~(c)-(b)~~ "Imaging device" means any mechanical, digital, or
 33 electronic viewing device; still camera; camcorder; motion
 34 picture camera; or any other instrument, equipment, or format
 35 capable of recording, storing, or transmitting visual images of
 36 another person.

37 (d) "Position of authority or trust" means a position
 38 occupied by a person 18 years of age or older who is a relative,
 39 caregiver, coach, employer, or other person who, by reason of
 40 his or her relationship with the victim, is able to exercise
 41 undue influence over him or her or exploit his or her trust.

42 ~~(e)-(d)~~ "Privately exposing the body" means exposing a
 43 sexual organ.

44 ~~(f)-(e)~~ ~~"Place and time when a person has a~~ Reasonable
 45 expectation of privacy" means circumstances under which a place
 46 ~~and time when~~ a reasonable person would believe that he or she
 47 could fully disrobe in privacy, without being concerned that the
 48 person's undressing was being viewed, recorded, or broadcasted
 49 by another, including, but not limited to, the interior of a
 50 residential dwelling, bathroom, changing room, fitting room,

51 | dressing room, or tanning booth.

52 | (2) (a) A person commits the offense of digital video
53 | voyeurism if that person:

54 | 1.(a) For his or her own amusement, entertainment, sexual
55 | arousal, gratification, or profit, or for the purpose of
56 | degrading, exploiting, or abusing another person, intentionally
57 | uses or installs an imaging device to secretly view, broadcast,
58 | or record a person, without that person's knowledge and consent,
59 | who is dressing, undressing, or privately exposing the body, at
60 | a place and time when that person has a reasonable expectation
61 | of privacy;

62 | 2.(b) For the amusement, entertainment, sexual arousal,
63 | gratification, or profit of another, or on behalf of another,
64 | intentionally permits the use or installation of an imaging
65 | device to secretly view, broadcast, or record a person, without
66 | that person's knowledge and consent, who is dressing,
67 | undressing, or privately exposing the body, at a place and time
68 | when that person has a reasonable expectation of privacy; or

69 | 3.(c) For the amusement, entertainment, sexual arousal,
70 | gratification, or profit of oneself or another, or on behalf of
71 | oneself or another, intentionally uses an imaging device to
72 | secretly view, broadcast, or record under or through the
73 | clothing being worn by another person, without that person's
74 | knowledge and consent, for the purpose of viewing the body of,
75 | or the undergarments worn by, that person.

76 (b) A person who is under 19 years of age and who violates
 77 this subsection commits a misdemeanor of the first degree,
 78 punishable as provided in s. 775.082 or s. 775.083.

79 (c) A person who is 19 years of age or older and who
 80 violates this subsection commits a felony of the third degree,
 81 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

82 (3)(a) A person commits the offense of digital video
 83 voyeurism dissemination if that person, knowing or having reason
 84 to believe that an image or recording was created in a manner
 85 described in subsection (2) ~~this section~~, intentionally
 86 disseminates, distributes, or transfers the image or recording
 87 to another person for the purpose of the amusement,
 88 entertainment, sexual arousal, or gratification of any person,
 89 ~~or profit,~~ or for the purpose of degrading, exploiting, or
 90 abusing another person.

91 (b) A person who violates this subsection commits a felony
 92 of the third degree, punishable as provided in s. 775.082, s.
 93 775.083, or s. 775.084.

94 (4) A person commits the offense of commercial digital
 95 ~~video~~ voyeurism dissemination if that person:

96 (a) Knowing or having reason to believe that an image or
 97 recording was created in a manner described in subsection (2)
 98 ~~this section~~, sells the image or recording for consideration to
 99 another person; or

100 (b) Having created the image or recording in a manner

101 described in subsection (2) ~~this section~~, disseminates,
102 distributes, or transfers the image or recording to another
103 person for that person to sell the image or recording to others.

104 (c) A person who violates this subsection commits a felony
105 of the third degree, punishable as provided in s. 775.082, s.
106 775.083, or s. 775.084.

107 (5) This section does not apply to any:

108 (a) Law enforcement agency conducting surveillance for a
109 law enforcement purpose;

110 (b) Security system when a written notice is conspicuously
111 posted on the premises stating that a video surveillance system
112 has been installed for the purpose of security for the premises;

113 (c) Video surveillance device that is installed in such a
114 manner that the presence of the device is clearly and
115 immediately obvious; or

116 (d) Dissemination, distribution, or transfer of images or
117 recordings subject to this section by a provider of an
118 electronic communication service as defined in 18 U.S.C. s.
119 2510(15), or a provider of a remote computing service as defined
120 in 18 U.S.C. s. 2711(2). For purposes of this section, the
121 exceptions to the definition of "electronic communication" set
122 forth in 18 U.S.C. s. 2510(12) (a), (b), (c), and (d) do not
123 apply, but are included within the definition of the term.

124 (6) Each instance of the viewing, broadcasting, recording,
125 disseminating, distributing, or transferring of an image or

126 recording made in violation of subsection (2) is a separate
 127 offense for which a separate penalty is authorized. ~~Except as~~
 128 ~~provided in subsections (7) and (8):~~

129 ~~(a) A person who is under 19 years of age and who violates~~
 130 ~~this section commits a misdemeanor of the first degree,~~
 131 ~~punishable as provided in s. 775.082 or s. 775.083.~~

132 ~~(b) A person who is 19 years of age or older and who~~
 133 ~~violates this section commits a felony of the third degree,~~
 134 ~~punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

135 (7) (a) A person who violates this section and who has
 136 previously been convicted of or adjudicated delinquent for any
 137 violation of this section commits a felony of the second degree,
 138 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

139 (b) If a person who is 19 years or age or older commits a
 140 violation of this section and is a family or household member of
 141 the victim or holds a position of authority or trust with the
 142 victim, the court shall reclassify the felony to the next higher
 143 degree as follows:

144 1. A felony of the third degree is reclassified as a
 145 felony of the second degree.

146 2. A felony of the second degree is reclassified as a
 147 felony of the first degree.

148
 149 For purposes of sentencing under chapter 921 and incentive gain-
 150 time eligibility under chapter 944, a felony that is

151 reclassified under this subsection is ranked one level above the
152 ranking under s. 921.0022 of the felony offense committed.

153 (8)(a) A person who is:

154 1. Eighteen years of age or older who is responsible for
155 the welfare of a child younger than 16 years of age, regardless
156 of whether the person knows or has reason to know the age of the
157 child, and who commits an offense under this section against
158 that child;

159 2. Eighteen years of age or older who is employed at a
160 private school as defined in s. 1002.01; a school as defined in
161 s. 1003.01; or a voluntary prekindergarten education program as
162 described in s. 1002.53(3)(a), (b), or (c) and who commits an
163 offense under this section against a student of the private
164 school, school, or voluntary prekindergarten education program;
165 or

166 3. Twenty-four years of age or older who commits an
167 offense under this section against a child younger than 16 years
168 of age, regardless of whether the person knows or has reason to
169 know the age of the child

170
171 commits a felony of the second degree, punishable as provided in
172 s. 775.082, s. 775.083, or s. 775.084.

173 (b) A person who violates this subsection and who has
174 previously been convicted of or adjudicated delinquent for any
175 violation of this section commits a felony of the second degree,

176 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 177 (9) For purposes of this section, a person has previously
 178 been convicted of or adjudicated delinquent for a violation of
 179 this section if the violation resulted in a conviction that was
 180 sentenced separately, or an adjudication of delinquency entered
 181 separately, before ~~prior to~~ the current offense.

182 Section 2. Paragraphs (c), (d), (e), and (f) of subsection
 183 (3) of section 921.0022, Florida Statutes, are amended to read:
 184 921.0022 Criminal Punishment Code; offense severity
 185 ranking chart.—

186 (3) OFFENSE SEVERITY RANKING CHART
 187 (c) LEVEL 3
 188

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.

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193	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
194	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
195	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
196	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
197	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
198	327.35(2)(b)	3rd	Felony BUI.
	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or

			fraudulent titles or bills of sale of vessels.
199	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
200	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
201	379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
202	379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described

			in the Marine Turtle Protection Act.
203	379.2431 (1) (e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
204	400.9935(4) (a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.
205	400.9935(4) (e)	3rd	Filing a false license application or other required information or failing to report information.
206	440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
207	501.001(2) (b)	2nd	Tampers with a consumer product or the container using materially false/misleading

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information.

208 624.401 (4) (a) 3rd Transacting insurance without a
certificate of authority.

209 624.401 (4) (b) 1. 3rd Transacting insurance without a
certificate of authority;
premium collected less than
\$20,000.

210 626.902 (1) (a) & 3rd Representing an unauthorized
(b) insurer.

211 697.08 3rd Equity skimming.

212 790.15 (3) 3rd Person directs another to
discharge firearm from a
vehicle.

213 794.053 3rd Lewd or lascivious written
solicitation of a person 16 or
17 years of age by a person 24
years of age or older.

214 806.10 (1) 3rd Maliciously injure, destroy, or

interfere with vehicles or
equipment used in firefighting.

215

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

216

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

217

810.145(2)(c) 3rd Digital voyeurism; 19 years of
age or older.

218

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

219

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

220

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

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221	812.081 (2)	3rd	Theft of a trade secret.
222	815.04 (4) (b)	2nd	Computer offense devised to defraud or obtain property.
223	817.034 (4) (a) 3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
224	817.233	3rd	Burning to defraud insurer.
225	817.234 (8) (b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
226	817.234 (11) (a)	3rd	Insurance fraud; property value less than \$20,000.
227	817.236	3rd	Filing a false motor vehicle insurance application.
228	817.2361	3rd	Creating, marketing, or presenting a false or

fraudulent motor vehicle
insurance card.

229

817.413(2) 3rd Sale of used goods of \$1,000 or
more as new.

230

817.49(2)(b)1. 3rd Willful making of a false
report of a crime causing great
bodily harm, permanent
disfigurement, or permanent
disability.

231

831.28(2)(a) 3rd Counterfeiting a payment
instrument with intent to
defraud or possessing a
counterfeit payment instrument
with intent to defraud.

232

831.29 2nd Possession of instruments for
counterfeiting driver licenses
or identification cards.

233

836.13(2) 3rd Person who promotes an altered
sexual depiction of an
identifiable person without

consent.

234

838.021 (3) (b) 3rd Threatens unlawful harm to public servant.

235

860.15 (3) 3rd Overcharging for repairs and parts.

236

870.01 (2) 3rd Riot.

237

870.01 (4) 3rd Inciting a riot.

238

893.13 (1) (a) 2. 3rd Sell, manufacture, or deliver cannabis (or other s. 893.03 (1) (c), (2) (c) 1., (2) (c) 2., (2) (c) 3., (2) (c) 6., (2) (c) 7., (2) (c) 8., (2) (c) 9., (2) (c) 10., (3), or (4) drugs).

239

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

university.

240

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

241

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

242

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

243

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

244

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

forgery, misrepresentation,
etc.

245

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

246

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

247

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

248

893.13(8)(a)2. 3rd Employ a trick or scheme in the
practitioner's practice to
assist a patient, other person,
or owner of an animal in

obtaining a controlled substance.

249

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

250

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

251

918.13(1) 3rd Tampering with or fabricating physical evidence.

252

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

253

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

254

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255	985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
256	(d) LEVEL 4		
257	Florida Statute	Felony Degree	Description
258	316.1935(3)(a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
259	499.0051(1)	3rd	Failure to maintain or deliver transaction history, transaction information, or transaction statements.
260	499.0051(5)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.

261	517.07(1)	3rd	Failure to register securities.
262	517.12(1)	3rd	Failure of dealer or associated person of a dealer of securities to register.
263	784.031	3rd	Battery by strangulation.
264	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
265	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
266	784.075	3rd	Battery on detention or commitment facility staff.
267	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
268	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
269			

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270	784.081 (3)	3rd	Battery on specified official or employee.
271	784.082 (3)	3rd	Battery by detained person on visitor or other detainee.
272	784.083 (3)	3rd	Battery on code inspector.
273	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.
274	787.03 (1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
275	787.04 (2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
	787.04 (3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at

			custody hearing or delivering to designated person.
276	787.07	3rd	Human smuggling.
277	790.115 (1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
278	790.115 (2) (b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
279	790.115 (2) (c)	3rd	Possessing firearm on school property.
280	794.051 (1)	3rd	Indecent, lewd, or lascivious touching of certain minors.
281	800.04 (7) (c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
282	806.135	2nd	Destroying or demolishing a memorial or historic property.
283			

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284	810.02 (4) (a)	3rd	Burglary, or attempted burglary, of an unoccupied structure; unarmed; no assault or battery.
285	810.02 (4) (b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
286	810.06	3rd	Burglary; possession of tools.
287	810.08 (2) (c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
288	<u>810.145 (3) (b)</u>	<u>3rd</u>	<u>Digital voyeurism</u> <u>dissemination.</u>
289	812.014 (2) (c) 3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
	812.014 (2) (c) 4. & 6.-10.	3rd	Grand theft, 3rd degree; specified items.

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290	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
291	817.505(4)(a)	3rd	Patient brokering.
292	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
293	817.568(2)(a)	3rd	Fraudulent use of personal identification information.
294	817.5695(3)(c)	3rd	Exploitation of person 65 years of age or older, value less than \$10,000.
295	817.625(2)(a)	3rd	Fraudulent use of scanning device, skimming device, or reencoder.
296	817.625(2)(c)	3rd	Possess, sell, or deliver skimming device.

297	828.125 (1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
298	836.14 (2)	3rd	Person who commits theft of a sexually explicit image with intent to promote it.
299	836.14 (3)	3rd	Person who willfully possesses a sexually explicit image with certain knowledge, intent, and purpose.
300	837.02 (1)	3rd	Perjury in official proceedings.
301	837.021 (1)	3rd	Make contradictory statements in official proceedings.
302	838.022	3rd	Official misconduct.
303	839.13 (2) (a)	3rd	Falsifying records of an individual in the care and

304			custody of a state agency.
305	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Families.
306	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
307	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
308	843.15(1)(a)	3rd	Failure to appear while on bail for felony (bond estreature or bond jumping).
309	843.19(2)	2nd	Injure, disable, or kill police, fire, or SAR canine or police horse.
	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less

than 18 years.

310

870.01(3) 2nd Aggravated rioting.

311

870.01(5) 2nd Aggravated inciting a riot.

312

874.05(1)(a) 3rd Encouraging or recruiting
another to join a criminal
gang.

313

893.13(2)(a)1. 2nd Purchase of cocaine (or other
s. 893.03(1)(a), (b), or (d),
(2)(a), (2)(b), or (2)(c)5.
drugs).

314

914.14(2) 3rd Witnesses accepting bribes.

315

914.22(1) 3rd Force, threaten, etc., witness,
victim, or informant.

316

914.23(2) 3rd Retaliation against a witness,
victim, or informant, no bodily
injury.

317

916.1085 3rd Introduction of specified

318	(2) (c) 1.		contraband into certain DCF facilities.
319	918.12	3rd	Tampering with jurors.
320	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
321	944.47(1) (a) 6.	3rd	Introduction of contraband (cellular telephone or other portable communication device) into correctional institution.
322	951.22(1) (h), (j) & (k)	3rd	Intoxicating drug, instrumentality or other device to aid escape, or cellular telephone or other portable communication device introduced into county detention facility.
323	(e) LEVEL 5		
324			

Florida	Felony	Description
Statute	Degree	

325	316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
326	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
327	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
328	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
329	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
330	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or

supplying, agreeing to supply,
 aiding in supplying, or giving
 away stone crab trap tags or
 certificates; making, altering,
 forging, counterfeiting, or
 reproducing stone crab trap
 tags; possession of forged,
 counterfeit, or imitation stone
 crab trap tags; and engaging in
 the commercial harvest of stone
 crabs while license is
 suspended or revoked.

- 331
379.367 (4)
3rd
Willful molestation of a
 commercial harvester's spiny
 lobster trap, line, or buoy.
- 332
379.407 (5) (b) 3.
3rd
Possession of 100 or more
 undersized spiny lobsters.
- 333
381.0041 (11) (b)
3rd
Donate blood, plasma, or organs
 knowing HIV positive.
- 334
440.10 (1) (g)
2nd
Failure to obtain workers'
 compensation coverage.

335	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
336	440.381 (2)	3rd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
337	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
338	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
339	790.01 (3)	3rd	Unlawful carrying of a concealed firearm.
340	790.162	2nd	Threat to throw or discharge destructive device.
341			

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342	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
343	790.221 (1)	2nd	Possession of short-barreled shotgun or machine gun.
344	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
345	796.05 (1)	2nd	Live on earnings of a prostitute; 1st offense.
346	800.04 (6) (c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
347	800.04 (7) (b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
	806.111 (1)	3rd	Possess, manufacture, or dispense fire bomb with intent

to damage any structure or property.

348

810.145 (4) (c) 3rd Commercial digital voyeurism dissemination.

349

810.145 (7) (a) 2nd Digital voyeurism; 2nd or subsequent offense.

350

810.145 (8) (a) 2nd Digital voyeurism; certain minor victims.

351

812.0145(2) (b) 2nd Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

352

812.015 3rd Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
 (8) (a) & (c) -
 (e)

353

812.015 (8) (f) 3rd Retail theft; multiple thefts within specified period.

354	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
355	812.081 (3)	2nd	Trafficking in trade secrets.
356	812.131 (2) (b)	3rd	Robbery by sudden snatching.
357	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
358	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
359	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
360	817.2341 (1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
361			

362	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
363	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
364	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
365	825.1025 (4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
	827.071 (4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which

includes child pornography.

366

827.071 (5)

3rd

Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.

367

828.12 (2)

3rd

Tortures any animal with intent to inflict intense pain, serious physical injury, or death.

368

836.14 (4)

2nd

Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.

369

839.13 (2) (b)

2nd

Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

370

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371	843.01(1)	3rd	Resist officer with violence to person; resist arrest with violence.
372	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
373	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
374	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
375	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
376	874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver

cocaine (or other s.
 893.03(1) (a), (1) (b), (1) (d),
 (2) (a), (2) (b), or (2) (c) 5.
 drugs).

377

893.13(1) (c) 2. 2nd Sell, manufacture, or deliver
 cannabis (or other s.
 893.03(1) (c), (2) (c) 1.,
 (2) (c) 2., (2) (c) 3., (2) (c) 6.,
 (2) (c) 7., (2) (c) 8., (2) (c) 9.,
 (2) (c) 10., (3), or (4) drugs)
 within 1,000 feet of a child
 care facility, school, or
 state, county, or municipal
 park or publicly owned
 recreational facility or
 community center.

378

893.13(1) (d) 1. 1st Sell, manufacture, or deliver
 cocaine (or other s.
 893.03(1) (a), (1) (b), (1) (d),
 (2) (a), (2) (b), or (2) (c) 5.
 drugs) within 1,000 feet of
 university.

379

380	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
381	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.</p>
382	893.13(4)(b)	2nd	<p>Use or hire of minor; deliver to minor other controlled substance.</p>
382	893.1351(1)	3rd	<p>Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.</p>

383
384
385
386
387
388
389
390

(f) LEVEL 6

Florida Statute	Felony Degree	Description
316.027 (2) (b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193 (2) (b)	3rd	Felony DUI, 4th or subsequent conviction.
400.9935 (4) (c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
499.0051 (2)	2nd	Knowing forgery of transaction history, transaction information, or transaction statement.
499.0051 (3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.

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391	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
392	775.0875(1)	3rd	Taking firearm from law enforcement officer.
393	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
394	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
395	784.041	3rd	Felony battery; domestic battery by strangulation.
396	784.048(3)	3rd	Aggravated stalking; credible threat.
397	784.048(5)	3rd	Aggravated stalking of person under 16.
398	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.

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399	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
400	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
401	784.081 (2)	2nd	Aggravated assault on specified official or employee.
402	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
403	784.083 (2)	2nd	Aggravated assault on code inspector.
404	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
405	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
406			

407	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
408	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
409	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
410	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
411	794.05 (1)	2nd	Unlawful sexual activity with specified minor.
	800.04 (5) (d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older

			but less than 16 years of age; offender less than 18 years.
412	800.04 (6) (b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
413	806.031 (2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
414	810.02 (3) (c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
415	810.145 (8) (b)	2nd	<u>Digital Video</u> Video voyeurism; certain minor victims; 2nd or subsequent offense.
416	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
417			
418	812.014 (2) (c) 5.	3rd	Grand theft; third degree;

firearm.

419

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

420

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

421

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

422

812.015 (9) (d) 2nd Retail theft; multiple thefts
within specified period.

423

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

424

817.4821 (5) 2nd Possess cloning paraphernalia
with intent to create cloned
cellular telephones.

425

426	817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
427	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
428	817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value \$10,000 or more, but less than \$50,000.
429	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
430	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
431	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
432	825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.

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433	827.03(2)(c)	3rd	Abuse of a child.
434	827.03(2)(d)	3rd	Neglect of a child.
435	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
436	828.126(3)	3rd	Sexual activities involving animals.
437	836.05	2nd	Threats; extortion.
438	836.10	2nd	Written or electronic threats to kill, do bodily injury, or conduct a mass shooting or an act of terrorism.
439	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.

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440	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
441	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
442	893.131	2nd	Distribution of controlled substances resulting in overdose or serious bodily injury.
443	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
444	918.13(2)(b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
445	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate

or offender on community supervision, resulting in great bodily harm.

446

944.40 2nd Escapes.

447

944.46 3rd Harboring, concealing, aiding escaped prisoners.

448

944.47(1) (a) 5. 2nd Introduction of contraband (firearm, weapon, or explosive) into correctional facility.

449

951.22(1) (i) 3rd Firearm or weapon introduced into county detention facility.

450

451 Section 3. Paragraph (e) of subsection (4) of section
452 397.417, Florida Statutes, is amended to read:

453 397.417 Peer specialists.—

454 (4) BACKGROUND SCREENING.—

455 (e) The background screening conducted under this
456 subsection must ensure that a peer specialist has not been
457 arrested for and is awaiting final disposition of, found guilty
458 of, regardless of adjudication, or entered a plea of nolo
459 contendere or guilty to, or been adjudicated delinquent and the

460 record has not been sealed or expunged for, any offense
 461 prohibited under any of the following state laws or similar laws
 462 of another jurisdiction:

463 1. Section 393.135, relating to sexual misconduct with
 464 certain developmentally disabled clients and reporting of such
 465 sexual misconduct.

466 2. Section 394.4593, relating to sexual misconduct with
 467 certain mental health patients and reporting of such sexual
 468 misconduct.

469 3. Section 409.920, relating to Medicaid provider fraud,
 470 if the offense was a felony of the first or second degree.

471 4. Section 415.111, relating to abuse, neglect, or
 472 exploitation of vulnerable adults.

473 5. Any offense that constitutes domestic violence as
 474 defined in s. 741.28.

475 6. Section 777.04, relating to attempts, solicitation, and
 476 conspiracy to commit an offense listed in this paragraph.

477 7. Section 782.04, relating to murder.

478 8. Section 782.07, relating to manslaughter; aggravated
 479 manslaughter of an elderly person or a disabled adult;
 480 aggravated manslaughter of a child; or aggravated manslaughter
 481 of an officer, a firefighter, an emergency medical technician,
 482 or a paramedic.

483 9. Section 782.071, relating to vehicular homicide.

484 10. Section 782.09, relating to killing an unborn child by

485 injury to the mother.

486 11. Chapter 784, relating to assault, battery, and
487 culpable negligence, if the offense was a felony.

488 12. Section 787.01, relating to kidnapping.

489 13. Section 787.02, relating to false imprisonment.

490 14. Section 787.025, relating to luring or enticing a
491 child.

492 15. Section 787.04(2), relating to leading, taking,
493 enticing, or removing a minor beyond state limits, or concealing
494 the location of a minor, with criminal intent pending custody
495 proceedings.

496 16. Section 787.04(3), relating to leading, taking,
497 enticing, or removing a minor beyond state limits, or concealing
498 the location of a minor, with criminal intent pending dependency
499 proceedings or proceedings concerning alleged abuse or neglect
500 of a minor.

501 17. Section 790.115(1), relating to exhibiting firearms or
502 weapons within 1,000 feet of a school.

503 18. Section 790.115(2)(b), relating to possessing an
504 electric weapon or device, a destructive device, or any other
505 weapon on school property.

506 19. Section 794.011, relating to sexual battery.

507 20. Former s. 794.041, relating to prohibited acts of
508 persons in familial or custodial authority.

509 21. Section 794.05, relating to unlawful sexual activity

510 with certain minors.

511 22. Section 794.08, relating to female genital mutilation.

512 23. Section 796.07, relating to procuring another to

513 commit prostitution, except for those offenses expunged pursuant

514 to s. 943.0583.

515 24. Section 798.02, relating to lewd and lascivious

516 behavior.

517 25. Chapter 800, relating to lewdness and indecent

518 exposure.

519 26. Section 806.01, relating to arson.

520 27. Section 810.02, relating to burglary, if the offense

521 was a felony of the first degree.

522 28. Section 810.14, relating to voyeurism, if the offense

523 was a felony.

524 29. Section 810.145, relating to digital ~~video~~ voyeurism,

525 if the offense was a felony.

526 30. Section 812.13, relating to robbery.

527 31. Section 812.131, relating to robbery by sudden

528 snatching.

529 32. Section 812.133, relating to carjacking.

530 33. Section 812.135, relating to home-invasion robbery.

531 34. Section 817.034, relating to communications fraud, if

532 the offense was a felony of the first degree.

533 35. Section 817.234, relating to false and fraudulent

534 insurance claims, if the offense was a felony of the first or

535 second degree.

536 36. Section 817.50, relating to fraudulently obtaining
537 goods or services from a health care provider and false reports
538 of a communicable disease.

539 37. Section 817.505, relating to patient brokering.

540 38. Section 817.568, relating to fraudulent use of
541 personal identification, if the offense was a felony of the
542 first or second degree.

543 39. Section 825.102, relating to abuse, aggravated abuse,
544 or neglect of an elderly person or a disabled adult.

545 40. Section 825.1025, relating to lewd or lascivious
546 offenses committed upon or in the presence of an elderly person
547 or a disabled person.

548 41. Section 825.103, relating to exploitation of an
549 elderly person or a disabled adult, if the offense was a felony.

550 42. Section 826.04, relating to incest.

551 43. Section 827.03, relating to child abuse, aggravated
552 child abuse, or neglect of a child.

553 44. Section 827.04, relating to contributing to the
554 delinquency or dependency of a child.

555 45. Former s. 827.05, relating to negligent treatment of
556 children.

557 46. Section 827.071, relating to sexual performance by a
558 child.

559 47. Section 831.30, relating to fraud in obtaining

560 medicinal drugs.

561 48. Section 831.31, relating to the sale; manufacture;
 562 delivery; or possession with intent to sell, manufacture, or
 563 deliver of any counterfeit controlled substance, if the offense
 564 was a felony.

565 49. Section 843.01, relating to resisting arrest with
 566 violence.

567 50. Section 843.025, relating to depriving a law
 568 enforcement, correctional, or correctional probation officer of
 569 the means of protection or communication.

570 51. Section 843.12, relating to aiding in an escape.

571 52. Section 843.13, relating to aiding in the escape of
 572 juvenile inmates of correctional institutions.

573 53. Chapter 847, relating to obscenity.

574 54. Section 874.05, relating to encouraging or recruiting
 575 another to join a criminal gang.

576 55. Chapter 893, relating to drug abuse prevention and
 577 control, if the offense was a felony of the second degree or
 578 greater severity.

579 56. Section 895.03, relating to racketeering and
 580 collection of unlawful debts.

581 57. Section 896.101, relating to the Florida Money
 582 Laundering Act.

583 58. Section 916.1075, relating to sexual misconduct with
 584 certain forensic clients and reporting of such sexual

585 misconduct.

586 59. Section 944.35(3), relating to inflicting cruel or
587 inhuman treatment on an inmate resulting in great bodily harm.

588 60. Section 944.40, relating to escape.

589 61. Section 944.46, relating to harboring, concealing, or
590 aiding an escaped prisoner.

591 62. Section 944.47, relating to introduction of contraband
592 into a correctional institution.

593 63. Section 985.701, relating to sexual misconduct in
594 juvenile justice programs.

595 64. Section 985.711, relating to introduction of
596 contraband into a detention facility.

597 Section 4. Paragraph (ff) of subsection (2) of section
598 435.04, Florida Statutes, as amended by s. 2, ch. 2023-220, Laws
599 of Florida, is amended to read:

600 435.04 Level 2 screening standards.—

601 (2) The security background investigations under this
602 section must ensure that no persons subject to the provisions of
603 this section have been arrested for and are awaiting final
604 disposition of, have been found guilty of, regardless of
605 adjudication, or entered a plea of nolo contendere or guilty to,
606 or have been adjudicated delinquent and the record has not been
607 sealed or expunged for, any offense prohibited under any of the
608 following provisions of state law or similar law of another
609 jurisdiction:

610 (ff) Section 810.145, relating to digital ~~video~~ voyeurism,
611 if the offense is a felony.

612 Section 5. Paragraph (s) of subsection (5) of section
613 456.074, Florida Statutes, is amended to read:

614 456.074 Certain health care practitioners; immediate
615 suspension of license.—

616 (5) The department shall issue an emergency order
617 suspending the license of any health care practitioner who is
618 arrested for committing or attempting, soliciting, or conspiring
619 to commit any act that would constitute a violation of any of
620 the following criminal offenses in this state or similar
621 offenses in another jurisdiction:

622 (s) Section 810.145(8), relating to digital ~~video~~
623 voyeurism of a minor.

624 Section 6. Subsection (17) of section 775.15, Florida
625 Statutes, is amended to read:

626 775.15 Time limitations; general time limitations;
627 exceptions.—

628 (17) In addition to the time periods prescribed in this
629 section, a prosecution for digital ~~video~~ voyeurism in violation
630 of s. 810.145 may be commenced within 1 year after the date on
631 which the victim of digital ~~video~~ voyeurism obtains actual
632 knowledge of the existence of such a recording or the date on
633 which the recording is confiscated by a law enforcement agency,
634 whichever occurs first. Any dissemination of such a recording

635 before the victim obtains actual knowledge thereof or before its
636 confiscation by a law enforcement agency does not affect any
637 provision of this subsection.

638 Section 7. Paragraph (r) of subsection (2) of section
639 943.0584, Florida Statutes, is amended to read:

640 943.0584 Criminal history records ineligible for court-
641 ordered expunction or court-ordered sealing.—

642 (2) A criminal history record is ineligible for a
643 certificate of eligibility for expunction or a court-ordered
644 expunction pursuant to s. 943.0585 or a certificate of
645 eligibility for sealing or a court-ordered sealing pursuant to
646 s. 943.059 if the record is a conviction for any of the
647 following offenses:

648 (r) Voyeurism or digital ~~video~~ voyeurism, as defined in
649 ss. 810.14 and 810.145, respectively;

650 Section 8. Paragraph (y) of subsection (1) of section
651 1012.315, Florida Statutes, is amended to read:

652 1012.315 Screening standards.—A person is ineligible for
653 educator certification or employment in any position that
654 requires direct contact with students in a district school
655 system, a charter school, or a private school that participates
656 in a state scholarship program under chapter 1002 if the person
657 is on the disqualification list maintained by the department
658 pursuant to s. 1001.10(4)(b), is registered as a sex offender as
659 described in 42 U.S.C. s. 9858f(c)(1)(C), would be ineligible

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660 for an exemption under s. 435.07(4)(c), or has been convicted or
661 found guilty of, has had adjudication withheld for, or has pled
662 guilty or nolo contendere to:

663 (1) Any felony offense prohibited under any of the
664 following statutes:

665 (y) Section 810.145, relating to digital ~~video~~ voyeurism.
666 Section 9. This act shall take effect October 1, 2024.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 1389 (2024)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Cassel offered the following:

3

4

Amendment

5

Remove line 124 and insert:

6

(6) Each instance of the secret viewing of a person in violation of subsection (2) or the broadcasting, recording,

7

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Cassel offered the following:

3
4 **Amendment**

5 Remove lines 601-609 and insert:

6 (2) The security background investigations under this
7 section must ensure that persons subject to this section have
8 not been arrested for and are awaiting final disposition of,
9 have not been found guilty of, regardless of adjudication, or
10 entered a plea of nolo contendere or guilty to, or have not been
11 adjudicated delinquent and the record has not been sealed or
12 expunged for, any offense prohibited under any of the following
13 provisions of state law or similar law of another jurisdiction:

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1393 Court Interpreter Services

SPONSOR(S): Tuck

TIED BILLS: IDEN./SIM. BILLS: SB 468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Mathews	Jones
2) Justice Appropriations Subcommittee	14 Y, 0 N	Smith	Keith
3) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

Pursuant to article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the Legislature.

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency (LEP individual) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI's prohibition against national origin discrimination; this is often true of failing to ensure that a LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods. To promote such access, the Florida Evidence Code and the Florida Rules of Judicial Administration require an interpreter's appointment for judicial proceedings in specified situations. An interpreter may also be necessary for depositions, mediations, and other case-related proceedings and to give a LEP individual access to points of public contact for the court system, which may include the offices of the clerks of the circuit court.

Under current law, "due process services" may only be provided with state funds for a person who is eligible for court-appointed counsel based on a determination of indigency. Due process services include providing and paying for court reporters, interpreters, expert witnesses, and, in certain instances, private court-appointed counsel for indigent defendants.

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

The bill also amends s. 29.0195, F.S., to remove the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay.

The bill may have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis & Economic Impact Statement.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Court Funding

Pursuant to article V, section 14, of the Florida Constitution, all funding for the offices of the clerks of the circuit court and county courts performing court-related functions shall be provided by adequate and appropriate filing fees for judicial proceedings and services charges and costs for court-related functions. However, where the requirements of the United States Constitution or the Florida Constitution preclude the imposition of filing fees and charges, the state shall provide those funds as determined by the legislature.¹

Further, pursuant to s. 29.001, F.S., for the purpose of interpreting art. V, sec. 14 of the Florida Constitution, the state courts system includes the Supreme Court, district courts of appeal, circuit courts, county courts, and certain supports thereto.² Funding for the state courts system is provided from state revenues.³ Additionally, section 29.004(5), F.S., provides that funding for court foreign language services and translators essential to comply with constitutional requirements be provided from state revenues.⁴

Provision of State-Funded Due Process Services

Under current law, due process services may only be provided with state revenues for a person who is eligible for court-appointed counsel based on a determination of indigency.⁵ Due process services include providing and paying for court reporters, interpreters, expert witnesses, and, in certain instances, private court-appointed counsel for indigent defendants.⁶ As such, state funds may only be used to provide due process services to a person who has been found to be indigent⁷ and is a party to a criminal or civil proceeding entitled to court-appointed counsel under Federal or State Constitution or as authorized by general law.⁸ In Florida, a defendant in the following criminal matters may be eligible for court-appointed counsel:

- A defendant in a criminal matter facing incarceration;
- Post-conviction capital collateral cases; or
- Death penalty proceedings.⁹

The following types of civil cases may utilize court-appointed counsel:

- Dependent children with special needs;
- Civil conflict matters;
- Child dependency;
- Guardianships;
- Termination of parental rights matters; or
- Involuntary commitments.¹⁰

¹ Art. 5, sec. 14(b), Fla. Const.

² S. 29.001(1), F.S.

³ *Id.*

⁴ S. 29.004(5), F.S.

⁵ S. 29.0185, F.S.

⁶ Florida Office of Program Policy Analysis and Government Accountability (OPPAGA), Due Process Services: Report No. 19-18 (December 2019), <https://oppaga.fl.gov/Documents/Reports/19-18.pdf> (last visited Feb. 9, 2024).

⁷ Indigency is determined pursuant to the provisions of s. 27.52, F.S. Generally, a person may be declared indigent if his or her income is equal to or below 200% of the federal poverty guidelines.

⁸ S. 27.40(1), F.S.

⁹ OPPAGA, Due Process Services (Dec. 2019) at 1.

¹⁰ *Id.*

Pursuant to s. 29.0195, F.S., the trial court administrator in each circuit must seek recovery of costs for state-funded services¹¹ from a person who has a present ability to pay such costs. As such, interpreter services are provided using state funds to a litigant who is not indigent, the state court administrator for that circuit has to seek reimbursement of those costs from the litigant. Any such funds recovered are to be deposited into the Administrative Trust Fund within the state courts system.

Interpretation and Translation Services

Although the terms “interpreter” and “translator” are often used interchangeably, there are significant differences between the two roles. An interpreter works with spoken language, by listening to a speaker speak in one language and repeating what the speaker said in another language.¹² Interpreters use one of two modes interpreting, consecutive¹³ or simultaneous,¹⁴ depending on the context.¹⁵ Translators work with written documents and take text written in the source language and translate it into text in the target language (i.e. taking a document written in Spanish and translating the document into English).¹⁶

According to data from the United States Census Bureau, over 60,000,000 people living in the United States who are over the age of five speak a language other than English at home.¹⁷ Of these, over 25,000,000 speak English “less than very well.”¹⁸ In Florida alone, nearly 30 percent of the state’s population over the age of five speaks a language other than English at home.¹⁹

Title VI of the Civil Rights Act of 1964 and its implementing regulations provide that no person shall be subject to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. In certain circumstances, failing to ensure that a person with limited or no English proficiency (LEP individual) can effectively participate in or benefit from federally-assisted programs or activities may violate Title VI’s prohibition against national origin discrimination; this is often true of failing to ensure that a LEP individual has meaningful language access to state court proceedings and operations through an interpreter or other appropriate methods.²⁰

The Florida Evidence Code provides that, when a judge determines that a witness cannot hear or understand the English language, or cannot express himself or herself in English sufficiently to be understood, a duly-qualified interpreter must be sworn in to interpret for the witness.²¹ Similarly, the Florida Rules of Judicial Administration require an interpreter’s appointment free of charge to the person needing the interpreter’s services:

- In any criminal or juvenile delinquency proceeding in which a LEP individual is the:
 - Accused; or
 - Victim, unless the court finds that he or she does not require an interpreter; and
- In all other proceedings in which a LEP individual is a litigant, if the court determines that:
 - The litigant’s inability to comprehend English deprives him or her of an understanding of the court proceedings;
 - A fundamental interest is at stake;²² and
 - No alternative to an interpreter’s appointment exists.²³

¹¹ The trial court administrator shall recover the costs of court reporter services and transcription; court interpreter services, including translation; and any other service for which state funds were used to provide a product or service within the circuit. S. 29.0195, F.S.

¹² American Translators Association, *What’s the Difference Between a Translator and an Interpreter?*, (Feb. 1, 2023), <https://www.atanet.org/client-assistance/whats-the-difference-between-a-translator-and-an-interpreter/> (last visited Jan. 30, 2024).

¹³ Consecutive interpreting involves listening to a speaker and repeating what has been said after the speaker stops talking. *Supra* note 11.

¹⁴ Simultaneous interpreting involves listening to a speaker and simultaneously repeating their speech in the target language on a slight delay. *Supra* note 11.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ U.S. Census Bureau, *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, <https://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (last visited Jan. 30, 2024).

¹⁸ *Id.*

¹⁹ U.S. Census Bureau, *Quick Facts: Florida*, <https://www.census.gov/quickfacts/fact/table/FL/POP815221> (last visited Jan. 30, 2024).

²⁰ U.S. Dept. of Justice, *Working with State Courts to Remove Language Barriers to Justice*, <https://www.justice.gov/archives/opa/blog/working-state-courts-remove-language-barriers-justice> (last visited Jan. 30, 2024).

²¹ S. 90.606, F.S.

²² A fundamental interest may include civil commitment, termination of parental rights, paternity, or dependency proceedings.

²³ R. 2.560, F.R.J.A.

The Office of the State Courts Administrator manages and administers the Court Interpreter Certification and Regulation Program and maintains a registry of certified,²⁴ language-skilled,²⁵ provisionally approved,²⁶ and registered²⁷ court interpreters.²⁸ Generally, the court must appoint an interpreter to provide interpretation services in the following order of preference:²⁹

- A certified or language-skilled interpreter.
- A provisionally-approved interpreter.
- A registered interpreter.
- An interpreter who is not certified, language-skilled, provisionally-approved, or registered, if the court finds good cause (such as preventing burdensome delay or the LEP individual's consent).

Parties to litigation may, for proceedings for which no interpreter is appointed, contract for the services of an interpreter at their own expense, but must observe the same preferences when retaining an interpreter as do the courts when appointing them.³⁰ However, the United States Department of Justice has noted that interpreters are not just necessary for court appearances; an interpreter may also be necessary to give a LEP individual access to points of public contact for the court system, which may include information desks and filing offices, including the offices of the clerks of the circuit court.³¹

United States Department of Justice

In 2010, in accordance with the provisions of Title VI of the Civil Rights Act of 1964, the U.S. Department of Justice (DOJ) issued a letter of guidance to state courts regarding the obligation to provide language access services to individuals with limited proficiency in the English language.³² The DOJ's letter specifically emphasized the following concerns about state courts' policies and practices which:

- Limit the types of proceedings for which qualified interpreter services were being provided by the court;
- Charge interpreter costs to one or more parties;
- Restrict language services to courtrooms; and
- Fail to ensure effective communication with court-appointed or supervised personnel.³³

The DOJ continues to monitor state courts' efforts related to the provision of interpreting services as part of the department's responsibilities under Title VI of the Civil Rights Act of 1964.³⁴

State's Commission on Trial Court Performance and Accountability

²⁴ A "certified" designation is the highest-qualified state-level interpreter designation for languages for which there is a state-level certification examination. Currently, these languages are Amharic, Arabic, Bosnian/Serbian/Croatian, Cantonese, Filipino (Tagalog), French, Haitian Creole, Hmong, Khmer, Korean, Mandarin, Polish, Portuguese, Russian, Spanish, Turkish, and Vietnamese. Office of the State Courts Administrator, *Find an Interpreter*, <https://www.flcourts.gov/Resources-Services/Court-Services/Court-Interpreting/Find-an-Interpreter> (last visited Jan. 30, 2024).

²⁵ The "language-skilled" designation is the highest-qualified state-level interpreter designation for languages for which there is no state-level certification examination. *Id.*

²⁶ The "provisionally approved" designation is the next highest qualified state-level interpreter designation below the certified and language-skilled designations. Such an interpreter may be utilized when no certified or language-skilled interpreter is available. *Id.*

²⁷ Registration is the initial step towards obtaining an official state-level designation, and "registered" refers to interpreters who have satisfied general prerequisites but who have yet to qualify for an official designation. Such an interpreter may be utilized when there is no certified, language-skilled, or provisionally approved interpreter available. *Id.*

²⁸ *Id.*; Office of the State Courts Administrator, *Court Services*, <https://www.flcourts.gov/Resources-Services/Court-Services> (last visited Jan. 30, 2024).

²⁹ R. 2.560, F.R.J.A.

³⁰ R. 2.565, F.R.J.A.

³¹ Letter from the U.S. Dept. of Justice, Civil Rights Division, to Chief Justices/State Court Administrators (August 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 30, 2024).

³² U.S. Dept. of Justice, *Department of Justice Guidance Letter Regarding the Obligation to Provide Language Access* (Aug. 17, 2010), <https://www.justice.gov/file/1250731/download> (last visited Jan. 30, 2024).

³³ *Id.* at 2.

³⁴ Office of the State Courts Administrator, *2024 Judicial Impact Statement on SB 468* (Jan. 17, 2024), on file with the House of Representatives' Civil Justice Subcommittee.

To gain greater compliance with the DOJ's priorities, the state's Commission on Trial Court Performance and Accountability, in coordination with the Trial Court Budget Commission, has been tasked with evaluating the ability of trial courts to expand the provision of court interpreting services to more people in more matters without cost to court participants and without regard to an individual's financial status.³⁵ The Commission recommended a phased approach to the expansion of state-funded court interpreter services.³⁶

In March 2023, the Commission submitted a revised report to the Court which recommended an initial expansion of interpreter services, without cost and regardless of indigency status to the following types of proceedings, for which such services are not currently required to be provided:

- Child support;
- Uniform Interstate Family Support Act;
- Simplified Dissolution of Marriage;
- Evictions; and
- Small Claims.³⁷

The Florida Supreme Court approved the Commission's revised report, including the expansion of state-funded court interpreter services for the recommended proceedings.³⁸

Effect of Proposed Changes

HB 1393 amends s. 29.0185, F.S., to authorize the state court system to use state funds to provide court-appointed interpreting services to non-indigent individuals. Such funds may be used if they are available in the fiscal year appropriation for due process services and if such interpreting services are provided as prescribed by the Supreme Court.

Additionally, the bill amends s. 29.0195, F.S., to repeal the requirement that a trial court administrator recover funds utilized for court interpreter services from those individuals who have the present ability to pay. The bill retains in current law the requirement that a trial court administrator must attempt to recover expenditures for translation services from non-indigent individuals, but exempts the recovery for interpretation services. Under the bill, any such provision of state-funded court interpreting services to non-indigent participants would be subject to the availability of funds.

Further, the bill clarifies that it does not authorize the recovery of costs for interpreter services from the state attorney, indigent defendants, or court-appointed defense counsel for indigent defendants.

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 29.0185, F.S., relating to the provision of state-funded due process services to individuals.

Section 2: Amends s. 29.0195, F.S., relating to the recovery of expenditures for state-funded services.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an insignificant negative fiscal impact on state revenues by eliminating the cost-recovery provision for court interpreting services. The annual amount collected from such services

³⁵ *Id.* at 3, *citing to* Fla. Admin. Order No. AOSC20-56 (June 24, 2020).

³⁶ *Id.*

³⁷ *Id.* at 4.

³⁸ *Id.*

is minimal. For the current fiscal year, the State Court System has collected \$3,820 from court interpreting related costs.³⁹

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on state expenditures. However, expenditures are contingent upon the expansion and provision of court interpreting services as defined by court rule and will be subject to annual appropriation. The Office of the State Courts Administrator indicates that filling currently authorized vacant positions will help facilitate the trial courts' ability to absorb any additional workload impact.⁴⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The potential expansion of court interpretation services to non-indigent individuals may have a positive economic impact on court participants who are not proficient in the English language.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

³⁹ Office of the State Courts Administrator, Agency Bill Analysis of 2024 House Bill 1393, p. 5 (Jan. 27, 2024) on file with the House Civil Justice Subcommittee.

⁴⁰ *Id.* at 6.

1 A bill to be entitled
2 An act relating to court interpreter services;
3 amending s. 29.0185, F.S.; authorizing the state
4 courts system to use state revenues, if available, to
5 provide court-appointed interpreting services to
6 nonindigent individuals; requiring such services to be
7 provided as prescribed by the Supreme Court; amending
8 s. 29.0195, F.S.; repealing the cost recovery
9 requirement for court-appointed interpreting services;
10 providing an exception; providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Section 29.0185, Florida Statutes, is amended
15 to read:

16 29.0185 Provision of state-funded due process services to
17 individuals.—

18 (1) Due process services may not be provided with state
19 revenues to an individual unless the individual on whose behalf
20 the due process services are being provided is eligible for
21 court-appointed counsel under s. 27.40, based upon a
22 determination of indigency under s. 27.52, regardless of whether
23 such counsel is appointed or the individual on whose behalf the
24 due process services are being provided is eligible for court-
25 appointed counsel under s. 27.40 and has been determined

26 indigent for costs pursuant to s. 27.52.

27 (2) Notwithstanding subsection (1), state revenues may be
 28 used by the state courts system to provide court-appointed
 29 interpreting services to nonindigent individuals if funds are
 30 available in the fiscal year appropriation for due process
 31 services and if interpreting services are provided as prescribed
 32 by the Supreme Court.

33 Section 2. Section 29.0195, Florida Statutes, is amended
 34 to read:

35 29.0195 Recovery of expenditures for state-funded
 36 services.-

37 (1) The trial court administrator of each circuit shall
 38 recover expenditures for state-funded services when those
 39 services have been furnished to a user of the state court system
 40 who possesses the present ability to pay. The rate of
 41 compensation for such services is ~~shall be~~ the actual cost of
 42 the services, including the cost of recovery. The trial court
 43 administrator shall deposit moneys recovered under this section
 44 in the Administrative Trust Fund within the state courts system.
 45 The trial court administrator shall recover the costs of court
 46 reporter services and transcription; translations ~~court~~
 47 ~~interpreter services, including translation;~~ and any other
 48 service for which state funds were used to provide a product or
 49 service within the circuit.

50 (2) This section does not authorize cost recovery for

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51 | court-appointed interpreting services, except translations, or
52 | cost recovery from entities described in ss. 29.005-29.007.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1415 Peer Support for First Responders

SPONSOR(S): Civil Justice Subcommittee, Chamberlin

TIED BILLS: **IDEN./SIM. BILLS:** SB 1712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	17 Y, 0 N, As CS	Mathews	Jones
2) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

First responders, such as police officers, firefighters, and paramedics, are often exposed to traumatic events that can lead to post-traumatic stress disorder (PTSD), depression, and suicide. While some first responders report positive experiences with professional mental health help, others feel more distressed after such intervention. Peer support can reduce the stigma, scheduling difficulties, lack of access, lack of trust, and fear or repercussions that may prevent first responders from seeking traditional mental health care.

Communications between a patient and a health care practitioner are confidential under doctor-patient or psychotherapist-patient privilege unless such confidentiality is waived. Moreover, Florida law recognizes the right to confidentiality for peer support communications between a first responder and a first responder peer. Section 111.09, F.S., defines the term “first responder” to include a:

- Law enforcement officer;
- Firefighter;
- Emergency medical technician;
- Paramedic; or
- 911 public safety telecommunicator.

Under current law, a first responder peer is a person who:

- Is not a healthcare practitioner;
- Has experience working as or with a first responder; and
- Has been designated by the first responder’s employing agency or affiliated organization to provide peer support and has received specified training to deliver such support.

Under current law, peer support communications are confidential and may not be divulged or testified to in a civil, criminal, administrative, or disciplinary proceeding unless a specific statutory exemption applies.

CS/HB 1415 amends s. 111.09, F.S., to include correctional officers and correctional probation officers as “first responders” for the purpose of peer support communications. As such, correctional officers and correctional probation officers participating in peer support would receive the same benefit of confidentiality with respect to peer support communications as law enforcement officers, firefighters, and other statutorily-defined first responders.

The bill has an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

First Responders

Pursuant to section 112.1815, F.S., a “first responder” means a:

- Law enforcement officer (LEO);¹
- Firefighter;²
- Emergency medical technician (EMT)³ or paramedic;⁴ or
- 911 public safety communicator.⁵

A volunteer law enforcement officer, firefighter, EMT, or paramedic engaged by the state or a local government is also considered a first responder.

In 2019, there were 47,500 suicide fatalities in the United States and an estimated 1.4 million suicide attempts.⁶ First responders may be at an elevated risk for suicide because of the environments in which they work, their culture, and their occupational and personal stress.⁷ First responders are often exposed to incidents of death and destruction that can result in the development of behavioral health conditions, such as post-traumatic stress disorder (PTSD), depression, and suicide.⁸ Approximately 30 percent of first responders develop behavioral health conditions as compared to 20 percent of adults in the general population.⁹ A study by the Ruderman Family Foundation revealed that 35 percent of police officers have suffered from PTSD and 46.8 percent of firefighters have experienced suicidal thoughts.¹⁰ Further, a 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is

¹ “Law enforcement officer” means 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. The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01. S. 943.10(1), F.S.

² “Firefighter” means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the division under s. 633.408. S. 633.102(9), F.S.

³ “Emergency medical technician” means a person who is certified by the department to perform basic life support. S. 401.24(12), F.S.

⁴ “Paramedic” means a person who is certified by the department to perform basic and advanced life support. S. 401.24(18), F.S.

⁵ “911 public safety telecommunicator” means a public safety dispatcher or 911 operator whose duties and responsibilities include the answering, receiving, transferring, and dispatching functions related to 911 calls; dispatching law enforcement officers, fire rescue services, emergency medical services, and other public safety services to the scene of an emergency; providing real-time information from federal, state, and local crime databases; or supervising or serving as the command officer to a person or persons having such duties and responsibilities. However, the term does not include administrative support personnel, including, but not limited to, those whose primary duties and responsibilities are in accounting, purchasing, legal, and personnel. S. 401.465(1)(a), F.S.

⁶ Hope M. Tiesman, PhD, et. Al., *Suicides Among First Responders: A Call to Action*, The Centers for Disease Control and Prevention (April 6, 2021), <https://blogs.cdc.gov/niosh-science-blog/2021/04/06/suicides-first-responders/> (last visited Jan. 26, 2024).

⁷ *Id.*

⁸ Miriam Heyman, Jeff Dill & Robert Douglas, *The Ruderman White Paper on Mental Health and Suicide of First Responders*, RUDERMAN FAMILY FOUNDATION 7, 9 (2018), https://issuu.com/rudermanfoundation/docs/first_responder_white_paper_final_ac270d530f8bfb (last visited Jan. 26, 2024) and SAMHSA Disaster Technical Assistance Center Supplemental Research Bulletin, *First Responders: Behavioral Health Concerns, Emergency Response, and Trauma* (May 2018), <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> (last visited Jan. 26, 2024).

⁹ SAMHSA Disaster Technical Assistance Center Supplemental Research Bulletin, *First Responders: Behavioral Health Concerns, Emergency Response, and Trauma* (May 2018), <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> (last visited Jan. 26, 2024).

¹⁰ *Id.* note 8.

more than 10 times the rate in the general population.¹¹ First responders are more likely to die by suicide than in the line of duty, according to the Firefighter Behavioral Health Alliance.¹²

First Responder Peer

Pursuant to s. 111.09, F.S., confidentiality of peer support communications applies only to communications with a first responder peer. Under Florida law, a first responder peer cannot be a health care practitioner. He or she must have experience working as or with a first responder regarding any physical or emotional conditions or issues associated with the first responder's employment and must be designated by the first responder's employing agency to provide peer support.

Peer Support

"Peer support" means the provision of physical, moral, or emotional support to a first responder by a first responder peer for the purpose of addressing physical or emotional conditions or other issues associated with being a first responder.¹³ Peer support communication includes any oral, written, or electronic communication made with a mutual expectation of confidentiality while a first responder peer is providing peer support in his or her official capacity.¹⁴

Traditional peer support services include social supports, such as mentoring, training, peer-led support groups, and assistance completing everyday tasks.¹⁵ Florida law recognizes confidentiality in peer support communications, which include written, oral, or electronic communications between a first responder and a first responder peer. Peers are not health care practitioners, but their support extends the reach of treatment beyond the clinical setting into the everyday environment of those seeking a successful, sustainable recovery process from mental health issues.¹⁶

A survey by the Journal of Emergency Medical Services revealed that first responders were less likely to contemplate suicide when they felt supported and encouraged at work.¹⁷ One study showed that while some firefighters reported positive experiences with professional mental health help, others felt more distressed after such intervention. Alternatively, these firefighters reported benefits from peer support, such as bonding with their fire crew after negative incidents, which can reduce the stigma, scheduling difficulties, lack of access, lack of trust, and fear or repercussions that may prevent first responders from seeking mental health care.¹⁸

Confidentiality

Generally, communications between a patient and a health care practitioner or provider of clinical, counseling or psychotherapy services are confidential.¹⁹ The privilege of confidentiality may only be waived under certain circumstances, including by agreement of the patient or if the patient has communicated threat to cause serious bodily harm to a specific person.²⁰ Under current law, a first responder is prohibited from divulging information from or testifying about a peer support

¹¹ Wes Venteicher, *Increasing suicide rates among first responders spark concerns*, FIRERESCUE NEWS, (Mar. 19, 2017), <https://www.firerescue1.com/fire-ems/articles/222673018-Increasing-suicide-rates-among-first-responders-spark-concern/> (last visited Jan. 26, 2024).

¹² Heyman, Dill & Douglas, *supra* note 74, at 19.

¹³ S. 111.09(1)(d), F.S.

¹⁴ S. 111.09(1)(e), F.S.

¹⁵ *Id.*

¹⁶ Substance Abuse and Mental Health Services Administration, *Peers*, <https://www.samhsa.gov/brss-tacs/recovery-support-tools/peers> (last visited Jan. 26, 2024)

¹⁷ Journal of Emergency Medical Services, *Survey Reveals Alarming Rates of EMS Provider Stress and Thoughts of Suicide*, (Sept. 28, 2015), <https://www.jems.com/2015/09/28/survey-reveals-alarming-rates-of-ems-provider-stress-and-thoughts-of-suicide/> (last visited Jan. 26, 2024).

¹⁸ Substance Abuse and Mental Health Services Administration, *First Responders: Behavioral Health Concerns, Emergency Response, and Trauma*, DISASTER TECHNICAL ASSISTANCE CENTER SUPPLEMENTAL RESEARCH BULLETIN (May 2019), 10, 12, <https://www.samhsa.gov/sites/default/files/dtac/supplementalresearchbulletin-firstresponders-may2018.pdf> (last visited Jan. 26, 2024).

¹⁹ S. 491.0147, F.S.

²⁰ *Id.*

communication in a civil, criminal, administrative, or disciplinary hearing.²¹ However, s. 111.09 provides limited exceptions to the confidentiality of peer support communications, including:

- When the person providing peer-to-peer support is a defendant in a proceeding arising from a complaint filed by the first responder and information divulged is limited to the scope of the proceeding.
- When the first responder agrees, in writing, to allow the peer to divulge the information or testify to the information related to the peer support.
- When, based on the peer support communications, the peer suspects that the first responder committed or intends to commit a criminal act, or if there are facts or circumstances that would lead a person to fear for the safety of the first responder, another person, or society.
 - However, under this exception, the information may only be divulged to potential victims and law enforcement or other appropriate authorities.²²

Pursuant to s. 111.09(3), F.S., current law does not limit the disclosure, discovery, or admissibility of information that is obtained by a peer from a source other than a first responder through a peer support communication.

Correctional Officer and Correctional Probation Officer

Pursuant to s. 943.10(2), F.S., a “correctional officer” is defined as any person who is appointed or employed full time by the state or any political subdivision of the state, or by any private entity which has contracted with the state or county, and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation, of inmates within a correctional institution.²³ A correctional officer does not include any secretarial, clerical, or professionally trained personnel.

Under current law, a “correctional probation officer” means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controlees within institutions of the Department of Corrections or within the community.²⁴ A correctional probation officer includes any supervisory personnel whose duties include the supervision, training, and guidance of correctional probation officers. However, the definition does not include management and administrative personnel.²⁵

Effect of Proposed Changes

CS/HB 1415 amends s. 111.09, F.S., to expand the privilege of confidentiality of peer support communications to correctional officers as defined in s. 943.10(2), F.S., and correctional probation officers as defined in s. 943.10(3), F.S.

As such, correctional officers and correctional probation officers participating in peer support would receive the same benefit of confidentiality with respect to peer support communications as law enforcement officers, firefighters, and other statutorily-defined first responders.

The bill has an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 111.09(1)(b), F.S., relating to peer support for first responders.

Section 2: Provides an effective date.

²¹ S. 111.09(2), F.S.

²² S. 111.09(2), F.S.

²³ S. 943.10(2), F.S.

²⁴ S. 943.10(3), F.S.

²⁵ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 1, 2024, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute modified the effective date of the bill to be October 1, 2024.

This analysis is drafted as to the committee substitute as passed by the Civil Justice Subcommittee.

CS/HB 1415

2024

1 A bill to be entitled
2 An act relating to peer support for first responders;
3 amending s. 111.09, F.S.; revising the definition of
4 "first responder" to include correctional officers and
5 correctional probation officers; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Paragraph (b) of subsection (1) of section
11 111.09, Florida Statutes, is amended to read:

12 111.09 Peer support for first responders.—

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

14 (b) "First responder" has the same meaning as provided in
15 s. 112.1815 and includes 911 public safety telecommunicators as
16 defined in s. 401.465, correctional officers as defined in s.
17 943.10(2), and correctional probation officers as defined in s.
18 943.10(3).

19 Section 2. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 Juvenile Justice

SPONSOR(S): Yarkosky

TIED BILLS: **IDEN./SIM. BILLS:** SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 2 N	Leshko	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee		Leshko	Kramer

SUMMARY ANALYSIS

HB 1425 amends several statutes relating to the Department of Juvenile Justice (DJJ). Specifically, the bill:

- Amends ss. 330.41, 553.865, 943.0515, 985.02, 985.03, 985.039, 985.126, 985.17, 985.27, 985.441, 985.455, 985.465, and 985.601, F.S., to make changes to juvenile commitment restrictiveness level classifications and terms, to replace the terms “gender-specific” and “gender” with “sex-specific” and “sex,” respectively, as those terms are defined in s. 553.865, F.S., and to strike an obsolete reporting date.
- Amends s. 381.887, F.S., to include any DJJ personnel and any DJJ contracted provider with direct contact with youth in the care of DJJ to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists and who are immune from any civil or criminal liability as a result of administering an emergency opioid antagonist.
- Amends ss. 790.22, 938.17, 948.51, 985.664, 985.668, and 985.676, F.S., to remove and redistribute certain duties from the juvenile justice circuit advisory boards to other entities and to simplify the role of such boards.
- Amends s. 985.115, F.S., to prohibit a person who has taken a child into custody from releasing a child to a juvenile assessment center if the child is suffering from a serious physical condition which requires prompt diagnosis or treatment, is believed to be mentally ill, or appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse.
- Amends s. 985.26, F.S., to authorize the initiation of a transfer to or from secure detention care or supervised release detention care upon a court’s own motion; a motion of the child; or a motion of the state. The bill requires a court to consider any information provided by DJJ regarding a child’s adjustment to detention supervision.
- Amends s. 985.601, F.S., to authorize DJJ to use state or federal funds to purchase and distribute promotional and educational materials for specified purposes.
- Amends ss. 1001.42, 1003.51, and 1003.52, F.S., to make conforming changes to align current education statutes with the controlling provisions of the Florida Scholars Academy adopted in 2023.

The bill does not change currently authorized resources or expenditures, and is not anticipated to have any fiscal impacts.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Commitment

Background

The court that has jurisdiction of an adjudicated delinquent child may commit the child to a Department of Juvenile Justice (DJJ) minimum-risk nonresidential, nonsecure residential, high-risk residential, or maximum-risk residential program.¹ Such commitment must be for the purpose of exercising active control over the child, including, but not limited to, custody, care, training, monitoring for substance abuse, electronic monitoring, and treatment of the child and release of the child from residential commitment into the community in a postcommitment nonresidential conditional release program.²

Restrictiveness Levels

Minimum-risk nonresidential programs work with youth who remain in and have full access to the community and participate at least five days a week in a day treatment program.³

Nonsecure residential programs are residential but may allow youth to have supervised access to the community. Facilities at this commitment level are either environmentally secure, staff secure, or are hardware-secure with walls, fencing, or locking doors.⁴

High-risk residential programs are residential and do not allow youth to have access to the community, except that temporary release providing community access for up to 72 continuous hours may be approved by a court for a youth who has made successful progress in his or her program in order for the youth to attend a family emergency or, during the final 60 days of his or her placement, to visit his or her home, enroll in school or a career and technical education program, complete a job interview, or participate in a community service project. High-risk residential facilities are hardware-secure with perimeter fencing and locking doors.⁵

Maximum-risk residential programs include juvenile correctional facilities and juvenile prisons. The programs at this commitment level are long-term residential and do not allow youth to have access to the community. Facilities at this commitment level are maximum-custody, hardware-secure with perimeter security fencing and locking doors.⁶

Twenty-four-hour awake supervision, custody, care, and treatment of residents is provided for all levels of residential commitment.⁷

According to DJJ, in practice some of the restrictiveness level classifications and terms are contradictory, unclear, or are better served through alternative means as follows:

- “Minimum-risk nonresidential” programs present a contradiction as typically a youth who is committed to DJJ is removed from the community and housed in a secure facility; however, the nature of minimum-risk nonresidential programs complicates the line between community probation and traditional commitment. DJJ asserts that the goal of these programs is better accomplished through probation instead of any kind of commitment.
- The term “nonsecure residential” programs is contradictory as it is used to describe programs where youth are *securely* housed with both staff and hardware-secure.

¹ Ss. 985.441(1)(b) and 985.03(44), F.S.

² S. 985.441(1)(b), F.S.

³ S. 985.03(44)(a), F.S.

⁴ S. 985.03(44)(b), F.S.

⁵ S. 985.03(44)(c), F.S.

⁶ S. 985.03(44)(d), F.S.

⁷ S. 985.03(44), F.S.

- The term “maximum-risk residential” is commonly used interchangeably with “juvenile prison” and “juvenile correctional facility” without proper cross-reference, and in practice DJJ and other stakeholders typically refer to all three as “maximum-risk residential.”

Additionally, DJJ provides housing and treatment services for youth based on their “sex,” which is currently undefined in DJJ statutes.⁸

Effect of Proposed Changes – Juvenile Commitment

The bill amends ss. 330.41, 553.865, 943.0515, 985.02, 985.03, 985.039, 985.126, 985.17, 985.27, 985.441, 985.455, 985.465, and 985.601, F.S., as follows:

- Removes “minimum-risk nonresidential” as a restrictiveness level for committed youth and all references to “minimum-risk nonresidential” programs.
- Renames all references to “nonsecure residential” programs to “moderate-risk” programs.
- Removes all references to “juvenile prison” and “juvenile correctional facilities” and replaces them with “maximum-risk residential.”
- Replaces the terms “gender-specific” and “gender” with “sex-specific” and “sex,” respectively, and defines “sex” as it is defined in s. 553.865, F.S.⁹
- Strikes an obsolete reporting date.

Emergency Opioid Antagonist Authorization and Immunity

Background

Section 381.887, F.S., generally governs the prescribing, ordering, and dispensing of emergency opioid antagonists to patients and caregivers and governs who is authorized to store, possess, and administer such antagonists. This section specifically delineates persons who are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated and who are immune from any civil liability or criminal liability as a result of administering such an antagonist to include the following:

- Emergency responders;
- Crime laboratory personnel for the statewide criminal analysis laboratory system; and
- Law enforcement personnel or personnel of another agency, including, but not limited to, correctional probation officers and child protective investigators who, while acting within the scope or course of employment, come into contact with a controlled substance or persons at risk of experiencing an opioid overdose.^{10, 11}

Effect of Proposed Changes – Emergency Opioid Antagonist Authorization and Immunity

The bill amends s. 381.887, F.S., to include any DJJ personnel and any DJJ contracted provider with direct contact with youth in the care of DJJ, as authorized under chs. 984¹² and 985, F.S.,¹³ to the list of persons who are authorized to possess, store, and administer emergency opioid antagonists as clinically indicated and who are immune from any civil liability or criminal liability as a result of administering an emergency opioid antagonist.

Juvenile Justice Circuit Advisory Boards

Background

⁸ DJJ, Agency Analysis of 2024 House Bill 1425, p. 3 (Jan. 12, 2024) (on file with the House Criminal Justice Subcommittee).

⁹ Section 553.865(l), F.S., defines “sex” to mean the classification of a person as either female or male based on the organization of the body of such person for a specific reproductive role, as indicated by the person’s sex chromosomes, naturally occurring sex hormones, and internal and external genitalia present at birth. Additionally, s. 553.865(f) and (h), F.S., define “female” to mean a person belonging, at birth, to the biological sex which has the specific reproductive role of producing eggs, and “male” to mean a person belonging, at birth, to the biological sex which has the specific reproductive rule of producing sperm, respectively.

¹⁰ S. 381.887(4), F.S.

¹¹ Section 381.887(7), F.S., does not limit any existing immunities for any emergency responders, crime laboratory personnel, or law enforcement personnel, or personnel of another agency which may be provided in other applicable provisions of law.

¹² Chapter 984 relates to children and families in need of services.

¹³ Chapter 985 relates to juvenile justice and the interstate compact on juveniles.

Section 985.664, F.S., authorizes a juvenile justice circuit advisory board (CAB) to be established in each of the 20 judicial circuits. The purpose of such boards is to provide advice and direction to DJJ in the development and implementation of juvenile justice programs and to work collaboratively with DJJ in seeking program improvements and policy changes to address the emerging and changing needs of Florida's youth who are at risk of delinquency.¹⁴ All CAB membership must be approved by the Secretary of DJJ, with limited exceptions, and must include:

- The state attorney or his or her designee.
- The public defender or his or her designee.
- The chief judge or his or her designee.
- A representative of the corresponding circuit or regional entity of the Department of Children and Families.
- The sheriff or his or her designee from each county in the circuit.
- A police chief or his or her designee from each county in the circuit.
- A county commissioner or his or her designee from each county in the circuit.
- The superintendent of each school district in the circuit or his or her designee.
- A representative from the workforce organization of each county in the circuit.
- A representative of the business community.
- A youth representative who has had an experience with the juvenile justice system and is not older than 21 years of age.
- A representative of the faith community.
- A health services representative who specializes in mental health care, victim-service programs, or victims of crime.
- A parent or family member of a youth who has been involved with the juvenile justice system.
- Up to five representatives from any of the following who are not otherwise represented:
 - Community leaders.
 - Youth-serving coalitions.¹⁵

The duties of CABs include, but are not limited to:

- Developing a comprehensive plan for the circuit.
- Participating in the facilitation of interagency cooperation and information sharing.
- Providing recommendations for public or private grants to be administered by one of the community partners that support one or more components of the comprehensive circuit plan.
- Providing recommendations to DJJ in the evaluation of prevention and early intervention grant programs.
- Providing an annual report to DJJ describing the board's activities.¹⁶

Except in single-county circuits, each CAB has a county organization representing each of the counties in the circuit that reports directly to the CAB on the juvenile justice needs of county.¹⁷

Effect of Proposed Changes – Juvenile Justice Circuit Advisory Boards

The bill amends ss. 790.22, 938.17, 948.51, 985.664, 985.668, and 985.676, F.S., to remove and redistribute certain duties from the CABs to DJJ and other entities and to simplify the role of such boards, as follows:

- Transfers the responsibility of establishing appropriate community service programs available to the alternative sanctions coordinators of the circuit courts from CABs to DJJ.

¹⁴ S. 985.664(1), F.S.

¹⁵ S. 985.664(4), F.S.

¹⁶ S. 985.664(3), F.S.

¹⁷ S. 985.664(1), F.S.

- Requires a sheriff's office that receives funds to operate a juvenile assessment center to provide an annual written financial report accounting for all funds to DJJ instead of to a CAB.
- Requires the public safety coordinating council of a county to collaborate with DJJ rather than a CAB when developing a comprehensive public safety plan that includes programs and services for juveniles.
- Requires CABs to work with the chief probation officer of the circuit in using data to inform policy and practice that will improve the juvenile justice continuum.
- Removes authorization for county organizations.
- Removes the following duties from CABs:
 - Developing a comprehensive plan.
 - Participating in interagency cooperation and information sharing.
 - Providing recommendations for public and private grants.
 - Providing an annual report of the board's activities.
- Requires membership of the board to be approved by the chief probation officer of the circuit and reduces the number of members on the board by two, by reducing the number of community leader or youth-serving coalition members required from five to three.
- Requires the chief probation officer of the circuit to serve as the chair of the board.
- Removes provisions relating to procedures to fill a vacant chair position, board membership terms, bylaw, quorum, and voting requirements, establishment of an executive committee, and requirements that CABs are subject to the code of ethics for public officers and employees.
- Requires the chief probation officer in each circuit to submit proposals for innovation zones rather than boards.
- Removes requirements for the boards to review applications for community juvenile justice partnership grants.
- Allows for recommendations from community stakeholders to direct which grant proposals should be given priority.
- Removes requirement that grant recipients submit an annual evaluation report to a CAB.

Juvenile Assessment Centers

Background

Section 985.115, F.S., generally governs to where or to whom a child may be released after being taken into custody. Unless otherwise ordered by a court, and unless there is a need to hold a child, the person who has taken a child into custody must attempt to release the child to specified persons or entities contingent upon specific circumstances, including release as follows:

- If a child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, to a law enforcement officer who shall deliver the child to a hospital for necessary evaluation and treatment.
- If the child is believed to be mentally ill,¹⁸ to a law enforcement officer who shall take the child to a designated public receiving facility¹⁹ for involuntary examination.²⁰
- If the child appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse, to a law enforcement officer who shall deliver the child to a hospital, addictions receiving facility, or treatment resource.
- If available, to a juvenile assessment center (JAC)²¹ equipped and staffed to assume custody of the child for the purpose of assessing the needs of the child in custody. The center may then release or deliver the child under this section with a copy of the assessment.²²

Effect of Proposed Changes – Juvenile Assessment Centers

¹⁸ For the purposes of s. 985.115, F.S., a person is mentally ill if they meet the criteria in s. 394.463(1), F.S.

¹⁹ Section 394.455, F.S., defines "public facility" to mean a facility that has contracted with the Department of Children and Families to provide mental health services to all persons, regardless of ability to pay, and is receiving state funds for such purpose.

²⁰ S. 394.463, F.S.

²¹ A juvenile assessment center is comprised of community operated facilities and programs which provide collocated central intake and screening services for youth referred to DJJ. S. 985.135(1), F.S.

²² S. 985.115(2)(c)-(f), F.S.

The bill amends s. 985.115, F.S., to prohibit a person who has taken a child into custody from releasing a child to a JAC, and such centers from receiving a child, if the child is suffering from a serious physical condition which requires prompt diagnosis or treatment, is believed to be mentally ill, or appears to be intoxicated and has threatened, attempted, or inflicted physical harm on himself or herself or another, or is incapacitated by substance abuse. This change clarifies existing law and may prevent practical complications when a law enforcement officer attempts to release a medically vulnerable youth to a JAC that is not equipped to handle the needs of the youth in his or her current state.

Transfer Between Secure Detention Care and Supervised Release Detention Care

Background

Section 985.26, F.S., controls the time period for which a court can order a child to be placed in detention care. A court may order a child to be placed on supervised release detention care²³ or secure detention care.²⁴ Generally, a court may order a child to be placed on supervised release detention care for up to 60 days before a hearing must be conducted to determine the need for continued supervised release detention care.²⁵ However, the court may only order a child to be held in secure detention care for 21 days unless an adjudicatory hearing for the case has been commenced in good faith by the court or unless the court finds good cause to extend the child's length of detention.²⁶

Additionally, the court may transition a child to and from secure detention care and supervised release detention care, including electronic monitoring, if the court finds such a transfer in placement is necessary, certain detention care is no longer necessary, to preserve public safety, or to ensure the child's safety, appearance in court, or compliance with a court order. Each period of secure or supervised release detention care counts toward the time limitations whether served consecutively or nonconsecutively.²⁷

Effect of Proposed Changes – Transfer Between Secure Detention Care and Supervised Release Detention Care

The bill amends s. 985.26, F.S., to authorize the initiation of a transfer to or from secure detention care or supervised release detention care upon:

- A court's own motion;
- A motion of the child; or
- A motion of the state.

The bill requires a court to consider any information provided by DJJ regarding a child's adjustment to detention supervision.

Authorized Use of State or Federal Funds

Background

Section 985.601, F.S., generally provides guidance on administering the juvenile justice services and programs within the juvenile justice continuum. The juvenile justice continuum includes all: children-in-need-of-services programs; families-in-need-of-services programs; other prevention, early intervention, and diversion programs; detention centers and related programs and facilities; community-based

²³ Section 985.03(18)(b), F.S., defines "supervised release detention care" to mean temporary, noncustody care of a child while the child is released to the custody of a parent, guardian, or custodian in a physically nonrestrictive environment under the supervision of DJJ staff pending adjudication or disposition.

²⁴ Section 985.03(18)(a), F.S., defines "secure detention care" to mean temporary custody of a child while the child is under the physical restriction of a secure detention center or facility pending adjudication, disposition, or placement.

²⁵ S. 985.26(2)(a)1., F.S.

²⁶ S. 985.26(2)(a)2., F.S.

²⁷ S. 985.26(2)(a)3., F.S.

residential commitment and nonresidential programs; and delinquency institutions provided or funded by DJJ.²⁸

Effect of Proposed Changes – Authorized Use of State or Federal Funds

The bill amends s. 985.601, F.S., to authorize DJJ to use state or federal funds to purchase and distribute promotional and educational materials for the following purposes:

- Educating youth and families about the juvenile justice continuum, including education on local prevention programs or community services available for participation or enrollment.
- Educating youth and families on youth-specific public safety issues, including, but not limited to, safe storage of adult-owned firearms, consequences of youth firearm offenses, human trafficking, and drug and alcohol abuse.
- Staff recruitment at job fairs, career fairs, community events, and technical education program, community college, or state college campuses.

DJJ Education

Background

The Department of Education (DOE) serves as the lead agency providing coordination and oversight of juvenile justice education programs,²⁹ curriculum, support services, and resources. Students who do not attend a local public school due to their placement in a DJJ detention, prevention, residential, or day treatment program are provided educational programs by the local school district in which the DJJ facility is located or by a provider through a contract with the local school district.³⁰ The district school board makes provisions for each student to participate in basic, career and professional education (CAPE), and exceptional student programs, as appropriate. Each student must have access to the appropriate courses and instruction to prepare them for the high school equivalency examination. School districts are required to provide the high school equivalency examination exit option for all juvenile justice education programs.³¹

Section 985.619, F.S., was created in 2023 to require DJJ to establish the Florida Scholars Academy (Academy) to deliver educational opportunities to students served in residential commitment programs. DJJ is required to contract with an education service provider with a proven track record of success to operate, provide, or supplement full-time instruction and instructional support services for educational pathways including a K-12 education, high school equivalency diploma, career and technical education credential pursuant to s. 1003.4282(10), F.S.,³² and enrollment in a degree program at a state college or university, with an emphasis on attaining an industry-recognized credential of value from the Master Credentials List under s. 445.004(4)(h), F.S.³³ The contracted education service provider is responsible for the administration of all educational services to students enrolled in the Academy.

Educational services through the Academy will begin July 1, 2024 and the amendment of certain current education statutes is necessary to conform current education policy with the controlling provisions related to the Academy ahead of the 2024 school year.³⁴

Effect of Proposed Changes – DJJ Education

²⁸ S. 20.316(1)(a)–(b), F.S.

²⁹ Juvenile justice education programs or schools operate for the purpose of providing educational services to youth in DJJ programs for a school year comprised of 250 days of instruction distributed over 12 months. S. 1003.01(14)(a), F.S.

³⁰ Juvenile justice education programs are subject to the rules of the State Board of Education. S. 1003.52(2), F.S.

³¹ S. 1003.52(3)(a)–(c), F.S.

³² A student is eligible to complete an alternative pathway to earning a standard high school diploma through the Career and Technical Education (CTE) pathway option. The CTE pathway option requires the student to complete at least 18 credits with a cumulative grade point average of 2.0 and meet other coursework requirements. S. 1003.4282(10), F.S.

³³ Credentials included are: registered apprenticeship programs, industry certifications, licenses, advanced technical certificates, college credit certificates, career certificates, applied technology diplomas, associate degrees, baccalaureate degrees, and graduate degrees. S. 445.004(4)(h), F.S.

³⁴ DJJ, *supra* at note 8.

The bill amends ss. 1001.42, 1003.51, and 1003.52, F.S., to make conforming changes to align current education statutes with the controlling provisions of the Academy adopted in 2023. The conforming changes are as follows:

- Removes references to education being provided by local school districts for students in DJJ residential programs.
- Removes a requirement that academic assessments be completed within the first 10 school days after a student enters a program.
- Requires virtual education be provided by an entity accredited by an accrediting body approved by DOE.
- Removes the DJJ educational accountability system as detention, prevention, and day treatment programs will follow the same accountability process as alternative schools and residential program educational accountability will be provided through the Academy's accountability measures.³⁵
- Replaces certain references to CAPE with "career and technical education."

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 330.41, F.S., relating to Unmanned Aircraft Systems Act.

Section 2: Amends s. 381.887, F.S., relating to emergency treatment for suspected opioid overdose.

Section 3: Amends s. 553.865, F.S., relating to private spaces.

Section 4: Amends s. 790.22, F.S., relating to use of BB guns, air or gas-operated guns, or electric weapons or devices by minor under 16; limitation; possession of firearms by minor under 18 prohibited; penalties.

Section 5: Amends s. 938.17, F.S., relating to county delinquency prevention; juvenile assessment centers and school board suspension programs.

Section 6: Amends 943.0515, F.S., relating to retention of criminal history records of minors.

Section 7: Amends s. 948.51, F.S., relating to community corrections assistance to counties or county consortiums.

Section 8: Amends s. 985.02, F.S., relating to legislative intent for the juvenile justice system.

Section 9: Amends s. 985.03, F.S., relating to definitions.

Section 10: Amends s. 985.039, F.S., relating to cost of supervision; cost of care.

Section 11: Amends s. 985.115, F.S., relating to release or delivery from custody.

Section 12: Amends s. 985.126, F.S., relating to diversion programs; data collection; denial of participation or expunged record.

Section 13: Amends s. 985.17, F.S., relating to prevention services.

Section 14: Amends s. 985.26, F.S., relating to length of detention.

Section 15: Amends s. 985.27, F.S., relating to postdisposition detention while awaiting residential commitment placement.

Section 16: Amends s. 985.441, F.S., relating to commitment.

Section 17: Amends s. 985.455, F.S., relating to other dispositional issues.

Section 18: Amends s. 985.465, F.S., relating to juvenile correctional facilities or juvenile prison.

Section 19: Amends s. 985.601, F.S., relating to administering the juvenile justice continuum.

Section 20: Amends s. 985.664, F.S., relating to juvenile justice circuit advisory boards.

Section 21: Amends s. 985.668, F.S., relating to innovation zones.

Section 22: Amends s. 985.676, F.S., relating to community juvenile justice partnership grants.

Section 23: Amends s. 1003.51, F.S., relating to other public educational services.

Section 24: Amends s. 1003.52, F.S., relating to educational services in Department of Juvenile Justice programs.

Section 25: Amends s. 1001.42, F.S., relating to powers and duties of district school board.

Section 26: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

³⁵ *Id.*

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not make changes to currently authorized resources or expenditures. It authorizes DJJ to use available state or federal funds for specified educational materials, but does not appropriate any additional funding. DJJ reports that the bill is not anticipated to have a fiscal impact.³⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

³⁶ DJJ, *supra* at note 8.
STORAGE NAME: h1425d.JDC
DATE: 2/12/2024

1 A bill to be entitled
2 An act relating to juvenile justice; amending s.
3 330.41, F.S.; conforming provisions to changes made by
4 the act; amending s. 381.887, F.S.; authorizing
5 certain employees of Department of Juvenile Justice
6 and contracted providers to possess and administer
7 opioid antagonists; providing immunity from liability
8 for administration; amending ss. 553.865, 790.22,
9 938.17, 943.0515, and 948.51, F.S.; conforming
10 provisions to changes made by the act; amending s.
11 985.02, F.S.; replacing the term "gender-specific"
12 with "sex-specific"; conforming provisions; amending
13 s. 985.03, F.S.; eliminating the minimum-risk
14 nonresidential restrictiveness level; redesignating
15 the nonsecure residential restrictiveness level as the
16 "moderate-risk residential level"; revising the
17 components of the maximum-risk residential
18 restrictiveness level; defining "sex"; amending s.
19 985.039, F.S.; conforming provisions to changes made
20 by the act; amending s. 985.115, F.S.; providing that
21 juvenile assessment centers are not facilities that
22 are permitted to receive certain children; amending
23 ss. 985.126 and 985.17, F.S.; conforming provisions to
24 changes made by the act; amending s. 985.26, F.S.;
25 revising provisions concerning transitioning a child

26 to and from secure detention care and supervised
 27 release detention care; amending ss. 985.27, 985.441,
 28 and 985.455, F.S.; conforming provisions to changes
 29 made by the act; amending s. 985.465, F.S.; replacing
 30 the term "juvenile correctional facility or juvenile
 31 prison" with "maximum-risk residential facilities";
 32 amending s. 985.601, F.S.; authorizing the purchase of
 33 promotional and educational materials for specified
 34 purposes; amending s. 985.664, F.S.; substantially
 35 revising provisions relating to juvenile justice
 36 circuit advisory boards; amending ss. 985.668 and
 37 985.676, F.S.; conforming provisions to changes made
 38 by the act; amending s. 1003.51, F.S.; revising
 39 provisions concerning education programs for students
 40 in Department of Juvenile Justice programs; amending
 41 s. 1003.52, F.S.; deleting provisions concerning
 42 certain performance measures; deleting provisions
 43 concerning CAPE programs; amending s. 1001.42, F.S.;
 44 revising a cross-reference; providing an effective
 45 date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Paragraph (a) of subsection (2) of section
 50 330.41, Florida Statutes, is amended to read:

51 330.41 Unmanned Aircraft Systems Act.—
 52 (2) DEFINITIONS.—As used in this act, the term:
 53 (a) "Critical infrastructure facility" means any of the
 54 following, if completely enclosed by a fence or other physical
 55 barrier that is obviously designed to exclude intruders, or if
 56 clearly marked with a sign or signs which indicate that entry is
 57 forbidden and which are posted on the property in a manner
 58 reasonably likely to come to the attention of intruders:
 59 1. A power generation or transmission facility,
 60 substation, switching station, or electrical control center.
 61 2. A chemical or rubber manufacturing or storage facility.
 62 3. A water intake structure, water treatment facility,
 63 wastewater treatment plant, or pump station.
 64 4. A mining facility.
 65 5. A natural gas or compressed gas compressor station,
 66 storage facility, or natural gas or compressed gas pipeline.
 67 6. A liquid natural gas or propane gas terminal or storage
 68 facility.
 69 7. Any portion of an aboveground oil or gas pipeline.
 70 8. A refinery.
 71 9. A gas processing plant, including a plant used in the
 72 processing, treatment, or fractionation of natural gas.
 73 10. A wireless communications facility, including the
 74 tower, antennae, support structures, and all associated ground-
 75 based equipment.

76 11. A seaport as listed in s. 311.09(1), which need not be
 77 completely enclosed by a fence or other physical barrier and
 78 need not be marked with a sign or signs indicating that entry is
 79 forbidden.

80 12. An inland port or other facility or group of
 81 facilities serving as a point of intermodal transfer of freight
 82 in a specific area physically separated from a seaport.

83 13. An airport as defined in s. 330.27.

84 14. A spaceport territory as defined in s. 331.303(18).

85 15. A military installation as defined in 10 U.S.C. s.
 86 2801(c)(4) and an armory as defined in s. 250.01.

87 16. A dam as defined in s. 373.403(1) or other structures,
 88 such as locks, floodgates, or dikes, which are designed to
 89 maintain or control the level of navigable waterways.

90 17. A state correctional institution as defined in s.
 91 944.02 or a private correctional facility authorized under
 92 chapter 957.

93 18. A secure detention center or facility as defined in s.
 94 985.03, or a moderate-risk ~~nonscore~~ residential facility, a
 95 high-risk residential facility, or a maximum-risk residential
 96 facility as those terms are described in s. 985.03(44).

97 19. A county detention facility as defined in s. 951.23.

98 20. A critical infrastructure facility as defined in s.
 99 692.201.

100 Section 2. Paragraph (d) is added to subsection (4) of

101 section 381.887, Florida Statutes, to read:

102 381.887 Emergency treatment for suspected opioid
103 overdose.—

104 (4) The following persons are authorized to possess,
105 store, and administer emergency opioid antagonists as clinically
106 indicated and are immune from any civil liability or criminal
107 liability as a result of administering an emergency opioid
108 antagonist:

109 (d) Personnel of the Department of Juvenile Justice and of
110 any contracted provider with direct contact with youth
111 authorized under chapters 984 and 985.

112 Section 3. Paragraphs (c) and (j) of subsection (3),
113 paragraph (a) of subsection (10), and paragraph (f) of
114 subsection (12) of section 553.865, Florida Statutes, are
115 amended to read:

116 553.865 Private spaces.—

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

118 (c) "Covered entity" means any:

- 119 1. Correctional institution;
- 120 2. Detention facility;
- 121 3. Educational institution;

122 4. Maximum risk residential facility ~~Juvenile correctional~~
123 ~~facility or juvenile prison~~ as described in s. 985.465, any
124 detention center or facility designated by the Department of
125 Juvenile Justice to provide secure detention as defined in s.

126 985.03(18) (a), and any facility used for a residential program
 127 as described in s. 985.03(44) ~~985.03(44) (b), (c), or (d)~~; or

128 5. Public building.

129 (j) "Public building" means a building comfort-conditioned
 130 for occupancy which is owned or leased by the state, a state
 131 agency, or a political subdivision. The term does not include a
 132 correctional institution, a detention facility, an educational
 133 institution, a maximum risk residential facility ~~juvenile~~
 134 ~~correctional facility or juvenile prison~~ as described in s.
 135 985.465, a detention center or facility designated by the
 136 Department of Juvenile Justice to provide secure detention as
 137 defined in s. 985.03(18) (a), or any facility used for a
 138 residential program as described in s. 985.03(44) ~~985.03(44) (b),~~
 139 ~~(c), or (d)~~.

140 (10) (a) Each maximum risk residential facility ~~juvenile~~
 141 ~~correctional facility or juvenile prison~~ as described in s.
 142 985.465, each detention center or facility designated by the
 143 Department of Juvenile Justice to provide secure detention as
 144 defined in s. 985.03(18) (a), and each facility used for a
 145 residential program as described in s. 985.03(44) ~~985.03(44) (b),~~
 146 ~~(c), or (d)~~ shall establish disciplinary procedures for any
 147 juvenile as defined in s. 985.03(7) who willfully enters, for a
 148 purpose other than those listed in subsection (6), a restroom or
 149 changing facility designated for the opposite sex in such
 150 maximum risk residential facility ~~juvenile correctional~~

151 ~~facility, juvenile prison,~~ secure detention center or facility,
 152 or residential program facility and refuses to depart when asked
 153 to do so by delinquency program staff, detention staff, or
 154 residential program staff.

155 (12) A covered entity that is:

156 (f) A maximum risk residential facility ~~juvenile~~
 157 ~~correctional facility or juvenile prison~~ as described in s.
 158 985.465, a detention center or facility designated by the
 159 Department of Juvenile Justice to provide secure detention as
 160 defined in s. 985.03(18)(a), or a facility used for a
 161 residential program as described in s. 985.03(44) ~~985.03(44)(b),~~
 162 ~~(c), or (d)~~ shall submit documentation to the Department of
 163 Juvenile Justice regarding compliance with subsections (4) and
 164 (5), as applicable, within 1 year after being established or, if
 165 such institution or facility was established before July 1,
 166 2023, no later than April 1, 2024.

167 Section 4. Paragraph (c) of subsection (4) of section
 168 790.22, Florida Statutes, is amended to read:

169 790.22 Use of BB guns, air or gas-operated guns, or
 170 electric weapons or devices by minor under 16; limitation;
 171 possession of firearms by minor under 18 prohibited; penalties.-

172 (4)

173 (c) The ~~juvenile justice circuit advisory boards or the~~
 174 Department of Juvenile Justice shall establish appropriate
 175 community service programs to be available to the alternative

176 sanctions coordinators of the circuit courts in implementing
 177 this subsection. The boards or department shall propose the
 178 implementation of a community service program in each circuit,
 179 and may submit a circuit plan, to be implemented upon approval
 180 of the circuit alternative sanctions coordinator.

181 Section 5. Subsection (4) of section 938.17, Florida
 182 Statutes, is amended to read:

183 938.17 County delinquency prevention; juvenile assessment
 184 centers and school board suspension programs.—

185 (4) A sheriff's office that receives proceeds pursuant to
 186 s. 939.185 shall account for all funds annually by August 1 in a
 187 written report to the Department of Juvenile Justice ~~juvenile~~
 188 ~~justice circuit advisory board~~ if funds are used for assessment
 189 centers, and to the district school board if funds are used for
 190 suspension programs.

191 Section 6. Subsection (1) of section 943.0515, Florida
 192 Statutes, is amended to read:

193 943.0515 Retention of criminal history records of minors.—

194 (1)(a) The Criminal Justice Information Program shall
 195 retain the criminal history record of a minor who is classified
 196 as a serious or habitual juvenile offender or committed to a
 197 maximum risk residential facility ~~juvenile correctional facility~~
 198 ~~or juvenile prison~~ under chapter 985 for 5 years after the date
 199 the offender reaches 21 years of age, at which time the record
 200 shall be expunged unless it meets the criteria of paragraph

201 (2) (a) or paragraph (2) (b).

202 (b)1. If the minor is not classified as a serious or
 203 habitual juvenile offender or committed to a maximum risk
 204 residential facility ~~juvenile correctional facility or juvenile~~
 205 ~~prison~~ under chapter 985, the program shall retain the minor's
 206 criminal history record for 2 years after the date the minor
 207 reaches 19 years of age, at which time the record shall be
 208 expunged unless it meets the criteria of paragraph (2) (a) or
 209 paragraph (2) (b).

210 2. A minor described in subparagraph 1. may apply to the
 211 department to have his or her criminal history record expunged
 212 before the minor reaches 21 years of age. To be eligible for
 213 expunction under this subparagraph, the minor must be 18 years
 214 of age or older and less than 21 years of age and have not been
 215 charged by the state attorney with or found to have committed
 216 any criminal offense within the 5-year period before the
 217 application date. The only offenses eligible to be expunged
 218 under this subparagraph are those that the minor committed
 219 before the minor reached 18 years of age. A criminal history
 220 record expunged under this subparagraph requires the approval of
 221 the state attorney for each circuit in which an offense
 222 specified in the criminal history record occurred. A minor
 223 seeking to expunge a criminal history record under this
 224 subparagraph shall apply to the department for expunction in the
 225 manner prescribed by rule. An application for expunction under

226 | this subparagraph shall include:

227 | a. A processing fee of \$75 to the department for placement
228 | in the Department of Law Enforcement Operating Trust Fund,
229 | unless such fee is waived by the executive director.

230 | b. A full set of fingerprints of the applicant taken by a
231 | law enforcement agency for purposes of identity verification.

232 | c. A sworn, written statement from the minor seeking
233 | relief that he or she is no longer under court supervision
234 | applicable to the disposition of the arrest or alleged criminal
235 | activity to which the application to expunge pertains and that
236 | he or she has not been charged with or found to have committed a
237 | criminal offense, in any jurisdiction of the state or within the
238 | United States, within the 5-year period before the application
239 | date. A person who knowingly provides false information on the
240 | sworn statement required by this sub-subparagraph commits a
241 | misdemeanor of the first degree, punishable as provided in s.
242 | 775.082 or s. 775.083.

243 | 3. A minor who applies, but who is not approved for early
244 | expunction in accordance with subparagraph 2., shall have his or
245 | her criminal history record expunged at age 21 if eligible under
246 | subparagraph 1.

247 | Section 7. Subsection (2) of section 948.51, Florida
248 | Statutes, is amended to read:

249 | 948.51 Community corrections assistance to counties or
250 | county consortiums.—

251 (2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.—A
 252 county, or a consortium of two or more counties, may contract
 253 with the Department of Corrections for community corrections
 254 funds as provided in this section. In order to enter into a
 255 community corrections partnership contract, a county or county
 256 consortium must have a public safety coordinating council
 257 established under s. 951.26 and must designate a county officer
 258 or agency to be responsible for administering community
 259 corrections funds received from the state. The public safety
 260 coordinating council shall prepare, develop, and implement a
 261 comprehensive public safety plan for the county, or the
 262 geographic area represented by the county consortium, and shall
 263 submit an annual report to the Department of Corrections
 264 concerning the status of the program. In preparing the
 265 comprehensive public safety plan, the public safety coordinating
 266 council shall cooperate with the Department of Juvenile Justice
 267 ~~juvenile justice circuit advisory board established under s.~~
 268 ~~985.664~~ in order to include programs and services for juveniles
 269 in the plan. To be eligible for community corrections funds
 270 under the contract, the initial public safety plan must be
 271 approved by the governing board of the county, or the governing
 272 board of each county within the consortium, and the Secretary of
 273 Corrections based on the requirements of this section. If one or
 274 more other counties develop a unified public safety plan, the
 275 public safety coordinating council shall submit a single

276 application to the department for funding. Continued contract
277 funding shall be pursuant to subsection (5). The plan for a
278 county or county consortium must cover at least a 5-year period
279 and must include:

280 (a) A description of programs offered for the job
281 placement and treatment of offenders in the community.

282 (b) A specification of community-based intermediate
283 sentencing options to be offered and the types and number of
284 offenders to be included in each program.

285 (c) Specific goals and objectives for reducing the
286 projected percentage of commitments to the state prison system
287 of persons with low total sentencing scores pursuant to the
288 Criminal Punishment Code.

289 (d) Specific evidence of the population status of all
290 programs which are part of the plan, which evidence establishes
291 that such programs do not include offenders who otherwise would
292 have been on a less intensive form of community supervision.

293 (e) The assessment of population status by the public
294 safety coordinating council of all correctional facilities owned
295 or contracted for by the county or by each county within the
296 consortium.

297 (f) The assessment of bed space that is available for
298 substance abuse intervention and treatment programs and the
299 assessment of offenders in need of treatment who are committed
300 to each correctional facility owned or contracted for by the

301 county or by each county within the consortium.

302 (g) A description of program costs and sources of funds
 303 for each community corrections program, including community
 304 corrections funds, loans, state assistance, and other financial
 305 assistance.

306 Section 8. Paragraph (h) of subsection (1) and subsection
 307 (7) of section 985.02, Florida Statutes, are amended to read:

308 985.02 Legislative intent for the juvenile justice
 309 system.—

310 (1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
 311 the Legislature that the children of this state be provided with
 312 the following protections:

313 (h) Sex-specific ~~Gender-specific~~ programming and sex-
 314 specific ~~gender-specific~~ program models and services that
 315 comprehensively address the needs of either sex ~~a targeted~~
 316 ~~gender group~~.

317 (7) SEX-SPECIFIC ~~GENDER-SPECIFIC~~ PROGRAMMING.—

318 (a) The Legislature finds that the needs of children
 319 served by the juvenile justice system are sex-specific ~~gender-~~
 320 ~~specific~~. A sex-specific ~~gender-specific~~ approach is one in
 321 which programs, services, and treatments comprehensively address
 322 the unique developmental needs of either sex ~~a targeted gender~~
 323 ~~group~~ under the care of the department. Young women and men have
 324 different pathways to delinquency, display different patterns of
 325 offending, and respond differently to interventions, treatment,

326 and services.

327 (b) Sex-specific ~~Gender-specific~~ interventions focus on
 328 the differences between young females' and young males' social
 329 roles and responsibilities, access to and use of resources,
 330 history of trauma, and reasons for interaction with the juvenile
 331 justice system. Sex-specific ~~Gender-specific~~ programs increase
 332 the effectiveness of programs by making interventions more
 333 appropriate to the specific needs of young women and men and
 334 ensuring that these programs do not unknowingly create,
 335 maintain, or reinforce sex ~~gender~~ roles or relations that may be
 336 damaging.

337 Section 9. Subsections (46) through (54) of section
 338 985.03, Florida Statutes, are renumbered as subsections (47)
 339 through (55), respectively, subsections (14) and (44) and
 340 present subsection (50) are amended, and a new subsection (46)
 341 is added to that section, to read:

342 985.03 Definitions.—As used in this chapter, the term:

343 (14) "Day treatment" means a nonresidential, community-
 344 based program designed to provide therapeutic intervention to
 345 youth who are served by the department, or placed on probation
 346 or conditional release, ~~or committed to the minimum-risk~~
 347 ~~nonresidential level~~. A day treatment program may provide
 348 educational and career and technical education services and
 349 shall provide case management services; individual, group, and
 350 family counseling; training designed to address delinquency risk

351 factors; and monitoring of a youth's compliance with, and
352 facilitation of a youth's completion of, sanctions if ordered by
353 the court. Program types may include, but are not limited to,
354 career programs, marine programs, juvenile justice alternative
355 schools, training and rehabilitation programs, and sex-specific
356 ~~gender-specific~~ programs.

357 (44) "Restrictiveness level" means the level of
358 programming and security provided by programs that service the
359 supervision, custody, care, and treatment needs of committed
360 children. Sections 985.601(10) and 985.721 apply to children
361 placed in programs at any residential commitment level. The
362 restrictiveness levels of commitment are as follows:

363 ~~(a) Minimum-risk nonresidential.—Programs or program~~
364 ~~models at this commitment level work with youth who remain in~~
365 ~~the community and participate at least 5 days per week in a day~~
366 ~~treatment program. Youth assessed and classified for programs at~~
367 ~~this commitment level represent a minimum risk to themselves and~~
368 ~~public safety and do not require placement and services in~~
369 ~~residential settings. Youth in this level have full access to,~~
370 ~~and reside in, the community. Youth who have been found to have~~
371 ~~committed delinquent acts that involve firearms, that are sexual~~
372 ~~offenses, or that would be life felonies or first degree~~
373 ~~felonies if committed by an adult may not be committed to a~~
374 ~~program at this level.~~

375 (a)-(b) Moderate-risk Nonsecure residential.—Programs or

376 program models at this commitment level are residential but may
377 allow youth to have supervised access to the community.
378 Facilities at this commitment level are either environmentally
379 secure, staff secure, or are hardware-secure with walls,
380 fencing, or locking doors. Residential facilities at this
381 commitment level shall have no more than 90 beds each, including
382 campus-style programs, unless those campus-style programs
383 include more than one treatment program using different
384 treatment protocols, and have facilities that coexist separately
385 in distinct locations on the same property. Facilities at this
386 commitment level shall provide 24-hour awake supervision,
387 custody, care, and treatment of residents. Youth assessed and
388 classified for placement in programs at this commitment level
389 represent a low or moderate risk to public safety and require
390 close supervision. The staff at a facility at this commitment
391 level may seclude a child who is a physical threat to himself or
392 herself or others. Mechanical restraint may also be used when
393 necessary.

394 (b) ~~(c)~~ High-risk residential.—Programs or program models
395 at this commitment level are residential and do not allow youth
396 to have access to the community, except that temporary release
397 providing community access for up to 72 continuous hours may be
398 approved by a court for a youth who has made successful progress
399 in his or her program in order for the youth to attend a family
400 emergency or, during the final 60 days of his or her placement,

401 to visit his or her home, enroll in school or a career and
402 technical education program, complete a job interview, or
403 participate in a community service project. High-risk
404 residential facilities are hardware-secure with perimeter
405 fencing and locking doors. Residential facilities at this
406 commitment level shall have no more than 90 beds each, including
407 campus-style programs, unless those campus-style programs
408 include more than one treatment program using different
409 treatment protocols, and have facilities that coexist separately
410 in distinct locations on the same property. Facilities at this
411 commitment level shall provide 24-hour awake supervision,
412 custody, care, and treatment of residents. Youth assessed and
413 classified for this level of placement require close supervision
414 in a structured residential setting. Placement in programs at
415 this level is prompted by a concern for public safety that
416 outweighs placement in programs at lower commitment levels. The
417 staff at a facility at this commitment level may seclude a child
418 who is a physical threat to himself or herself or others.
419 Mechanical restraint may also be used when necessary. The
420 facility may provide for single cell occupancy, except that
421 youth may be housed together during prerelease transition.

422 (c)~~(d)~~ Maximum-risk residential. ~~Programs or program~~
423 ~~models at this commitment level include juvenile correctional~~
424 ~~facilities and juvenile prisons.~~ The programs at this commitment
425 level are long-term residential and do not allow youth to have

426 access to the community. Facilities at this commitment level are
 427 maximum-custody, hardware-secure with perimeter security fencing
 428 and locking doors. Residential facilities at this commitment
 429 level shall have no more than 90 beds each, including campus-
 430 style programs, unless those campus-style programs include more
 431 than one treatment program using different treatment protocols,
 432 and have facilities that coexist separately in distinct
 433 locations on the same property. Facilities at this commitment
 434 level shall provide 24-hour awake supervision, custody, care,
 435 and treatment of residents. The staff at a facility at this
 436 commitment level may seclude a child who is a physical threat to
 437 himself or herself or others. Mechanical restraint may also be
 438 used when necessary. Facilities at this commitment level shall
 439 provide for single cell occupancy, except that youth may be
 440 housed together during prerelease transition. Youth assessed and
 441 classified for this level of placement require close supervision
 442 in a maximum security residential setting. Placement in a
 443 program at this level is prompted by a demonstrated need to
 444 protect the public.

445 (46) "Sex" means has the same meaning as provided in s.
 446 553.865 (3) .

447 (51)~~(50)~~ "Temporary release" means the terms and
 448 conditions under which a child is temporarily released from a
 449 residential commitment facility or allowed home visits. If the
 450 temporary release is from a moderate-risk ~~nonsecure~~ residential

451 facility, a high-risk residential facility, or a maximum-risk
 452 residential facility, the terms and conditions of the temporary
 453 release must be approved by the child, the court, and the
 454 facility.

455 Section 10. Paragraph (a) of subsection (1) of section
 456 985.039, Florida Statutes, is amended to read:

457 985.039 Cost of supervision; cost of care.—

458 (1) Except as provided in subsection (3) or subsection
 459 (4):

460 (a) When any child is placed into supervised release
 461 detention, probation, or other supervision status with the
 462 department, ~~or is committed to the minimum-risk nonresidential~~
 463 ~~restrictiveness level~~, the court shall order the parent of such
 464 child to pay to the department a fee for the cost of the
 465 supervision of such child in the amount of \$1 per day for each
 466 day that the child is in such status.

467 Section 11. Paragraph (f) of subsection (2) of section
 468 985.115, Florida Statutes, is amended to read:

469 985.115 Release or delivery from custody.—

470 (2) Unless otherwise ordered by the court under s. 985.255
 471 or s. 985.26, and unless there is a need to hold the child, a
 472 person taking a child into custody shall attempt to release the
 473 child as follows:

474 (f) If available, to a juvenile assessment center equipped
 475 and staffed to assume custody of the child for the purpose of

476 assessing the needs of the child in custody. The center may then
 477 release or deliver the child under this section with a copy of
 478 the assessment. A juvenile assessment center is not to be
 479 considered a facility that is permitted to receive a child as
 480 described in paragraph (c), paragraph (d), or paragraph (e).

481 Section 12. Paragraphs (a) and (b) of subsection (3) and
 482 subsection (4) of section 985.126, Florida Statutes, are amended
 483 to read:

484 985.126 Diversion programs; data collection; denial of
 485 participation or expunged record.—

486 (3) (a) ~~Beginning October 1, 2018,~~ Each diversion program
 487 shall submit data to the department which identifies for each
 488 minor participating in the diversion program:

489 1. The race, ethnicity, sex ~~gender~~, and age of that minor.

490 2. The offense committed, including the specific law
 491 establishing the offense.

492 3. The judicial circuit and county in which the offense
 493 was committed and the law enforcement agency that had contact
 494 with the minor for the offense.

495 4. Other demographic information necessary to properly
 496 register a case into the Juvenile Justice Information System
 497 Prevention Web, as specified by the department.

498 (b) ~~Beginning October 1, 2018,~~ Each law enforcement agency
 499 shall submit to the department data that identifies for each
 500 minor who was eligible for a diversion program, but was instead

501 referred to the department, provided a notice to appear, or
 502 arrested:

- 503 1. The data required pursuant to paragraph (a).
- 504 2. Whether the minor was offered the opportunity to
 505 participate in a diversion program. If the minor was:
 - 506 a. Not offered such opportunity, the reason such offer was
 507 not made.
 - 508 b. Offered such opportunity, whether the minor or his or
 509 her parent or legal guardian declined to participate in the
 510 diversion program.

511 (4) ~~Beginning January 1, 2019,~~ The department shall
 512 compile and semiannually publish the data required by subsection
 513 (3) on the department's website in a format that is, at a
 514 minimum, sortable by judicial circuit, county, law enforcement
 515 agency, race, ethnicity, sex ~~gender~~, age, and offense committed.

516 Section 13. Paragraph (a) of subsection (3) of section
 517 985.17, Florida Statutes, is amended to read:

518 985.17 Prevention services.—

519 (3) The department's prevention services for youth at risk
 520 of becoming delinquent should:

- 521 (a) Focus on preventing initial or further involvement of
 522 such youth in the juvenile justice system by including services
 523 such as literacy services, sex-specific ~~gender-specific~~
 524 programming, recreational services, and after-school services,
 525 and should include targeted services to troubled, truant,

526 | ungovernable, abused, trafficked, or runaway youth. To decrease
527 | the likelihood that a youth will commit a delinquent act, the
528 | department should use mentoring and may provide specialized
529 | services addressing the strengthening of families, job training,
530 | and substance abuse.

531 | Section 14. Paragraph (a) of subsection (2) of section
532 | 985.26, Florida Statutes, is amended to read:

533 | 985.26 Length of detention.—

534 | (2)(a)1. A court may order a child to be placed on
535 | supervised release detention care for any time period until an
536 | adjudicatory hearing is completed. However, if a child has
537 | served 60 days on supervised release detention care, the court
538 | must conduct a hearing within 15 days after the 60th day, to
539 | determine the need for continued supervised release detention
540 | care. At the hearing, and upon good cause being shown that the
541 | nature of the charge requires additional time for the
542 | prosecution or defense of the case or that the totality of the
543 | circumstances, including the preservation of public safety,
544 | warrants an extension, the court may order the child to remain
545 | on supervised release detention care until the adjudicatory
546 | hearing is completed.

547 | 2. Except as provided in paragraph (b) or paragraph (c), a
548 | child may not be held in secure detention care under a special
549 | detention order for more than 21 days unless an adjudicatory
550 | hearing for the case has been commenced in good faith by the

551 court.

552 3. This section does not prohibit a court from
 553 transitioning a child to and from secure detention care and
 554 supervised release detention care, including electronic
 555 monitoring, when the court finds such a placement necessary, or
 556 no longer necessary, to preserve public safety or to ensure the
 557 child's safety, appearance in court, or compliance with a court
 558 order. Such transfer may be upon the court's own motion, or upon
 559 motion of the child or the state, and after considering any
 560 information provided by the department regarding the child's
 561 adjustment to detention supervision. Each period of secure
 562 detention care or supervised release detention care counts
 563 toward the time limitations in this subsection whether served
 564 consecutively or nonconsecutively.

565 Section 15. Section 985.27, Florida Statutes, is amended
 566 to read:

567 985.27 Postdisposition detention while awaiting
 568 residential commitment placement.—The court must place all
 569 children who are adjudicated and awaiting placement in a
 570 moderate-risk ~~nonsecure~~, high-risk, or maximum-risk residential
 571 commitment program in secure detention care until the placement
 572 or commitment is accomplished.

573 Section 16. Subsection (2) of section 985.441, Florida
 574 Statutes, is amended to read:

575 985.441 Commitment.—

576 (2) Notwithstanding subsection (1), the court having
 577 jurisdiction over an adjudicated delinquent child whose offense
 578 is a misdemeanor, or a child who is currently on probation for a
 579 misdemeanor, may not commit the child for any misdemeanor
 580 offense or any probation violation that is technical in nature
 581 and not a new violation of law at a restrictiveness level other
 582 than minimum-risk nonresidential. However, the court may commit
 583 such child to a moderate-risk ~~nonsecure~~ residential placement
 584 if:

585 (a) The child has previously been adjudicated or had
 586 adjudication withheld for a felony offense;

587 (b) The child has previously been adjudicated or had
 588 adjudication withheld for three or more misdemeanor offenses
 589 within the previous 18 months;

590 (c) The child is before the court for disposition for a
 591 violation of s. 800.03, s. 806.031, or s. 828.12; or

592 (d) The court finds by a preponderance of the evidence
 593 that the protection of the public requires such placement or
 594 that the particular needs of the child would be best served by
 595 such placement. Such finding must be in writing.

596 Section 17. Subsection (3) of section 985.455, Florida
 597 Statutes, is amended to read:

598 985.455 Other dispositional issues.—

599 (3) Any commitment of a delinquent child to the department
 600 must be for an indeterminate period of time, which may include

601 periods of temporary release; however, the period of time may
602 not exceed the maximum term of imprisonment that an adult may
603 serve for the same offense, ~~except that the duration of a~~
604 ~~minimum-risk nonresidential commitment for an offense that is a~~
605 ~~misdemeanor of the second degree, or is equivalent to a~~
606 ~~misdemeanor of the second degree, may be for a period not to~~
607 ~~exceed 6 months.~~ The duration of the child's placement in a
608 commitment program of any restrictiveness level shall be based
609 on objective performance-based treatment planning. The child's
610 treatment plan progress and adjustment-related issues shall be
611 reported to the court quarterly, unless the court requests
612 monthly reports. If the child is under the jurisdiction of a
613 dependency court, the court may receive and consider any
614 information provided by the Guardian Ad Litem Program or the
615 child's attorney ad litem, if appointed. The child's length of
616 stay in a commitment program may be extended if the child fails
617 to comply with or participate in treatment activities. The
618 child's length of stay in the program shall not be extended for
619 purposes of sanction or punishment. Any temporary release from
620 such program must be approved by the court. Any child so
621 committed may be discharged from institutional confinement or a
622 program upon the direction of the department with the
623 concurrence of the court. The child's treatment plan progress
624 and adjustment-related issues must be communicated to the court
625 at the time the department requests the court to consider

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626 releasing the child from the commitment program. The department
627 shall give the court that committed the child to the department
628 reasonable notice, in writing, of its desire to discharge the
629 child from a commitment facility. The court that committed the
630 child may thereafter accept or reject the request. If the court
631 does not respond within 10 days after receipt of the notice, the
632 request of the department shall be deemed granted. This section
633 does not limit the department's authority to revoke a child's
634 temporary release status and return the child to a commitment
635 facility for any violation of the terms and conditions of the
636 temporary release.

637 Section 18. Section 985.465, Florida Statutes, is amended
638 to read:

639 985.465 Maximum-risk residential facilities ~~Juvenile~~
640 ~~correctional facilities or juvenile prison.~~ -A maximum risk
641 facility ~~juvenile correctional facility or juvenile prison~~ is a
642 physically secure residential commitment program with a
643 designated length of stay from 18 months to 36 months, primarily
644 serving children 13 years of age to 19 years of age or until the
645 jurisdiction of the court expires. Each child committed to this
646 level must meet one of the following criteria:

647 (1) The child is at least 13 years of age at the time of
648 the disposition for the current offense and has been adjudicated
649 on the current offense for:

650 (a) Arson;

- 651 (b) Sexual battery;
- 652 (c) Robbery;
- 653 (d) Kidnapping;
- 654 (e) Aggravated child abuse;
- 655 (f) Aggravated assault;
- 656 (g) Aggravated stalking;
- 657 (h) Murder;
- 658 (i) Manslaughter;
- 659 (j) Unlawful throwing, placing, or discharging of a
- 660 destructive device or bomb;
- 661 (k) Armed burglary;
- 662 (l) Aggravated battery;
- 663 (m) Carjacking;
- 664 (n) Home-invasion robbery;
- 665 (o) Burglary with an assault or battery;
- 666 (p) Any lewd or lascivious offense committed upon or in
- 667 the presence of a person less than 16 years of age; or
- 668 (q) Carrying, displaying, using, threatening to use, or
- 669 attempting to use a weapon or firearm during the commission of a
- 670 felony.
- 671 (2) The child is at least 13 years of age at the time of
- 672 the disposition, the current offense is a felony, and the child
- 673 has previously been committed three or more times to a
- 674 delinquency commitment program.
- 675 (3) The child is at least 13 years of age and is currently

676 committed for a felony offense and transferred from a moderate-
677 risk or high-risk residential commitment placement.

678 (4) The child is at least 13 years of age at the time of
679 the disposition for the current offense, the child is eligible
680 for prosecution as an adult for the current offense, and the
681 current offense is ranked at level 7 or higher on the Criminal
682 Punishment Code offense severity ranking chart pursuant to s.
683 921.0022.

684 Section 19. Subsection (12) is added to section 985.601,
685 Florida Statutes, and paragraph (a) of subsection (3) of that
686 section is amended, to read:

687 985.601 Administering the juvenile justice continuum.—

688 (3)(a) The department shall develop or contract for
689 diversified and innovative programs to provide rehabilitative
690 treatment, including early intervention and prevention,
691 diversion, comprehensive intake, case management, diagnostic and
692 classification assessments, trauma-informed care, individual and
693 family counseling, family engagement resources and programs,
694 sex-specific ~~gender-specific~~ programming, shelter care,
695 diversified detention care emphasizing alternatives to secure
696 detention, diversified probation, halfway houses, foster homes,
697 community-based substance abuse treatment services, community-
698 based mental health treatment services, community-based
699 residential and nonresidential programs, mother-infant programs,
700 and environmental programs. The department may pay expenses in

701 support of innovative programs and activities that address
702 identified needs and the well-being of children in the
703 department's care or under its supervision, subject to the
704 requirements of chapters 215, 216, and 287. Each program shall
705 place particular emphasis on reintegration and conditional
706 release for all children in the program.

707 (12) The department may use state or federal funds to
708 purchase and distribute promotional and educational materials
709 consistent with the dignity and integrity of the state for the
710 purposes of:

711 (a) Educating youth and families about the juvenile
712 justice continuum, including local prevention programs or
713 community services available for participation or enrollment.

714 (b) Staff recruitment at job fairs, career fairs,
715 community events, and technical education program, community
716 college, or state college campuses.

717 (c) Educating youth and families on youth-specific public
718 safety issues, including, but not limited to, safe storage of
719 adult-owned firearms, consequences of youth firearm offenses,
720 human trafficking, and drug and alcohol abuse.

721 Section 20. Section 985.664, Florida Statutes, is amended
722 to read:

723 985.664 Juvenile justice circuit advisory boards.—

724 (1) Each circuit shall have a juvenile justice circuit
725 advisory board. The board shall work with the chief probation

726 officer of the circuit to use data to inform policy and practice
727 which improves the juvenile justice continuum.

728 ~~(1) There is authorized a juvenile justice circuit~~
729 ~~advisory board to be established in each of the 20 judicial~~
730 ~~circuits. Except in single-county circuits, each juvenile~~
731 ~~justice circuit advisory board shall have a county organization~~
732 ~~representing each of the counties in the circuit. The county~~
733 ~~organization shall report directly to the juvenile justice~~
734 ~~circuit advisory board on the juvenile justice needs of the~~
735 ~~county. The purpose of each juvenile justice circuit advisory~~
736 ~~board is to provide advice and direction to the department in~~
737 ~~the development and implementation of juvenile justice programs~~
738 ~~and to work collaboratively with the department in seeking~~
739 ~~program improvements and policy changes to address the emerging~~
740 ~~and changing needs of Florida's youth who are at risk of~~
741 ~~delinquency.~~

742 ~~(2) The duties and responsibilities of a juvenile justice~~
743 ~~circuit advisory board include, but are not limited to:~~

744 ~~(a) Developing a comprehensive plan for the circuit. The~~
745 ~~initial circuit plan shall be submitted to the department no~~
746 ~~later than December 31, 2014, and no later than June 30 every 3~~
747 ~~years thereafter. The department shall prescribe a format and~~
748 ~~content requirements for the submission of the comprehensive~~
749 ~~plan.~~

750 ~~(b) Participating in the facilitation of interagency~~

751 ~~cooperation and information sharing.~~

752 ~~(c) Providing recommendations for public or private grants~~
 753 ~~to be administered by one of the community partners that support~~
 754 ~~one or more components of the comprehensive circuit plan.~~

755 ~~(d) Providing recommendations to the department in the~~
 756 ~~evaluation of prevention and early intervention grant programs,~~
 757 ~~including the Community Juvenile Justice Partnership Grant~~
 758 ~~program established in s. 985.676 and proceeds from the Invest~~
 759 ~~in Children license plate annual use fees.~~

760 ~~(e) Providing an annual report to the department~~
 761 ~~describing the board's activities. The department shall~~
 762 ~~prescribe a format and content requirements for submission of~~
 763 ~~annual reports. The annual report must be submitted to the~~
 764 ~~department no later than August 1 of each year.~~

765 (2)~~(3)~~ Each juvenile justice circuit advisory board shall
 766 have a minimum of 14 ~~16~~ members. The membership of each board
 767 must reflect:

768 (a) The circuit's geography and population distribution.

769 (b) Diversity in the judicial circuit.

770 (3)~~(4)~~ Each member of the juvenile justice circuit
 771 advisory board must be approved by the chief probation officer
 772 of the circuit ~~Secretary of Juvenile Justice~~, except those
 773 members listed in paragraphs (a), (b), (c), (e), (f), (g), and
 774 (h). Each ~~The~~ juvenile justice circuit advisory board ~~boards~~
 775 ~~established under subsection (1)~~ must include as members:

- 776 (a) The state attorney or his or her designee.
- 777 (b) The public defender or his or her designee.
- 778 (c) The chief judge or his or her designee.
- 779 (d) A representative of the corresponding circuit or
- 780 regional entity of the Department of Children and Families.
- 781 (e) The sheriff or the sheriff's designee from each county
- 782 in the circuit.
- 783 (f) A police chief or his or her designee from each county
- 784 in the circuit.
- 785 (g) A county commissioner or his or her designee from each
- 786 county in the circuit.
- 787 (h) The superintendent of each school district in the
- 788 circuit or his or her designee.
- 789 (i) A representative from the workforce organization of
- 790 each county in the circuit.
- 791 (j) A representative of the business community.
- 792 (k) A youth representative who has had an experience with
- 793 the juvenile justice system and is not older than 21 years of
- 794 age.
- 795 (l) A representative of the faith community.
- 796 (m) A health services representative who specializes in
- 797 mental health care, victim-service programs, or victims of
- 798 crimes.
- 799 (n) A parent or family member of a youth who has been
- 800 involved with the juvenile justice system.

801 (o) Up to three ~~five~~ representatives from the community.
802 ~~any of the following who are not otherwise represented in this~~
803 ~~subsection:~~

804 1. ~~Community leaders.~~

805 2. ~~Youth-serving coalitions.~~

806 (4) The chief probation officer in each circuit shall
807 serve as the chair of the juvenile justice circuit advisory
808 board for that circuit.

809 ~~(5) When a vacancy in the office of the chair occurs, the~~
810 ~~juvenile justice circuit advisory board shall appoint a new~~
811 ~~chair, who must meet the board membership requirements in~~
812 ~~subsection (4). The chair shall appoint members to vacant seats~~
813 ~~within 45 days after the vacancy and submit the appointments to~~
814 ~~the department for approval. The chair shall serve at the~~
815 ~~pleasure of the Secretary of Juvenile Justice.~~

816 ~~(6) A member may not serve more than three consecutive 2-~~
817 ~~year terms, except those members listed in paragraphs (4)(a),~~
818 ~~(b), (c), (e), (f), (g), and (h). A former member who has not~~
819 ~~served on the juvenile justice circuit advisory board for 2~~
820 ~~years is eligible to serve on the juvenile justice circuit~~
821 ~~advisory board again.~~

822 ~~(7) At least half of the voting members of the juvenile~~
823 ~~justice circuit advisory board constitutes a quorum. A quorum~~
824 ~~must be present in order for the board to vote on a measure or~~
825 ~~position.~~

826 ~~(8) In order for a juvenile justice circuit advisory board~~
827 ~~measure or position to pass, it must receive more than 50~~
828 ~~percent of the vote.~~

829 ~~(9) Each juvenile justice circuit advisory board must~~
830 ~~provide for the establishment of an executive committee of not~~
831 ~~more than 10 members. The duties and authority of the executive~~
832 ~~committee must be addressed in the bylaws.~~

833 ~~(10) Each juvenile justice circuit advisory board shall~~
834 ~~have bylaws. The department shall prescribe a format and content~~
835 ~~requirements for the bylaws. All bylaws must be approved by the~~
836 ~~department. The bylaws shall address at least the following~~
837 ~~issues: election or appointment of officers; filling of vacant~~
838 ~~positions; meeting attendance requirements; and the~~
839 ~~establishment and duties of an executive committee.~~

840 ~~(11) Members of juvenile justice circuit advisory boards~~
841 ~~are subject to part III of chapter 112.~~

842 Section 21. Paragraph (a) of subsection (1) of section
843 985.668, Florida Statutes, is amended to read:

844 985.668 Innovation zones.—The department shall encourage
845 each of the juvenile justice circuit boards to propose at least
846 one innovation zone within the circuit for the purpose of
847 implementing any experimental, pilot, or demonstration project
848 that furthers the legislatively established goals of the
849 department. An innovation zone is a defined geographic area such
850 as a circuit, commitment region, county, municipality, service

851 delivery area, school campus, or neighborhood providing a
 852 laboratory for the research, development, and testing of the
 853 applicability and efficacy of model programs, policy options,
 854 and new technologies for the department.

855 (1) (a) The chief probation officer in each circuit
 856 ~~juvenile justice circuit board~~ shall submit a proposal for an
 857 innovation zone to the secretary. If the purpose of the proposed
 858 innovation zone is to demonstrate that specific statutory goals
 859 can be achieved more effectively by using procedures that
 860 require modification of existing rules, policies, or procedures,
 861 the proposal may request the secretary to waive such existing
 862 rules, policies, or procedures or to otherwise authorize use of
 863 alternative procedures or practices. Waivers of such existing
 864 rules, policies, or procedures must comply with applicable state
 865 or federal law.

866 Section 22. Subsection (2) of section 985.676, Florida
 867 Statutes, is amended to read:

868 985.676 Community juvenile justice partnership grants.—

869 (2) GRANT APPLICATION PROCEDURES.—

870 (a) Each entity wishing to apply for an annual community
 871 juvenile justice partnership grant, which may be renewed for a
 872 maximum of 2 additional years for the same provision of
 873 services, shall submit a grant proposal for funding or continued
 874 funding to the department. The department shall establish the
 875 grant application procedures. In order to be considered for

876 funding, the grant proposal shall include the following
877 assurances and information:

878 ~~1. A letter from the chair of the juvenile justice circuit~~
879 ~~board confirming that the grant application has been reviewed~~
880 ~~and found to support one or more purposes or goals of the~~
881 ~~juvenile justice plan as developed by the board.~~

882 1.2. A rationale and description of the program and the
883 services to be provided, including goals and objectives.

884 2.3. A method for identification of the juveniles most
885 likely to be involved in the juvenile justice system who will be
886 the focus of the program.

887 3.4. Provisions for the participation of parents and
888 guardians in the program.

889 4.5. Coordination with other community-based and social
890 service prevention efforts, including, but not limited to, drug
891 and alcohol abuse prevention and dropout prevention programs,
892 that serve the target population or neighborhood.

893 5.6. An evaluation component to measure the effectiveness
894 of the program in accordance with s. 985.632.

895 6.7. A program budget, including the amount and sources of
896 local cash and in-kind resources committed to the budget. The
897 proposal must establish to the satisfaction of the department
898 that the entity will make a cash or in-kind contribution to the
899 program of a value that is at least equal to 20 percent of the
900 amount of the grant.

901 ~~7.8.~~ The necessary program staff.

902 (b) The department shall consider the recommendations of
903 community stakeholders ~~the juvenile justice circuit advisory~~
904 ~~board~~ as to the priority that should be given to proposals
905 submitted by entities within a circuit in awarding such grants.

906 (c) The department shall make available, to anyone wishing
907 to apply for such a grant, information on all of the criteria to
908 be used in the selection of the proposals for funding pursuant
909 to the provisions of this subsection.

910 (d) The department shall review all program proposals
911 submitted. Entities submitting proposals shall be notified of
912 approval not later than June 30 of each year.

913 (e) Each entity that is awarded a grant as provided for in
914 this section shall submit an annual evaluation report to the
915 department and, ~~the circuit juvenile justice manager, and the~~
916 ~~juvenile justice circuit advisory board~~, by a date subsequent to
917 the end of the contract period established by the department,
918 documenting the extent to which the program objectives have been
919 met, the effect of the program on the juvenile arrest rate, and
920 any other information required by the department. The department
921 shall coordinate and incorporate all such annual evaluation
922 reports with s. 985.632. Each entity is also subject to a
923 financial audit and a performance audit.

924 (f) The department may establish rules and policy
925 provisions necessary to implement this section.

926 Section 23. Paragraphs (q), (s), and (t) of subsection (2)
 927 section 1003.51, Florida Statutes, are redesignated as
 928 paragraphs (p), (q), and (r), respectively, and present
 929 paragraphs (g), (h), (p), and (r) of subsection (2) of that
 930 section are amended, to read:

931 1003.51 Other public educational services.—

932 (2) The State Board of Education shall adopt rules
 933 articulating expectations for effective education programs for
 934 students in Department of Juvenile Justice programs, including,
 935 but not limited to, education programs in juvenile justice
 936 prevention, day treatment, residential, and detention programs.
 937 The rule shall establish policies and standards for education
 938 programs for students in Department of Juvenile Justice programs
 939 and shall include the following:

940 (g) Assessment procedures, which:

941 1. For prevention and, day treatment, ~~and residential~~
 942 programs, include appropriate academic and career assessments
 943 administered at program entry and exit that are selected by the
 944 Department of Education in partnership with representatives from
 945 the Department of Juvenile Justice, district school boards, and
 946 education providers. ~~Assessments must be completed within the~~
 947 ~~first 10 school days after a student's entry into the program.~~

948 2. Provide for determination of the areas of academic need
 949 and strategies for appropriate intervention and instruction for
 950 each student in a detention facility within 5 school days after

951 the student's entry into the program and administer a research-
952 based assessment that will assist the student in determining his
953 or her educational and career options and goals within 22 school
954 days after the student's entry into the program.

955

956 The results of these assessments, together with a portfolio
957 depicting the student's academic and career accomplishments,
958 shall be included in the discharge packet assembled for each
959 student.

960 (h) Recommended instructional programs, including, but not
961 limited to:

962 1. Secondary education.

963 2. High school equivalency examination preparation.

964 3. Postsecondary education.

965 4. Career and professional education (CAPE).

966 5. Job preparation.

967 6. Virtual education that:

968 a. Provides competency-based instruction that addresses
969 the unique academic needs of the student through delivery by an
970 entity accredited by an accrediting body approved by the
971 Department of Education ~~Advanced or the Southern Association of~~
972 ~~Colleges and Schools.~~

973 b. Confers certifications and diplomas.

974 c. Issues credit that articulates with and transcripts
975 that are recognized by secondary schools.

976 d. Allows the student to continue to access and progress
977 through the program once the student leaves the juvenile justice
978 system.

979 ~~(p) Performance expectations for providers and district
980 school boards, including student performance measures by type of
981 program, education program performance ratings, school
982 improvement, and corrective action plans for low-performing
983 programs.~~

984 ~~(r) A series of graduated sanctions for district school
985 boards whose educational programs in Department of Juvenile
986 Justice programs are considered to be unsatisfactory and for
987 instances in which district school boards fail to meet standards
988 prescribed by law, rule, or State Board of Education policy.
989 These sanctions shall include the option of requiring a district
990 school board to contract with a provider or another district
991 school board if the educational program at the Department of
992 Juvenile Justice program is performing below minimum standards
993 and, after 6 months, is still performing below minimum
994 standards.~~

995 Section 24. Section 1003.52, Florida Statutes, is amended
996 to read:

997 1003.52 Educational services in Department of Juvenile
998 Justice programs.—

999 (1) The Department of Education shall serve as the lead
1000 agency for juvenile justice education programs, curriculum,

1001 support services, and resources. To this end, the Department of
 1002 Education and the Department of Juvenile Justice shall each
 1003 designate a Coordinator for Juvenile Justice Education Programs
 1004 to serve as the point of contact for resolving issues not
 1005 addressed by district school boards and to provide each
 1006 department's participation in the following activities:

1007 (a) Training, collaborating, and coordinating with
 1008 district school boards, local workforce development boards, and
 1009 local youth councils, educational contract providers, and
 1010 juvenile justice providers, whether state operated or
 1011 contracted.

1012 (b) Collecting information on the academic, career and
 1013 technical ~~professional~~ education ~~(CAPE)~~, and transition
 1014 performance of students in juvenile justice programs and
 1015 reporting on the results.

1016 (c) Developing academic and career and technical education
 1017 ~~CAPE~~ protocols that provide guidance to district school boards
 1018 and juvenile justice education providers in all aspects of
 1019 education programming, including records transfer and
 1020 transition.

1021 (d) Implementing a joint accountability, program
 1022 performance, and program improvement process.

1023
 1024 Annually, a cooperative agreement and plan for juvenile justice
 1025 education service enhancement shall be developed between the

1026 Department of Juvenile Justice and the Department of Education
 1027 and submitted to the Secretary of Juvenile Justice and the
 1028 Commissioner of Education by June 30. The plan shall include, at
 1029 a minimum, each agency's role regarding educational program
 1030 accountability, technical assistance, training, and coordination
 1031 of services.

1032 (2) Students participating in Department of Juvenile
 1033 Justice education programs pursuant to chapter 985 which are
 1034 sponsored by a community-based agency or are operated or
 1035 contracted for by the Department of Juvenile Justice shall
 1036 receive education programs according to rules of the State Board
 1037 of Education. These students shall be eligible for services
 1038 afforded to students enrolled in programs pursuant to s. 1003.53
 1039 and all corresponding State Board of Education rules.

1040 (3) The district school board of the county in which the
 1041 juvenile justice education prevention, day treatment,
 1042 ~~residential,~~ or detention program is located shall provide or
 1043 contract for appropriate educational assessments and an
 1044 appropriate program of instruction and special education
 1045 services.

1046 (a) All contracts between a district school board desiring
 1047 to contract directly with juvenile justice education programs to
 1048 provide academic instruction for students in such programs must
 1049 be in writing. Unless both parties agree to an extension of
 1050 time, the district school board and the juvenile justice

1051 education program shall negotiate and execute a new or renewal
 1052 contract within 40 days after the district school board provides
 1053 the proposal to the juvenile justice education program. The
 1054 Department of Education shall provide mediation services for any
 1055 disputes relating to this paragraph.

1056 (b) District school boards shall satisfy invoices issued
 1057 by juvenile justice education programs within 15 working days
 1058 after receipt. If a district school board does not timely issue
 1059 a warrant for payment, it must pay to the juvenile justice
 1060 education program interest at a rate of 1 percent per month,
 1061 calculated on a daily basis, on the unpaid balance until such
 1062 time as a warrant is issued for the invoice and accrued interest
 1063 amount. The district school board may not delay payment to a
 1064 juvenile justice education program of any portion of funds owed
 1065 pending the district's receipt of local funds.

1066 (c) The district school board shall make provisions for
 1067 each student to participate in basic career and technical
 1068 education, ~~CAPE~~, and exceptional student programs as
 1069 appropriate. Students served in Department of Juvenile Justice
 1070 education programs shall have access to the appropriate courses
 1071 and instruction to prepare them for the high school equivalency
 1072 examination. Students participating in high school equivalency
 1073 examination preparation programs shall be funded at the basic
 1074 program cost factor for Department of Juvenile Justice programs
 1075 in the Florida Education Finance Program. Each program shall be

1076 conducted according to applicable law providing for the
1077 operation of public schools and rules of the State Board of
1078 Education. School districts shall provide the high school
1079 equivalency examination exit option for all juvenile justice
1080 education programs.

1081 (d) The Department of Education, with the assistance of
1082 the school districts and juvenile justice education providers,
1083 shall select a common student assessment instrument and protocol
1084 for measuring student learning gains and student progression
1085 while a student is in a juvenile justice education program. The
1086 Department of Education and the Department of Juvenile Justice
1087 shall jointly review the effectiveness of this assessment and
1088 implement changes as necessary.

1089 (4) Educational services shall be provided at times of the
1090 day most appropriate for the juvenile justice program. School
1091 programming in juvenile justice detention, prevention or, day
1092 ~~treatment, and residential~~ programs shall be made available by
1093 the local school district during the juvenile justice school
1094 year, as provided in s. 1003.01(14). In addition, students in
1095 juvenile justice education programs shall have access to courses
1096 offered pursuant to ss. 1002.37, 1002.45, and 1003.498. The
1097 Department of Education and the school districts shall adopt
1098 policies necessary to provide such access.

1099 (5) The educational program shall provide instruction
1100 based on each student's individualized transition plan, assessed

1101 educational needs, and the education programs available in the
 1102 school district in which the student will return. Depending on
 1103 the student's needs, educational programming may consist of
 1104 remedial courses, academic courses required for grade
 1105 advancement, ~~CAPE courses,~~ high school equivalency examination
 1106 preparation, or exceptional student education curricula and
 1107 related services which support the transition goals and reentry
 1108 and which may lead to completion of the requirements for receipt
 1109 of a high school diploma or its equivalent. Prevention and day
 1110 treatment juvenile justice education programs, at a minimum,
 1111 shall provide career readiness and exploration opportunities as
 1112 well as truancy and dropout prevention intervention services.
 1113 ~~Residential juvenile justice education programs with a~~
 1114 ~~contracted minimum length of stay of 9 months shall provide CAPE~~
 1115 ~~courses that lead to preapprentice certifications and industry~~
 1116 ~~certifications. Programs with contracted lengths of stay of less~~
 1117 ~~than 9 months may provide career education courses that lead to~~
 1118 ~~preapprentice certifications and CAPE industry certifications.~~
 1119 ~~If the duration of a program is less than 40 days, the~~
 1120 ~~educational component may be limited to tutorial remediation~~
 1121 ~~activities, career employability skills instruction, education~~
 1122 ~~counseling, and transition services that prepare students for a~~
 1123 ~~return to school, the community, and their home settings based~~
 1124 ~~on the students' needs.~~

1125 (6) Participation in the program by students of compulsory

1126 school-attendance age as provided for in s. 1003.21 shall be
1127 mandatory. All students of noncompulsory school-attendance age
1128 who have not received a high school diploma or its equivalent
1129 shall participate in the educational program, unless the student
1130 files a formal declaration of his or her intent to terminate
1131 school enrollment as described in s. 1003.21 and is afforded the
1132 opportunity to take the high school equivalency examination and
1133 attain a Florida high school diploma before release from a
1134 juvenile justice education program. A student who has received a
1135 high school diploma or its equivalent and is not employed shall
1136 participate in workforce development or other CAPE education or
1137 Florida College System institution or university courses while
1138 in the program, subject to available funding.

1139 (7) An individualized progress monitoring plan shall be
1140 developed for all students not classified as exceptional
1141 education students upon entry in a juvenile justice education
1142 program and upon reentry in the school district. These plans
1143 shall address academic, literacy, and career and technical
1144 skills and shall include provisions for intensive remedial
1145 instruction in the areas of weakness.

1146 (8) Each district school board shall maintain an academic
1147 record for each student enrolled in a juvenile justice education
1148 program as prescribed by s. 1003.51. Such record shall delineate
1149 each course completed by the student according to procedures in
1150 the State Course Code Directory. The district school board shall

1151 include a copy of a student's academic record in the discharge
 1152 packet when the student exits the program.

1153 (9) Each district school board shall make provisions for
 1154 high school level students to earn credits toward high school
 1155 graduation while in ~~residential and nonresidential~~ juvenile
 1156 justice detention, prevention, or day treatment ~~education~~
 1157 programs. Provisions must be made for the transfer of credits
 1158 and partial credits earned.

1159 (10) School districts and juvenile justice education
 1160 providers shall develop individualized transition plans during
 1161 the course of a student's stay in a juvenile justice education
 1162 program to coordinate academic, career and technical, and
 1163 secondary and postsecondary services that assist the student in
 1164 successful community reintegration upon release. Development of
 1165 the transition plan shall be a collaboration of the personnel in
 1166 the juvenile justice education program, reentry personnel,
 1167 personnel from the school district where the student will
 1168 return, the student, the student's family, and the Department of
 1169 Juvenile Justice ~~personnel for committed students~~.

1170 (a) Transition planning must begin upon a student's
 1171 placement in the program. The transition plan must include, at a
 1172 minimum:

- 1173 1. Services and interventions that address the student's
- 1174 assessed educational needs and postrelease education plans.
- 1175 2. Services to be provided during the program stay and

1176 services to be implemented upon release, including, but not
1177 limited to, continuing education in secondary school, ~~CAPE~~
1178 ~~programs~~, postsecondary education, or employment, based on the
1179 student's needs.

1180 3. Specific monitoring responsibilities to determine
1181 whether the individualized transition plan is being implemented
1182 and the student is provided access to support services that will
1183 sustain the student's success by individuals who are responsible
1184 for the reintegration and coordination of these activities.

1185 (b) For the purpose of transition planning and reentry
1186 services, representatives from the school district and the one-
1187 stop center where the student will return shall participate as
1188 members of the local Department of Juvenile Justice reentry
1189 teams. The school district, upon return of a student from a
1190 juvenile justice education program, must consider the individual
1191 needs and circumstances of the student and the transition plan
1192 recommendations when reenrolling a student in a public school. A
1193 local school district may not maintain a standardized policy for
1194 all students returning from a juvenile justice program but place
1195 students based on their needs and their performance in the
1196 juvenile justice education program, including any virtual
1197 education options.

1198 (c) The Department of Education and the Department of
1199 Juvenile Justice shall provide oversight and guidance to school
1200 districts, education providers, and reentry personnel on how to

1201 implement effective educational transition planning and
1202 services.

1203 (11) The district school board shall recruit and train
1204 teachers who are interested, qualified, or experienced in
1205 educating students in juvenile justice programs. Students in
1206 juvenile justice programs shall be provided a wide range of
1207 education programs and opportunities including textbooks,
1208 technology, instructional support, and resources commensurate
1209 with resources provided to students in public schools, including
1210 textbooks and access to technology. If the district school board
1211 operates a juvenile justice education program at a juvenile
1212 justice facility, the district school board, in consultation
1213 with the director of the juvenile justice facility, shall select
1214 the instructional personnel assigned to that program. The
1215 Secretary of Juvenile Justice or the director of a juvenile
1216 justice program may request that the performance of a teacher
1217 assigned by the district to a juvenile justice education program
1218 be reviewed by the district and that the teacher be reassigned
1219 based upon an evaluation conducted pursuant to s. 1012.34 or for
1220 inappropriate behavior. Juvenile justice education programs
1221 shall have access to the substitute teacher pool used by the
1222 district school board.

1223 (12) District school boards may contract with a private
1224 provider for the provision of education programs to students
1225 placed in juvenile justice detention, prevention, or day

1226 treatment programs with the Department of Juvenile Justice and
1227 shall generate local, state, and federal funding, including
1228 funding through the Florida Education Finance Program for such
1229 students. The district school board's planning and budgeting
1230 process shall include the needs of Department of Juvenile
1231 Justice education programs in the district school board's plan
1232 for expenditures for state categorical and federal funds.

1233 (13) (a) Eligible students enrolled in juvenile justice
1234 education programs shall be funded the same as students enrolled
1235 in traditional public schools funded in the Florida Education
1236 Finance Program and as specified in s. 1011.62 and the General
1237 Appropriations Act.

1238 (b) Juvenile justice education programs to receive the
1239 appropriate FEFP funding for Department of Juvenile Justice
1240 education programs shall include those operated through a
1241 contract with the Department of Juvenile Justice.

1242 (c) Consistent with the rules of the State Board of
1243 Education, district school boards shall request an alternative
1244 FTE survey for Department of Juvenile Justice education programs
1245 experiencing fluctuations in student enrollment.

1246 (d) FTE count periods shall be prescribed in rules of the
1247 State Board of Education and shall be the same for programs of
1248 the Department of Juvenile Justice as for other public school
1249 programs. The summer school period for students in Department of
1250 Juvenile Justice education programs shall begin on the day

1251 immediately following the end of the regular school year and end
 1252 on the day immediately preceding the subsequent regular school
 1253 year. Students shall be funded for no more than 25 hours per
 1254 week of direct instruction.

1255 (e) Each juvenile justice education program must receive
 1256 all federal funds for which the program is eligible.

1257 (14) Each district school board shall negotiate a
 1258 cooperative agreement with the Department of Juvenile Justice on
 1259 the delivery of educational services to students in juvenile
 1260 justice detention, prevention, or day treatment programs under
 1261 the jurisdiction of the Department of Juvenile Justice. Such
 1262 agreement must include, but is not limited to:

1263 (a) Roles and responsibilities of each agency, including
 1264 the roles and responsibilities of contract providers.

1265 (b) Administrative issues including procedures for sharing
 1266 information.

1267 (c) Allocation of resources including maximization of
 1268 local, state, and federal funding.

1269 (d) Procedures for educational evaluation for educational
 1270 exceptionalities and special needs.

1271 (e) Curriculum and delivery of instruction.

1272 (f) Classroom management procedures and attendance
 1273 policies.

1274 (g) Procedures for provision of qualified instructional
 1275 personnel, whether supplied by the district school board or

1276 provided under contract by the provider, and for performance of
 1277 duties while in a juvenile justice setting.

1278 (h) Provisions for improving skills in teaching and
 1279 working with students referred to juvenile justice education
 1280 programs.

1281 (i) Transition plans for students moving into and out of
 1282 juvenile justice education programs.

1283 (j) Procedures and timelines for the timely documentation
 1284 of credits earned and transfer of student records.

1285 (k) Methods and procedures for dispute resolution.

1286 (l) Provisions for ensuring the safety of education
 1287 personnel and support for the agreed-upon education program.

1288 (m) Strategies for correcting any deficiencies found
 1289 through the accountability and evaluation system and student
 1290 performance measures.

1291 (15) Nothing in this section or in a cooperative agreement
 1292 requires the district school board to provide more services than
 1293 can be supported by the funds generated by students in the
 1294 juvenile justice programs.

1295 ~~(16) The Department of Education, in consultation with the~~
 1296 ~~Department of Juvenile Justice, district school boards, and~~
 1297 ~~providers, shall adopt rules establishing:~~

1298 ~~(a) Objective and measurable student performance measures~~
 1299 ~~to evaluate a student's educational progress while participating~~
 1300 ~~in a prevention, day treatment, or residential program. The~~

1301 ~~student performance measures must be based on appropriate~~
1302 ~~outcomes for all students in juvenile justice education~~
1303 ~~programs, taking into consideration the student's length of stay~~
1304 ~~in the program. Performance measures shall include outcomes that~~
1305 ~~relate to student achievement of career education goals,~~
1306 ~~acquisition of employability skills, receipt of a high school~~
1307 ~~diploma or its equivalent, grade advancement, and the number of~~
1308 ~~CAPE industry certifications earned.~~

1309 ~~(b) A performance rating system to be used by the~~
1310 ~~Department of Education to evaluate the delivery of educational~~
1311 ~~services within each of the juvenile justice programs. The~~
1312 ~~performance rating shall be primarily based on data regarding~~
1313 ~~student performance as described in paragraph (a).~~

1314 ~~(c) The timeframes, procedures, and resources to be used~~
1315 ~~to improve a low-rated educational program or to terminate or~~
1316 ~~reassign the program.~~

1317 ~~(d) The Department of Education, in partnership with the~~
1318 ~~Department of Juvenile Justice, shall develop a comprehensive~~
1319 ~~accountability and program improvement process. The~~
1320 ~~accountability and program improvement process shall be based on~~
1321 ~~student performance measures by type of program and shall rate~~
1322 ~~education program performance. The accountability system shall~~
1323 ~~identify and recognize high-performing education programs. The~~
1324 ~~Department of Education, in partnership with the Department of~~
1325 ~~Juvenile Justice, shall identify low-performing programs. Low-~~

1326 ~~performing education programs shall receive an onsite program~~
1327 ~~evaluation from the Department of Juvenile Justice. School~~
1328 ~~improvement, technical assistance, or the reassignment of the~~
1329 ~~program shall be based, in part, on the results of the program~~
1330 ~~evaluation. Through a corrective action process, low-performing~~
1331 ~~programs must demonstrate improvement or the programs shall be~~
1332 ~~reassigned.~~

1333 (16)~~(17)~~ The department, in collaboration with the
1334 Department of Juvenile Justice, shall collect data and report on
1335 ~~commitment~~, day treatment, prevention, and detention programs.
1336 The report shall be submitted to the President of the Senate,
1337 the Speaker of the House of Representatives, and the Governor by
1338 February 1 of each year. The report must include, at a minimum:

- 1339 (a) The number and percentage of students who:
- 1340 1. Return to an alternative school, middle school, or high
1341 school upon release and the attendance rate of such students
1342 before and after participation in juvenile justice education
1343 programs.
 - 1344 2. Receive a standard high school diploma or a high school
1345 equivalency diploma.
 - 1346 3. Receive industry certification.
 - 1347 4. Enroll in a postsecondary educational institution.
 - 1348 5. Complete a juvenile justice education program without
1349 reoffending.
 - 1350 6. Reoffend within 1 year after completion of a day

1351 treatment ~~or residential commitment~~ program.

1352 7. Remain employed 1 year after completion of a day
1353 treatment ~~or residential commitment~~ program.

1354 8. Demonstrate learning gains pursuant to paragraph
1355 (3) (d).

1356 (b) The following cost data for each juvenile justice
1357 education program:

1358 1. The amount of funding provided by district school
1359 boards to juvenile justice programs and the amount retained for
1360 administration, including documenting the purposes of such
1361 expenses.

1362 2. The status of the development of cooperative
1363 agreements.

1364 3. Recommendations for system improvement.

1365 4. Information on the identification of, and services
1366 provided to, exceptional students, to determine whether these
1367 students are properly reported for funding and are appropriately
1368 served.

1369 ~~(17)-(18)~~ The district school board shall not be charged
1370 any rent, maintenance, utilities, or overhead on such
1371 facilities. Maintenance, repairs, and remodeling of existing
1372 facilities shall be provided by the Department of Juvenile
1373 Justice.

1374 ~~(18)-(19)~~ When additional facilities are required for
1375 juvenile justice detention, prevention, or day treatment

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1376 programs, the district school board and the Department of
1377 Juvenile Justice shall agree on the appropriate site based on
1378 the instructional needs of the students. When the most
1379 appropriate site for instruction is on district school board
1380 property, a special capital outlay request shall be made by the
1381 commissioner in accordance with s. 1013.60. When the most
1382 appropriate site is on state property, state capital outlay
1383 funds shall be requested by the Department of Juvenile Justice
1384 provided by s. 216.043 and shall be submitted as specified by s.
1385 216.023. Any instructional facility to be built on state
1386 property shall have educational specifications jointly developed
1387 by the district school board and the Department of Juvenile
1388 Justice and approved by the Department of Education. The size of
1389 space and occupant design capacity criteria as provided by State
1390 Board of Education rules shall be used for remodeling or new
1391 construction whether facilities are provided on state property
1392 or district school board property.

1393 (19)~~(20)~~ The parent of an exceptional student shall have
1394 the due process rights provided for in this chapter.

1395 (20)~~(21)~~ The State Board of Education shall adopt rules
1396 necessary to implement this section. Such rules must require the
1397 minimum amount of paperwork and reporting.

1398 ~~(22) The Department of Juvenile Justice and the Department~~
1399 ~~of Education, in consultation with CareerSource Florida, Inc.,~~
1400 ~~the statewide Workforce Development Youth Council, district~~

1401 ~~school boards, Florida College System institutions, providers,~~
 1402 ~~and others, shall jointly develop a multiagency plan for CAPE~~
 1403 ~~which describes the funding, curriculum, transfer of credits,~~
 1404 ~~goals, and outcome measures for career education programming in~~
 1405 ~~juvenile commitment facilities, pursuant to s. 985.622. The plan~~
 1406 ~~must be reviewed annually.~~

1407 Section 25. Paragraph (c) of subsection (18) of section
 1408 1001.42, Florida Statutes, is amended to read:

1409 1001.42 Powers and duties of district school board.—The
 1410 district school board, acting as a board, shall exercise all
 1411 powers and perform all duties listed below:

1412 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
 1413 Maintain a system of school improvement and education
 1414 accountability as provided by statute and State Board of
 1415 Education rule. This system of school improvement and education
 1416 accountability shall be consistent with, and implemented
 1417 through, the district's continuing system of planning and
 1418 budgeting required by this section and ss. 1008.385, 1010.01,
 1419 and 1011.01. This system of school improvement and education
 1420 accountability shall comply with the provisions of ss. 1008.33,
 1421 1008.34, 1008.345, and 1008.385 and include the following:

1422 (c) Public disclosure.—The district school board shall
 1423 provide information regarding the performance of students and
 1424 educational programs as required pursuant to ss. 1008.22 and
 1425 1008.385 and implement a system of school reports as required by

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1426 | statute and State Board of Education rule which shall include
1427 | schools operating for the purpose of providing educational
1428 | services to students in Department of Juvenile Justice programs,
1429 | and for those schools, report on the elements specified in s.
1430 | 1003.52(16) ~~1003.52(17)~~. Annual public disclosure reports shall
1431 | be in an easy-to-read report card format and shall include the
1432 | school's grade, high school graduation rate calculated without
1433 | high school equivalency examinations, disaggregated by student
1434 | ethnicity, and performance data as specified in state board
1435 | rule.

1436 | Section 26. This act shall take effect July 1, 2024.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Yarkosky offered the following:

Amendment (with title amendment)

Remove lines 177-1435 and insert:

6 this subsection. The ~~boards or~~ department shall propose the
 7 implementation of a community service program in each circuit,
 8 and may submit a circuit plan, to be implemented upon approval
 9 of the circuit alternative sanctions coordinator.

10 Section 5. Subsection (4) of section 938.17, Florida
 11 Statutes, is amended to read:

12 938.17 County delinquency prevention; juvenile assessment
 13 centers and school board suspension programs.—

14 (4) A sheriff's office that receives proceeds pursuant to
 15 s. 939.185 shall account for all funds annually by August 1 in a
 16 written report to the Department of Juvenile Justice ~~juvenile~~

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17 ~~justice circuit advisory board~~ if funds are used for assessment
18 centers, and to the district school board if funds are used for
19 suspension programs.

20 Section 6. Subsection (1) of section 943.0515, Florida
21 Statutes, is amended to read:

22 943.0515 Retention of criminal history records of minors.—

23 (1)(a) The Criminal Justice Information Program shall
24 retain the criminal history record of a minor who is classified
25 as a serious or habitual juvenile offender or committed to a
26 maximum risk residential facility ~~juvenile correctional facility~~
27 ~~or juvenile prison~~ under chapter 985 for 5 years after the date
28 the offender reaches 21 years of age, at which time the record
29 shall be expunged unless it meets the criteria of paragraph
30 (2)(a) or paragraph (2)(b).

31 (b)1. If the minor is not classified as a serious or
32 habitual juvenile offender or committed to a maximum risk
33 residential facility ~~juvenile correctional facility~~ ~~or juvenile~~
34 ~~prison~~ under chapter 985, the program shall retain the minor's
35 criminal history record for 2 years after the date the minor
36 reaches 19 years of age, at which time the record shall be
37 expunged unless it meets the criteria of paragraph (2)(a) or
38 paragraph (2)(b).

39 2. A minor described in subparagraph 1. may apply to the
40 department to have his or her criminal history record expunged
41 before the minor reaches 21 years of age. To be eligible for

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42 expunction under this subparagraph, the minor must be 18 years
43 of age or older and less than 21 years of age and have not been
44 charged by the state attorney with or found to have committed
45 any criminal offense within the 5-year period before the
46 application date. The only offenses eligible to be expunged
47 under this subparagraph are those that the minor committed
48 before the minor reached 18 years of age. A criminal history
49 record expunged under this subparagraph requires the approval of
50 the state attorney for each circuit in which an offense
51 specified in the criminal history record occurred. A minor
52 seeking to expunge a criminal history record under this
53 subparagraph shall apply to the department for expunction in the
54 manner prescribed by rule. An application for expunction under
55 this subparagraph shall include:

56 a. A processing fee of \$75 to the department for placement
57 in the Department of Law Enforcement Operating Trust Fund,
58 unless such fee is waived by the executive director.

59 b. A full set of fingerprints of the applicant taken by a
60 law enforcement agency for purposes of identity verification.

61 c. A sworn, written statement from the minor seeking
62 relief that he or she is no longer under court supervision
63 applicable to the disposition of the arrest or alleged criminal
64 activity to which the application to expunge pertains and that
65 he or she has not been charged with or found to have committed a
66 criminal offense, in any jurisdiction of the state or within the

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67 United States, within the 5-year period before the application
68 date. A person who knowingly provides false information on the
69 sworn statement required by this sub-subparagraph commits a
70 misdemeanor of the first degree, punishable as provided in s.
71 775.082 or s. 775.083.

72 3. A minor who applies, but who is not approved for early
73 expunction in accordance with subparagraph 2., shall have his or
74 her criminal history record expunged at age 21 if eligible under
75 subparagraph 1.

76 Section 7. Subsection (2) of section 948.51, Florida
77 Statutes, is amended to read:

78 948.51 Community corrections assistance to counties or
79 county consortiums.—

80 (2) ELIGIBILITY OF COUNTIES AND COUNTY CONSORTIUMS.—A
81 county, or a consortium of two or more counties, may contract
82 with the Department of Corrections for community corrections
83 funds as provided in this section. In order to enter into a
84 community corrections partnership contract, a county or county
85 consortium must have a public safety coordinating council
86 established under s. 951.26 and must designate a county officer
87 or agency to be responsible for administering community
88 corrections funds received from the state. The public safety
89 coordinating council shall prepare, develop, and implement a
90 comprehensive public safety plan for the county, or the
91 geographic area represented by the county consortium, and shall

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92 submit an annual report to the Department of Corrections
93 concerning the status of the program. In preparing the
94 comprehensive public safety plan, the public safety coordinating
95 council shall cooperate with the Department of Juvenile Justice
96 ~~juvenile justice circuit advisory board established under s.~~
97 ~~985.664~~ in order to include programs and services for juveniles
98 in the plan. To be eligible for community corrections funds
99 under the contract, the initial public safety plan must be
100 approved by the governing board of the county, or the governing
101 board of each county within the consortium, and the Secretary of
102 Corrections based on the requirements of this section. If one or
103 more other counties develop a unified public safety plan, the
104 public safety coordinating council shall submit a single
105 application to the department for funding. Continued contract
106 funding shall be pursuant to subsection (5). The plan for a
107 county or county consortium must cover at least a 5-year period
108 and must include:

109 (a) A description of programs offered for the job
110 placement and treatment of offenders in the community.

111 (b) A specification of community-based intermediate
112 sentencing options to be offered and the types and number of
113 offenders to be included in each program.

114 (c) Specific goals and objectives for reducing the
115 projected percentage of commitments to the state prison system

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116 of persons with low total sentencing scores pursuant to the
117 Criminal Punishment Code.

118 (d) Specific evidence of the population status of all
119 programs which are part of the plan, which evidence establishes
120 that such programs do not include offenders who otherwise would
121 have been on a less intensive form of community supervision.

122 (e) The assessment of population status by the public
123 safety coordinating council of all correctional facilities owned
124 or contracted for by the county or by each county within the
125 consortium.

126 (f) The assessment of bed space that is available for
127 substance abuse intervention and treatment programs and the
128 assessment of offenders in need of treatment who are committed
129 to each correctional facility owned or contracted for by the
130 county or by each county within the consortium.

131 (g) A description of program costs and sources of funds
132 for each community corrections program, including community
133 corrections funds, loans, state assistance, and other financial
134 assistance.

135 Section 8. Paragraph (h) of subsection (1) and subsection
136 (7) of section 985.02, Florida Statutes, are amended to read:

137 985.02 Legislative intent for the juvenile justice
138 system.—

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139 (1) GENERAL PROTECTIONS FOR CHILDREN.—It is a purpose of
140 the Legislature that the children of this state be provided with
141 the following protections:

142 (h) Sex-specific ~~Gender-specific~~ programming and sex-
143 specific ~~gender-specific~~ program models and services that
144 comprehensively address the needs of either sex ~~a targeted~~
145 ~~gender group~~.

146 (7) SEX-SPECIFIC ~~GENDER-SPECIFIC~~ PROGRAMMING.—

147 (a) The Legislature finds that the needs of children
148 served by the juvenile justice system are sex-specific ~~gender-~~
149 ~~specific~~. A sex-specific ~~gender-specific~~ approach is one in
150 which programs, services, and treatments comprehensively address
151 the unique developmental needs of either sex ~~a targeted gender~~
152 ~~group~~ under the care of the department. Young women and men have
153 different pathways to delinquency, display different patterns of
154 offending, and respond differently to interventions, treatment,
155 and services.

156 (b) Sex-specific ~~Gender-specific~~ interventions focus on
157 the differences between young females' and young males' social
158 roles and responsibilities, access to and use of resources,
159 history of trauma, and reasons for interaction with the juvenile
160 justice system. Sex-specific ~~Gender-specific~~ programs increase
161 the effectiveness of programs by making interventions more
162 appropriate to the specific needs of young women and men and
163 ensuring that these programs do not unknowingly create,

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164 maintain, or reinforce sex ~~gender~~ roles or relations that may be
165 damaging.

166 Section 9. Subsections (46) through (54) of section
167 985.03, Florida Statutes, are renumbered as subsections (47)
168 through (55), respectively, subsections (14) and (44) and
169 present subsection (50) are amended, and a new subsection (46)
170 is added to that section, to read:

171 985.03 Definitions.—As used in this chapter, the term:

172 (14) "Day treatment" means a nonresidential, community-
173 based program designed to provide therapeutic intervention to
174 youth who are served by the department or, placed on probation
175 or conditional release, ~~or committed to the minimum-risk~~
176 ~~nonresidential level~~. A day treatment program may provide
177 educational and career and technical education services and
178 shall provide case management services; individual, group, and
179 family counseling; training designed to address delinquency risk
180 factors; and monitoring of a youth's compliance with, and
181 facilitation of a youth's completion of, sanctions if ordered by
182 the court. Program types may include, but are not limited to,
183 career programs, marine programs, juvenile justice alternative
184 schools, training and rehabilitation programs, and sex-specific
185 ~~gender-specific~~ programs.

186 (44) "Restrictiveness level" means the level of
187 programming and security provided by programs that service the
188 supervision, custody, care, and treatment needs of committed

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189 children. Sections 985.601(10) and 985.721 apply to children
190 placed in programs at any residential commitment level. The
191 restrictiveness levels of commitment are as follows:

192 ~~(a) Minimum-risk nonresidential.—Programs or program~~
193 ~~models at this commitment level work with youth who remain in~~
194 ~~the community and participate at least 5 days per week in a day~~
195 ~~treatment program. Youth assessed and classified for programs at~~
196 ~~this commitment level represent a minimum risk to themselves and~~
197 ~~public safety and do not require placement and services in~~
198 ~~residential settings. Youth in this level have full access to,~~
199 ~~and reside in, the community. Youth who have been found to have~~
200 ~~committed delinquent acts that involve firearms, that are sexual~~
201 ~~offenses, or that would be life felonies or first degree~~
202 ~~felonies if committed by an adult may not be committed to a~~
203 ~~program at this level.~~

204 ~~(a)(b) Moderate-risk Nonsecure residential.—Programs or~~
205 ~~program models at this commitment level are residential but may~~
206 ~~allow youth to have supervised access to the community.~~
207 ~~Facilities at this commitment level are either environmentally~~
208 ~~secure, staff secure, or are hardware-secure with walls,~~
209 ~~fencing, or locking doors. Residential facilities at this~~
210 ~~commitment level shall have no more than 90 beds each, including~~
211 ~~campus-style programs, unless those campus-style programs~~
212 ~~include more than one treatment program using different~~
213 ~~treatment protocols, and have facilities that coexist separately~~

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214 in distinct locations on the same property. Facilities at this
215 commitment level shall provide 24-hour awake supervision,
216 custody, care, and treatment of residents. Youth assessed and
217 classified for placement in programs at this commitment level
218 represent a low or moderate risk to public safety and require
219 close supervision. The staff at a facility at this commitment
220 level may seclude a child who is a physical threat to himself or
221 herself or others. Mechanical restraint may also be used when
222 necessary.

223 ~~(b)(e)~~ High-risk residential.—Programs or program models
224 at this commitment level are residential and do not allow youth
225 to have access to the community, except that temporary release
226 providing community access for up to 72 continuous hours may be
227 approved by a court for a youth who has made successful progress
228 in his or her program in order for the youth to attend a family
229 emergency or, during the final 60 days of his or her placement,
230 to visit his or her home, enroll in school or a career and
231 technical education program, complete a job interview, or
232 participate in a community service project. High-risk
233 residential facilities are hardware-secure with perimeter
234 fencing and locking doors. Residential facilities at this
235 commitment level shall have no more than 90 beds each, including
236 campus-style programs, unless those campus-style programs
237 include more than one treatment program using different
238 treatment protocols, and have facilities that coexist separately

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239 in distinct locations on the same property. Facilities at this
240 commitment level shall provide 24-hour awake supervision,
241 custody, care, and treatment of residents. Youth assessed and
242 classified for this level of placement require close supervision
243 in a structured residential setting. Placement in programs at
244 this level is prompted by a concern for public safety that
245 outweighs placement in programs at lower commitment levels. The
246 staff at a facility at this commitment level may seclude a child
247 who is a physical threat to himself or herself or others.
248 Mechanical restraint may also be used when necessary. The
249 facility may provide for single cell occupancy, except that
250 youth may be housed together during prerelease transition.

251 ~~(c)-(d) Maximum-risk residential. Programs or program~~
252 ~~models at this commitment level include juvenile correctional~~
253 ~~facilities and juvenile prisons.~~ The programs at this commitment
254 level are long-term residential and do not allow youth to have
255 access to the community. Facilities at this commitment level are
256 maximum-custody, hardware-secure with perimeter security fencing
257 and locking doors. Residential facilities at this commitment
258 level shall have no more than 90 beds each, including campus-
259 style programs, unless those campus-style programs include more
260 than one treatment program using different treatment protocols,
261 and have facilities that coexist separately in distinct
262 locations on the same property. Facilities at this commitment
263 level shall provide 24-hour awake supervision, custody, care,

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264 and treatment of residents. The staff at a facility at this
265 commitment level may seclude a child who is a physical threat to
266 himself or herself or others. Mechanical restraint may also be
267 used when necessary. Facilities at this commitment level shall
268 provide for single cell occupancy, except that youth may be
269 housed together during prerelease transition. Youth assessed and
270 classified for this level of placement require close supervision
271 in a maximum security residential setting. Placement in a
272 program at this level is prompted by a demonstrated need to
273 protect the public.

274 (46) "Sex" has the same meaning as provided in s.
275 553.865(3).

276 (51) ~~(50)~~ "Temporary release" means the terms and
277 conditions under which a child is temporarily released from a
278 residential commitment facility or allowed home visits. If the
279 temporary release is from a moderate-risk ~~nonsecure~~ residential
280 facility, a high-risk residential facility, or a maximum-risk
281 residential facility, the terms and conditions of the temporary
282 release must be approved by the child, the court, and the
283 facility.

284 Section 10. Paragraph (a) of subsection (1) of section
285 985.039, Florida Statutes, is amended to read:

286 985.039 Cost of supervision; cost of care.—

287 (1) Except as provided in subsection (3) or subsection
288 (4):

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289 (a) When any child is placed into supervised release
290 detention, probation, or other supervision status with the
291 department, ~~or is committed to the minimum-risk nonresidential~~
292 ~~restrictiveness level~~, the court shall order the parent of such
293 child to pay to the department a fee for the cost of the
294 supervision of such child in the amount of \$1 per day for each
295 day that the child is in such status.

296 Section 11. Paragraph (f) of subsection (2) of section
297 985.115, Florida Statutes, is amended to read:

298 985.115 Release or delivery from custody.—

299 (2) Unless otherwise ordered by the court under s. 985.255
300 or s. 985.26, and unless there is a need to hold the child, a
301 person taking a child into custody shall attempt to release the
302 child as follows:

303 (f) If available, to a juvenile assessment center equipped
304 and staffed to assume custody of the child for the purpose of
305 assessing the needs of the child in custody. The center may then
306 release or deliver the child under this section with a copy of
307 the assessment. A juvenile assessment center may not be
308 considered a facility that can receive a child under paragraph
309 (c), paragraph (d), or paragraph (e).

310 Section 12. Paragraphs (a) and (b) of subsection (3) and
311 subsection (4) of section 985.126, Florida Statutes, are amended
312 to read:

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313 985.126 Diversion programs; data collection; denial of
314 participation or expunged record.—

315 (3)(a) ~~Beginning October 1, 2018,~~ Each diversion program
316 shall submit data to the department which identifies for each
317 minor participating in the diversion program:

318 1. The race, ethnicity, sex ~~gender~~, and age of that minor.

319 2. The offense committed, including the specific law
320 establishing the offense.

321 3. The judicial circuit and county in which the offense
322 was committed and the law enforcement agency that had contact
323 with the minor for the offense.

324 4. Other demographic information necessary to properly
325 register a case into the Juvenile Justice Information System
326 Prevention Web, as specified by the department.

327 (b) ~~Beginning October 1, 2018,~~ Each law enforcement agency
328 shall submit to the department data that identifies for each
329 minor who was eligible for a diversion program, but was instead
330 referred to the department, provided a notice to appear, or
331 arrested:

332 1. The data required pursuant to paragraph (a).

333 2. Whether the minor was offered the opportunity to
334 participate in a diversion program. If the minor was:

335 a. Not offered such opportunity, the reason such offer was
336 not made.

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337 b. Offered such opportunity, whether the minor or his or
338 her parent or legal guardian declined to participate in the
339 diversion program.

340 (4) ~~Beginning January 1, 2019,~~ The department shall
341 compile and semiannually publish the data required by subsection
342 (3) on the department's website in a format that is, at a
343 minimum, sortable by judicial circuit, county, law enforcement
344 agency, race, ethnicity, sex ~~gender~~, age, and offense committed.

345 Section 13. Paragraph (a) of subsection (3) of section
346 985.17, Florida Statutes, is amended to read:

347 985.17 Prevention services.—

348 (3) The department's prevention services for youth at risk
349 of becoming delinquent should:

350 (a) Focus on preventing initial or further involvement of
351 such youth in the juvenile justice system by including services
352 such as literacy services, sex-specific ~~gender-specific~~
353 programming, recreational services, and after-school services,
354 and should include targeted services to troubled, truant,
355 ungovernable, abused, trafficked, or runaway youth. To decrease
356 the likelihood that a youth will commit a delinquent act, the
357 department should use mentoring and may provide specialized
358 services addressing the strengthening of families, job training,
359 and substance abuse.

360 Section 14. Paragraph (a) of subsection (2) of section
361 985.26, Florida Statutes, is amended to read:

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362 985.26 Length of detention.—

363 (2)(a)1. A court may order a child to be placed on
364 supervised release detention care for any time period until an
365 adjudicatory hearing is completed. However, if a child has
366 served 60 days on supervised release detention care, the court
367 must conduct a hearing within 15 days after the 60th day, to
368 determine the need for continued supervised release detention
369 care. At the hearing, and upon good cause being shown that the
370 nature of the charge requires additional time for the
371 prosecution or defense of the case or that the totality of the
372 circumstances, including the preservation of public safety,
373 warrants an extension, the court may order the child to remain
374 on supervised release detention care until the adjudicatory
375 hearing is completed.

376 2. Except as provided in paragraph (b) or paragraph (c), a
377 child may not be held in secure detention care under a special
378 detention order for more than 21 days unless an adjudicatory
379 hearing for the case has been commenced in good faith by the
380 court.

381 3. This section does not prohibit a court from
382 transitioning a child to and from secure detention care and
383 supervised release detention care, including electronic
384 monitoring, when the court finds such a placement necessary, or
385 no longer necessary, to preserve public safety or to ensure the
386 child's safety, appearance in court, or compliance with a court

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387 order. Such transition may be initiated upon the court's own
388 motion, or upon a motion of the child or of the state, and after
389 considering any information provided by the department regarding
390 the child's adjustment to detention supervision. Each period of
391 secure detention care or supervised release detention care
392 counts toward the time limitations in this subsection whether
393 served consecutively or nonconsecutively.

394 Section 15. Section 985.27, Florida Statutes, is amended
395 to read:

396 985.27 Postdisposition detention while awaiting
397 residential commitment placement.—The court must place all
398 children who are adjudicated and awaiting placement in a
399 moderate-risk nonsecure, high-risk, or maximum-risk residential
400 commitment program in secure detention care until the placement
401 or commitment is accomplished.

402 Section 16. Subsection (2) of section 985.441, Florida
403 Statutes, is amended to read:

404 985.441 Commitment.—

405 (2) Notwithstanding subsection (1), the court having
406 jurisdiction over an adjudicated delinquent child whose offense
407 is a misdemeanor, or a child who is currently on probation for a
408 misdemeanor, may not commit the child for any misdemeanor
409 offense or any probation violation that is technical in nature
410 and not a new violation of law ~~at a restrictiveness level other~~
411 ~~than minimum-risk nonresidential~~. However, the court may commit

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412 such child to a moderate-risk ~~nonsecure~~ residential placement
413 if:

414 (a) The child has previously been adjudicated or had
415 adjudication withheld for a felony offense;

416 (b) The child has previously been adjudicated or had
417 adjudication withheld for three or more misdemeanor offenses
418 within the previous 18 months;

419 (c) The child is before the court for disposition for a
420 violation of s. 800.03, s. 806.031, or s. 828.12; or

421 (d) The court finds by a preponderance of the evidence
422 that the protection of the public requires such placement or
423 that the particular needs of the child would be best served by
424 such placement. Such finding must be in writing.

425 Section 17. Subsection (3) of section 985.455, Florida
426 Statutes, is amended to read:

427 985.455 Other dispositional issues.—

428 (3) Any commitment of a delinquent child to the department
429 must be for an indeterminate period of time, which may include
430 periods of temporary release; however, the period of time may
431 not exceed the maximum term of imprisonment that an adult may
432 serve for the same offense, ~~except that the duration of a~~
433 ~~minimum-risk nonresidential commitment for an offense that is a~~
434 ~~misdemeanor of the second degree, or is equivalent to a~~
435 ~~misdemeanor of the second degree, may be for a period not to~~
436 ~~exceed 6 months.~~ The duration of the child's placement in a

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437 commitment program of any restrictiveness level shall be based
438 on objective performance-based treatment planning. The child's
439 treatment plan progress and adjustment-related issues shall be
440 reported to the court quarterly, unless the court requests
441 monthly reports. If the child is under the jurisdiction of a
442 dependency court, the court may receive and consider any
443 information provided by the Guardian Ad Litem Program or the
444 child's attorney ad litem, if appointed. The child's length of
445 stay in a commitment program may be extended if the child fails
446 to comply with or participate in treatment activities. The
447 child's length of stay in the program shall not be extended for
448 purposes of sanction or punishment. Any temporary release from
449 such program must be approved by the court. Any child so
450 committed may be discharged from institutional confinement or a
451 program upon the direction of the department with the
452 concurrence of the court. The child's treatment plan progress
453 and adjustment-related issues must be communicated to the court
454 at the time the department requests the court to consider
455 releasing the child from the commitment program. The department
456 shall give the court that committed the child to the department
457 reasonable notice, in writing, of its desire to discharge the
458 child from a commitment facility. The court that committed the
459 child may thereafter accept or reject the request. If the court
460 does not respond within 10 days after receipt of the notice, the
461 request of the department shall be deemed granted. This section

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462 does not limit the department's authority to revoke a child's
463 temporary release status and return the child to a commitment
464 facility for any violation of the terms and conditions of the
465 temporary release.

466 Section 18. Section 985.465, Florida Statutes, is amended
467 to read:

468 985.465 Maximum-risk residential facilities ~~Juvenile~~
469 ~~correctional facilities or juvenile prison.~~ A maximum risk
470 residential facility ~~juvenile correctional facility or juvenile~~
471 ~~prison~~ is a physically secure residential commitment program
472 with a designated length of stay from 18 months to 36 months,
473 primarily serving children 13 years of age to 19 years of age or
474 until the jurisdiction of the court expires. Each child
475 committed to this level must meet one of the following criteria:

476 (1) The child is at least 13 years of age at the time of
477 the disposition for the current offense and has been adjudicated
478 on the current offense for:

- 479 (a) Arson;
- 480 (b) Sexual battery;
- 481 (c) Robbery;
- 482 (d) Kidnapping;
- 483 (e) Aggravated child abuse;
- 484 (f) Aggravated assault;
- 485 (g) Aggravated stalking;
- 486 (h) Murder;

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- 487 (i) Manslaughter;
- 488 (j) Unlawful throwing, placing, or discharging of a
489 destructive device or bomb;
- 490 (k) Armed burglary;
- 491 (l) Aggravated battery;
- 492 (m) Carjacking;
- 493 (n) Home-invasion robbery;
- 494 (o) Burglary with an assault or battery;
- 495 (p) Any lewd or lascivious offense committed upon or in
496 the presence of a person less than 16 years of age; or
- 497 (q) Carrying, displaying, using, threatening to use, or
498 attempting to use a weapon or firearm during the commission of a
499 felony.
- 500 (2) The child is at least 13 years of age at the time of
501 the disposition, the current offense is a felony, and the child
502 has previously been committed three or more times to a
503 delinquency commitment program.
- 504 (3) The child is at least 13 years of age and is currently
505 committed for a felony offense and transferred from a moderate-
506 risk or high-risk residential commitment placement.
- 507 (4) The child is at least 13 years of age at the time of
508 the disposition for the current offense, the child is eligible
509 for prosecution as an adult for the current offense, and the
510 current offense is ranked at level 7 or higher on the Criminal

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511 Punishment Code offense severity ranking chart pursuant to s.
512 921.0022.

513 Section 19. Paragraph (a) of subsection (3) of section
514 985.601, Florida Statutes, is amended, and subsection (12) is
515 added to that section, to read:

516 985.601 Administering the juvenile justice continuum.—

517 (3)(a) The department shall develop or contract for
518 diversified and innovative programs to provide rehabilitative
519 treatment, including early intervention and prevention,
520 diversion, comprehensive intake, case management, diagnostic and
521 classification assessments, trauma-informed care, individual and
522 family counseling, family engagement resources and programs,
523 sex-specific ~~gender-specific~~ programming, shelter care,
524 diversified detention care emphasizing alternatives to secure
525 detention, diversified probation, halfway houses, foster homes,
526 community-based substance abuse treatment services, community-
527 based mental health treatment services, community-based
528 residential and nonresidential programs, mother-infant programs,
529 and environmental programs. The department may pay expenses in
530 support of innovative programs and activities that address
531 identified needs and the well-being of children in the
532 department's care or under its supervision, subject to the
533 requirements of chapters 215, 216, and 287. Each program shall
534 place particular emphasis on reintegration and conditional
535 release for all children in the program.

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536 (12) The department may use state or federal funds to
537 purchase and distribute promotional and educational materials
538 that are consistent with the dignity and integrity of the state
539 for all of the following purposes:

540 (a) Educating children and families about the juvenile
541 justice continuum, including local prevention programs or
542 community services available for participation or enrollment.

543 (b) Staff recruitment at job fairs, career fairs,
544 community events, the Institute for Commercialization of Florida
545 Technology, community college campuses, or state university
546 campuses.

547 (c) Educating children and families on children-specific
548 public safety issues, including, but not limited to, safe
549 storage of adult-owned firearms, consequences of child firearm
550 offenses, human trafficking, or drug and alcohol abuse.

551 Section 20. Paragraph (b) of subsection (4) of section
552 985.619, Florida Statutes, is amended to read:

553 985.619 Florida Scholars Academy.—

554 (4) GOVERNING BODY; POWERS AND DUTIES.—

555 (b) The board of trustees shall have the following powers
556 and duties:

557 1. Meet at least 4 times each year, upon the call of the
558 chair, or at the request of a majority of the membership.

559 2. Be responsible for the Florida Scholars Academy's
560 development of an education delivery system that is cost-

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561 effective, high-quality, educationally sound, and capable of
562 sustaining an effective delivery system.

563 3.a. Identify appropriate performance measures and
564 standards based on student achievement which reflect the
565 school's statutory mission and priorities, and implement an
566 accountability system approved by the State Board of Education
567 for the school by the 2024-2025 school year which includes an
568 assessment of its effectiveness and efficiency in providing
569 quality services that encourage high student achievement,
570 seamless articulation, and maximum access to career
571 opportunities.

572 b. For the 2024-2025 school year, the results of the
573 accountability system must serve as an informative baseline for
574 the academy as it works to improve performance in future years.

575 4. Administer and maintain the educational programs of the
576 Florida Scholars Academy in accordance with law and department
577 rules, in consultation with the State Board of Education.

578 5. With the approval of the secretary of the department or
579 his or her designee, determine the compensation, including
580 salaries and fringe benefits, and other conditions of employment
581 for such personnel, in alignment with the Florida Scholars
582 Academy's provider contracts.

583 6. The employment of all Florida Scholars Academy
584 administrative and instructional personnel are subject to
585 rejection for cause by the secretary of the department or his or

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586 her designee and are subject to policies established by the
587 board of trustees.

588 7. Provide for the content and custody of student records
589 in compliance with s. 1002.22.

590 8. Maintain the financial records and accounts of the
591 Florida Scholars Academy in compliance with rules adopted by the
592 State Board of Education for the uniform system of financial
593 records and accounts for the schools of this state.

594 9. Is a body corporate with all the powers of a body
595 corporate and may exercise such authority as is needed for the
596 proper operation and improvement of the Florida Scholars
597 Academy. The board of trustees is specifically authorized to
598 adopt rules, policies, and procedures, consistent with law and
599 State Board of Education rules related to governance, personnel,
600 budget and finance, administration, programs, curriculum and
601 instruction, travel and purchasing, technology, students,
602 contracts and grants, and property as necessary for optimal,
603 efficient operation of the Florida Scholars Academy.

604 10. Notwithstanding any rule to the contrary, review and
605 approve an annual academic calendar to provide educational
606 services to youth for a school year composed of 250 days or
607 1,250 hours of instruction for students enrolled in a
608 traditional K-12 education pathway, distributed over 12 months.
609 The board of trustees may decrease the minimum number of days

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610 for instruction by up to 20 days or 100 hours for teacher
611 planning.

612 Section 21. Section 985.664, Florida Statutes, is amended
613 to read:

614 985.664 Juvenile justice circuit advisory boards.—

615 (1) Each circuit shall have a juvenile justice circuit
616 advisory board. The board shall work with the chief probation
617 officer of the circuit to use data to inform policy and practice
618 which improves the juvenile justice continuum.

619 ~~(1) There is authorized a juvenile justice circuit~~
620 ~~advisory board to be established in each of the 20 judicial~~
621 ~~circuits. Except in single-county circuits, each juvenile~~
622 ~~justice circuit advisory board shall have a county organization~~
623 ~~representing each of the counties in the circuit. The county~~
624 ~~organization shall report directly to the juvenile justice~~
625 ~~circuit advisory board on the juvenile justice needs of the~~
626 ~~county. The purpose of each juvenile justice circuit advisory~~
627 ~~board is to provide advice and direction to the department in~~
628 ~~the development and implementation of juvenile justice programs~~
629 ~~and to work collaboratively with the department in seeking~~
630 ~~program improvements and policy changes to address the emerging~~
631 ~~and changing needs of Florida's youth who are at risk of~~
632 ~~delinquency.~~

633 ~~(2) The duties and responsibilities of a juvenile justice~~
634 ~~circuit advisory board include, but are not limited to:~~

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635 ~~(a) Developing a comprehensive plan for the circuit. The~~
636 ~~initial circuit plan shall be submitted to the department no~~
637 ~~later than December 31, 2014, and no later than June 30 every 3~~
638 ~~years thereafter. The department shall prescribe a format and~~
639 ~~content requirements for the submission of the comprehensive~~
640 ~~plan.~~

641 ~~(b) Participating in the facilitation of interagency~~
642 ~~cooperation and information sharing.~~

643 ~~(c) Providing recommendations for public or private grants~~
644 ~~to be administered by one of the community partners that support~~
645 ~~one or more components of the comprehensive circuit plan.~~

646 ~~(d) Providing recommendations to the department in the~~
647 ~~evaluation of prevention and early intervention grant programs,~~
648 ~~including the Community Juvenile Justice Partnership Grant~~
649 ~~program established in s. 985.676 and proceeds from the Invest~~
650 ~~in Children license plate annual use fees.~~

651 ~~(e) Providing an annual report to the department~~
652 ~~describing the board's activities. The department shall~~
653 ~~prescribe a format and content requirements for submission of~~
654 ~~annual reports. The annual report must be submitted to the~~
655 ~~department no later than August 1 of each year.~~

656 ~~(2)(3)~~ Each juvenile justice circuit advisory board shall
657 have a minimum of 14 ~~16~~ members. The membership of each board
658 must reflect:

659 (a) The circuit's geography and population distribution.

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- 660 (b) Diversity in the judicial circuit.
- 661 ~~(3)+(4)~~ Each member of the juvenile justice circuit
662 advisory board must be approved by the chief probation officer
663 of the circuit ~~Secretary of Juvenile Justice~~, except those
664 members listed in paragraphs (a), (b), (c), (e), (f), (g), and
665 (h). Each ~~The~~ juvenile justice circuit advisory board ~~boards~~
666 ~~established under subsection (1)~~ must include as members:
- 667 (a) The state attorney or his or her designee.
- 668 (b) The public defender or his or her designee.
- 669 (c) The chief judge or his or her designee.
- 670 (d) A representative of the corresponding circuit or
671 regional entity of the Department of Children and Families.
- 672 (e) The sheriff or the sheriff's designee from each county
673 in the circuit.
- 674 (f) A police chief or his or her designee from each county
675 in the circuit.
- 676 (g) A county commissioner or his or her designee from each
677 county in the circuit.
- 678 (h) The superintendent of each school district in the
679 circuit or his or her designee.
- 680 (i) A representative from the workforce organization of
681 each county in the circuit.
- 682 (j) A representative of the business community.

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683 (k) A youth representative who has had an experience with
684 the juvenile justice system and is not older than 21 years of
685 age.

686 (l) A representative of the faith community.

687 (m) A health services representative who specializes in
688 mental health care, victim-service programs, or victims of
689 crimes.

690 (n) A parent or family member of a youth who has been
691 involved with the juvenile justice system.

692 (o) Up to three ~~five~~ representatives from the community.
693 ~~any of the following who are not otherwise represented in this~~
694 ~~subsection:~~

695 ~~1. Community leaders.~~

696 ~~2. Youth-serving coalitions.~~

697 (4) The chief probation officer in each circuit shall
698 serve as the chair of the juvenile justice circuit advisory
699 board for that circuit.

700 ~~(5) When a vacancy in the office of the chair occurs, the~~
701 ~~juvenile justice circuit advisory board shall appoint a new~~
702 ~~chair, who must meet the board membership requirements in~~
703 ~~subsection (4). The chair shall appoint members to vacant seats~~
704 ~~within 45 days after the vacancy and submit the appointments to~~
705 ~~the department for approval. The chair shall serve at the~~
706 ~~pleasure of the Secretary of Juvenile Justice.~~

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707 ~~(6) A member may not serve more than three consecutive 2-~~
708 ~~year terms, except those members listed in paragraphs (4)(a),~~
709 ~~(b), (c), (e), (f), (g), and (h). A former member who has not~~
710 ~~served on the juvenile justice circuit advisory board for 2~~
711 ~~years is eligible to serve on the juvenile justice circuit~~
712 ~~advisory board again.~~

713 ~~(7) At least half of the voting members of the juvenile~~
714 ~~justice circuit advisory board constitutes a quorum. A quorum~~
715 ~~must be present in order for the board to vote on a measure or~~
716 ~~position.~~

717 ~~(8) In order for a juvenile justice circuit advisory board~~
718 ~~measure or position to pass, it must receive more than 50~~
719 ~~percent of the vote.~~

720 ~~(9) Each juvenile justice circuit advisory board must~~
721 ~~provide for the establishment of an executive committee of not~~
722 ~~more than 10 members. The duties and authority of the executive~~
723 ~~committee must be addressed in the bylaws.~~

724 ~~(10) Each juvenile justice circuit advisory board shall~~
725 ~~have bylaws. The department shall prescribe a format and content~~
726 ~~requirements for the bylaws. All bylaws must be approved by the~~
727 ~~department. The bylaws shall address at least the following~~
728 ~~issues: election or appointment of officers; filling of vacant~~
729 ~~positions; meeting attendance requirements; and the~~
730 ~~establishment and duties of an executive committee.~~

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731 ~~(11) Members of juvenile justice circuit advisory boards~~
732 ~~are subject to part III of chapter 112.~~

733 Section 22. Paragraph (a) of subsection (1) of section
734 985.668, Florida Statutes, is amended to read:

735 985.668 Innovation zones.—The department shall encourage
736 each of the juvenile justice circuit boards to propose at least
737 one innovation zone within the circuit for the purpose of
738 implementing any experimental, pilot, or demonstration project
739 that furthers the legislatively established goals of the
740 department. An innovation zone is a defined geographic area such
741 as a circuit, commitment region, county, municipality, service
742 delivery area, school campus, or neighborhood providing a
743 laboratory for the research, development, and testing of the
744 applicability and efficacy of model programs, policy options,
745 and new technologies for the department.

746 (1)(a) The chief probation officer in each circuit
747 ~~juvenile justice circuit board~~ shall submit a proposal for an
748 innovation zone to the secretary. If the purpose of the proposed
749 innovation zone is to demonstrate that specific statutory goals
750 can be achieved more effectively by using procedures that
751 require modification of existing rules, policies, or procedures,
752 the proposal may request the secretary to waive such existing
753 rules, policies, or procedures or to otherwise authorize use of
754 alternative procedures or practices. Waivers of such existing

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755 rules, policies, or procedures must comply with applicable state
756 or federal law.

757 Section 23. Subsections (1) and (2) of section 985.676,
758 Florida Statutes, are amended to read:

759 985.676 Community juvenile justice partnership grants.—

760 (1) GRANTS; CRITERIA.—

761 (a) In order to encourage the development of a circuit
762 juvenile justice plan ~~and the development and implementation of~~
763 ~~circuit interagency agreements under s. 985.664~~, the community
764 juvenile justice partnership grant program is established and
765 shall be administered by the department.

766 (b) In awarding these grants, the department shall
767 consider applications that at a minimum provide for the
768 following:

769 1. The participation of the agencies and programs needed
770 to implement the project or program for which the applicant is
771 applying;

772 2. The reduction of truancy and in-school and out-of-
773 school suspensions and expulsions, the enhancement of school
774 safety, and other delinquency early-intervention and diversion
775 services;

776 3. The number of youths from 10 through 17 years of age
777 within the geographic area to be served by the program, giving
778 those geographic areas having the highest number of youths from
779 10 to 17 years of age priority for selection;

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780 4. The extent to which the program targets high-juvenile-
781 crime neighborhoods and those public schools serving juveniles
782 from high-crime neighborhoods;

783 5. The validity and cost-effectiveness of the program; and

784 6. The degree to which the program is located in and
785 managed by local leaders of the target neighborhoods and public
786 schools serving the target neighborhoods.

787 (c) In addition, the department may consider the following
788 criteria in awarding grants:

789 1. The circuit juvenile justice plan and any county
790 juvenile justice plans that are referred to or incorporated into
791 the circuit plan, including a list of individuals, groups, and
792 public and private entities that participated in the development
793 of the plan.

794 2. The diversity of community entities participating in
795 the development of the circuit juvenile justice plan.

796 3. The number of community partners who will be actively
797 involved in the operation of the grant program.

798 4. The number of students or youths to be served by the
799 grant and the criteria by which they will be selected.

800 5. The criteria by which the grant program will be
801 evaluated and, if deemed successful, the feasibility of
802 implementation in other communities.

803 (2) GRANT APPLICATION PROCEDURES.—

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804 (a) Each entity wishing to apply for an annual community
805 juvenile justice partnership grant, which may be renewed for a
806 maximum of 2 additional years for the same provision of
807 services, shall submit a grant proposal for funding or continued
808 funding to the department. The department shall establish the
809 grant application procedures. In order to be considered for
810 funding, the grant proposal shall include the following
811 assurances and information:

812 ~~1. A letter from the chair of the juvenile justice circuit~~
813 ~~board confirming that the grant application has been reviewed~~
814 ~~and found to support one or more purposes or goals of the~~
815 ~~juvenile justice plan as developed by the board.~~

816 ~~2.~~ A rationale and description of the program and the
817 services to be provided, including goals and objectives.

818 ~~2.3.~~ A method for identification of the juveniles most
819 likely to be involved in the juvenile justice system who will be
820 the focus of the program.

821 ~~3.4.~~ Provisions for the participation of parents and
822 guardians in the program.

823 ~~4.5.~~ Coordination with other community-based and social
824 service prevention efforts, including, but not limited to, drug
825 and alcohol abuse prevention and dropout prevention programs,
826 that serve the target population or neighborhood.

827 ~~5.6.~~ An evaluation component to measure the effectiveness
828 of the program in accordance with s. 985.632.

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829 ~~6.7.~~ A program budget, including the amount and sources of
830 local cash and in-kind resources committed to the budget. The
831 proposal must establish to the satisfaction of the department
832 that the entity will make a cash or in-kind contribution to the
833 program of a value that is at least equal to 20 percent of the
834 amount of the grant.

835 ~~7.8.~~ The necessary program staff.

836 (b) The department shall consider the recommendations of
837 community stakeholders ~~the juvenile justice circuit advisory~~
838 ~~board~~ as to the priority that should be given to proposals
839 submitted by entities within a circuit in awarding such grants.

840 (c) The department shall make available, to anyone wishing
841 to apply for such a grant, information on all of the criteria to
842 be used in the selection of the proposals for funding pursuant
843 to the provisions of this subsection.

844 (d) The department shall review all program proposals
845 submitted. Entities submitting proposals shall be notified of
846 approval not later than June 30 of each year.

847 (e) Each entity that is awarded a grant as provided for in
848 this section shall submit an annual evaluation report to the
849 department and, ~~the circuit juvenile justice manager, and the~~
850 ~~juvenile justice circuit advisory board~~, by a date subsequent to
851 the end of the contract period established by the department,
852 documenting the extent to which the program objectives have been
853 met, the effect of the program on the juvenile arrest rate, and

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854 any other information required by the department. The department
855 shall coordinate and incorporate all such annual evaluation
856 reports with s. 985.632. Each entity is also subject to a
857 financial audit and a performance audit.

858 (f) The department may establish rules and policy
859 provisions necessary to implement this section.

860 Section 24. Paragraph (c) of subsection (18) of section
861 1001.42, Florida Statutes, is amended to read:

862 1001.42 Powers and duties of district school board.—The
863 district school board, acting as a board, shall exercise all
864 powers and perform all duties listed below:

865 (18) IMPLEMENT SCHOOL IMPROVEMENT AND ACCOUNTABILITY.—
866 Maintain a system of school improvement and education
867 accountability as provided by statute and State Board of
868 Education rule. This system of school improvement and education
869 accountability shall be consistent with, and implemented
870 through, the district's continuing system of planning and
871 budgeting required by this section and ss. 1008.385, 1010.01,
872 and 1011.01. This system of school improvement and education
873 accountability shall comply with the provisions of ss. 1008.33,
874 1008.34, 1008.345, and 1008.385 and include the following:

875 (c) *Public disclosure.*—The district school board shall
876 provide information regarding the performance of students and
877 educational programs as required pursuant to ss. 1008.22 and
878 1008.385 and implement a system of school reports as required by

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879 statute and State Board of Education rule which shall include
880 schools operating for the purpose of providing educational
881 services to students in Department of Juvenile Justice programs,
882 ~~and for those schools, report on the elements specified in s.~~
883 ~~1003.52(17)~~. Annual public disclosure reports shall be in an
884 easy-to-read report card format and shall include the school's
885 grade, high school graduation rate calculated without high
886 school equivalency examinations, disaggregated by student
887 ethnicity, and performance data as specified in state board
888 rule.

889 Section 25. Paragraph (a) of subsection (14) of section
890 1003.01, Florida Statutes, is amended to read:

891 1003.01 Definitions.—As used in this chapter, the term:

892 (14) (a) "Juvenile justice education programs or schools"
893 means programs or schools operating for the purpose of providing
894 educational services to youth in Department of Juvenile Justice
895 programs, for a school year composed of 250 days of instruction,
896 or the equivalent expressed in hours as specified in State Board
897 of Education rule, distributed over 12 months. If the period of
898 operation is expressed in hours, the State Board of Education
899 must review the calculation annually. ~~The use of the equivalent~~
900 ~~expressed in hours is only applicable to nonresidential~~
901 ~~programs. At the request of the provider,~~ A district school
902 board, including an educational entity under s. 985.619, may
903 decrease the minimum number of days of instruction by ~~up to 10~~

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904 ~~days for teacher planning for residential programs~~ and up to 20
905 days or equivalent hours as specified in the State Board of
906 Education rule for teacher planning ~~for nonresidential programs~~,
907 subject to the approval of the Department of Juvenile Justice
908 and the Department of Education.

909 Section 26. Subsections (2) through (5) of section
910 1003.51, Florida Statutes, are amended to read:

911 1003.51 Other public educational services.—

912 (2) The State Board of Education shall adopt rules
913 articulating expectations for effective education programs for
914 students in Department of Juvenile Justice programs, including,
915 but not limited to, education programs in juvenile justice
916 prevention, day treatment, ~~residential~~, and detention programs.
917 The rules ~~rule~~ shall establish policies and standards for
918 education programs for students in Department of Juvenile
919 Justice programs and shall include the following:

920 (a) The interagency collaborative process needed to ensure
921 effective programs with measurable results.

922 (b) The responsibilities of the Department of Education,
923 the Department of Juvenile Justice, CareerSource Florida, Inc.,
924 district school boards, and providers of education services to
925 students in Department of Juvenile Justice programs.

926 (c) Academic expectations.

927 (d) Career expectations.

928 (e) Education transition planning and services.

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929 (f) Service delivery options available to district school
930 boards, including direct service and contracting.

931 (g) Assessment procedures that, ~~which~~:

932 ~~1. For prevention, day treatment, and residential~~
933 ~~programs, include appropriate academic and career assessments~~
934 ~~administered at program entry and exit that are selected by the~~
935 ~~Department of Education in partnership with representatives from~~
936 ~~the Department of Juvenile Justice, district school boards, and~~
937 ~~education providers. Assessments must be completed within the~~
938 ~~first 10 school days after a student's entry into the program.~~

939 ~~2. provide for determination of the areas of academic need~~
940 ~~and strategies for appropriate intervention and instruction for~~
941 ~~each student in a detention facility within 5 school days after~~
942 ~~the student's entry into the program and administer a research-~~
943 ~~based assessment that will assist the student in determining his~~
944 ~~or her educational and career options and goals within 22 school~~
945 ~~days after the student's entry into the program.~~

946
947 The results of these assessments, together with a portfolio
948 depicting the student's academic and career accomplishments,
949 shall be included in the discharge packet assembled for each
950 student.

951 (h) Recommended instructional programs, using course
952 delivery models aligned to the state academic standards. Options
953 may include direct instruction, blended learning pursuant to s.

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954 1011.61(1), or district virtual instruction programs, virtual
955 charter schools, Florida Virtual School, virtual course
956 offerings, and district franchises of Florida Virtual School
957 pursuant to ss. 1002.33, 1002.37, 1002.45, 1002.455, 1003.498,
958 and 1011.62(1), and credit recovery course procedures including,
959 but not limited to:

- 960 1. Secondary education.
- 961 2. High school equivalency examination preparation.
- 962 3. Postsecondary education.
- 963 4. Career and technical ~~professional~~ education ~~(CAPE)~~.
- 964 5. Job preparation.
- 965 6. Virtual education that:
 - 966 a. Provides competency-based instruction that addresses
967 the unique academic needs of the student through delivery by an
968 entity accredited by a Department of Education-approved
969 accrediting body ~~AdvancedED or the Southern Association of~~
970 ~~Colleges and Schools~~.
 - 971 b. Confers certifications and diplomas.
 - 972 c. Issues credit that articulates with and transcripts
973 that are recognized by secondary schools.
 - 974 d. Allows the student to continue to access and progress
975 through the program once the student leaves the juvenile justice
976 system.
 - 977 (i) Funding requirements, which must provide that at least
978 95 percent of the FEFP funds generated by students in Department

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979 of Juvenile Justice programs or in an education program for
980 juveniles under s. 985.19 must be spent on instructional costs
981 for those students. Department of Juvenile Justice education
982 programs are entitled to 100 percent of the formula-based
983 categorical funds generated by students in Department of
984 Juvenile Justice programs. Such funds must be spent on
985 appropriate categoricals, such as instructional materials and
986 public school technology for those students.

987 (j) Qualifications of instructional staff, procedures for
988 the selection of instructional staff, and procedures for
989 consistent instruction and qualified staff year-round.
990 Qualifications shall include those for instructors of career and
991 technical education ~~CAPE~~ courses, standardized across the state,
992 and shall be based on state certification, local school district
993 approval, and industry-recognized certifications as identified
994 on the Master Credential ~~CAPE Industry Certification Funding~~
995 List. Procedures for the use of noncertified instructional
996 personnel who possess expert knowledge or experience in their
997 fields of instruction shall be established.

998 (k) Transition services, including the roles and
999 responsibilities of appropriate personnel in the juvenile
1000 justice education program, the school district where the student
1001 will reenter, provider organizations, and the Department of
1002 Juvenile Justice.

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1003 (l) Procedures and timeframe for transfer of education
1004 records when a student enters and leaves a Department of
1005 Juvenile Justice education program.

1006 (m) The requirement that each district school board
1007 maintain an academic transcript for each student enrolled in a
1008 juvenile justice education program that delineates each course
1009 completed by the student as provided by the State Course Code
1010 Directory.

1011 (n) The requirement that each district school board make
1012 available and transmit a copy of a student's transcript in the
1013 discharge packet when the student exits a juvenile justice
1014 education program.

1015 (o) Contract requirements.

1016 (p) Accountability and school improvement requirements as
1017 public alternative schools pursuant to ss. 1008.31, 1008.34,
1018 1008.341, and 1008.345 ~~Performance expectations for providers~~
1019 ~~and district school boards, including student performance~~
1020 ~~measures by type of program, education program performance~~
1021 ~~ratings, school improvement, and corrective action plans for~~
1022 ~~low-performing programs.~~

1023 (q) The role and responsibility of the district school
1024 board in securing workforce development funds.

1025 (r) A series of graduated sanctions for district school
1026 boards whose educational programs in Department of Juvenile
1027 Justice programs are considered to be unsatisfactory and for

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1028 instances in which district school boards fail to meet standards
1029 prescribed by law, rule, or State Board of Education policy.
1030 These sanctions shall include the option of requiring a district
1031 school board to contract with a provider or another district
1032 school board if the educational program at the Department of
1033 Juvenile Justice program is performing below minimum standards
1034 and, after 6 months, is still performing below minimum
1035 standards.

1036 ~~(s)~~ Curriculum, school ~~guidance~~ counseling, transition,
1037 and education services expectations, including curriculum
1038 flexibility for detention centers operated by the Department of
1039 Juvenile Justice.

1040 (s) ~~(t)~~ Other aspects of program operations.

1041 (3) The Department of Education in partnership with the
1042 Department of Juvenile Justice, the district school boards, and
1043 providers shall:

1044 (a) Develop and implement requirements for contracts and
1045 cooperative agreements regarding the delivery of appropriate
1046 education services to students in Department of Juvenile Justice
1047 education programs. The minimum contract requirements shall
1048 include, but are not limited to, payment structure and amounts;
1049 access to district services; contract management provisions;
1050 data reporting requirements, including reporting of full-time
1051 equivalent student membership; accountability requirements and
1052 corrective action plans, if needed; administration of federal

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1053 programs such as Title I, exceptional student education, and the
1054 federal Strengthening Career and Technical Education for the
1055 21st Century Act ~~Carl D. Perkins Career and Technical Education~~
1056 ~~Act of 2006~~; and the policy and standards included in subsection
1057 (2).

1058 (b) Develop and implement procedures for transitioning
1059 students into and out of Department of Juvenile Justice
1060 education programs. These procedures shall reflect the policy
1061 and standards adopted pursuant to subsection (2).

1062 (c) Maintain standardized required content of education
1063 records to be included as part of a student's commitment record
1064 and procedures for securing the student's records. The education
1065 records shall include, but not be limited to, the following:

1066 1. A copy of the student's individual educational plan, and
1067 Section 504 plan, or behavioral plan, if applicable.

1068 2. A copy of the student's individualized progress
1069 monitoring plan.

1070 3. A copy of the student's individualized transition plan.

1071 4. Data on student performance on assessments taken
1072 according to s. 1008.22.

1073 5. A copy of the student's permanent cumulative record.

1074 6. A copy of the student's academic transcript.

1075 7. A portfolio reflecting the student's academic
1076 accomplishments and industry certification earned, when age

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1077 appropriate, while in the Department of Juvenile Justice
1078 program.

1079 (d) Establish the roles and responsibilities of the
1080 juvenile probation officer and others involved in the withdrawal
1081 of the student from school and assignment to a juvenile justice
1082 education program.

1083 (4) Each district school board shall:

1084 (a) Notify students in juvenile justice education programs
1085 who attain the age of 16 years of the law regarding compulsory
1086 school attendance and make available the option of enrolling in
1087 an education program to attain a Florida high school diploma by
1088 taking the high school equivalency examination before release
1089 from the program. The Department of Education shall assist
1090 juvenile justice education programs with becoming high school
1091 equivalency examination centers.

1092 (b) Respond to requests for student education records
1093 received from another district school board or a juvenile
1094 justice education program within 3 ~~5~~ working days after
1095 receiving the request.

1096 (c) Provide access to courses offered pursuant to ss.
1097 1002.37, 1002.45, 1002.455, and 1003.498. School districts and
1098 providers may enter into cooperative agreements for the
1099 provision of curriculum associated with courses offered pursuant
1100 to s. 1003.498 to enable providers to offer such courses.

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1101 (d) Complete the assessment process required by subsection
1102 (2).

1103 (e) Monitor compliance with contracts for education
1104 programs for students in juvenile justice prevention, day
1105 treatment, ~~residential,~~ and detention programs.

1106 (5) The Department of Education shall issue an alternative
1107 school improvement rating for prevention and day treatment
1108 prevention juvenile justice education programs, pursuant to s.
1109 1008.341 ~~establish and operate, either directly or indirectly~~
1110 ~~through a contract, a mechanism to provide accountability~~
1111 ~~measures that annually assesses and evaluates all juvenile~~
1112 ~~justice education programs using student performance data and~~
1113 ~~program performance ratings by type of program and shall provide~~
1114 ~~technical assistance and related research to district school~~
1115 ~~boards and juvenile justice education providers. The Department~~
1116 ~~of Education, with input from the Department of Juvenile~~
1117 ~~Justice, school districts, and education providers, shall~~
1118 ~~develop annual recommendations for system and school~~
1119 ~~improvement.~~

1120 Section 27. Section 1003.52, Florida Statutes, is amended
1121 to read:

1122 1003.52 Educational services in Department of Juvenile
1123 Justice programs.—

1124 (1) The Department of Education shall serve as the lead
1125 agency for juvenile justice education programs, curriculum,

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1126 support services, and resources. To this end, the Department of
1127 Education and the Department of Juvenile Justice shall each
1128 designate a Coordinator for Juvenile Justice Education Programs
1129 to serve as the point of contact for resolving issues not
1130 addressed by district school boards and to provide each
1131 department's participation in the following activities:

1132 (a) Training, collaborating, and coordinating with
1133 district school boards, local workforce development boards, ~~and~~
1134 ~~local youth councils,~~ educational contract providers, and
1135 juvenile justice providers, whether state operated or
1136 contracted.

1137 (b) Collecting information on the academic, career and
1138 technical ~~professional~~ education ~~(CAPE)~~, and transition
1139 performance of students in juvenile justice programs and
1140 reporting on the results.

1141 (c) Developing academic and career and technical education
1142 ~~CAPE~~ protocols that provide guidance to district school boards
1143 and juvenile justice education providers in all aspects of
1144 education programming, including records transfer and
1145 transition.

1146 ~~(d) Implementing a joint accountability, program~~
1147 ~~performance, and program improvement process.~~

1148
1149 Annually, a cooperative agreement and plan for juvenile justice
1150 education service enhancement shall be developed between the

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1151 Department of Juvenile Justice and the Department of Education
1152 and submitted to the Secretary of Juvenile Justice and the
1153 Commissioner of Education by June 30. The plan shall include, at
1154 a minimum, each agency's role regarding educational program
1155 accountability, technical assistance, training, and coordination
1156 of services.

1157 (2) Students participating in Department of Juvenile
1158 Justice education programs pursuant to chapter 985 which are
1159 sponsored by a community-based agency or are operated or
1160 contracted for by the Department of Juvenile Justice shall
1161 receive education programs according to rules of the State Board
1162 of Education. These students shall be eligible for services
1163 afforded to students enrolled in programs pursuant to s. 1003.53
1164 and all corresponding State Board of Education rules.

1165 (3) The district school board of the county in which the
1166 juvenile justice education prevention, day treatment,
1167 ~~residential~~, or detention program is located shall provide or
1168 contract for appropriate educational assessments and an
1169 appropriate program of instruction and special education
1170 services.

1171 (a) All contracts between a district school board desiring
1172 to contract directly with juvenile justice education programs to
1173 provide academic instruction for students in such programs must
1174 be in writing and reviewed by the Department of Juvenile
1175 Justice. Unless both parties agree to an extension of time, the

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1176 district school board and the juvenile justice education program
1177 shall negotiate and execute a new or renewal contract within 40
1178 days after the district school board provides the proposal to
1179 the juvenile justice education program. The Department of
1180 Education shall provide mediation services for any disputes
1181 relating to this paragraph.

1182 (b) District school boards shall satisfy invoices issued
1183 by juvenile justice education programs within 15 working days
1184 after receipt. If a district school board does not timely issue
1185 a warrant for payment, it must pay to the juvenile justice
1186 education program interest at a rate of 1 percent per month,
1187 calculated on a daily basis, on the unpaid balance until such
1188 time as a warrant is issued for the invoice and accrued interest
1189 amount. The district school board may not delay payment to a
1190 juvenile justice education program of any portion of funds owed
1191 pending the district's receipt of local funds.

1192 (c) The district school board shall make provisions for
1193 each student to participate in basic career and technical
1194 education, ~~CAPE~~, and exceptional student programs, as
1195 appropriate. Students served in Department of Juvenile Justice
1196 education programs shall have access to the appropriate courses
1197 and instruction to prepare them for the high school equivalency
1198 examination. Students participating in high school equivalency
1199 examination preparation programs shall be funded at the basic
1200 program cost factor for Department of Juvenile Justice programs

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1201 in the Florida Education Finance Program. Each program shall be
1202 conducted according to applicable law providing for the
1203 operation of public schools and rules of the State Board of
1204 Education. School districts shall provide the high school
1205 equivalency examination exit option for all juvenile justice
1206 education programs, except for residential programs operated
1207 under s. 985.619.

1208 (d) The district school board shall select appropriate
1209 academic and career assessments to be administered at the time
1210 of program entry and exit for the purpose of developing goals
1211 for education transition plans, progress monitoring plans,
1212 individual education plans, as applicable, and federal
1213 reporting, as applicable ~~The Department of Education, with the~~
1214 ~~assistance of the school districts and juvenile justice~~
1215 ~~education providers, shall select a common student assessment~~
1216 ~~instrument and protocol for measuring student learning gains and~~
1217 ~~student progression while a student is in a juvenile justice~~
1218 ~~education program. The Department of Education and the~~
1219 ~~Department of Juvenile Justice shall jointly review the~~
1220 ~~effectiveness of this assessment and implement changes as~~
1221 ~~necessary.~~

1222 (4) Educational services shall be provided at times of the
1223 day most appropriate for the juvenile justice program. School
1224 programming in juvenile justice detention, prevention, or day
1225 treatment, ~~and residential~~ programs shall be made available by

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1226 the local school district during the juvenile justice school
1227 year, as provided in s. 1003.01(14). In addition, students in
1228 juvenile justice education programs shall have access to courses
1229 offered pursuant to ss. 1002.37, 1002.45, and 1003.498. The
1230 Department of Education and the school districts shall adopt
1231 policies necessary to provide such access.

1232 (5) The educational program shall provide instruction
1233 based on each student's individualized transition plan, assessed
1234 educational needs, and the education programs available in the
1235 school district in which the student will return. Depending on
1236 the student's needs, educational programming may consist of
1237 remedial courses, academic courses required for grade
1238 advancement, career and technical education ~~CAPE courses~~, high
1239 school equivalency examination preparation, or exceptional
1240 student education curricula and related services which support
1241 the transition goals and reentry and which may lead to
1242 completion of the requirements for receipt of a high school
1243 diploma or its equivalent. Prevention and day treatment juvenile
1244 justice education programs, at a minimum, shall provide career
1245 readiness and exploration opportunities as well as truancy and
1246 dropout prevention intervention services. ~~Residential juvenile
1247 justice education programs with a contracted minimum length of
1248 stay of 9 months shall provide CAPE courses that lead to
1249 preapprentice certifications and industry certifications.
1250 Programs with contracted lengths of stay of less than 9 months~~

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1251 ~~may provide career education courses that lead to preapprentice~~
1252 ~~certifications and CAPE industry certifications. If the duration~~
1253 ~~of a program is less than 40 days, the educational component may~~
1254 ~~be limited to tutorial remediation activities, career~~
1255 ~~employability skills instruction, education counseling, and~~
1256 ~~transition services that prepare students for a return to~~
1257 ~~school, the community, and their home settings based on the~~
1258 ~~students' needs.~~

1259 (6) Participation in the program by students of compulsory
1260 school-attendance age as provided for in s. 1003.21 shall be
1261 mandatory. All students of noncompulsory school-attendance age
1262 who have not received a high school diploma or its equivalent
1263 shall participate in the educational program, unless the student
1264 files a formal declaration of his or her intent to terminate
1265 school enrollment as described in s. 1003.21 and is afforded the
1266 opportunity to take the high school equivalency examination and
1267 attain a Florida high school diploma before release from a
1268 juvenile justice education program. A student who has received a
1269 high school diploma or its equivalent and is not employed shall
1270 participate in workforce development ~~or other CAPE education~~ or
1271 Florida College System institution or university courses while
1272 in the program, subject to available funding.

1273 (7) An individualized progress monitoring plan shall be
1274 developed for all students ~~not classified as exceptional~~
1275 ~~education students~~ upon entry in a juvenile justice education

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1276 program and upon reentry in the school district. These plans
1277 shall address academic, literacy, and career and technical
1278 skills and shall include provisions for intensive remedial
1279 instruction in the areas of weakness.

1280 (8) Each district school board shall maintain an academic
1281 record for each student enrolled in a juvenile justice education
1282 program as prescribed by s. 1003.51. Such record shall delineate
1283 each course completed by the student according to procedures in
1284 the State Course Code Directory. The district school board shall
1285 include a copy of a student's academic record in the discharge
1286 packet when the student exits the program.

1287 (9) Each district school board shall make provisions for
1288 high school level students to earn credits toward high school
1289 graduation while in ~~residential and nonresidential~~ juvenile
1290 justice detention, prevention, or day treatment education
1291 programs. Provisions must be made for the transfer of credits
1292 and partial credits earned.

1293 (10) School districts and juvenile justice education
1294 providers shall develop individualized transition plans during
1295 the course of a student's stay in a juvenile justice education
1296 program to coordinate academic, career and technical, and
1297 secondary and postsecondary services that assist the student in
1298 successful community reintegration upon release. Development of
1299 the transition plan shall be a collaboration of the personnel in
1300 the juvenile justice education program, reentry personnel,

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1301 personnel from the school district where the student will
1302 return, the student, the student's family, and the Department of
1303 Juvenile Justice ~~personnel for committed students~~.

1304 (a) Transition planning must begin upon a student's
1305 placement in the program. The transition plan must include, at a
1306 minimum:

1307 1. Services and interventions that address the student's
1308 assessed educational needs and postrelease education plans.

1309 2. Services to be provided during the program stay and
1310 services to be implemented upon release, including, but not
1311 limited to, continuing education in secondary school, career and
1312 technical education ~~CAPE programs~~, postsecondary education, or
1313 employment, based on the student's needs.

1314 3. Specific monitoring responsibilities to determine
1315 whether the individualized transition plan is being implemented
1316 and the student is provided access to support services that will
1317 sustain the student's success by individuals who are responsible
1318 for the reintegration and coordination of these activities.

1319 (b) For the purpose of transition planning and reentry
1320 services, representatives from the school district and the one-
1321 stop center where the student will return shall participate as
1322 members of the local Department of Juvenile Justice reentry
1323 teams. The school district, upon return of a student from a
1324 juvenile justice education program, must consider the individual
1325 needs and circumstances of the student and the transition plan

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1326 recommendations when reenrolling a student in a public school. A
1327 local school district may not maintain a standardized policy for
1328 all students returning from a juvenile justice program but place
1329 students based on their needs and their performance in the
1330 juvenile justice education program, including any virtual
1331 education options.

1332 (c) The Department of Education and the Department of
1333 Juvenile Justice shall provide oversight and guidance to school
1334 districts, education providers, and reentry personnel on how to
1335 implement effective educational transition planning and
1336 services.

1337 (11) The district school board shall recruit and train
1338 teachers who are ~~interested, qualified, or experienced~~ in
1339 educating students in juvenile justice programs. Students in
1340 juvenile justice programs shall be provided a wide range of
1341 education programs and opportunities including instructional
1342 materials ~~textbooks~~, technology, instructional support, and
1343 resources commensurate with resources provided to students in
1344 public schools, including instructional materials ~~textbooks~~ and
1345 access to technology. If the district school board operates a
1346 juvenile justice education program at a juvenile justice
1347 facility, the district school board, in consultation with the
1348 director of the juvenile justice facility, shall select the
1349 instructional personnel assigned to that program. The Secretary
1350 of Juvenile Justice or the director of a juvenile justice

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1351 program may request that the performance of a teacher assigned
1352 by the district to a juvenile justice education program be
1353 reviewed by the district and that the teacher be reassigned
1354 based upon an evaluation conducted pursuant to s. 1012.34 or for
1355 inappropriate behavior. Juvenile justice education programs
1356 shall have access to the substitute teacher pool used by the
1357 district school board.

1358 (12) District school boards may contract with a private
1359 provider for the provision of education programs to students
1360 placed in juvenile justice detention, prevention, or day
1361 treatment programs with the Department of Juvenile Justice and
1362 shall generate local, state, and federal funding, including
1363 funding through the Florida Education Finance Program for such
1364 students. The district school board's planning and budgeting
1365 process shall include the needs of Department of Juvenile
1366 Justice education programs in the district school board's plan
1367 for expenditures for state categorical and federal funds.

1368 (13) (a) Eligible students enrolled in juvenile justice
1369 detention, prevention, or day treatment education programs shall
1370 be funded the same as students enrolled in traditional public
1371 schools funded in the Florida Education Finance Program and as
1372 specified in s. 1011.62 and the General Appropriations Act.

1373 (b) Juvenile justice education programs to receive the
1374 appropriate FEFP funding for Department of Juvenile Justice

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1375 education programs shall include those operated through a
1376 contract with the Department of Juvenile Justice.

1377 (c) Consistent with the rules of the State Board of
1378 Education, district school boards shall request an alternative
1379 FTE survey for Department of Juvenile Justice education programs
1380 experiencing fluctuations in student enrollment.

1381 (d) FTE count periods shall be prescribed in rules of the
1382 State Board of Education and shall be the same for programs of
1383 the Department of Juvenile Justice as for other public school
1384 programs. The summer school period for students in Department of
1385 Juvenile Justice education programs shall begin on the day
1386 immediately following the end of the regular school year and end
1387 on the day immediately preceding the subsequent regular school
1388 year. Students shall be funded for no more than 25 hours per
1389 week of direct instruction.

1390 (e) Each juvenile justice education program must receive
1391 all federal funds for which the program is eligible.

1392 (14) Each district school board shall negotiate a
1393 cooperative agreement with the Department of Juvenile Justice on
1394 the delivery of educational services to students in juvenile
1395 justice detention, prevention, or day treatment programs under
1396 the jurisdiction of the Department of Juvenile Justice. Such
1397 agreement must include, but is not limited to:

1398 (a) Roles and responsibilities of each agency, including
1399 the roles and responsibilities of contract providers.

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1400 (b) Administrative issues including procedures for sharing
1401 information.

1402 (c) Allocation of resources including maximization of
1403 local, state, and federal funding.

1404 (d) Procedures for educational evaluation for educational
1405 exceptionalities and special needs.

1406 (e) Curriculum and delivery of instruction.

1407 (f) Classroom management procedures and attendance
1408 policies.

1409 (g) Procedures for provision of qualified instructional
1410 personnel, whether supplied by the district school board or
1411 provided under contract by the provider, and for performance of
1412 duties while in a juvenile justice setting.

1413 (h) Provisions for improving skills in teaching and
1414 working with students referred to juvenile justice education
1415 programs.

1416 (i) Transition plans for students moving into and out of
1417 juvenile justice education programs.

1418 (j) Procedures and timelines for the timely documentation
1419 of credits earned and transfer of student records.

1420 (k) Methods and procedures for dispute resolution.

1421 (l) Provisions for ensuring the safety of education
1422 personnel and support for the agreed-upon education program.

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1423 (m) Strategies for correcting any deficiencies found
1424 through the alternative school improvement rating accountability
1425 ~~and evaluation system~~ and student performance measures.

1426 (n) Career and academic assessments selected by the
1427 district pursuant to paragraph (3)(d).

1428 (15) Nothing in this section or in a cooperative agreement
1429 requires the district school board to provide more services than
1430 can be supported by the funds generated by students in the
1431 juvenile justice programs.

1432 ~~(16) The Department of Education, in consultation with the~~
1433 ~~Department of Juvenile Justice, district school boards, and~~
1434 ~~providers, shall adopt rules establishing:~~

1435 ~~(a) Objective and measurable student performance measures~~
1436 ~~to evaluate a student's educational progress while participating~~
1437 ~~in a prevention, day treatment, or residential program. The~~
1438 ~~student performance measures must be based on appropriate~~
1439 ~~outcomes for all students in juvenile justice education~~
1440 ~~programs, taking into consideration the student's length of stay~~
1441 ~~in the program. Performance measures shall include outcomes that~~
1442 ~~relate to student achievement of career education goals,~~
1443 ~~acquisition of employability skills, receipt of a high school~~
1444 ~~diploma or its equivalent, grade advancement, and the number of~~
1445 ~~CAPE industry certifications earned.~~

1446 ~~(b) A performance rating system to be used by the~~
1447 ~~Department of Education to evaluate the delivery of educational~~

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1448 ~~services within each of the juvenile justice programs. The~~
1449 ~~performance rating shall be primarily based on data regarding~~
1450 ~~student performance as described in paragraph (a).~~

1451 ~~(c) The timeframes, procedures, and resources to be used~~
1452 ~~to improve a low-rated educational program or to terminate or~~
1453 ~~reassign the program.~~

1454 ~~(d) The Department of Education, in partnership with the~~
1455 ~~Department of Juvenile Justice, shall develop a comprehensive~~
1456 ~~accountability and program improvement process. The~~
1457 ~~accountability and program improvement process shall be based on~~
1458 ~~student performance measures by type of program and shall rate~~
1459 ~~education program performance. The accountability system shall~~
1460 ~~identify and recognize high-performing education programs. The~~
1461 ~~Department of Education, in partnership with the Department of~~
1462 ~~Juvenile Justice, shall identify low-performing programs. Low-~~
1463 ~~performing education programs shall receive an onsite program~~
1464 ~~evaluation from the Department of Juvenile Justice. School~~
1465 ~~improvement, technical assistance, or the reassignment of the~~
1466 ~~program shall be based, in part, on the results of the program~~
1467 ~~evaluation. Through a corrective action process, low-performing~~
1468 ~~programs must demonstrate improvement or the programs shall be~~
1469 ~~reassigned.~~

1470 ~~(17) The department, in collaboration with the Department~~
1471 ~~of Juvenile Justice, shall collect data and report on~~
1472 ~~commitment, day treatment, prevention, and detention programs.~~

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1473 ~~The report shall be submitted to the President of the Senate,~~
1474 ~~the Speaker of the House of Representatives, and the Governor by~~
1475 ~~February 1 of each year. The report must include, at a minimum:~~

1476 ~~(a) The number and percentage of students who:~~

1477 ~~1. Return to an alternative school, middle school, or high~~
1478 ~~school upon release and the attendance rate of such students~~
1479 ~~before and after participation in juvenile justice education~~
1480 ~~programs.~~

1481 ~~2. Receive a standard high school diploma or a high school~~
1482 ~~equivalency diploma.~~

1483 ~~3. Receive industry certification.~~

1484 ~~4. Enroll in a postsecondary educational institution.~~

1485 ~~5. Complete a juvenile justice education program without~~
1486 ~~reoffending.~~

1487 ~~6. Reoffend within 1 year after completion of a day~~
1488 ~~treatment or residential commitment program.~~

1489 ~~7. Remain employed 1 year after completion of a day~~
1490 ~~treatment or residential commitment program.~~

1491 ~~8. Demonstrate learning gains pursuant to paragraph~~
1492 ~~(3)(d).~~

1493 ~~(b) The following cost data for each juvenile justice~~
1494 ~~education program:~~

1495 ~~1. The amount of funding provided by district school~~
1496 ~~boards to juvenile justice programs and the amount retained for~~

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1497 ~~administration, including documenting the purposes of such~~
1498 ~~expenses.~~

1499 ~~2. The status of the development of cooperative~~
1500 ~~agreements.~~

1501 ~~3. Recommendations for system improvement.~~

1502 ~~4. Information on the identification of, and services~~
1503 ~~provided to, exceptional students, to determine whether these~~
1504 ~~students are properly reported for funding and are appropriately~~
1505 ~~served.~~

1506 ~~(18)~~ The district school board shall not be charged any
1507 rent, maintenance, utilities, or overhead on such facilities.
1508 Maintenance, repairs, and remodeling of existing detention
1509 facilities shall be provided by the Department of Juvenile
1510 Justice.

1511 (17) ~~(19)~~ When additional facilities are required for
1512 juvenile justice detention, prevention, or day treatment
1513 programs, the district school board and the Department of
1514 Juvenile Justice shall agree on the appropriate site based on
1515 the instructional needs of the students. When the most
1516 appropriate site for instruction is on district school board
1517 property, a special capital outlay request shall be made by the
1518 commissioner in accordance with s. 1013.60. When the most
1519 appropriate site is on state property, state capital outlay
1520 funds shall be requested by the Department of Juvenile Justice
1521 provided by s. 216.043 and shall be submitted as specified by s.

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1522 216.023. Any instructional facility to be built on state
1523 property shall have educational specifications jointly developed
1524 by the district school board and the Department of Juvenile
1525 Justice and approved by the Department of Education. The size of
1526 space and occupant design capacity criteria as provided by State
1527 Board of Education rules shall be used for remodeling or new
1528 construction whether facilities are provided on state property
1529 or district school board property.

1530 ~~(18)-(20)~~ The parent of an exceptional student shall have
1531 the due process rights provided for in this chapter.

1532 ~~(19)-(21)~~ The State Board of Education shall adopt rules
1533 necessary to implement this section. Such rules must require the
1534 minimum amount of paperwork and reporting.

1535 ~~(22) The Department of Juvenile Justice and the Department~~
1536 ~~of Education, in consultation with CareerSource Florida, Inc.,~~
1537 ~~the statewide Workforce Development Youth Council, district~~
1538 ~~school boards, Florida College System institutions, providers,~~
1539 ~~and others, shall jointly develop a multiagency plan for CAPE~~
1540 ~~which describes the funding, curriculum, transfer of credits,~~
1541 ~~goals, and outcome measures for career education programming in~~
1542 ~~juvenile commitment facilities, pursuant to s. 985.622. The plan~~
1543 ~~must be reviewed annually.~~

1544 Section 28. For the purpose of incorporating the amendment
1545 made by this act to section 985.115, Florida Statutes, in a

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1546 reference thereto, subsection (1) of section 985.25, Florida
1547 Statutes, is reenacted to read:

1548 985.25 Detention intake.—

1549 (1) The department shall receive custody of a child who
1550 has been taken into custody from the law enforcement agency or
1551 court and shall review the facts in the law enforcement report
1552 or probable cause affidavit and make such further inquiry as may
1553 be necessary to determine whether detention care is appropriate.

1554 (a) During the period of time from the taking of the child
1555 into custody to the date of the detention hearing, the initial
1556 decision as to the child's placement into detention care shall
1557 be made by the department under ss. 985.24 and 985.245(1).

1558 (b) The department shall base the decision whether to place the
1559 child into detention care on an assessment of risk in accordance
1560 with the risk assessment instrument and procedures developed by
1561 the department under s. 985.245, except that a child shall be
1562 placed in secure detention care until the child's detention
1563 hearing if the child meets the criteria specified in s.

1564 985.255(1)(f), is charged with possessing or discharging a
1565 firearm on school property in violation of s. 790.115, or is
1566 charged with any other offense involving the possession or use
1567 of a firearm.

1568 (c) If the final score on the child's risk assessment
1569 instrument indicates detention care is appropriate, but the
1570 department otherwise determines the child should be released,

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1571 the department shall contact the state attorney, who may
1572 authorize release.

1573 (d) If the final score on the risk assessment instrument
1574 indicates detention is not appropriate, the child may be
1575 released by the department in accordance with ss. 985.115 and
1576 985.13.

1577
1578 Under no circumstances shall the department or the state
1579 attorney or law enforcement officer authorize the detention of
1580 any child in a jail or other facility intended or used for the
1581 detention of adults, without an order of the court.

1582 Section 29. For the purpose of incorporating the amendment
1583 made by this act to section 985.27, Florida Statutes, in a
1584 reference thereto, subsection (3) of section 985.255, Florida
1585 Statutes, is reenacted to read:

1586 985.255 Detention criteria; detention hearing.—

1587 (3)(a) The purpose of the detention hearing required under
1588 subsection (1) is to determine the existence of probable cause
1589 that the child has committed the delinquent act or violation of
1590 law that he or she is charged with and the need for continued
1591 detention. The court shall use the results of the risk
1592 assessment performed by the department and, based on the
1593 criteria in subsection (1), shall determine the need for
1594 continued detention. If the child is a prolific juvenile
1595 offender who is detained under s. 985.26(2)(c), the court shall

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1596 use the results of the risk assessment performed by the
1597 department and the criteria in subsection (1) or subsection (2)
1598 only to determine whether the prolific juvenile offender should
1599 be held in secure detention.

1600 (b) If the court orders a placement more restrictive than
1601 indicated by the results of the risk assessment instrument, the
1602 court shall state, in writing, clear and convincing reasons for
1603 such placement.

1604 (c) Except as provided in s. 790.22(8) or s. 985.27, when
1605 a child is placed into detention care, or into a respite home or
1606 other placement pursuant to a court order following a hearing,
1607 the court order must include specific instructions that direct
1608 the release of the child from such placement no later than 5
1609 p.m. on the last day of the detention period specified in s.
1610 985.26 or s. 985.27, whichever is applicable, unless the
1611 requirements of such applicable provision have been met or an
1612 order of continuance has been granted under s. 985.26(4). If the
1613 court order does not include a release date, the release date
1614 shall be requested from the court on the same date that the
1615 child is placed in detention care. If a subsequent hearing is
1616 needed to provide additional information to the court for safety
1617 planning, the initial order placing the child in detention care
1618 shall reflect the next detention review hearing, which shall be
1619 held within 3 calendar days after the child's initial detention
1620 placement.

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1621 Section 30. For the purpose of incorporating the amendment
1622 made by this act to section 985.441, Florida Statutes, in a
1623 reference thereto, paragraph (h) of subsection (2) of section
1624 985.475, Florida Statutes, is reenacted to read:

1625 985.475 Juvenile sexual offenders.—

1626 (2) Following a delinquency adjudicatory hearing under s.
1627 985.35, the court may on its own or upon request by the state or
1628 the department and subject to specific appropriation, determine
1629 whether a juvenile sexual offender placement is required for the
1630 protection of the public and what would be the best approach to
1631 address the treatment needs of the juvenile sexual offender.
1632 When the court determines that a juvenile has no history of a
1633 recent comprehensive assessment focused on sexually deviant
1634 behavior, the court may, subject to specific appropriation,
1635 order the department to conduct or arrange for an examination to
1636 determine whether the juvenile sexual offender is amenable to
1637 community-based treatment.

1638 (h) If the juvenile sexual offender violates any condition
1639 of the disposition or the court finds that the juvenile sexual
1640 offender is failing to make satisfactory progress in treatment,
1641 the court may revoke the community-based treatment alternative
1642 and order commitment to the department under s. 985.441.

1643 Section 31. For the purpose of incorporating the amendment
1644 made by this act to section 985.441, Florida Statutes, in a

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1645 reference thereto, paragraph (b) of subsection (4) of section
1646 985.565, Florida Statutes, is reenacted to read:
1647 985.565 Sentencing powers; procedures; alternatives for
1648 juveniles prosecuted as adults.—
1649 (4) SENTENCING ALTERNATIVES.—
1650 (b) *Juvenile sanctions.*—For juveniles transferred to adult
1651 court but who do not qualify for such transfer under s.
1652 985.556(3), the court may impose juvenile sanctions under this
1653 paragraph. If juvenile sentences are imposed, the court shall,
1654 under this paragraph, adjudge the child to have committed a
1655 delinquent act. Adjudication of delinquency may not be deemed a
1656 conviction, nor shall it operate to impose any of the civil
1657 disabilities ordinarily resulting from a conviction. The court
1658 shall impose an adult sanction or a juvenile sanction and may
1659 not sentence the child to a combination of adult and juvenile
1660 punishments. An adult sanction or a juvenile sanction may
1661 include enforcement of an order of restitution or probation
1662 previously ordered in any juvenile proceeding. However, if the
1663 court imposes a juvenile sanction and the department determines
1664 that the sanction is unsuitable for the child, the department
1665 shall return custody of the child to the sentencing court for
1666 further proceedings, including the imposition of adult
1667 sanctions. Upon adjudicating a child delinquent under subsection
1668 (1), the court may:

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1669 1. Place the child in a probation program under the
1670 supervision of the department for an indeterminate period of
1671 time until the child reaches the age of 19 years or sooner if
1672 discharged by order of the court.

1673 2. Commit the child to the department for treatment in an
1674 appropriate program for children for an indeterminate period of
1675 time until the child is 21 or sooner if discharged by the
1676 department. The department shall notify the court of its intent
1677 to discharge no later than 14 days before discharge. Failure of
1678 the court to timely respond to the department's notice shall be
1679 considered approval for discharge.

1680 3. Order disposition under ss. 985.435, 985.437, 985.439,
1681 985.441, 985.45, and 985.455 as an alternative to youthful
1682 offender or adult sentencing if the court determines not to
1683 impose youthful offender or adult sanctions.

1684
1685 It is the intent of the Legislature that the criteria and
1686 guidelines in this subsection are mandatory and that a
1687 determination of disposition under this subsection is subject to
1688 the right of the child to appellate review under s. 985.534.

1689 Section 32. For the purpose of incorporating the amendment
1690 made by this act to section 985.03, Florida Statutes, in a
1691 reference thereto, section 985.721, Florida Statutes, is
1692 reenacted to read:

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1693 985.721 Escapes from secure detention or residential
1694 commitment facility.—An escape from:
1695 (1) Any secure detention facility maintained for the
1696 temporary detention of children, pending adjudication,
1697 disposition, or placement;
1698 (2) Any residential commitment facility described in s.
1699 985.03(44), maintained for the custody, treatment, punishment,
1700 or rehabilitation of children found to have committed delinquent
1701 acts or violations of law; or (3) Lawful transportation to or
1702 from any such secure detention facility or residential
1703 commitment facility,
1704
1705 constitutes escape within the intent and meaning of s. 944.40
1706 and is a felony of the third degree, punishable as provided in
1707 s. 775.082, s. 775.083, or s. 775.084.

1711 -----
1712 **T I T L E A M E N D M E N T**

1713 Remove lines 34-44 and insert:
1714 purposes; amending s. 985.619, F.S.; providing the board of
1715 trustees of the Florida Scholars Academy the power and duty to
1716 review and approve an annual academic calendar; authorizing the
1717 board of trustees to decrease the minimum number of days for

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1718 instruction; amending s. 985.664, F.S.; substantially revising
1719 provisions relating to juvenile justice circuit advisory boards;
1720 amending ss. 985.668 and 985.676, F.S.; conforming provisions to
1721 changes made by the act; amending s. 1001.42, F.S.; conforming a
1722 provision to changes made by the act; amending s. 1003.01, F.S.;
1723 revising the definition of the term "juvenile justice education
1724 programs or schools"; amending s. 1003.51, F.S.; revising
1725 requirements for certain State Board of Education rules to
1726 establish policies and standards for certain education programs;
1727 revising requirements for the Department of Education, in
1728 partnership with the Department of Juvenile Justice, the
1729 district school boards, and education providers, to develop and
1730 implement certain contract requirements and to maintain
1731 standardized required content of education records; revising
1732 district school board requirements; revising departmental
1733 requirements relating to juvenile justice education programs;
1734 amending s. 1003.52, F.S.; revising the role of Coordinators for
1735 Juvenile Justice Education Programs in collecting certain
1736 information and developing certain protocols; deleting
1737 provisions relating to career and professional education (CAPE);
1738 requiring district school boards to select appropriate academic
1739 and career assessments to be administered at the time of program
1740 entry and exit; deleting provisions related to requiring
1741 residential juvenile justice education programs to provide
1742 certain CAPE courses; requiring each district school board to

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1743 make provisions for high school level students to earn credits
1744 toward high school graduation while in juvenile justice
1745 detention, prevention, or day treatment programs; authorizing
1746 district school boards to contract with private providers for
1747 the provision of education programs to students placed in such
1748 programs; requiring each district school board to negotiate a
1749 cooperative agreement with the department on the delivery of
1750 educational services to students in such programs; revising
1751 requirements for such agreements; deleting provisions requiring
1752 the Department of Education, in consultation with the Department
1753 of Juvenile Justice, to adopt rules and collect data and report
1754 on certain programs; deleting a provision requiring that
1755 specified entities jointly develop a multiagency plan for CAPE;
1756 conforming provisions to changes made by the act; reenacting s.
1757 985.25(1), F.S., relating to detention intakes, to incorporate
1758 the amendment made to s. 985.115, F.S., in a reference thereto;
1759 reenacting s. 985.255(3), F.S., relating to detention criteria
1760 and detention hearings, to incorporate the amendment made to s.
1761 985.27, F.S., in a reference thereto; reenacting ss.
1762 985.475(2)(h) and 985.565(4)(b), F.S., relating to juvenile
1763 sexual offenders and juvenile sanctions, respectively, to
1764 incorporate the amendment made to s. 985.441, F.S., in
1765 references thereto; reenacting s. 985.721, F.S., relating to
1766 escapes from secure detention or residential commitment

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1425 (2024)

Amendment No. 1

1767 facilities, to incorporate the amendment made to s. 985.03,
1768 F.S., in a reference thereto; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1545 Child Exploitation Offenses

SPONSOR(S): Criminal Justice Subcommittee, Baker

TIED BILLS: **IDEN./SIM. BILLS:** SB 1656

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Butcher	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee		Butcher	Kramer

SUMMARY ANALYSIS

Felony offenses which are subject to the Criminal Punishment Code are listed in a single offense severity ranking chart (OSRC) in s. 921.0022, F.S., which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense. A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense. The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.

Section 827.071, F.S., prohibits specified child exploitation offenses, including:

- Section 827.071(2), F.S., prohibiting a person from using a child in a sexual performance as a second degree felony and a Level 6 offense.
- Section 827.071(3), F.S., prohibiting a person from promoting a sexual performance by a child as a second degree felony and a Level 6 offense.
- Section 827.071(4), F.S., prohibiting a person from possessing child pornography with the intent to promote as a second degree felony and a Level 5 offense.
- Section 827.071(5), F.S., prohibiting a person from possessing or intentionally viewing child pornography as a third degree felony and a Level 5 offense.

CS/HB 1545 amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses:

Violation	Current OSRC Ranking	New OSRC Ranking
Using a child in or promoting a child sexual performance under s. 827.071(2) or (3), F.S.	Level 6	Level 7
Possessing child pornography with intent to promote under s. 827.071(4), F.S.	Level 5	Level 7
Possessing or intentionally viewing child pornography under s. 827.071(5), F.S.	Level 5	Level 6

The bill may have a positive indeterminate impact on jail and prison beds by increasing the OSRC ranking for specified child exploitation offenses, which may result in increased admissions or longer terms of incarceration for persons convicted of such offenses.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code¹ are listed in a single offense severity ranking chart (OSRC),² which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.^{3,4} A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.^{5,6} The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, absent a valid reason for departure.⁷

Child Exploitation Offenses

Using a Child in a Sexual Performance

Section 827.071(2), F.S., prohibits a person from, knowing the character and content thereof, employing, authorizing, or inducing a child to engage in a sexual performance; or being a parent, legal guardian, or custodian of such child, consenting to the participation by such child in a sexual performance. A violation for using a child in a sexual performance is a second degree felony⁸ and the offense is ranked as a Level 6 offense on the OSRC.

Promoting a Sexual Performance by a Child

Under s. 827.071(3), F.S., a person commits a second degree felony if, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child. The offense is ranked as a Level 6 offense on the OSRC.

Possessing Child Pornography with Intent to Promote

Under s. 827.071(4), F.S., a person commits a second degree felony if he or she possesses with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes child pornography. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. The offense is ranked as a Level 5 offense on the OSRC.

Possessing or Intentionally Viewing Child Pornography

¹ All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.

² S. 921.0022, F.S.

³ S. 921.0022(2), F.S.

⁴ Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.

⁵ Ss. 921.0022 and 921.0024, F.S.

⁶ A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.

⁷ If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.

⁸ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

Section 827.071(5), F.S., prohibits a person from knowingly possessing, controlling, or intentionally viewing a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include child pornography. A violation of the prohibition is a third degree felony⁹ and the offense is ranked as a Level 5 offense on the OSRC.

Additionally, s. 827.071(5), F.S., specifies that the possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense, and if such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes child pornography depicting more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense.¹⁰

Section 827.071, F.S., defines the following relevant terms:

- “Child pornography” means any image depicting a minor engaged in sexual conduct, or any image that has been created, altered, adapted, or modified by electronic, mechanical, or other means, to portray an identifiable minor engaged in sexual conduct.¹¹
- “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual or simulated lewd exhibition of the genitals; actual physical contact with a person’s clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed.¹²
- “Sexual performance” means any performance or part thereof which includes sexual conduct by a child.¹³

Reclassification of Specified Child Exploitation Offenses

Under s. 775.0847, F.S., a violation of s. 827.071, F.S., must be reclassified to the next higher degree if the offender possesses 10 or more images of any form of child pornography regardless of content, and the content of at least one image contains one or more of the following:

- A child who is younger than the age of five;
- Sadomasochistic abuse¹⁴ involving a child;
- Sexual battery¹⁵ involving a child;
- Sexual bestiality¹⁶ involving a child; or
- Any motion picture, film, video, or computer-generated motion picture, film, or video involving a child, regardless of length and regardless of whether the motion picture, film, video, or computer-generated motion picture, film, or video contains sound.

⁹ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁰ This does not apply to any material possessed, controlled, or intentionally viewed as part of a law enforcement investigation. S. 827.071(5)(b), F.S.

¹¹ S. 827.071(1)(b), F.S.

¹² A mother’s breastfeeding of her baby does not under any circumstance constitute “sexual conduct.” S. 827.071(1)(l), F.S.

¹³ “Performance” means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience. S. 827.071(1)(m) and (g), F.S.

¹⁴ “Sadomasochistic abuse” means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself. S. 827.071(1)(i), F.S.

¹⁵ “Sexual battery” means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, “sexual battery” does not include an act done for a bona fide medical purpose. S. 827.071(1)(j), F.S.

¹⁶ “Sexual bestiality” means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or female genitals of the other. S. 827.071(1)(k), F.S.

This section reclassifies both the felony and OSRC level for a qualifying offense. For example, a third degree felony that is ranked as a Level 5 offense on the OSRC would be reclassified as a second degree felony that is ranked as a Level 6 offense on the OSRC, if the offense meets the requirements under s. 775.0847, F.S.

Effect of Proposed Changes

CS/HB 1545 amends s. 921.0022, F.S., to increase the OSRC rankings for specified child exploitation offenses as follows:¹⁷

Violation	Current OSRC Ranking	New OSRC Ranking
Using a child in or promoting a child sexual performance under 827.071(2) or (3), F.S.	Level 6	Level 7
Possessing child pornography with intent to promote under s. 827.071(4), F.S.	Level 5	Level 7
Possessing or intentionally viewing child pornography under s. 827.071(5), F.S.	Level 5	Level 6

By increasing the offense severity ranking of specified child exploitation offenses, the bill may increase the minimum sentence to which a person convicted of such an offense may be sentenced and may increase a term of incarceration required to be imposed as part of that sentence.

Under s. 921.0024(2), F.S., if a person scores *more than 44 points*, the lowest permissible sentence to which he or she may be sentenced is a specified term of months in state prison, determined by a formula, and if a person scores *44 points or fewer*, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control.

Under s. 921.0024(1), F.S., which specifies the method for calculating an offender’s scoresheet total, a Level 6 offense scores 36 points and a Level 7 offense scores 54 points. Thus, by increasing the OSRC ranking for specified child exploitation offenses, persons convicted of such offenses may be eligible for a minimum prison sentence as a result of that conviction.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 2: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

¹⁷ The bill retains the current felony levels for ss. 827.071(2), (3), (4), and (5), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by increasing the OSRC ranking for specified child exploitation offenses, which may result in increased prison admissions or longer terms of incarceration for persons convicted of such offenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the ranking of an offense under s. 827.071(5), F.S., that is already subject to reclassification on the OSRC under s. 775.0847, F.S., and made another technical change.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to child exploitation offenses;
 3 amending s. 921.0022, F.S.; revising the ranking of
 4 specified child exploitation offenses for purposes of
 5 the offense severity ranking chart of the Criminal
 6 Punishment Code; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Paragraphs (e), (f), and (g) of subsection (3)
 11 of section 921.0022, Florida Statutes, are amended to read:

12 921.0022 Criminal Punishment Code; offense severity
 13 ranking chart.—

14 (3) OFFENSE SEVERITY RANKING CHART

15
 16 (e) LEVEL 5

17

Florida	Felony	Description
Statute	Degree	
316.027 (2) (a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.

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20	316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
21	316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
22	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
23	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
	379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or reproducing stone crab trap

			tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
24	379.367 (4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
25	379.407 (5) (b) 3.	3rd	Possession of 100 or more undersized spiny lobsters.
26	381.0041 (11) (b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
27	440.10 (1) (g)	2nd	Failure to obtain workers' compensation coverage.
28	440.105 (5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
29	440.381 (2)	3rd	Submission of false,

			misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.
30	624.401 (4) (b) 2.	2nd	Transacting insurance without a certificate or authority; premium collected \$20,000 or more but less than \$100,000.
31	626.902 (1) (c)	2nd	Representing an unauthorized insurer; repeat offender.
32	790.01 (3)	3rd	Unlawful carrying of a concealed firearm.
33	790.162	2nd	Threat to throw or discharge destructive device.
34	790.163 (1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
35	790.221 (1)	2nd	Possession of short-barreled

			shotgun or machine gun.
36	790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
37	796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.
38	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
39	800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
40	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
41	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.

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42	812.015 (8) (a) & (c) - (e)	3rd	Retail theft; property stolen is valued at \$750 or more and one or more specified acts.
43	812.015 (8) (f)	3rd	Retail theft; multiple thefts within specified period.
44	812.019 (1)	2nd	Stolen property; dealing in or trafficking in.
45	812.081 (3)	2nd	Trafficking in trade secrets.
46	812.131 (2) (b)	3rd	Robbery by sudden snatching.
47	812.16 (2)	3rd	Owning, operating, or conducting a chop shop.
48	817.034 (4) (a) 2.	2nd	Communications fraud, value \$20,000 to \$50,000.
49	817.234 (11) (b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
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51	817.2341(1), (2) (a) & (3) (a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
52	817.568 (2) (b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, \$5,000 or more or use of personal identification information of 10 or more persons.
53	817.611 (2) (a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.
54	817.625 (2) (b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.

55	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
56	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes child pornography.
57	827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.
58	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
	836.14(4)	2nd	Person who willfully promotes for financial gain a sexually explicit image of an identifiable person without consent.

59	839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.
60	843.01(1)	3rd	Resist officer with violence to person; resist arrest with violence.
61	847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
62	847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
63	847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
64	874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent

65	874.05(2)(a)	2nd	offense. Encouraging or recruiting person under 13 years of age to join a criminal gang.
66	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs).
67	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
68			

69	893.13(1)(d)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of university.</p>
70	893.13(1)(e)2.	2nd	<p>Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (2)(c)10., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.</p>
71	893.13(1)(f)1.	1st	<p>Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)5. drugs) within 1,000 feet of public housing facility.</p>

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72	893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
73	893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.
74	(f) LEVEL 6		
75	Florida Statute	Felony Degree	Description
76	316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
77	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
78	400.9935(4)(c)	2nd	Operating a clinic, or offering services requiring licensure, without a license.
79	499.0051(2)	2nd	Knowing forgery of transaction

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			history, transaction information, or transaction statement.
80	499.0051(3)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
81	499.0051(4)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
82	775.0875(1)	3rd	Taking firearm from law enforcement officer.
83	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
84	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
85	784.041	3rd	Felony battery; domestic battery by strangulation.
86	784.048(3)	3rd	Aggravated stalking; credible

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			threat.
87	784.048 (5)	3rd	Aggravated stalking of person under 16.
88	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer.
89	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
90	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
91	784.081 (2)	2nd	Aggravated assault on specified official or employee.
92	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
93	784.083 (2)	2nd	Aggravated assault on code inspector.
94			

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95	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
96	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
97	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
98	790.164 (1)	2nd	False report concerning bomb, explosive, weapon of mass destruction, act of arson or violence to state property, or use of firearms in violent manner.
99	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
	794.011 (8) (a)	3rd	Solicitation of minor to participate in sexual activity

by custodial adult.

100	794.05(1)	2nd	Unlawful sexual activity with specified minor.
101	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
102	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
103	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
104	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
105	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
106			

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107	812.014 (2) (b) 1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
108	812.014 (2) (c) 5.	3rd	Grand theft; third degree; firearm.
109	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
110	812.015 (9) (a)	2nd	Retail theft; property stolen \$750 or more; second or subsequent conviction.
111	812.015 (9) (b)	2nd	Retail theft; aggregated property stolen within 30 days is \$3,000 or more; coordination of others.
112	812.015 (9) (d)	2nd	Retail theft; multiple thefts within specified period.
	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).

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113	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
114	817.49(2)(b)2.	2nd	Willful making of a false report of a crime resulting in death.
115	817.505(4)(b)	2nd	Patient brokering; 10 or more patients.
116	817.5695(3)(b)	2nd	Exploitation of person 65 years of age or older, value \$10,000 or more, but less than \$50,000.
117	825.102(1)	3rd	Abuse of an elderly person or disabled adult.
118	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
119	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.

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120	825.103 (3) (c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$10,000.
121	827.03 (2) (c)	3rd	Abuse of a child.
122	827.03 (2) (d)	3rd	Neglect of a child.
123	827.071 (2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
124	<u>827.071 (5)</u>	<u>3rd</u>	<u>Possess, control, or intentionally view any photographic material, motion picture, etc., which includes child pornography.</u>
125	828.126 (3)	3rd	Sexual activities involving animals.
126	836.05	2nd	Threats; extortion.
127	836.10	2nd	Written or electronic threats

to kill, do bodily injury, or
conduct a mass shooting or an
act of terrorism.

128

843.12 3rd Aids or assists person to
escape.

129

847.011 3rd Distributing, offering to
distribute, or possessing with
intent to distribute obscene
materials depicting minors.

130

847.012 3rd Knowingly using a minor in the
production of materials harmful
to minors.

131

847.0135(2) 3rd Facilitates sexual conduct of
or with a minor or the visual
depiction of such conduct.

132

893.131 2nd Distribution of controlled
substances resulting in
overdose or serious bodily
injury.

133

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134	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
135	918.13(2) (b)	2nd	Tampering with or fabricating physical evidence relating to a capital felony.
136	944.35(3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
137	944.40	2nd	Escapes.
138	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
139	944.47(1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
	951.22(1) (i)	3rd	Firearm or weapon introduced

into county detention facility.

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(g) LEVEL 7

Florida Statute	Felony Degree	Description
316.027 (2) (c)	1st	Accident involving death, failure to stop; leaving scene.
316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.

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148	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
149	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
150	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
151	456.065 (2)	3rd	Practicing a health care profession without a license.
152	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
153	458.327 (1)	3rd	Practicing medicine without a license.
	459.013 (1)	3rd	Practicing osteopathic medicine

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without a license.

154

460.411 (1) 3rd Practicing chiropractic
medicine without a license.

155

461.012 (1) 3rd Practicing podiatric medicine
without a license.

156

462.17 3rd Practicing naturopathy without
a license.

157

463.015 (1) 3rd Practicing optometry without a
license.

158

464.016 (1) 3rd Practicing nursing without a
license.

159

465.015 (2) 3rd Practicing pharmacy without a
license.

160

466.026 (1) 3rd Practicing dentistry or dental
hygiene without a license.

161

467.201 3rd Practicing midwifery without a
license.

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162	468.366	3rd	Delivering respiratory care services without a license.
163	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
164	483.901 (7)	3rd	Practicing medical physics without a license.
165	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
166	484.053	3rd	Dispensing hearing aids without a license.
167	494.0018 (2)	1st	Conviction of any violation of chapter 494 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
168	560.123 (8) (b) 1.	3rd	Failure to report currency or

payment instruments exceeding \$300 but less than \$20,000 by a money services business.

169

560.125 (5) (a) 3rd

Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.

170

655.50 (10) (b) 1. 3rd

Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.

171

775.21 (10) (a) 3rd

Sexual predator; failure to register; failure to renew driver license or identification card; other registration violations.

172

775.21 (10) (b) 3rd

Sexual predator working where children regularly congregate.

173

775.21 (10) (g) 3rd

Failure to report or providing

false information about a sexual predator; harbor or conceal a sexual predator.

174

782.051(3)

2nd

Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.

175

782.07(1)

2nd

Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).

176

782.071

2nd

Killing of a human being or unborn child by the operation of a motor vehicle in a reckless manner (vehicular homicide).

177

782.072

2nd

Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).

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178	784.045 (1) (a) 1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
179	784.045 (1) (a) 2.	2nd	Aggravated battery; using deadly weapon.
180	784.045 (1) (b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
181	784.048 (4)	3rd	Aggravated stalking; violation of injunction or court order.
182	784.048 (7)	3rd	Aggravated stalking; violation of court order.
183	784.07 (2) (d)	1st	Aggravated battery on law enforcement officer.
184	784.074 (1) (a)	1st	Aggravated battery on sexually violent predators facility staff.
185	784.08 (2) (a)	1st	Aggravated battery on a person

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65 years of age or older.

186 784.081 (1) 1st Aggravated battery on specified
official or employee.

187 784.082 (1) 1st Aggravated battery by detained
person on visitor or other
detainee.

188 784.083 (1) 1st Aggravated battery on code
inspector.

189 787.06 (3) (a) 2. 1st Human trafficking using
coercion for labor and services
of an adult.

190 787.06 (3) (e) 2. 1st Human trafficking using
coercion for labor and services
by the transfer or transport of
an adult from outside Florida
to within the state.

191 790.07 (4) 1st Specified weapons violation
subsequent to previous
conviction of s. 790.07 (1) or

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(2).

192

790.16(1) 1st Discharge of a machine gun
under specified circumstances.

193

790.165(2) 2nd Manufacture, sell, possess, or
deliver hoax bomb.

194

790.165(3) 2nd Possessing, displaying, or
threatening to use any hoax
bomb while committing or
attempting to commit a felony.

195

790.166(3) 2nd Possessing, selling, using, or
attempting to use a hoax weapon
of mass destruction.

196

790.166(4) 2nd Possessing, displaying, or
threatening to use a hoax
weapon of mass destruction
while committing or attempting
to commit a felony.

197

790.23 1st, PBL Possession of a firearm by a
person who qualifies for the

			penalty enhancements provided for in s. 874.04.
198	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
199	796.05(1)	1st	Live on earnings of a prostitute; 2nd offense.
200	796.05(1)	1st	Live on earnings of a prostitute; 3rd and subsequent offense.
201	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim younger than 12 years of age; offender younger than 18 years of age.
202	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but younger than 16 years of age; offender 18 years of age

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or older.

203

800.04(5)(e) 1st Lewd or lascivious molestation;
victim 12 years of age or older
but younger than 16 years;
offender 18 years or older;
prior conviction for specified
sex offense.

204

806.01(2) 2nd Maliciously damage structure by
fire or explosive.

205

810.02(3)(a) 2nd Burglary of occupied dwelling;
unarmed; no assault or battery.

206

810.02(3)(b) 2nd Burglary of unoccupied
dwelling; unarmed; no assault
or battery.

207

810.02(3)(d) 2nd Burglary of occupied
conveyance; unarmed; no assault
or battery.

208

810.02(3)(e) 2nd Burglary of authorized
emergency vehicle.

209

812.014(2)(a)1. 1st Property stolen, valued at
 \$100,000 or more or a
 semitrailer deployed by a law
 enforcement officer; property
 stolen while causing other
 property damage; 1st degree
 grand theft.

210

812.014(2)(b)2. 2nd Property stolen, cargo valued
 at less than \$50,000, grand
 theft in 2nd degree.

211

812.014(2)(b)3. 2nd Property stolen, emergency
 medical equipment; 2nd degree
 grand theft.

212

812.014(2)(b)4. 2nd Property stolen, law
 enforcement equipment from
 authorized emergency vehicle.

213

812.014(2)(f) 2nd Grand theft; second degree;
 firearm with previous
 conviction of s.
 812.014(2)(c)5.

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214	812.0145(2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
215	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
216	812.131(2) (a)	2nd	Robbery by sudden snatching.
217	812.133(2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
218	817.034(4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
219	817.234(8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
220	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
221			

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222	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
223	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
224	817.418 (2) (a)	3rd	Offering for sale or advertising personal protective equipment with intent to defraud.
225	817.504 (1) (a)	3rd	Offering or advertising a vaccine with intent to defraud.
226	817.535 (2) (a)	3rd	Filing false lien or other unauthorized document.
	817.611 (2) (b)	2nd	Traffic in or possess 15 to 49 counterfeit credit cards or related documents.

227	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
228	825.103 (3) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$10,000 or more, but less than \$50,000.
229	827.03 (2) (b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
230	827.04 (3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
231	<u>827.071 (2) & (3)</u>	<u>2nd</u>	<u>Use or induce a child in a sexual performance, or promote or direct such performance.</u>
232	<u>827.071 (4)</u>	<u>2nd</u>	<u>Possess with intent to promote any photographic material,</u>

motion picture, etc., which
includes child pornography.

233	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
234	838.015	2nd	Bribery.
235	838.016	2nd	Unlawful compensation or reward for official behavior.
236	838.021(3)(a)	2nd	Unlawful harm to a public servant.
237	838.22	2nd	Bid tampering.
238	843.0855(2)	3rd	Impersonation of a public officer or employee.
239	843.0855(3)	3rd	Unlawful simulation of legal process.
240	843.0855(4)	3rd	Intimidation of a public officer or employee.

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241	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
242	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
243	872.06	2nd	Abuse of a dead human body.
244	874.05(2)(b)	1st	Encouraging or recruiting person under 13 to join a criminal gang; second or subsequent offense.
245	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
246	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5.)

within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

247

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s.

893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)5., within 1,000 feet of property used for religious services or a specified business site.

248

893.13(4)(a) 1st Use or hire of minor; deliver to minor other controlled substance.

249

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

250

893.135 1st Trafficking in cocaine, more

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251	(1) (b) 1.a.		than 28 grams, less than 200 grams.
	893.135	1st	Trafficking in illegal drugs,
	(1) (c) 1.a.		more than 4 grams, less than 14 grams.
252			
	893.135	1st	Trafficking in hydrocodone, 28
	(1) (c) 2.a.		grams or more, less than 50 grams.
253			
	893.135	1st	Trafficking in hydrocodone, 50
	(1) (c) 2.b.		grams or more, less than 100 grams.
254			
	893.135	1st	Trafficking in oxycodone, 7
	(1) (c) 3.a.		grams or more, less than 14 grams.
255			
	893.135	1st	Trafficking in oxycodone, 14
	(1) (c) 3.b.		grams or more, less than 25 grams.
256			
	893.135	1st	Trafficking in fentanyl, 4
	(1) (c) 4.b. (I)		grams or more, less than 14

grams.

257 893.135 1st Trafficking in phencyclidine,
 (1) (d) 1.a. 28 grams or more, less than 200
 grams.

258 893.135 (1) (e) 1. 1st Trafficking in methaqualone,
 200 grams or more, less than 5
 kilograms.

259 893.135 (1) (f) 1. 1st Trafficking in amphetamine, 14
 grams or more, less than 28
 grams.

260 893.135 1st Trafficking in flunitrazepam, 4
 (1) (g) 1.a. grams or more, less than 14
 grams.

261 893.135 1st Trafficking in gamma-
 (1) (h) 1.a. hydroxybutyric acid (GHB), 1
 kilogram or more, less than 5
 kilograms.

262 893.135 1st Trafficking in 1,4-Butanediol,
 (1) (j) 1.a. 1 kilogram or more, less than 5

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kilograms.

263 893.135 1st Trafficking in Phenethylamines,
 (1) (k) 2.a. 10 grams or more, less than 200
 grams.

264 893.135 1st Trafficking in synthetic
 (1) (m) 2.a. cannabinoids, 280 grams or
 more, less than 500 grams.

265 893.135 1st Trafficking in synthetic
 (1) (m) 2.b. cannabinoids, 500 grams or
 more, less than 1,000 grams.

266 893.135 1st Trafficking in n-benzyl
 (1) (n) 2.a. phenethylamines, 14 grams or
 more, less than 100 grams.

267 893.1351(2) 2nd Possession of place for
 trafficking in or manufacturing
 of controlled substance.

268 896.101(5)(a) 3rd Money laundering, financial
 transactions exceeding \$300 but
 less than \$20,000.

269	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
270	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
271	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
272	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
273	943.0435(13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

274	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.
275	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
276	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
277	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
278	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

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279

985.4815(10) 3rd Sexual offender; failure to submit to the taking of a digitized photograph.

280

985.4815(12) 3rd Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.

281

985.4815(13) 3rd Sexual offender; failure to report and reregister; failure to respond to address verification; providing false registration information.

282

283

Section 2. This act shall take effect October 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1563 Construction Contracting

SPONSOR(S): Grant

TIED BILLS: IDEN./SIM. BILLS: SB 1778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N	Wright	Anstead
2) Judiciary Committee		Mawn	Kramer
3) Commerce Committee			

SUMMARY ANALYSIS

Construction contractors are certified or registered by the Construction Industry Licensing Board housed within the Department of Business and Professional Regulation (DBPR). The Florida Homeowners' Construction Recovery Fund, under DBPR, is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors, and is funded through a building permit surcharge.

Certain crimes related to construction fraud exist; however, currently, there is no requirement for construction funds to be placed in an escrow account.

The bill creates a process to require contractors to keep certain contract funds in an escrow account, under certain circumstances, with criminal penalties.

Specifically, the bill requires a contractor or qualified company that receives \$10,000 or more for improvements to residential real property to, before the substantial completion of work under the contract, place such payment in an escrow account with:

- A savings and loan association, bank, or trust company located in the state;
- An attorney who is a member in good standing with The Florida Bar; or
- A real estate broker licensed in the state.

The bill also:

- Allows such escrow requirements to be waived in writing by the homeowner. However, if the value of the improvement or construction is more than \$100,000, such contractor or qualified company must obtain a performance bond for the value of the contract.
- Allows a contractor or qualified company to withdraw funds from the escrow account before the substantial completion of work, in certain circumstances.
- Provides that a contractor or qualified company that willfully violates the escrow requirements commits a felony of the third degree.
- Provides that, if a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a construction fraud crime, the court must impose a cost of \$51 against the offender in addition to any other cost or penalty required by law, and that the Florida Homeowners' Construction Recovery Fund will be funded through such allotted fees, in addition to DBPR permit surcharges.

The bill will have an indeterminate fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR), through 11 divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.¹

Construction Contractors

Chapter 489, F.S., relates to “contracting,” with part I of that chapter addressing the licensure and regulation of construction contracting, and part II of that chapter addressing the licensure and regulation of electrical and alarm system contracting.

Construction contractors are certified or registered by the Construction Industry Licensing Board (CILB) housed within DBPR. The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate. The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.²

“Certified contractors” are individuals who pass the state competency examination and obtain a certificate of competency issued by DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.³

“Certified specialty contractors” are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.

“Registered contractors” are individuals that have taken and passed a local competency examination and can practice the specific category of contracting for which he or she is approved, but only in the local jurisdiction for which the license is issued.⁴

¹ s. 20.165, F.S.

² S. 489.107, F.S.

³ S. 489.105, F.S.

⁴ S. 489.103, F.S.

Florida Homeowners' Construction Recovery Fund

The Florida Homeowners' Construction Recovery Fund is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed contractors. Claims are filed with the DBPR and reviewed for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board for review.⁵

Current law requires all local governments to assess and collect a 1% surcharge on any building permit issued by their respective enforcement agencies for the purpose of enforcing the Building Code. The local jurisdictions collect the assessment and remit the surcharge fees to DBPR to fund the activities of the Commission, DBPR's Building Code Compliance and Mitigation Program, and the Florida Fire Prevention Code informal interpretations.⁶

Current law also requires all local governments to assess and collect a separate 1.5% surcharge on any building permit issued by their respective enforcement agencies for the purpose of enforcing the Building Code. The local governments collect the assessment and remit the surcharge fees to DBPR, where it is divided equally to fund the activities of the Building Code Administrators and Inspectors Board (BCAIB) and the Florida Homeowners' Construction Recovery Fund.⁷

Local government are permitted to retain 10% of the amount of the surcharges they collect to fund participation by their agencies in the national and state building code adoption processes and to provide education related to enforcement of the Building Code.⁸

Construction Liens (Ch. 713, F.S.)

Florida law seeks to ensure that people working on construction projects are paid for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien⁹ on the property, provided the person complies with statutory procedures.¹⁰ These procedures require the filing or serving of various documents, including a:

- Notice of Commencement;¹¹
- Notice to Owner;¹²
- Claim of Lien;¹³
- Notice of Termination;¹⁴
- Waiver or Release of Lien;¹⁵
- Notice of Contest of Lien;¹⁶
- Contractor's Final Payment Affidavit;¹⁷ and

⁵ S. 489.1401(2), F.S.

⁶ S. 553.721, F.S.

⁷ S. 468.631, F.S.

⁸ Ss. 468.631, and 553.721, F.S.

⁹ A lien is a claim against property that evidences a debt, obligation, or duty. Fla. Jur. 2d Liens s. 37:1.

¹⁰ Ch. 713, F.S.

¹¹ S. 713.13, F.S.

¹² To secure construction lien rights, a person working on a construction project who is not in direct contract ("privity") with the owner must serve a notice to owner in the statutory form provided; laborers are exempt from this requirement. The notice informs the owner that someone with whom he or she is not in privity is providing services or materials on the property and that such person expects the owner to ensure he or she is paid. The notice must be served no later than 45 days after the person begins furnishing services or materials and before the date the owner disburses the final payment after the contractor has furnished his or her final payment affidavit. After receiving a notice to owner, the owner must obtain a waiver or release of lien from the notice's sender before paying the contractor, unless a payment bond applies, or risk payments to the contractor constituting improper payments that leave the owner liable to the notice sender if the contractor does not pay such person. *Stocking Bldg. Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313 (Fla 3d DCA 2011); s. 713.06, F.S.

¹³ S. 713.08, F.S.

¹⁴ S. 713.132, F.S.

¹⁵ S. 713.20, F.S.

¹⁶ S. 713.22(2), F.S.

¹⁷ S. 713.06(3), F.S.

- Demands of Written Statement of Account.¹⁸

Construction Fraud Crimes (Sections 489.126 and 489.127, F.S.)

Moneys Received by Contractors – Commencing Work

A contractor who receives, as initial payment, money totaling more than 10 percent of the contract price for repair, restoration, improvement, or construction to residential real property must:

- Apply for permits necessary to do work within 30 days after the date payment is made, except where the work does not require a permit under the applicable codes and ordinances, and
- Start the work within 90 days after the date all necessary permits for work, if any, are issued, unless:
 - The person who made the payment agreed, in writing, to a longer period to apply for the necessary permits or start the work or to longer periods for both; or
 - The contractor is permitted to show “just cause” as to why they have failed to apply for the necessary permits, starting the work, or refunding the payment.¹⁹

If a contractor fails to comply with these requirements, the contractee, who is normally the homeowner, must make written demand to the contractor that includes a demand to:²⁰

- Apply for the necessary permits,
- Start the work, or
- Refund the payment.

Such demand must be sent via certified mail, return receipt requested, to the address listed in the contracting agreement. If there is no address for the contractor listed in the contracting agreement, or no written agreement exists, it must be sent to the address listed for licensing purposes with DBPR or the local licensing board.²¹

A contractor will not be permitted to show “just cause” for failing to apply for the necessary permits, starting the work, or refunding the payment if the contractor fails to apply for the necessary permits, start the work, or refund payments within 30 days of receiving written demand to apply for the necessary permits, start the work, or refund the payment from the person who made the payment.²²

A contractor or qualified company who violates these requirements commits:²³

- A misdemeanor of the first degree, if the total money received is less than \$1,000.
- A felony of the third degree, if the total money received is \$1,000 or more, but less than \$20,000.
- A felony of the second degree, if the total money received is \$20,000 or more, but less than \$200,000.
- A felony of the first degree, if the total money received is \$200,000 or more

Moneys Received by Contractors – Termination

A contractor who receives money for repair, restoration, addition, improvement, or construction of residential real property in excess of the value of the work performed may not fail or refuse to perform any work for any 90-day period or for any period that is mutually agreed upon and specified in the contract.²⁴

¹⁸ S. 713.16, F.S.

¹⁹ S. 489.126(2), F.S.

²⁰ S. 489.126(2)(b)1., F.S.

²¹ *Id.*

²² S. 489.126(2)(b)2., F.S.

²³ S. 489.126(5), F.S.

²⁴ S. 489.126(3)(a), F.S.

It is prima facie evidence that a contractor received money for the repair, restoration, addition, improvement, or construction of residential real property and that the amount received exceeds the value of the work performed by the contractor when:²⁵

- The contractor failed to perform any of the contracted work during any 90-day period or any period that is mutually agreed upon and specified in the contract;
- The failure to perform any such work during the 90-day period or such period that is mutually agreed upon and specified in the contract was not related to the owner's termination of the contract or a material breach of the contract by the owner; and
- The contractor failed to perform for the 90-day period or such period that is mutually agreed upon and specified in the contract without "just cause," or terminated the contract without proper notification to the owner.

Proper notification of termination must be made by the contractor in the form of a letter that includes the reason for termination of the contract or the reason for failure to perform sent via certified mail, return receipt requested, mailed to the address of the owner listed in the contracting agreement. If no written agreement exists, the letter must be mailed to the address where the work was to be performed or the address listed on the permit, if applicable.²⁶

If a contractor fails to properly submit a notice of termination, written demand must be made to the contractor to:²⁷

- Perform work, or
- Refund the money received in excess of the value of the work performed.

Such demand must be sent via certified mail, return receipt requested, mailed to the address listed in the contracting agreement. If there is no address for the contractor listed in the contracting agreement, or no agreement exists, the letter must be mailed to the address listed with the department for licensing purposes or the local construction industry licensing board, if applicable.²⁸

A contractor will not be permitted to show "just cause" to terminate the contract if the contractor fails to perform work, or refund the money received in excess of the value of the work performed, within 30 days after receiving a written demand to perform the work, or refund the money received in excess of the value of the work performed, from the person who made the payment.²⁹

A contractor or qualified company who violates these requirements commits:³⁰

- A misdemeanor of the first degree, if the total money received exceeding the value of the work performed is less than \$1,000.
- A felony of the third degree, if the total money received exceeding the value of the work performed is \$1,000 or more, but less than \$20,000.
- A felony of the second degree, if the total money received exceeding the value of the work performed is \$20,000 or more, but less than \$200,000.
- A felony of the first degree, if the total money received exceeding the value of the work performed is \$200,000 or more.

²⁵ S. 489.126(3), F.S.

²⁶ S. 489.126(3)(b)3.a., F.S.

²⁷ S. 489.126(3)(b)3.b., F.S.

²⁸ *Id.*

²⁹ S. 489.126(3)(b)3.c., F.S.

³⁰ S. 489.126(6), F.S.

Unlicensed Activity

No person shall:³¹

- Falsely hold himself or herself or a business organization out as a licensee, certificateholder, or registrant;
- Falsely impersonate a contractor certificateholder or registrant;
- Present as his or her own the contractor certificate or registration of another;
- Knowingly give false or forged evidence to the CILB or a member thereof;
- Use or attempt to use a contractor certificate or registration that has been suspended or revoked;
- Engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified;
- Operate a business organization engaged in contracting after 60 days following the termination of its only qualifying agent without designating another primary qualifying agent, with certain exceptions;
- Commence or perform work for which a building permit is required without such building permit being in effect; or
- Willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

For purposes of these prohibitions, a person or business organization operating on an inactive or suspended certificate or registration is not duly certified or registered and is considered unlicensed.³²

Any unlicensed person who commits a violation of these prohibitions:³³

- Commits a misdemeanor of the first degree.
- After having been previously found guilty of such violation, commits a felony of the third degree.
- During the existence of a state of emergency declared by executive order of the Governor, commits a felony of the third degree.
- If such person operates as a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator, commits a felony of the third degree.

Relatedly, a certified or registered contractor may not:³⁴

- Enter into an agreement to allow his or her certification number or registration to be used by a person or company who is unlicensed.
- Knowingly allow his or her certification number or registration to be used by a person or company who is unlicensed.
- Apply for or obtain a building permit for a person or company that is unlicensed.³⁵

A person who violates these prohibitions:

- Commits a misdemeanor of the first degree.
- After having been previously found guilty of such violation, commits a felony of the third degree.

Escrow Accounts

Escrow is a legal concept describing a financial agreement where an asset or money is held by a third party on behalf of two other parties that are in the process of completing a transaction.³⁶

³¹ S. 489.127(1), F.S.

³² *Id.*

³³ S. 489.127(2), F.S.

³⁴ S. 489.126(4), F.S.

³⁵ This does not prohibit a contractor from applying for or obtaining a building permit to allow the contractor to perform work for another person without compensation or to perform work on property that is owned by the contractor. *Id.*

³⁶ Caroline Banton, *How Escrow Protects Parties in Financial Transactions*, Investopedia, Aug. 23, 2023,

<https://www.investopedia.com/terms/e/escrow.asp> (last visited Feb. 13, 2024).

Escrow accounts are managed by the escrow agent. The agent releases the assets or funds upon the fulfillment of predetermined contractual obligations, or upon receiving appropriate instructions. Money, securities, funds, and other assets may be held in escrow.³⁷

Effect of the Bill

Construction Fraud Crimes

The bill creates a process in s. 713.345(2)(a), F.S., to require contractors to keep certain contract funds in an escrow account, under certain circumstances, with criminal penalties.

The bill defines "substantial completion" as performance that is nearly equivalent to that which was contracted for and when only minor, corrective, or warranty work remains.

The bill requires a contractor or qualified company that receives \$10,000 or more for improvements to residential real property to, before the substantial completion of work under the contract, place such payment in an escrow account with:

- A savings and loan association, bank, or trust company located in the state;
- An attorney who is a member in good standing with The Florida Bar; or
- A real estate broker licensed in the state.

The escrow requirements do not apply to the following:

- A contract for hourly labor provided by the contractor or qualified company, but only to the extent payments are made to subcontractors and for materials before substantial completion of the contract.
- A contractor who owns the real property upon which the improvement or construction is to be completed.
- A cost-plus contract.
- A situation in which the escrow requirements are waived in writing by the owner of the residential real property. However, if such escrow requirement is waived, and the value of the improvement or construction is more than \$100,000, the contractor or qualified company must record a copy of a payment by the owner of the residential real property and a performance bond equal to the value of the contract with an insurer authorized to do business in Florida as surety.

The bill requires the contractor or qualified company, within 10 business days after a deposit has been made, to inform the owner of the residential real property in writing of the name of the depository institution, attorney, or real estate broker with whom the funds have been deposited, unless the contract specifies where such payment must be deposited.

The bill allows a contractor or qualified company to keep funds received from different owners in the same account if the contractor or qualified company has financial or accounting records that clearly show how the funds deposited were allocated to each owner.

The bill provides that a depository institution, an attorney, or a real estate broker who receives such a payment in an amount of \$10,000 or more from a contractor or qualified company is not required to:

- Inquire into the validity or propriety of any deposits to or withdrawals from the escrow account; or
- Ensure that any withdrawals from such account are used for a specific purpose as required by a contract.

The bill provides that a deposit into the escrow account remains the property of the owner of the residential real property except as otherwise provided by the bill.

³⁷ *Id.*

The bill allows a contractor or qualified company to withdraw funds from the escrow account before the substantial completion of work, and therefore have control over the disbursement of funds in escrow, in the following circumstances:

- Under the terms of a payment schedule agreed to in the contract between the contractor or qualified company and the owner of the residential real property;
- When required to make payments to subcontractors or for materials related to the contracted job; or
- Upon substantial completion of the improvements to the residential real property if the owner of such property violates the contract, but only if the amount withdrawn by the contractor or qualified company covers reasonable costs plus liquidated damages not to exceed \$500.

The bill provides that if a waiver of the escrow requirement has been executed in writing, the owner of the residential real property may deliver by certified mail, return receipt requested, a written demand for an accounting report of the funds paid to the contractor or qualified company to:

- The address listed in the contract; or
- If the address is not provided in the contract, or a written contract does not exist, the address that is listed for the contractor or qualified company with DBPR for licensing purposes.

Within 60 days after receipt of such demand, the bill requires the contractor or qualified company to provide the owner with an accounting record indicating payments that were made to subcontractors and for purchased materials.

The bill provides that a contractor or qualified company that willfully violates s. 713.345(2)(a), F.S., commits a felony of the third degree.³⁸ The failure of a contractor or qualified company to respond to an owner's written demand for an accounting report creates a rebuttable presumption that a violation of s. 713.345(2)(a), F.S., was willful.

Florida Homeowners' Construction Recovery Fund

The bill provides that the Florida Homeowners' Construction Recovery Fund will be funded through allotted fees from cases related to construction fraud, in addition to DBPR permit surcharges.

The bill provides that, if a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, a construction fraud crime in ss. 489.126, 489.127, or 713.345, F.S., a court must impose a cost of \$51 against the offender in addition to any other cost or penalty required by law. Payment of such court cost is a condition of probation, community control, or any other court-ordered supervision.

The bill requires the clerk of the court to transfer \$50 from the proceeds of the court cost to the Florida Homeowners' Construction Recovery Fund each month. The clerk of the court retains \$1 of each sum collected as a service charge.

Effective Date

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

- Section 1: Amends s. 713.01, F.S.; relating to definitions.
- Section 2: Amends s. 713.345, F.S.; relating to moneys received for real property improvements; penalty for misapplication.
- Section 3: Creates s. 938.14, F.S.; relating to court costs imposed in cases related to construction fraud.
- Section 4: Amends s. 489.140, F.S.; relating to Florida Homeowners' Construction Recovery Fund.
- Section 5: Provides an effective date of July 1, 2024.

³⁸ Punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may increase funds available to be disbursed through the Florida Homeowners' Construction Recovery Fund.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase availability of funds from the Florida Homeowners' Construction Recovery Fund for homeowners' who have been financially harmed by a contractor.

D. FISCAL COMMENTS:

The bill may have a positive impact on jail and prison beds by creating new felony offenses relating to construction fraud, which may result in increased admissions to such facilities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is unclear if the escrow account requirements are applicable to contract amounts of \$10,000 or more, payments adding up to \$10,000 or more over time, or only to lump sum payments of \$10,000 or more.

The bill is unclear when a contractor may take funds from the escrow account. The bill does not state that the contractor has rights to the funds after substantial completion of the contract for improvements. The bill also lists instances when funds may be withdrawn prior to substantial completion, but then states that funds may only be withdrawn upon substantial completion if the owner of such property violates the contract.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to construction contracting; amending
3 s. 713.01, F.S.; defining the term "substantial
4 completion"; amending s. 713.345, F.S.; requiring
5 contractors and qualified companies that receive a
6 specified amount of money for improvements to
7 residential real property to place such payments in an
8 escrow account with specified institutions or persons
9 or to provide a surety bond; requiring the contractor
10 or qualified company to provide certain written
11 information within a specified timeframe to the owner
12 of the residential real property being improved;
13 authorizing the contractor or qualified company to
14 keep funds received from different owners in the same
15 account under certain circumstances; providing that
16 the institution and person with whom funds were
17 deposited are not required to make certain inquiries;
18 providing that funds deposited into an escrow account
19 remain the property of the owner; authorizing the
20 contractor or qualified company to withdraw funds
21 before the substantial completion of work in certain
22 circumstances; authorizing the owner of the
23 residential real property to request in a specified
24 manner an accounting record from the contractor or
25 qualified company; requiring the contractor or

26 | qualified company to provide such accounting records
 27 | within a specified timeframe; requiring a contractor
 28 | or qualified company to record a payment and
 29 | performance bond in certain circumstances; requiring
 30 | the owner of the residential real property to pay for
 31 | the cost of such recording; providing that a
 32 | contractor or qualified company has control over
 33 | certain disbursements if certain requirements are met;
 34 | providing applicability; creating a rebuttable
 35 | presumption; providing criminal penalties; creating s.
 36 | 938.14, F.S.; requiring the court to impose an
 37 | additional court cost for certain offenses; providing
 38 | that such court cost is a condition of probation,
 39 | community control, or court-ordered supervision;
 40 | requiring the clerk of the court to transfer a
 41 | specified amount to the Florida Homeowners'
 42 | Construction Recovery Fund; providing for the clerk of
 43 | the court to retain a service charge; amending s.
 44 | 489.140, F.S.; conforming a provision to changes made
 45 | by the act; providing an effective date.

46 |
 47 | Be It Enacted by the Legislature of the State of Florida:

48 |
 49 | Section 1. Subsection (30) of section 713.01, Florida
 50 | Statutes, is renumbered as subsection (31), and a new subsection

51 (30) is added to that section, to read:

52 713.01 Definitions.—As used in this part, the term:

53 (30) "Substantial completion" means performance that is
54 nearly equivalent to that which was contracted for and when only
55 minor, corrective, or warranty work remains.

56 Section 2. Subsection (2) of section 713.345, Florida
57 Statutes, is renumbered as subsection (3), and a new subsection
58 (2) is added to that section, to read:

59 713.345 Moneys received for real property improvements;
60 penalty for misapplication; escrow account required for certain
61 funds.—

62 (2)(a) A contractor or qualified company that receives
63 \$10,000 or more for improvements to residential real property
64 must, before the substantial completion of work under the
65 contract, place such payment in an escrow account with a savings
66 and loan association, bank, or trust company located in the
67 state; an attorney who is a member in good standing with The
68 Florida Bar; or a real estate broker licensed in the state,
69 unless such escrow requirement is waived in writing by the owner
70 of the residential real property. If such escrow is waived in
71 writing by the owner of the residential real property, the
72 contractor must provide a copy of a surety bond if required
73 under paragraph (g).

74 (b) Unless the contract specifies where such payment must
75 be deposited, the contractor or qualified company must, within

76 10 business days after a deposit has been made, inform the owner
77 of the residential real property in writing of the name of the
78 depository institution, attorney, or real estate broker with
79 whom the funds have been deposited.

80 (c) The contractor or qualified company may keep funds
81 received from different owners in the same account if the
82 contractor or qualified company has financial or accounting
83 records that clearly show how the funds deposited were allocated
84 to each owner.

85 (d) A depository institution, an attorney, or a real
86 estate broker who receives a payment in an amount of \$10,000 or
87 more from a contractor or qualified company under this
88 subsection for improvements to residential real property is not
89 required to inquire into the validity or propriety of any
90 deposits to or withdrawals from the escrow account or to ensure
91 that any withdrawals from such account are used for a specific
92 purpose as required by a contract. A deposit into the escrow
93 account remains the property of the owner of the residential
94 real property except as otherwise provided in this subsection.

95 (e) A contractor or qualified company may withdraw funds
96 from the escrow account before the substantial completion of
97 work in the following circumstances:

98 1. Under the terms of a payment schedule agreed to in the
99 contract between the contractor or qualified company and the
100 owner of the residential real property;

101 2. When required to make payments to subcontractors or for
102 materials related to the contracted job in order to comply with
103 subsection (1); or

104 3. Upon substantial completion of the improvements to the
105 residential real property if the owner of such property violates
106 the contract, but only if the amount withdrawn by the contractor
107 or qualified company covers reasonable costs plus liquidated
108 damages not to exceed \$500.

109 (f) If a waiver of the escrow requirement has been
110 executed in writing, the owner of the residential real property
111 may deliver by certified mail, return receipt requested, a
112 written demand to the address listed in the contract for an
113 accounting report of the funds paid to the contractor or
114 qualified company. If the address of the contractor or qualified
115 company is not provided in the contract, or a written contract
116 or agreement does not exist, the owner must deliver by certified
117 mail, return receipt requested, the written demand to the
118 address that is listed for the contractor or qualified company
119 with the department for licensing purposes. Within 60 days after
120 receipt of such demand, the contractor or qualified company must
121 provide the owner with an accounting record indicating payments
122 that were made to subcontractors and for purchased materials.

123 (g) If the escrow requirement is waived in writing by the
124 owner of the residential real property and the value of the
125 improvement or construction is more than \$100,000, a contractor

126 or qualified company must record a copy of a payment by the
127 owner of the residential real property and a performance bond
128 equal to the value of the contract with an insurer authorized to
129 do business in the state as surety. The owner of the residential
130 real property is responsible for the cost of such recording.

131 (h) A contractor or qualified company has control over the
132 disbursement of funds in escrow if the contractor or qualified
133 company complies with paragraph (e).

134 (i) This subsection does not apply to any of the
135 following:

136 1. A contract for hourly labor provided by the contractor
137 or qualified company, but applies only to payments made to
138 subcontractors and for materials before substantial completion
139 of the contract.

140 2. A contractor who owns the real property upon which the
141 improvement or construction is to be completed.

142 3. A cost-plus contract.

143 (j) The failure of a contractor or qualified company to
144 respond to an owner's written demand for an accounting report as
145 required under paragraph (f) creates a rebuttable presumption
146 that a violation of this subsection was willful.

147 (k) A contractor or qualified company that willfully
148 violates this subsection commits a felony of the third degree,
149 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

150 Section 3. Section 938.14, Florida Statutes, is created to

151 read:

152 938.14 Court cost imposed in cases related to construction
 153 fraud.-

154 (1) If a person pleads guilty or nolo contendere to, or is
 155 found guilty of, regardless of adjudication, an offense in
 156 violation of s. 489.126, s. 489.127, or s. 713.345, the court
 157 shall impose a court cost of \$51 against the offender in
 158 addition to any other cost or penalty required by law. Payment
 159 of such court cost is a condition of probation, community
 160 control, or any other court-ordered supervision.

161 (2) Each month the clerk of the court shall transfer \$50
 162 from the proceeds of the court cost to the Florida Homeowners'
 163 Construction Recovery Fund. The clerk of the court shall retain
 164 \$1 of each sum collected as a service charge.

165 Section 4. Section 489.140, Florida Statutes, is amended
 166 to read:

167 489.140 Florida Homeowners' Construction Recovery Fund.-
 168 There is created the Florida Homeowners' Construction Recovery
 169 Fund as a separate account in the Professional Regulation Trust
 170 Fund. The recovery fund shall be funded pursuant to ss. 468.631
 171 and 938.14 ~~s. 468.631~~.

172 Section 5. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<input type="checkbox"/>	(Y/N)
ADOPTED AS AMENDED	<input type="checkbox"/>	(Y/N)
ADOPTED W/O OBJECTION	<input type="checkbox"/>	(Y/N)
FAILED TO ADOPT	<input type="checkbox"/>	(Y/N)
WITHDRAWN	<input type="checkbox"/>	(Y/N)
OTHER	<input type="checkbox"/>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Grant offered the following:

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (s) is added to subsection (1) of
 7 section 489.129, Florida Statutes, to read:

8 489.129 Disciplinary proceedings.—

9 (1) The board may take any of the following actions
 10 against any certificateholder or registrant: place on probation
 11 or reprimand the licensee, revoke, suspend, or deny the issuance
 12 or renewal of the certificate or registration, require financial
 13 restitution to a consumer for financial harm directly related to
 14 a violation of a provision of this part, impose an
 15 administrative fine not to exceed \$10,000 per violation, require
 16 continuing education, or assess costs associated with

Amendment No. 1

17 investigation and prosecution, if the contractor, financially
18 responsible officer, or business organization for which the
19 contractor is a primary qualifying agent, a financially
20 responsible officer, or a secondary qualifying agent responsible
21 under s. 489.1195 is found guilty of any of the following acts:

22 (s) Committing a violation of s. 713.345(2). If a
23 contractor or qualified business licensed by the board under
24 this chapter pleads guilty or nolo contendere to, or is found
25 guilty of, regardless of adjudication, an offense in violation
26 of s. 489.126(5)(b), (c), or (d); s. 489.126(6)(b), (c), or (d);
27 or s. 713.345(2)(g), the board and the Electrical Contractors'
28 Licensing Board must suspend all licenses issued to such
29 licensee under this chapter for a minimum of 1 year from the
30 date of conviction. The suspension required under this paragraph
31 is not exclusive, and the board may impose any additional
32 penalties set forth in this subsection.

33
34 For the purposes of this subsection, construction is considered
35 to be commenced when the contract is executed and the contractor
36 has accepted funds from the customer or lender. A contractor
37 does not commit a violation of this subsection when the
38 contractor relies on a building code interpretation rendered by
39 a building official or person authorized by s. 553.80 to enforce
40 the building code, absent a finding of fraud or deceit in the
41 practice of contracting, or gross negligence, repeated

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42 negligence, or negligence resulting in a significant danger to
43 life or property on the part of the building official, in a
44 proceeding under chapter 120.

45 Section 2. Subsection (2) of section 713.345, Florida
46 Statutes, is renumbered as subsection (3), and a new subsection
47 (2) is added to that section, to read:

48 713.345 Moneys received for real property improvements;
49 penalty for misapplication; escrow account required for certain
50 funds.—

51 (2) (a) As used in this subsection, the term:

52 1. "Substantial completion" means performance that is
53 nearly equivalent to that which was contracted for and when only
54 minor, corrective, or warranty work remains.

55 2. "Designated contractor or qualified business" means a
56 contractor certified or registered under chapter 489 or a
57 business organization qualified by a contractor certified or
58 registered under chapter 489 who:

59 a. Has been certified, registered, or qualified for less
60 than 5 years;

61 b. Contracts for improvements to residential real property
62 within an area for which a state of emergency has been declared
63 pursuant to s. 252.36 for a hurricane within 18 months after the
64 date of the declaration; or

65 c. Has been disciplined by the Construction Industry
66 Licensing Board or the Electrical Contractors' Licensing Board

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67 within the previous five years for failing to comply with this
68 subsection or s. 489.126.

69 (b) A designated contractor or qualified business that
70 receives a payment of \$10,000 or more prior to commencement
71 pursuant to a contract for improvements to residential real
72 property, must, within 3 business days after receipt, place such
73 payment in an escrow account with a savings and loan
74 association, bank, or trust company located in the state; an
75 attorney who is a member in good standing with The Florida Bar;
76 or a real estate broker licensed in the state, unless such
77 escrow requirement is waived in writing by the owner of the
78 residential real property. If such escrow is waived in writing
79 by the owner of the residential real property, the contractor
80 must provide a copy of a performance bond if required under
81 subparagraph 5.

82 1. Unless the contract specifies where such payment must
83 be deposited, the designated contractor or qualified business
84 must, within 10 business days after a deposit has been made,
85 inform the owner of the residential real property in writing of
86 the name of the depository institution, attorney, or real estate
87 broker with whom the funds have been deposited.

88 2. The designated contractor or qualified business may
89 keep funds received from different owners in the same account if
90 the designated contractor or qualified business has financial or

Amendment No. 1

91 accounting records that clearly show how the funds deposited
92 were allocated to each owner.

93 3. A depository institution, an attorney, or a real estate
94 broker who receives a payment in an amount of \$10,000 or more
95 from a designated contractor or qualified business under this
96 subsection for improvements to residential real property is not
97 required to inquire into the nature of any deposits to or
98 withdrawals from the escrow account or to ensure that any
99 withdrawals from such account are used for a specific purpose as
100 required by a contract. A deposit into the escrow account
101 remains the property of the owner of the residential real
102 property except as otherwise provided in this subsection.

103 4. A designated contractor or qualified business may
104 withdraw funds from the escrow account before the substantial
105 completion of work in the following circumstances:

106 a. Under the terms of a payment schedule agreed to in the
107 contract between the designated contractor or qualified business
108 and the owner of the residential real property;

109 b. When required to make payments to subcontractors or for
110 materials related to the contracted job in order to comply with
111 subsection (1); or

112 c. If the owner of such property violates the contract,
113 but only if the amount withdrawn by the designated contractor or
114 qualified business covers reasonable costs plus liquidated
115 damages not to exceed \$500.

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116 5. If the escrow requirement is waived in writing by the
117 owner of the residential real property, a designated contractor
118 or qualified business must obtain a performance bond equal to
119 the value of the contract and provide proof of such bond to the
120 property owner before commencing or continuing the project.

121 6. A designated contractor or qualified business has
122 control over the disbursement of funds in escrow upon
123 substantial completion of the contract, or any portion that is
124 specifically accounted for in the contract.

125 (c) The owner of the residential real property may deliver
126 by certified mail, return receipt requested, a written demand to
127 the address listed in the contract for an accounting report of
128 the funds paid to the designated contractor or qualified
129 business. If the address of the designated contractor or
130 qualified business is not provided in the contract, or a written
131 contract or agreement does not exist, the owner must deliver by
132 certified mail, return receipt requested, the written demand to
133 the address that is listed for the designated contractor or
134 qualified business with the Department of Business and
135 Professional Regulation for licensing purposes. Within 60 days
136 after receipt of such demand, the designated contractor or
137 qualified business must provide the owner with an accounting
138 record indicating all payments made to and from the designated
139 contractor or qualified business, including those that were made

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Amendment No. 1

140 to subcontractors and for purchased materials, by certified
141 mail, return receipt requested.

142 (d) The failure of a designated contractor or qualified
143 business to respond to an owner's written demand for an
144 accounting report as required under paragraph (c) creates a
145 rebuttable presumption that a violation was willful.

146 (e) This subsection does not apply to any of the
147 following:

148 1. A contract for hourly labor provided by a contractor
149 certified or registered under chapter 489 or a business
150 organization qualified by a contractor certified or registered
151 under chapter 489.

152 2. A contractor certified or registered under chapter 489
153 or a business organization qualified by a contractor certified
154 or registered under chapter 489 who owns the real property upon
155 which the improvement or construction is to be completed.

156 3. A cost-plus contract.

157 (f) If the value of a contract or addenda thereto is more
158 than \$100,000 for a contract for improvements to residential
159 real property, a contractor certified or registered under
160 chapter 489 or a business organization qualified by a contractor
161 certified or registered under chapter 489, must obtain a
162 performance bond equal to the value of the contract and provide
163 proof of such bond to the property owner before commencing or
164 continuing the project.

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165 (g) A contractor certified or registered under chapter 489
166 or a business organization qualified by a contractor certified
167 or registered under chapter 489 commits a felony of the third
168 degree, punishable as provided in s. 775.082, s. 775.083, or s.
169 775.084, if the contractor or qualified business willfully fails
170 to place funds in an escrow account as required under this
171 subsection.

172 (h) If a contractor or qualified business pleads guilty or
173 nolo contendere to, or is found guilty of, regardless of
174 adjudication, a violation of paragraph (g), the licensee is
175 subject to discipline under s. 489.129(1)(s).

176 Section 3. Section 938.14, Florida Statutes, is created to
177 read:

178 938.14 Court cost imposed in cases related to construction
179 fraud.-

180 (1) If a person pleads guilty or nolo contendere to, or is
181 found guilty of, regardless of adjudication, an offense in
182 violation of s. 489.126, s. 489.127, or s. 713.345, the court
183 shall impose a court cost of \$51 against the offender in
184 addition to any other cost or penalty required by law. Payment
185 of such court cost is a condition of probation, community
186 control, or any other court-ordered supervision.

187 (2) Each month the clerk of the court shall transfer \$50
188 from the proceeds of the court cost to the Florida Homeowners'

Amendment No. 1

189 Construction Recovery Fund. The clerk of the court shall retain
190 \$1 of each sum collected as a service charge.

191 Section 4. Section 489.140, Florida Statutes, is amended
192 to read:

193 489.140 Florida Homeowners' Construction Recovery Fund.—
194 There is created the Florida Homeowners' Construction Recovery
195 Fund as a separate account in the Professional Regulation Trust
196 Fund. The recovery fund shall be funded pursuant to ss. 468.631
197 and 938.14 ~~s. 468.631.~~

198 Section 5. This act shall take effect July 1, 2024.

199

200

201

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

202

Remove everything before the enacting clause and insert:

203

An act relating to construction contracting; amending s.

204

489.129, F.S.; authorizing disciplinary action for specified

205

offenses; amending s. 713.345, F.S.; requiring a designated

206

contractor or qualified business that receives a payment of

207

\$10,000 or more before commencement pursuant to a contract for

208

improvements to residential real property to place such payment

209

in an escrow account with specified depository institutions,

210

attorneys, or real estate brokers within 3 business days after

211

receipt, absent written waiver of such requirement by the

212

property owner; requiring a designated contractor or qualified

213

business to inform the property owner in writing of the name of

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Amendment No. 1

214 the depository institution, attorney, or real estate broker with
215 whom the funds have been deposited, unless the contract
216 specified where such payment must be deposited; authorizing the
217 designated contractor or qualified business to keep funds
218 received from different property owners in one escrow account
219 under specified circumstances; specifying the obligations of a
220 depository institution, attorney, or real estate broker who
221 accepts a deposit from a designated contractor or qualified
222 business under this subsection; clarifying property rights in a
223 deposit into an escrow account under this subsection;
224 authorizing a designated contractor or qualified business to
225 withdraw funds from the escrow account in specified
226 circumstances; specifying who controls disbursements from an
227 escrow account upon substantial completion or as accounted for
228 in the contract; requiring a designated contractor or qualified
229 business to obtain a performance bond in certain situations;
230 authorizing a property owner who waives the escrow requirement
231 to deliver in a specified manner a written demand for an
232 accounting report of the funds paid to the designated contractor
233 or qualified business; requiring a designated contractor or
234 qualified business to provide to a property owner in a specified
235 manner an accounting record containing specified information
236 within 60 days of receipt of the property owner's demand
237 therefor; requiring specified contractors and business
238 organizations qualified by specified contractors to obtain a

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Amendment No. 1

239 performance bond in certain situations; providing definitions;
240 providing applicability; creating a rebuttable presumption;
241 providing criminal penalties; authorizing disciplinary action
242 for specified offenses; creating s. 938.14, F.S.; requiring the
243 court to impose an additional court cost for certain offenses in
244 specified circumstances; providing that such court cost is a
245 condition of probation, community control, or court-ordered
246 supervision; requiring the clerk of the court to transfer part
247 of such court cost to the Florida Homeowners' Construction
248 Recovery Fund; providing for the clerk of the court to retain a
249 service charge from such court cost; amending s. 489.140, F.S.;
250 conforming a provision to changes made by the act; providing an
251 effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1589 Driving Without a Valid Driver License

SPONSOR(S): Criminal Justice Subcommittee, Plakon

TIED BILLS: IDEN./SIM. BILLS: SB 1324

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 3 N, As CS	Butcher	Hall
2) Judiciary Committee		Butcher	Kramer

SUMMARY ANALYSIS

In Florida, unless exempted, a person may not drive a motor vehicle upon a highway unless he or she has a valid driver license issued under chapter 322, F.S. Under s. 322.34(2), F.S., a person whose driver license or driving privilege has been canceled, suspended, or revoked, or who does not have a driver license or driving privilege but is under suspension or revocation equivalent status as defined in s. 322.01(42), F.S., who, knowing of such cancellation, suspension, revocation, or suspension or revocation equivalent status, drives a motor vehicle upon a highway in Florida, commits a:

- Second degree misdemeanor, upon a first conviction.
- First degree misdemeanor, upon a second or subsequent conviction, and must serve 10 days in jail for a third or subsequent specified conviction.
- Third degree felony, upon a third or subsequent conviction *if* the current or most recent offense of driving while license suspended or revoked (DWLS) relates to a specified driving offense.

A person who drives without ever having been issued a valid driver license commits an offense of no valid driver license (NVDL) under s. 322.03, F.S. A violation for NVDL is a second degree misdemeanor and, unlike the penalty for DWLS, does not increase upon a second or subsequent conviction.

CS/HB 1589 amends s. 322.03, F.S., to revise the criminal penalties applicable to an offense of NVDL. Under the bill, a person commits a:

- Second degree misdemeanor, upon a first conviction.
- First degree misdemeanor, upon a second conviction.
- First degree misdemeanor, and must serve 10 days in jail for a third or subsequent conviction.

The bill specifies that the penalties under s. 322.03, F.S., for a violation of NVDL, do not apply to a violation of 316.212, F.S., relating to the operation of golf carts.

The bill may have a positive indeterminate impact on jail beds by increasing the penalty for a second or subsequent offense of NVDL and requiring a person convicted of a third or subsequent offense to serve a minimum of 10 days in jail, which may increase jail admissions and terms of incarceration.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Requirements to Obtain a Driver License

In Florida, unless exempted, a person may not drive a motor vehicle¹ upon a highway² unless he or she has a valid driver license issued under chapter 322, F.S.³ Generally, to obtain a Florida driver license, a person must:

- Be at least 16 years of age;
- Complete a drug, alcohol, and traffic awareness course; and
- Pass a driving knowledge exam and driving skills test.^{4,5}

A person younger than 18 years of age must also hold a learner's permit for a specified period of time, not be convicted of traffic infractions, and complete a specified amount of driving experience.⁶

Operating a Vehicle without a Valid Driver License

Driving While License Suspended, Revoked, Canceled, or Disqualified

Under s. 322.34(2), F.S, a person whose driver license or driving privilege has been canceled, suspended, or revoked, or who does not have a driver license or driving privilege but is under suspension or revocation equivalent status as defined in s. 322.01(42), F.S.,⁷ who, knowing of such cancellation, suspension, revocation, or suspension or revocation equivalent status, drives a motor vehicle upon a highway in Florida, commits a:

- Second degree misdemeanor, upon a first conviction.⁸
- First degree misdemeanor,⁹ upon a second or subsequent conviction, and must serve 10 days in jail for a third or subsequent specified conviction.¹⁰
- Third degree felony,¹¹ upon a third or subsequent conviction if the current or most recent offense of driving while license suspended or revoked (DWLS) relates to a violation for:
 - Driving under the influence;
 - Refusal to submit to a urine, breath-alcohol, or blood alcohol test;
 - A traffic offense causing death or serious bodily injury; or
 - Fleeing or eluding.¹²

¹ "Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and electric bicycles as defined in s. 316.003, F.S. S. 322.01(28), F.S.

² "Street or highway" means the entire width between the boundary lines of a way or place if any part of that way or place is open to public use for purposes of vehicular traffic. S. 322.01(40), F.S.

³ S. 322.03, F.S.

⁴ *How to Get Your Florida Driver's License*, <https://www.stateofflorida.com/drivers-license-steps/> (last visited Feb. 7, 2024).

⁵ See also *General Information*, FLHSMV, <https://www.flhsmv.gov/driver-licenses-id-cards/general-information/> (last visited Feb. 7, 2024).

⁶ *Supra* note 4.

⁷ "Suspension or revocation equivalent status" is a designation for a person who does not have a driver license or driving privilege but would qualify for suspension or revocation of his or her driver license or driving privilege if licensed. The department may designate a person as having suspension or revocation equivalent status in the same manner as it is authorized to suspend or revoke a driver license or driving privilege by law.

⁸ S. 322.34(2)(a), F.S. A second degree misdemeanor is punishable by up to 60 days in jail and a \$500 fine, as provided in s. 775.082 and s. 775.083, F.S.

⁹ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine, as provided in s. 775.082 and s. 775.083, F.S.

¹⁰ S. 322.34(2)(b), F.S.

¹¹ A third degree felony is punishable by up to five years in prison and a \$5,000 fine, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

¹² S. 322.34(2)(c), F.S. A person whose third or subsequent DWLS qualifies as a third degree felony under s. 322.34(2)(c), F.S., is not subject to the minimum mandatory period of 10 days in jail that applies to a third or subsequent DWLS under s. 322.34(2)(b), F.S.

No Valid Driver License

A person who drives without ever having been issued a valid driver license commits an offense of no valid driver license (NVDL) under s. 322.03, F.S. A violation of NVDL is a second degree misdemeanor¹³ and, unlike the penalty for DWLS, does not increase upon a second or subsequent conviction.

Habitual Traffic Offender Designation

Under s. 322.264, F.S., a “habitual traffic offender” (HTO) is any person whose record, as maintained by the Department of Highway Safety and Motor Vehicles, shows that he or she has accumulated three or more convictions within five years, arising out of separate acts, of any one or more of the following offenses:

- Voluntary or involuntary manslaughter resulting from the operation of a motor vehicle;
- Driving under the influence offenses under ss. 316.193, former 316.1931, or former 860.01, F.S.;
- Any felony in the commission of which a motor vehicle is used;
- DWLS;
- Failing to stop and render aid as required in the event of a motor vehicle crash resulting in the death of or personal injury to another person;
- Driving a commercial motor vehicle while his or her privilege is disqualified; or
- Fifteen convictions for moving traffic offenses for which points may be assessed as set forth in s. 322.27, F.S.

A person who drives a motor vehicle upon a highway in Florida while designated as an HTO commits a third degree felony.¹⁴ Unlike DWLS convictions, a person does not qualify for HTO status based on NVDL convictions.¹⁵

Effect of Proposed Changes

CS/HB 1589 amends s. 322.03, F.S., to revise the criminal penalties applicable to an offense of NVDL. Under the bill, a person commits a:

- Second degree misdemeanor, upon a first conviction.
- First degree misdemeanor, upon a second conviction.
- First degree misdemeanor, and must serve 10 days in jail for a third or subsequent conviction.

The bill specifies that the penalties under s. 322.03, F.S., for a violation of NVDL, do not apply to a violation of 316.212, F.S., relating to the operation of golf carts.¹⁶

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 322.03, F.S., relating to drivers must be licensed; penalties.

Section 2: Amends s. 322.15, F.S., relating to license to be carried and exhibited on demand; fingerprint to be imprinted upon a citation.

Section 3: Amends s. 322.291, F.S., relating to driver improvement schools or DUI programs; required in certain suspension and revocation cases.

¹³ S. 322.29, F.S.

¹⁴ S. 322.34(5), F.S.

¹⁵ NVDL is a criminal violation for which no points are assessed. See FLHSMV (revised July 1, 2023), https://www.flhsmv.gov/pdf/courts/utc/appendix_c.pdf (last visited Feb. 7, 2024).

¹⁶ A golf cart is a type of motor vehicle as defined in s. 320.01, F.S. Under s. 316.212(7), F.S., a golf cart may be operated on public roads or streets by a certain person not possessing a valid driver license, including a person: a) who is under 18 years of age and possesses a valid learner’s driver license or valid driver license; or b) who is 18 years of age or older who possesses a valid form of government-issued photographic identification. A person who violates s. 316.212, F.S., commits a noncriminal traffic infraction, punishable pursuant to chapter 318 as a nonmoving violation.

Section 4: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail beds by increasing the penalty for a second or subsequent offense of NVDL and requiring a person convicted of a third or subsequent offense of NVDL to serve 10 days in jail, which may increase jail admissions and terms of incarceration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made a technical change to clarify the provision

making the penalties under s. 322.03, F.S., inapplicable to a violation of s. 316.212, F.S., relating to the operation of golf carts.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

CS/HB 1589

2024

1 A bill to be entitled
2 An act relating to driving without a valid driver
3 license; amending s. 322.03, F.S.; revising penalties
4 for the offense of driving without a valid driver
5 license; requiring a specified minimum jail sentence
6 for a third or subsequent conviction of such offense;
7 providing applicability; amending ss. 322.15 and
8 322.291, F.S.; conforming cross-references; providing
9 an effective date.

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

12
13 Section 1. Section 322.03, Florida Statutes, is amended to
14 read:

15 322.03 Drivers must be licensed; penalties.—

16 (1) (a) Except as otherwise authorized in this chapter, a
17 person may not drive any motor vehicle upon a highway in this
18 state unless such person has a valid driver license issued under
19 this chapter.

20 (b) A person who violates paragraph (a) commits:

21 1. Upon a first conviction, a misdemeanor of the second
22 degree, punishable as provided in s. 775.082 or s. 775.083.

23 2. Upon a second conviction, a misdemeanor of the first
24 degree, punishable as provided in s. 775.082 or s. 775.083.

25 3. Upon a third or subsequent conviction, a misdemeanor of

26 the first degree, punishable as provided in s. 775.082 or s.
27 775.083, and the court must order the person to serve a minimum
28 mandatory period of 10 days in jail.

29
30 The penalties provided in this paragraph do not apply to
31 violations of s. 316.212.

32 (2)(a) A person who drives a commercial motor vehicle may
33 not receive a driver license unless and until he or she
34 surrenders to the department all driver licenses in his or her
35 possession issued to him or her by any other jurisdiction or
36 makes an affidavit that he or she does not possess a driver
37 license. Any such person who fails to surrender such licenses
38 commits a noncriminal infraction, punishable as a moving
39 violation as set forth in chapter 318. Any such person who makes
40 a false affidavit concerning such licenses commits a misdemeanor
41 of the first degree, punishable as provided in s. 775.082 or s.
42 775.083.

43 (b) All surrendered licenses may be returned by the
44 department to the issuing jurisdiction together with information
45 that the licensee is now licensed in a new jurisdiction or may
46 be destroyed by the department, which shall notify the issuing
47 jurisdiction of such destruction. A person may not have more
48 than one valid driver license at any time.

49 (3)~~(2)~~ Prior to issuing a driver license, the department
50 shall require any person who has been convicted two or more

51 times of a violation of s. 316.193 or of a substantially similar
52 alcohol-related or drug-related offense outside this state
53 within the preceding 5 years, or who has been convicted of three
54 or more such offenses within the preceding 10 years, to present
55 proof of successful completion of or enrollment in a department-
56 approved substance abuse education course. If the person fails
57 to complete such education course within 90 days after issuance,
58 the department shall cancel the license. Further, prior to
59 issuing the driver license the department shall require such
60 person to present proof of financial responsibility as provided
61 in s. 324.031. For the purposes of this paragraph, a previous
62 conviction for violation of former s. 316.028, former s.
63 316.1931, or former s. 860.01 shall be considered a previous
64 conviction for violation of s. 316.193.

65 (4)~~(3)~~(a) The department may not issue a commercial driver
66 license to any person who is not a resident of this state.

67 (b) A resident of this state who is required by the laws
68 of this state to possess a commercial driver license may not
69 operate a commercial motor vehicle in this state unless he or
70 she possesses a valid commercial driver license issued by this
71 state. Except as provided in paragraph (c), any person who
72 violates this paragraph commits ~~is guilty of~~ a misdemeanor of
73 the first degree, punishable as provided in s. 775.082 or s.
74 775.083.

75 (c) Any person whose commercial driver license has been

76 expired for a period of 30 days or less and who drives a
 77 commercial motor vehicle within this state commits ~~is guilty of~~
 78 a nonmoving violation, punishable as provided in s. 318.18.

79 (5)~~(4)~~ A person may not operate a motorcycle unless he or
 80 she holds a driver license that authorizes such operation,
 81 subject to the appropriate restrictions and endorsements. A
 82 person may operate an autocycle, as defined in s. 316.003,
 83 without a motorcycle endorsement.

84 (6)~~(5)~~ It is a violation of this section for any person
 85 whose driver license has been expired for more than 6 months to
 86 operate a motor vehicle on the highways of this state.

87 (7)~~(6)~~ A person who is charged with a violation of this
 88 section, other than a violation of paragraph (2)(a) ~~of~~
 89 ~~subsection (1)~~, may not be convicted if, prior to or at the time
 90 of his or her court or hearing appearance, the person produces
 91 in court or to the clerk of the court in which the charge is
 92 pending a driver license issued to him or her and valid at the
 93 time of his or her arrest. The clerk of the court is authorized
 94 to dismiss such case at any time prior to the defendant's
 95 appearance in court. The clerk of the court may assess a fee of
 96 \$5 for dismissing the case under this subsection.

97 Section 2. Subsection (3) of section 322.15, Florida
 98 Statutes, is amended to read:

99 322.15 License to be carried and exhibited on demand;
 100 fingerprint to be imprinted upon a citation.—

101 (3) In relation to violations of subsection (1) or s.
 102 322.03(6) ~~s. 322.03(5)~~, persons who cannot supply proof of a
 103 valid driver license for the reason that the license was
 104 suspended for failure to comply with that citation shall be
 105 issued a suspension clearance by the clerk of the court for that
 106 citation upon payment of the applicable penalty and fee for that
 107 citation. If proof of a valid driver license is not provided to
 108 the clerk of the court within 30 days, the person's driver
 109 license shall again be suspended for failure to comply.

110 Section 3. Section 322.291, Florida Statutes, is amended
 111 to read:

112 322.291 Driver improvement schools or DUI programs;
 113 required in certain suspension and revocation cases.—Except as
 114 provided in s. 322.03(3) ~~s. 322.03(2)~~, any person:

115 (1) Whose driving privilege has been revoked:

116 (a) Upon conviction for:

117 1. Driving, or being in actual physical control of, any
 118 vehicle while under the influence of alcoholic beverages, any
 119 chemical substance set forth in s. 877.111, or any substance
 120 controlled under chapter 893, in violation of s. 316.193;

121 2. Driving with an unlawful blood- or breath-alcohol
 122 level;

123 3. Manslaughter resulting from the operation of a motor
 124 vehicle;

125 4. Failure to stop and render aid as required under the

126 laws of this state in the event of a motor vehicle crash
127 resulting in the death or personal injury of another;
128 5. Reckless driving; or
129 (b) As a habitual offender;
130 (c) Upon direction of the court, if the court feels that
131 the seriousness of the offense and the circumstances surrounding
132 the conviction warrant the revocation of the licensee's driving
133 privilege; or
134 (2) Whose license was suspended under the point system,
135 was suspended for driving with an unlawful blood-alcohol level
136 of 0.10 percent or higher before January 1, 1994, was suspended
137 for driving with an unlawful blood-alcohol level of 0.08 percent
138 or higher after December 31, 1993, was suspended for a violation
139 of s. 316.193(1), or was suspended for refusing to submit to a
140 lawful breath, blood, or urine test as provided in s. 322.2615
141
142 shall, before the driving privilege may be reinstated, present
143 to the department proof of enrollment in a department-approved
144 advanced driver improvement course operating pursuant to s.
145 318.1451 or a substance abuse education course conducted by a
146 DUI program licensed pursuant to s. 322.292, which shall include
147 a psychosocial evaluation and treatment, if referred.
148 Additionally, for a third or subsequent violation of
149 requirements for installation of an ignition interlock device, a
150 person must complete treatment as determined by a licensed

151 treatment agency following a referral by a DUI program and have
152 the duration of the ignition interlock device requirement
153 extended by at least 1 month up to the time period required to
154 complete treatment. If the person fails to complete such course
155 or evaluation within 90 days after reinstatement, or
156 subsequently fails to complete treatment, if referred, the DUI
157 program shall notify the department of the failure. Upon receipt
158 of the notice, the department shall cancel the offender's
159 driving privilege, notwithstanding the expiration of the
160 suspension or revocation of the driving privilege. The
161 department may temporarily reinstate the driving privilege upon
162 verification from the DUI program that the offender has
163 completed the education course and evaluation requirement and
164 has reentered and is currently participating in treatment. If
165 the DUI program notifies the department of the second failure to
166 complete treatment, the department shall reinstate the driving
167 privilege only after notice of completion of treatment from the
168 DUI program.

169 Section 4. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1653 Duties and Prohibited Acts Associated with Death

SPONSOR(S): Criminal Justice Subcommittee, Giallombardo

TIED BILLS: **IDEN./SIM. BILLS:** SB 768

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	17 Y, 0 N, As CS	Padgett	Hall
2) Justice Appropriations Subcommittee	14 Y, 0 N	Saag	Keith
3) Judiciary Committee		Padgett	Kramer

SUMMARY ANALYSIS

Generally, s. 406.11, F.S., requires a district medical examiner to determine the cause of death of a deceased human being in specified circumstances, including when a person's cause of death is not obvious, when a death may implicate criminal activity, or when a death impacts public health and safety. Section 406.12, F.S., requires a person who becomes aware of the death of any person under circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to the district medical examiner. Any person who knowingly fails or refuses to report such a death or the circumstances surrounding the death, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, commits a first degree misdemeanor.

CS/HB 1653 amends s. 406.12, F.S., to require a person who becomes aware of the death of any person under the circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to *either* the district medical examiner *or* to a law enforcement agency having jurisdiction over the location.

The bill retains the first degree misdemeanor offense in current law if a person knowingly fails or refuses to report a death under the circumstances described in s. 406.11, F.S., or refuses to make available prior medical or other information pertinent to a death investigation, and creates a new offense, punishable as a third degree felony, if a person fails to make such a report or fails to make such specified information available with the intent to conceal the death or to alter the circumstances surrounding the death.

The bill *increases* the penalty if a person, without an order from the office of the district medical examiner, willfully touches, removes or disturbs a body, clothing, or any article upon or near the body, with the intent to conceal the death or alter the evidence or circumstances surrounding the death, from a first degree misdemeanor to a third degree felony.

The bill may have an indeterminate positive impact on prison and jail beds by creating a new felony offense and increasing the penalty for a specified violation of s. 406.12, F.S., from a first degree misdemeanor to a third degree felony, which may lead to increased admissions and longer terms of incarceration in such facilities.

The bill provides an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

District Medical Examiner

The Governor is required to appoint a district medical examiner, who must be a physician who practices in pathology, for each medical examiner district in the state.¹ Currently, there are 25 medical examiner districts in Florida.² Section 406.11, F.S., requires a district medical examiner to determine the cause of death of a deceased human being in the following circumstances:

- When any person dies in this state:
 - Of criminal violence.
 - By accident.
 - By suicide.
 - Suddenly, when in apparent good health.
 - Unattended by a practicing physician or other recognized practitioner.
 - In any prison or penal institution.
 - In police custody.
 - In any suspicious or unusual circumstance.
 - By criminal abortion.
 - By poison.
 - By disease constituting a threat to public health.
 - By disease, injury, or toxic agent resulting from employment.
- When a dead body is brought into this state without proper medical certification.
- When a body is to be cremated, dissected, or buried at sea.³

To determine the cause of death, a medical examiner may perform examinations, investigations, and autopsies as he or she deems necessary or as requested by the state attorney.⁴

Duty to Report

Section 406.12, F.S., requires a person who becomes aware of the death of any person under circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to the district medical examiner. Any person who knowingly fails or refuses to report such a death or the circumstances surrounding the death, who refuses to make available prior medical or other information pertinent to the death investigation, or who, without an order from the office of the district medical examiner, willfully touches, removes, or disturbs the body, clothing, or any article upon or near the body, with the intent to alter the evidence or circumstances surrounding the death, commits a first degree misdemeanor.^{5, 6}

Effect of Proposed Changes

CS/HB 1653 amends s. 406.12, F.S., to require a person who becomes aware of the death of any person under the circumstances described in s. 406.11, F.S., to report such a death and the

¹ S. 406.06(1)(a), F.S.

² Florida Department of Law Enforcement, *Coverage Map – Florida Medical Examiner Districts*, <https://www.fdle.state.fl.us/MEC/Maps/Documents/Coverage-Map.aspx> (last visited Feb. 6, 2024).

³ S. 406.11(1), F.S.

⁴ *Id.*

⁵ S. 406.12, F.S.

⁶ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. Ss. 775.082 and 775.083, F.S.

circumstances surrounding the death to *either* the district medical examiner *or* to a law enforcement agency having jurisdiction over the location.

The bill retains the first degree misdemeanor offense in current law if a person knowingly fails or refuses to report a death under the circumstances described in s. 406.11, F.S., or refuses to make available prior medical or other information pertinent to a death investigation, and creates a new offense, punishable as a third degree felony,⁷ if a person fails to make such a report or fails to make such specified information available with the intent to conceal the death or to alter the circumstances surrounding the death.

The bill *increases* the penalty if a person, without an order from the office of the district medical examiner, willfully touches, removes or disturbs a body, clothing, or any article upon or near the body, with the intent to conceal the death or alter the evidence or circumstances surrounding the death, from a first degree misdemeanor to a third degree felony.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 406.12, F.S., relating to duty to report; prohibited acts.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on prison and jail beds by creating a new felony offense and increasing the penalty for a specified violation of s. 406.12, F.S., from a first degree misdemeanor to a third degree felony, which may lead to increased admissions and longer terms of incarceration in such facilities.

⁷ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 25, 2024, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Required a person who becomes aware of the death of any person under the circumstances described in s. 406.11, F.S., to report such a death and the circumstances surrounding the death to *either* the district medical examiner *or* to a law enforcement agency having jurisdiction over the location.
- Created a third degree felony offense if a person, with the intent to conceal the death or to alter the circumstances surrounding the death, fails or refuses to report the death of any person under circumstances described in s. 406.11, F.S., or fails to make available prior medical or other information pertinent to a death investigation.
- Increased the penalty if a person, without an order from the office of the district medical examiner, willfully touches, removes or disturbs a body, clothing, or any article upon or near the body, with the intent to conceal the death or alter the evidence or circumstance surrounding the death, from a first degree misdemeanor to a third degree felony.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to duties and prohibited acts
 3 associated with death; amending s. 406.12, F.S.;
 4 authorizing a report regarding specified deaths and
 5 circumstances to be made to a law enforcement agency
 6 in addition to the medical examiner; increasing the
 7 criminal penalty for failing or refusing to report a
 8 death or for refusing to make available certain
 9 information with the intent to conceal the death or
 10 alter the evidence and circumstances surrounding the
 11 death; increasing the criminal penalty for willfully
 12 touching, removing, or disturbing a body without an
 13 order from the office of the district medical examiner
 14 with the intent to conceal the death or alter the
 15 evidence and circumstances surrounding the death;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 406.12, Florida Statutes, is amended to
 21 read:

22 406.12 Duty to report; prohibited acts.—

23 (1) It is the duty of any person in the district where a
 24 death occurs, including all municipalities and unincorporated
 25 and federal areas, who becomes aware of the death of any person

26 | occurring under the circumstances described in s. 406.11 to
27 | report such death and circumstances forthwith to the district
28 | medical examiner or to a law enforcement agency having
29 | jurisdiction over the location.

30 | (2) Any person who knowingly fails or refuses to report
31 | such death and circumstances as required under subsection (1)
32 | or, who refuses to make available prior medical or other
33 | information pertinent to the death investigation commits a
34 | misdemeanor of the first degree, punishable as provided in s.
35 | 775.082 or s. 775.083.

36 | (3) Any person,~~or~~ who, with the intent to conceal such
37 | death or to alter the evidence or circumstances surrounding such
38 | death:

39 | (a) Violates subsection (2); or

40 | (b) Without an order from the office of the district
41 | medical examiner, willfully touches, removes, or disturbs the
42 | body, clothing, or any article upon or near the body, with the
43 | ~~intent to alter the evidence or circumstances surrounding the~~
44 | ~~death, shall be guilty of a misdemeanor of the first~~
45 |
46 | commits a felony of the third degree, punishable as provided in
47 | s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

48 | Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1657 Criminal Offenses Against Law Enforcement Officers and Other Personnel

SPONSOR(S): Criminal Justice Subcommittee, Baker

TIED BILLS: **IDEN./SIM. BILLS:** SB 1092

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 3 N	Butcher	Hall
2) Justice Appropriations Subcommittee	11 Y, 3 N	Saag	Keith
3) Judiciary Committee		Butcher	Kramer

SUMMARY ANALYSIS

Under current law, a person may lawfully resist an illegal arrest *without* force or violence, but may not lawfully resist an illegal arrest *with* force or violence. Accordingly, s. 776.051, F.S., specifies that:

- A person is not justified in using or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.
- A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in using force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

However, because applicable statutes and jury instructions reference an officer's *execution of a legal duty*, some defendants have raised the technical illegality of an officer's conduct to attempt to justify using force against that officer.

Under s. 782.065, F.S., a court must sentence a defendant to life imprisonment without eligibility for release if the defendant committed a specified murder offense and the victim was a law enforcement or correctional officer engaged in the lawful performance of a legal duty. Manslaughter under s. 782.07, F.S., is not included under s. 782.065, F.S., as an offense for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

HB 1657 amends ss. 776.051 (use of force in resisting or making arrest), 782.065 (murder of law enforcement officer), 784.07, F.S. (assault or battery of law enforcement officer), and 843.01, F.S. (resisting a legally authorized person with violence), to change the current requirement for a law enforcement officer or other specified personnel to *be engaged in the lawful performance of a legal duty* to a requirement that the officer or personnel *be acting in the performance of his or her official duties*. The bill also repeals s. 776.051(2), F.S., which currently provides that a law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful. In doing so, the bill removes any reference to a requirement of a legal duty and instead requires that an officer be acting in the performance of his or her official duties.

The bill amends s. 782.065, F.S., to add manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, to the list of offenses for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

The bill may have an indeterminate positive impact on the jail and prison bed population by enhancing the penalty for manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, to require a convicted person to serve a sentence of life imprisonment without eligibility for release.

The bill provides an effective date of October 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Resisting or Using Force Against an Officer

Section 943.10(1), F.S., defines a “law enforcement officer” 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.¹

Under current law, a person may lawfully resist an illegal arrest *without* force or violence,² but may not lawfully resist an illegal arrest with force or violence.³ Under s. 776.012, F.S.,⁴ however, a person may lawfully use force to resist a law enforcement officer’s use of *excessive* force.⁵

Accordingly, s. 776.051, F.S., specifies that:

- A person is not justified in using or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is *engaged in the execution of a legal duty*, if the law enforcement officer was acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.⁶
- A law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in using force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

Florida’s Standard Criminal Jury Instructions for the justifiable use of deadly and non-deadly force provide:

- A person is not justified in using force or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is *engaged in the execution of a legal duty*, if the law enforcement officer is acting in good faith and he or she is known, or reasonably appears, to be a law enforcement officer.

¹ The term includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. The term also includes a special officer employed by a Class I, Class II, or Class III railroad pursuant to s. 354.01, F.S.

² See, e.g., *K.Y.E. v. State*, 557 So. 2d 956, 957 (Fla. 1st DCA 1990) (citations omitted).

³ See *Tillman v. State*, 934 So. 2d 1263, 1270 n. 4 (Fla. 2006) (superseded by statute on other grounds) (explaining that in arrest situations, Florida courts have consistently read s. 776.051(1), F.S., *in pari materia* with offenses described in ss. 784.07(2) (assault or battery of officer) and 843.01 (resisting officer with violence), F.S., and, in so doing, have not required the State to prove that an arrest was lawful). The Legislature amended s. 776.051, F.S., after *Tillman* to make the prohibition against using force to resist a law enforcement officer apply to both arrest and nonarrest situations. Ch. 2008-67, Laws of Fla.

⁴ Section 776.012, F.S., provides that (1) a person is justified in using or threatening to use force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to defend himself or herself or another against the other’s imminent use of unlawful force. A person who uses or threatens to use force in accordance with this subsection does not have a duty to retreat before using or threatening to use such force. Additionally, 2) a person is justified in using or threatening to use deadly force if he or she reasonably believes that using or threatening to use such force is necessary to prevent imminent death or great bodily harm to himself or herself or another or to prevent the imminent commission of a forcible felony. A person who uses or threatens to use deadly force in accordance with this subsection does not have a duty to retreat and has the right to stand his or her ground if the person using or threatening to use the deadly force is not engaged in a criminal activity and is in a place where he or she has a right to be.

⁵ *Jackson v. State*, 463 So. 2d 372, 374 (Fla. 5th DCA 1985).

⁶ Courts apply the legal standards governing the duty undertaken by a law enforcement officer to determine whether he or she was lawfully executing a legal duty. *Tillman*, 934 So. 2d at 1271. When determining whether an officer was performing a legal duty, courts have noted that there is a valid distinction between a police officer in the lawful execution of a legal duty and a police officer who is “merely on the job.” *Jay v. State*, 731 So. 2d 774, 775 (Fla. 4th DCA 1999).

- However, if an officer uses excessive force to make an arrest, then a person is justified in the use or threatened use of reasonable force to defend himself, herself, or another, but only to the extent he or she reasonably believes such force or threat of force is necessary.⁷

Although a person may not lawfully use force or violence to resist a law enforcement officer in arrest or detention scenarios, because applicable statutes and jury instructions reference an officer's *execution of a legal duty*, some defendants have raised the technical illegality of an officer's conduct to attempt to justify using force against that officer.⁸ Other Florida statutes similarly require an officer to be engaged in the execution of a legal duty or lawful performance of a duty, and have created similar confusion regarding whether an officer's conduct must be technically legal.

Assault and Battery of a Law Enforcement Officer

Section 784.07, F.S., reclassifies⁹ the offenses of assault or battery to assault or battery of a law enforcement officer or other specified personnel if the victim was a specified officer *engaged in the lawful performance of his or her duties*.

For purposes of determining whether a person commits assault or battery:

- An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent, punishable as a second degree misdemeanor.¹⁰
- A person commits a "battery" if he or she actually and intentionally touches or strikes another person against the will of the other, or intentionally causes bodily harm to another person, generally punishable as a first degree misdemeanor.¹¹

Florida's Standard Criminal Jury Instructions for assault/battery and aggravated assault/aggravated battery of a law enforcement officer or other specified personnel require the victim to have been *engaged in the lawful performance of his or her duty*.¹²

Resisting a Law Enforcement Officer with Violence

Section 843.01, F.S., prohibits a person from willfully resisting, obstructing, or opposing an officer or other specified personnel in the execution of legal process or in the *lawful execution of any legal duty*, by offering or doing violence to such person, punishable as a third degree felony.^{13,14}

Florida's Standard Criminal Jury Instructions for resisting an officer with violence¹⁵ require that an officer was *engaged in the lawful execution of a legal duty* or the execution of legal process. When a defendant claims the officer acted unlawfully or raises self-defense to a charge under s. 843.01, F.S., the court must provide:

⁷ Fla. Std. Jury Instr. 3.6(f) and 3.6(g) (Crim).

⁸ See, e.g., Frank Fernandez, *Convicted cop killer Othal Wallace sentenced to 30 years in Jason Raynor's death* (Oct. 27, 2023), The Daytona Beach News-Journal, <https://www.news-journalonline.com/story/news/courts/2023/10/27/live-convicted-daytona-beach-cop-killer-othal-wallaces-sentencing/> (last visited Feb. 12, 2024).

⁹ Reclassification under s. 784.07, F.S., occurs as follows: a) in the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree; b) in the case of battery, from a misdemeanor of the first degree to a felony of the third degree; c) in the case of aggravated assault, from a felony of the third degree to a felony of the second degree, and any person convicted of aggravated assault upon a law enforcement officer shall be sentenced to a minimum term of imprisonment of three years; and d) in the case of aggravated battery, from a felony of the second degree to a felony of the first degree, and any person convicted of a aggravated battery of a law enforcement officer shall be sentenced to a minimum term of imprisonment of five years.

¹⁰ S. 784.011, F.S. A second degree misdemeanor is punishable by up to six months in county jail and a \$500 fine. ss. 775.082 and 775.083, F.S.

¹¹ S. 784.03, F.S. A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. ss. 775.082 and 775.083, F.S.

¹² Fla. Std. Jury Instr. 8.10, 8.11, 8.12, and 8.13 (Crim).

¹³ Section 843.02, F.S., similarly prohibits a person from resisting, obstructing, or opposing an officer or other specified personnel in the execution of legal process or in the lawful execution of any legal duty, *without* offering or doing violence to such person, and is punishable as a first degree misdemeanor.

¹⁴ A third degree felony is punishable by up to five years in prison and a \$5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁵ Fla. Std. Jury Instr. 21.1 (Crim). See also *supra* note 6.

- A special instruction incorporating s. 776.051(1), F.S., which prohibits using or threatening to use force to resist an arrest by a law enforcement officer, or to resist a law enforcement officer who is engaged in the execution of a legal duty, when the defense claims the officer's conduct was technically unlawful.
- A special instruction incorporating instructions 3.6(f), relating to the justifiable use or threatened use of deadly force, or 3.6(g), relating to the justifiable use or threatened use of non-deadly force, when the defense claims the officer used excessive force.

Offenses Requiring a Sentence of Life Imprisonment

Under s. 782.065, F.S., a court must sentence a defendant to life imprisonment without eligibility for release if:

- The defendant committed first degree murder under s. 782.04(1), F.S., and a death sentence was not imposed; second or third degree murder under s. 782.04(2), (3), or (4); attempted first or second degree murder under s. 782.04(1)(a)1. or (2); or attempted felony murder under s. 782.051, F.S.; and
- The victim was a law enforcement officer, part-time law enforcement officer, auxiliary law enforcement officer, correctional officer, part-time correctional officer, auxiliary correctional officer, correctional probation officer, part-time correctional probation officer, or auxiliary correctional probation officer, as those terms are defined in s. 943.10, F.S., *engaged in the lawful performance of a legal duty*.

The Florida Supreme Court has held that s. 782.065, F.S., is a reclassification statute that creates a substantive offense, and accordingly, the trial judge must add the following elements to jury instructions relating to such murder offenses:¹⁶

- The victim was a specified officer;
- The defendant knew that the victim was a specified officer; and
- The victim was *engaged in the lawful performance of a legal duty*.

Manslaughter

Under s. 782.07, F.S., manslaughter is the unlawful killing of a human being by the act, procurement, or culpable negligence¹⁷ of another, without lawful justification. Generally, manslaughter is punishable as a second degree felony.¹⁸

However, under s. 782.07(4), F.S., manslaughter may be enhanced to a first degree felony¹⁹ if a person causes the death, through culpable negligence, of a law enforcement officer or other specified personnel who is *performing duties that are within the course of his or her employment*.

Currently, manslaughter committed against a law enforcement officer is not included under s. 782.065, F.S., as an offense for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

Effect of Proposed Changes

¹⁶ See Fla. Std. Jury Instr. 7.2 (first degree murder), 7.3 (first degree felony murder), 7.4 (second degree murder), 7.5 (second degree felony murder), and 7.6 (third degree felony murder) (Crim). See also Fla. Std. Jury Instr. 7.13 (Crim), which clarifies that reclassification under s. 782.065, F.S., does not apply to manslaughter.

¹⁷ According to Fla. Std. Jury Instr. 7.7(a) (Crim), "culpable negligence" is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.

¹⁸ A second degree felony is punishable by up to 15 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

¹⁹ A first degree felony is punishable by up to 30 years in prison and a \$10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

Use of Force in Resisting Arrest or Making an Arrest or in the Execution of a Legal Duty

HB 1657 amends ss. 776.051 (use of force in resisting or making arrest), 782.065 (murder of law enforcement officer or other specified personnel), 784.07, F.S. (assault or battery of law enforcement officer or other specified personnel), and 843.01, F.S. (resisting a legally authorized person with violence), to change the current requirement for a law enforcement officer or other specified personnel to *be engaged in the lawful performance of a legal duty* to a requirement that a law enforcement officer or other specified personnel *be acting in the performance of his or her official duties*²⁰ as described in s. 943.10, F.S.

The bill repeals s. 776.051(2), F.S., which currently provides that a law enforcement officer, or any person whom the officer has summoned or directed to assist him or her, is not justified in the use of force if the arrest or execution of a legal duty is unlawful and known by him or her to be unlawful.

In doing so, the bill removes any reference to a requirement of a legal duty and instead requires that an officer be acting in the performance of his or her official duties.

Offenses Requiring a Sentence of Life Imprisonment

The bill amends s. 782.065, F.S., to add manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, to the list of offenses for which a court must sentence a convicted defendant to life imprisonment without eligibility for release.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as the “Officer Jason Raynor Act.”

Section 2: Amends s. 776.051, F.S., relating to use or threatened use of force in resisting arrest or making an arrest or in the execution of a legal duty; prohibition.

Section 3: Amends s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

Section 4: Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers and other specified personnel; reclassification of offenses; minimum sentences.

Section 5: Amends s. 843.01, F.S., relating to resisting, obstructing, or opposing by offering or doing violence to legally authorized person, police canine, or police horse.

Section 6: Provides an effective date of October 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

²⁰ An officer is engaged in the performance of his or her official duties when acting within the scope of his employment. See *State v. A.R.R.*, 113 So. 3d 942, 944-45 (Fla. 5th DCA 2013)(citations omitted).

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate positive impact on the jail and prison bed population by enhancing the penalty for manslaughter under s. 782.07(1), F.S., when committed against a law enforcement officer, to require a convicted person to serve a sentence of life imprisonment without eligibility for release. To the extent that some offenders may be sentenced differently as a result of the bill's changes, its impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to criminal offenses against law
 enforcement officers and other personnel; amending s.
 776.051, F.S.; revising a prohibition on the use or
 threatened use of force to resist arrest or detention;
 amending s. 782.065, F.S.; providing for enhanced
 punishment for additional offenses when committed
 against specified officers; revising applicability;
 amending s. 784.07, F.S.; revising the definition of
 the term "law enforcement officer"; revising
 provisions concerning assault or battery upon
 specified officers; amending s. 843.01, F.S.; revising
 a provision concerning resisting, obstructing, or
 opposing specified officers; providing an effective
 date.

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

Section 1. This act may be cited as the "Officer Jason Raynor Act."

Section 2. Section 776.051, Florida Statutes, is amended to read:

776.051 Use or threatened use of force in resisting arrest or detention ~~making an arrest or in the execution of a legal duty~~; prohibition.—

26 ~~(1)~~ A person is not justified in the use or threatened use
 27 of force to resist a lawful or an unlawful ~~an~~ arrest or
 28 detention by a law enforcement officer, or to resist a law
 29 enforcement officer who was acting in the performance of his or
 30 her official duties as described in s. 943.10(1), if ~~who is~~
 31 ~~engaged in the execution of a legal duty, if the law enforcement~~
 32 ~~officer was acting in good faith and he or she is known, or~~
 33 reasonably appears, to be a law enforcement officer.

34 ~~(2)~~ A law enforcement officer, or any person whom the
 35 officer has summoned or directed to assist him or her, is not
 36 justified in the use of force if the arrest or execution of a
 37 legal duty is unlawful and known by him or her to be unlawful.

38 Section 3. Section 782.065, Florida Statutes, is amended
 39 to read:

40 782.065 Murder; law enforcement officer, correctional
 41 officer, correctional probation officer.—Notwithstanding ss.
 42 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant
 43 shall be sentenced to life imprisonment without eligibility for
 44 release upon findings by the trier of fact that, beyond a
 45 reasonable doubt:

46 (1) The defendant committed murder in the first degree in
 47 violation of s. 782.04(1) and a death sentence was not imposed;
 48 murder in the second or third degree in violation of s.
 49 782.04(2), (3), or (4); attempted murder in the first or second
 50 degree in violation of s. 782.04(1)(a)1. or (2); ~~or~~ attempted

51 felony murder in violation of s. 782.051; or manslaughter in
 52 violation of s. 782.07(1); and

53 (2) The victim of any offense described in subsection (1)
 54 was a law enforcement officer, part-time law enforcement
 55 officer, auxiliary law enforcement officer, correctional
 56 officer, part-time correctional officer, auxiliary correctional
 57 officer, correctional probation officer, part-time correctional
 58 probation officer, or auxiliary correctional probation officer,
 59 as those terms are defined in s. 943.10, who was acting in the
 60 performance of his or her official duties as described in s.
 61 943.10 engaged in the lawful performance of a legal duty.

62 Section 4. Paragraph (e) of subsection (1) and subsection
 63 (2) of section 784.07, Florida Statutes, are amended to read:

64 784.07 Assault or battery of law enforcement officers and
 65 other specified personnel; reclassification of offenses; minimum
 66 sentences.—

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

68 (e) "Law enforcement officer" includes a law enforcement
 69 officer, a correctional officer, a correctional probation
 70 officer, a part-time law enforcement officer, a part-time
 71 correctional officer, an auxiliary law enforcement officer, and
 72 an auxiliary correctional officer, as those terms are
 73 respectively defined in s. 943.10, and any county probation
 74 officer; an employee or agent of the Department of Corrections
 75 who supervises or provides services to inmates; an officer of

76 | the Florida Commission on Offender Review; a federal law
77 | enforcement officer as defined in s. 901.1505; and law
78 | enforcement personnel of the Fish and Wildlife Conservation
79 | Commission, the Department of Environmental Protection, or the
80 | Department of Law Enforcement. The duties and responsibilities
81 | of these respective positions are described in s. 943.10.

82 | (2) Whenever any person is charged with knowingly
83 | committing an assault or battery upon a law enforcement officer,
84 | a firefighter, an emergency medical care provider, hospital
85 | personnel, a railroad special officer, a traffic accident
86 | investigation officer as described in s. 316.640, a nonsworn law
87 | enforcement agency employee who is certified as an agency
88 | inspector, a blood alcohol analyst, or a breath test operator
89 | while such employee is in uniform and engaged in processing,
90 | testing, evaluating, analyzing, or transporting a person who is
91 | detained or under arrest for DUI, a law enforcement explorer, a
92 | traffic infraction enforcement officer as described in s.
93 | 316.640, a parking enforcement specialist as defined in s.
94 | 316.640, a person licensed as a security officer as defined in
95 | s. 493.6101 and wearing a uniform that bears at least one patch
96 | or emblem that is visible at all times that clearly identifies
97 | the employing agency and that clearly identifies the person as a
98 | licensed security officer, or a security officer employed by the
99 | board of trustees of a community college, while the officer,
100 | firefighter, emergency medical care provider, hospital

101 personnel, railroad special officer, traffic accident
 102 investigation officer, traffic infraction enforcement officer,
 103 inspector, analyst, operator, law enforcement explorer, parking
 104 enforcement specialist, public transit employee or agent, or
 105 security officer who was acting in the performance of his or her
 106 official duties ~~is engaged in the lawful performance of his or~~
 107 ~~her duties~~, the offense for which the person is charged shall be
 108 reclassified as follows:

109 (a) In the case of assault, from a misdemeanor of the
 110 second degree to a misdemeanor of the first degree.

111 (b) In the case of battery, from a misdemeanor of the
 112 first degree to a felony of the third degree. Notwithstanding
 113 any other provision of law, a person convicted of battery upon a
 114 law enforcement officer committed in furtherance of a riot or an
 115 aggravated riot prohibited under s. 870.01 shall be sentenced to
 116 a minimum term of imprisonment of 6 months.

117 (c) In the case of aggravated assault, from a felony of
 118 the third degree to a felony of the second degree.
 119 Notwithstanding any other provision of law, any person convicted
 120 of aggravated assault upon a law enforcement officer shall be
 121 sentenced to a minimum term of imprisonment of 3 years.

122 (d) In the case of aggravated battery, from a felony of
 123 the second degree to a felony of the first degree.
 124 Notwithstanding any other provision of law, any person convicted
 125 of aggravated battery of a law enforcement officer shall be

126 sentenced to a minimum term of imprisonment of 5 years.

127 Section 5. Subsection (1) of section 843.01, Florida
 128 Statutes, is amended to read:

129 843.01 Resisting, obstructing, or opposing by offering or
 130 doing violence to legally authorized person, police canine, or
 131 police horse.—

132 (1) Whoever knowingly and willfully resists, obstructs, or
 133 opposes any officer as defined in s. 943.10(1), (2), (3), (6),
 134 (7), (8), or (9); member of the Florida Commission on Offender
 135 Review or any administrative aide or supervisor employed by the
 136 commission; parole and probation supervisor; county probation
 137 officer; personnel or representative of the Department of Law
 138 Enforcement; or other person legally authorized to execute
 139 process in the execution of legal process or acting in the
 140 performance of his or her official duties as described in s.
 141 943.10 in the lawful execution of any legal duty, by offering or
 142 doing violence to the person of such officer or legally
 143 authorized person, commits a felony of the third degree,
 144 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

145 Section 6. This act shall take effect October 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Baker offered the following:

Amendment

Remove lines 27-141 and insert:

6 of force to resist any ~~an~~ arrest or detention by a law
 7 enforcement officer, or to resist a law enforcement officer who
 8 is engaged in the performance of his or her official duties as
 9 described in s. 943.10(1), if ~~who is engaged in the execution of~~
 10 ~~a legal duty, if the law enforcement officer was acting in good~~
 11 ~~faith and~~ he or she is known, or reasonably appears, to be a law
 12 enforcement officer.

13 ~~(2) A law enforcement officer, or any person whom the~~
 14 ~~officer has summoned or directed to assist him or her, is not~~
 15 ~~justified in the use of force if the arrest or execution of a~~
 16 ~~legal duty is unlawful and known by him or her to be unlawful.~~

Amendment No. 1

17 Section 3. Section 782.065, Florida Statutes, is amended
18 to read:

19 782.065 Murder; law enforcement officer, correctional
20 officer, correctional probation officer.—Notwithstanding ss.
21 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant
22 shall be sentenced to life imprisonment without eligibility for
23 release upon findings by the trier of fact that, beyond a
24 reasonable doubt:

25 (1) The defendant committed murder in the first degree in
26 violation of s. 782.04(1) and a death sentence was not imposed;
27 murder in the second or third degree in violation of s.
28 782.04(2), (3), or (4); attempted murder in the first or second
29 degree in violation of s. 782.04(1)(a)1. or (2); ~~or~~ attempted
30 felony murder in violation of s. 782.051; or manslaughter in
31 violation of s. 782.07; and

32 (2) The victim of any offense described in subsection (1)
33 was a law enforcement officer, part-time law enforcement
34 officer, auxiliary law enforcement officer, correctional
35 officer, part-time correctional officer, auxiliary correctional
36 officer, correctional probation officer, part-time correctional
37 probation officer, or auxiliary correctional probation officer,
38 as those terms are defined in s. 943.10, who was engaged in the
39 performance of his or her official duties as described in s.
40 943.10 ~~engaged in the lawful performance of a legal duty.~~

Amendment No. 1

41 Section 4. Paragraph (e) of subsection (1) and subsection
42 (2) of section 784.07, Florida Statutes, are amended to read:

43 784.07 Assault or battery of law enforcement officers and
44 other specified personnel; reclassification of offenses; minimum
45 sentences.—

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

47 (e) "Law enforcement officer" includes a law enforcement
48 officer, a correctional officer, a correctional probation
49 officer, a part-time law enforcement officer, a part-time
50 correctional officer, an auxiliary law enforcement officer, and
51 an auxiliary correctional officer, as those terms are
52 respectively defined in s. 943.10, and any county probation
53 officer; an employee or agent of the Department of Corrections
54 who supervises or provides services to inmates; an officer of
55 the Florida Commission on Offender Review; a federal law
56 enforcement officer as defined in s. 901.1505; and law
57 enforcement personnel of the Fish and Wildlife Conservation
58 Commission, the Department of Environmental Protection, or the
59 Department of Law Enforcement. The duties and responsibilities
60 of these respective positions are described in s. 943.10.

61 (2) Whenever any person is charged with knowingly
62 committing an assault or battery upon a law enforcement officer,
63 a firefighter, an emergency medical care provider, hospital
64 personnel, a railroad special officer, a traffic accident
65 investigation officer as described in s. 316.640, a nonsworn law

Amendment No. 1

66 enforcement agency employee who is certified as an agency
67 inspector, a blood alcohol analyst, or a breath test operator
68 while such employee is in uniform and engaged in processing,
69 testing, evaluating, analyzing, or transporting a person who is
70 detained or under arrest for DUI, a law enforcement explorer, a
71 traffic infraction enforcement officer as described in s.
72 316.640, a parking enforcement specialist as defined in s.
73 316.640, a person licensed as a security officer as defined in
74 s. 493.6101 and wearing a uniform that bears at least one patch
75 or emblem that is visible at all times that clearly identifies
76 the employing agency and that clearly identifies the person as a
77 licensed security officer, or a security officer employed by the
78 board of trustees of a community college, while the officer,
79 firefighter, emergency medical care provider, hospital
80 personnel, railroad special officer, traffic accident
81 investigation officer, traffic infraction enforcement officer,
82 inspector, analyst, operator, law enforcement explorer, parking
83 enforcement specialist, public transit employee or agent, or
84 security officer is engaged in the performance of his or her
85 official duties ~~is engaged in the lawful performance of his or~~
86 ~~her duties~~, the offense for which the person is charged shall be
87 reclassified as follows:

88 (a) In the case of assault, from a misdemeanor of the
89 second degree to a misdemeanor of the first degree.

Amendment No. 1

90 (b) In the case of battery, from a misdemeanor of the
91 first degree to a felony of the third degree. Notwithstanding
92 any other provision of law, a person convicted of battery upon a
93 law enforcement officer committed in furtherance of a riot or an
94 aggravated riot prohibited under s. 870.01 shall be sentenced to
95 a minimum term of imprisonment of 6 months.

96 (c) In the case of aggravated assault, from a felony of
97 the third degree to a felony of the second degree.
98 Notwithstanding any other provision of law, any person convicted
99 of aggravated assault upon a law enforcement officer shall be
100 sentenced to a minimum term of imprisonment of 3 years.

101 (d) In the case of aggravated battery, from a felony of
102 the second degree to a felony of the first degree.
103 Notwithstanding any other provision of law, any person convicted
104 of aggravated battery of a law enforcement officer shall be
105 sentenced to a minimum term of imprisonment of 5 years.

106 Section 5. Subsection (1) of section 843.01, Florida
107 Statutes, is amended to read:

108 843.01 Resisting, obstructing, or opposing by offering or
109 doing violence to legally authorized person, police canine, or
110 police horse.—

111 (1) Whoever knowingly and willfully resists, obstructs, or
112 opposes any officer as defined in s. 943.10(1), (2), (3), (6),
113 (7), (8), or (9); member of the Florida Commission on Offender
114 Review or any administrative aide or supervisor employed by the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1657 (2024)

Amendment No. 1

115 | commission; parole and probation supervisor; county probation
116 | officer; personnel or representative of the Department of Law
117 | Enforcement; or other person legally authorized to execute
118 | process in the execution of legal process or engaged in the
119 | performance of his or her official duties as described in s.
120 | 943.10 ~~in the lawful execution of any legal duty~~, by offering or



Special Master's Final Report

The Honorable Paul Renner
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6009 - Representative Hart
Relief/Patricia Ermini/Lee County Sheriff's Office

SUMMARY

This is a contested excess judgment claim for \$626,769.93 based on a federal jury verdict awarding damages to Patricia Ermini ("Ermini") for the injuries and damages she sustained when Lee County Sheriff's Office ("LCSO") deputies entered her home to conduct a welfare check on the night of March 23, 2012, which welfare check resulted in an LCSO deputy shooting Ermini. Ermini alleges that the Lee County Sheriff¹ was negligent through the actions of his deputies taken during the welfare check, while the LCSO alleges that Ermini was herself negligent and therefore caused her own harm.

FINDINGS OF FACT

The Incident

Welfare Check Request

On the evening of March 23, 2012, then-71-year-old mother of two Patricia Ermini ("Ermini") lived alone in a home she owned in Fort Myers, Florida.² On that date, Ermini, who was in the process of a contentious, lengthy, and expensive divorce, consumed wine in her home and, some time thereafter, spoke on the telephone with her daughter, Maine resident Robin LaCasse ("LaCasse"). During the course of this telephone call, Ermini, upset over recent developments in her divorce proceeding, cried hysterically (a behavior that was unusual for her, according to LaCasse) and indicated to LaCasse that she "couldn't take it anymore." When Ermini became so upset that her crying interfered with her ability to speak, LaCasse asked Ermini to hang up, splash water on her face to calm down, and call her back.

After a brief time period, Ermini attempted to call LaCasse as requested; however, LaCasse was in a shop at that particular moment and consequently missed Ermini's call. Ermini then decided that, as she was very tired, she would go to sleep in her home's primary bedroom. Over the course of the next hour, LaCasse repeatedly attempted to reach Ermini on her cell

¹ This is not a claim against the Sheriff personally; rather, it is a claim against the Office of the Sheriff.

² Fort Myers is located in Lee County, Florida. The record indicates that Ermini had a daughter and a son, both of whom resided in Maine on March 23, 2012.

phone.³ When Ermini failed to answer or return any of these calls, LaCasse grew increasingly concerned that Ermini may have attempted or might commit suicide.⁴ In light of this concern, around 8:40 p.m., LaCasse called the Lee County Sheriff's Office ("LCSO") and requested that the LCSO send deputies to Ermini's home to conduct a welfare check. During the course of this phone call, LaCasse relayed:

- Ermini's name and age;
- The fact that Ermini lived alone;
- The fact that LaCasse feared for Ermini's life, along with the basis for her fear;
- The fact that Ermini had a gun for self-protection; and
- The possibility that Ermini might have been drinking.⁵

Law Enforcement Response

Shortly thereafter, an LCSO dispatch operator relayed LaCasse's request for a welfare check over the LCSO radio system and conveyed the information relayed by LaCasse, including Ermini's name and age; the fact that Ermini had a gun; and the fact that Ermini might have been drinking. LCSO deputy Charlene Palmese ("Palmese")⁶ responded to the call, informing the dispatch operator that she was en route to Ermini's home. LCSO deputies Richard Lisenbee ("Lisenbee") and Robert Hamer ("Hamer") also responded to the call and proceeded towards Ermini's home to assist Palmese.⁷

Lisenbee, the first deputy to arrive at Ermini's home, testified that he parked his patrol vehicle down the road in a position that was likely not visible from the home.⁸ According to his testimony, he then approached the home, which he described as dark with no visible interior or exterior lights illuminated, and took a quick look around the home's exterior. Seeing nothing, he opened the screen door to the front porch and propped it open, then pounded on the front door, calling out "Sherriff's Office." Getting no response, Lisenbee tried the front door handle, which he found unlocked, and proceeded to open the door, calling out "Sheriff's Office," and asking "Anyone here? Anyone home?", with no response. He then left the front door standing open and waited outside for backup.

Palmese arrived at Ermini's home shortly thereafter and, according to her testimony, parked her patrol vehicle down the road, as Lisenbee did, in a position that was likely not visible from Ermini's home. She then approached the home and, upon seeing that the front door was "wide open," notified dispatch of this fact over the radio and consulted with Lisenbee about the best course of action; both deputies agreed that it was best they wait for backup before entering the home. However, Palmese testified that, although she initially believed that Lisenbee had found the door wide open upon his arrival, Lisenbee later told her that it was he who had opened the door before her arrival, and left it open.

Hamer, the last deputy to arrive at Ermini's home, testified that he, like Lisenbee and Palmese, parked his patrol vehicle on the street in a position that was likely not visible from Ermini's home. He then approached the house to confer with Lisenbee and Palmese, in the mistaken belief that the front door had been found "wide open," as he had heard Palmese's statement to

³ Ermini's testimony suggests that she did not have a land line, but that she did have two cell phones, one she had purchased for herself and another her daughter had recently sent her. Unfortunately, the phone calls LaCasse placed to the cell phone Ermini had purchased did not go through. Further, the ringer on the cell phone LaCasse sent Ermini had been switched to "silent," and Ermini did not know how to turn the volume on; thus, she did not receive any auditory alerts when this cell phone received an incoming call. In any event, Ermini testified that she left both cell phones in the kitchen before heading to bed.

⁴ The record indicates that Ermini had a history of depression but did not have a history of suicidal ideation. Ermini testified at trial that when she told LaCasse she "couldn't take it anymore," she was referring to her protracted divorce proceedings and was in no way indicating that she intended to take her own life or otherwise harm herself.

⁵ According to LaCasse's testimony, Ermini denied having consumed any alcohol while on the phone with LaCasse, but LaCasse suspected she might have consumed alcohol because of how upset Ermini was. Ermini later acknowledged she had consumed wine at some point before her phone call to LaCasse.

⁶ According to the record, on March 23 2012, the LCSO employed Palmese as a road patrol deputy.

⁷ According to the record, on March 23, 2012, the LCSO employed Lisenbee and Hamer as road patrol deputies.

⁸ A bank of trees largely shielded Ermini's home from the roadway.

that effect over the radio and neither Lisenbee nor Palmese corrected his false impression. Hamer subsequently returned to his patrol vehicle to retrieve his AR-15 rifle, which was equipped with a flashlight and a sighting device that enabled him to more easily find his target.

After Hamer returned to the house, the testimony from the deputies suggests that at least Lisenbee called out through the open front door, announcing "Sheriff's Office."⁹ The deputies then entered the home, with guns drawn, and maneuvered their way through in silence.¹⁰ Though all three deputies were wearing a dark green LCSO uniform and duty belt, along with visible badges and other insignia, the interior of the home was dark, causing the deputies to illuminate flashlights to increase their field of visibility; however, the deputies chose not to turn on any interior lights, apparently so that they would not make themselves visible to anyone in the home, lest they become targets.

In any event, shortly after entering through the front door, the deputies reached the home's primary bedroom, located directly off of the living room and marked by a set of closed French doors. During her deposition, and again at the trial held in this matter, LCSO Captain Kathryn Rairden ("Rairden")¹¹ testified that, although there is no specific protocol for conducting a welfare check, in a situation like the one presented to the deputies (that is, where the deputies know a person is potentially armed with a gun and might be behind a closed door), she would have secured the room, preventing any deputies from standing in front of the doorway or on the other side of the drywall; she would then have had the deputies "form up somewhere" safe and start trying to establish communication with the potentially-armed person in order to get such person to emerge from the room unarmed.

Unfortunately, the deputies did not follow these procedures. Instead, Lisenbee threw open the closed right-side door to Ermini's bedroom and peered inside without first attempting to establish communication with Ermini. Further, he did this at a time when Hamer was positioned behind him in the living room, and Palmese was behind him near the adjacent kitchen; in other words, both Hamer and Palmese were positioned on the other side of the drywall and in view of the open door. Thus, in throwing open the bedroom door as he did, Lisenbee placed himself, Hamer, and Palmese in the potential line of fire of any armed person waiting within.

According to her testimony, Ermini first became aware that there were strangers in her home when she was awoken by a man throwing her bedroom door open, shining a flashlight into the room, and saying "she's in here." She also heard a female's voice but couldn't make out what the female said. Ermini testified that she could not see anything, as the light from the flashlight was shining directly in her eyes, and that she was immediately terrified, not knowing who was in her home, or for what purpose.

Lisenbee testified that he opened the right side of the bedroom door to find Ermini seemingly asleep on her bed, clothed only in undergarments; he then proceeded to loudly announce "Sheriff's Office," and he may have also said something to the effect of "we're here to help."¹² The record is unclear as to exactly what happened next, but the parties generally agree that Ermini picked up her gun and moved quickly from her bed to behind the partially-open bedroom door; Ermini testified that she moved to the door in an attempt to ascertain who was in her home, as she could not see them. The parties also generally agree that Ermini spoke to the deputies at this point, although exactly what she said is in dispute; Ermini testified that she warned the deputies that she had a gun and demanded that they leave her home, while the deputies testified that Ermini warned them about the gun and threatened to shoot them.

⁹ According to their respective testimonies, Palmese did not recall anyone other than Lisenbee announcing their presence, but Hamer was unsure as to whether or not he or Palmese had also done so.

¹⁰ The record indicates that each deputy carried an LCSO-issued Glock handgun. However, Hamer had his personal, LCSO-approved AR-15 drawn as he moved through the house. The record also indicates that the home was found in a state of disarray; Ermini later testified that this was due to her lax housekeeping skills and not anything sinister.

¹¹ Rairden was the Captain assigned to LCSO's South District, the district to which Hamer, Lisenbee, and Palmese were also assigned on March 23, 2012.

¹² It is unclear from the record precisely what Lisenbee said, as he couldn't recall specifically and the testimony of the deputies, and of Ms. Ermini, differ as to what his specific statement might have been. However, all three deputies remember him loudly announcing "Sheriff's Office."

Whatever Ermini's exact statement was, Lisenbee and Palmese testified that they immediately began backing up in response thereto; however, Hamer testified that he moved forward and "took the point," turning off his flashlight and stepping in front of Lisenbee as he was the more experienced deputy and had more firepower. According to Hamer, he then saw Ermini emerge from behind the still-closed left-side bedroom door, stand in the open, right side of the doorway, and assume a "shooting stance" with both of her hands wrapped around the gun and her finger on the trigger; he testified that, in fear for his life and the lives of the other deputies, he fired his AR-15 rifle immediately, without ever ordering Ermini to drop her gun, striking Ermini several times and causing her to collapse to the floor.¹³ However, Lisenbee testified that he only saw Ermini's gun emerging from around the side of the closed door before Hamer shot her,¹⁴ while Palmese testified that she saw neither Ermini nor her gun until after the shooting.

What is clear from the record is that Hamer fired seven rounds from his AR-15 rifle at Ermini, and that all seven rounds passed through the closed left-side bedroom door. At least two of those rounds struck Ermini, hitting her left leg and right arm and causing her to immediately fall backwards to the ground and drop her gun, which was found to the left of her body. Based on the location of the bullet holes from the rounds fired by Hamer, it is improbable that Ermini was standing in a shooting stance in the open right-side doorway and immediately shot by Hamer, as Hamer claimed; at the time she was shot, the record shows that Ermini must have been at least partially concealed behind the closed left-side doorway, through which all of Hamer's rounds passed, for any of those rounds to have struck her.

In any event, Hamer immediately called in the shooting over his radio and, after clearing the bedroom and handcuffing Ermini, began rendering medical aide to Ermini until emergency responders arrived and took over her care. Ermini was visibly confused and upset at this point, repeatedly asking the deputies and emergency responders who the deputies were, why they were in her home, and why they were trying to kill her.

Hamer later testified in the trial held in this matter that, when he enters a home without a warrant or consent, he anticipates that the person inside might be surprised or frightened by his presence, as the record suggests Ermini was; he also testified that, in such a situation, communication is the key to reducing the person's fear and surprise. However, the record is clear that, from the point that Palmese radioed in that the front door was "wide open" to the point that Hamer called in the shooting, a total of three minutes had elapsed; it is also clear that a matter of seconds elapsed from the point that Lisenbee opened Ermini's bedroom door to find Ermini sleeping and the point that Hamer shot her. Furthermore, at no point during the pre-shooting interaction did any deputy ensure that Ermini knew and understood that they were law enforcement officers or explain to Ermini why they were there. Neither did the deputies illuminate themselves so Ermini could see their uniforms; instead, they shone bright flashlights in her eyes, so she couldn't see them at all. Indeed, other than one pronouncement of "Sheriff's Office," the deputies failed to communicate anything of value to Ermini that would enable her to determine that her life was not in danger, and Hamer would later testify that he was unsure Ermini even knew who the deputies were at the time he shot her, as she seemed confused.

Physical Injuries

Emergency medical responders transported Ermini by ambulance to the emergency department of Lee Memorial Hospital, where she was sedated, intubated, placed on a ventilator, given fluids

¹³ Initial news reports submitted as evidence in the Special Master Hearing held in this matter suggested that Ermini fired the first shot. By the time the matter went to trial, the story had changed, such that all the deputies admitted that Hamer had fired the first shots. However, at some point after Hamer began shooting at Ermini, Ermini's gun discharged one round, which round passed through her kitchen wall at a point just inches below the ceiling. Ermini testified that she does not remember firing her gun, and it is unclear from the record whether Ermini's gun discharged in the course of her fall or whether she fired the gun intentionally in response to Hamer shooting at her; in either case, her finger must have been on the trigger to cause it to discharge.

¹⁴ This is consistent with Ermini's testimony that she was peering around the closed left side of her bedroom door, gun in hand, to determine who was in her home when Hamer shot her.

and two units of blood, and admitted in critical condition. An evaluation of her injuries revealed gunshot wounds to her right upper arm and left thigh; a probable graze wound to her head; a fractured left femur; a fourth ventricle hemorrhage; intracranial bleeding; and a foreign body lodged in her right eye.¹⁵ She was also noted to have a blood alcohol content of .148.¹⁶

After emergency medical personnel cleaned out her wounds and stopped her hemorrhage, Ermini was admitted to the surgical intensive care unit, where she underwent procedures to close her head wound, stabilize her fractured leg with screws and rods, and place skin grafts to her right arm and left leg. She subsequently underwent numerous wound drainage procedures and wound VAC changes before being discharged for out-patient and home care on April 18, 2012. However, Ermini became septic after her discharge, which infection caused her tremendous pain for which she was prescribed pain medication. She also developed post-traumatic stress disorder and paranoia, which, according to her testimony, causes her to occasionally hide in her closet at night in case anyone should enter her home and try to kill her.

Initial Investigations

The LCSO initially placed Ermini under arrest and charged her with two counts of aggravated assault on a law enforcement officer.¹⁷ However, on June 5, 2012, the State Attorney for the 20th Judicial Circuit ultimately declined to prosecute the matter, citing insufficient evidence, and dismissed all charges against Ermini.

The LCSO also conducted an internal investigation into the conduct of Hamer, Lisenbee, and Palmese, finding that each deputy had acted appropriately under the circumstances and that the shooting of Ermini was justified. No disciplinary action was ever taken against the deputies in response to their actions during the March 23, 2012, check of Ermini's welfare.

Litigation History

Initial Pleadings

On November 15, 2010, Ermini filed a Complaint against Sheriff Scott, in his official capacity, the LCSO detective who had arrested Ermini, in his individual capacity, and against Hamer, Lisenbee, and Palmese, in their individual capacities, (collectively "the Defendants") in the Fort Myers Division of the United States District Court for the Middle District of Florida.¹⁸ Therein, Ermini raised four counts alleging civil rights violations under 42 U.S.C. §1983 and nine counts under state law, including Count XII of the Complaint, which count alleged that Sheriff Scott was negligent through the actions of his detective and deputies.

On December 29, 2015, the Defendants filed an Answer denying the allegations in the Complaint, demanding a jury trial, and raising eight affirmative defenses, including a defense:

- That Ermini was herself negligent or engaged in wrongful conduct;
- That the actions by the Sheriff, through his deputies, were taken without malice; with probable cause; in pursuit of lawful and legal duties; with such force as was reasonable and appropriate; and in self-defense or defense of others.
- An alcoholic beverage defense under s. 768.36, F.S. (2012).¹⁹

¹⁵ The foreign body turned out to be a wood chip from Ermini's bedroom door.

¹⁶ Dr. Robert O'Connor, who treated Ermini in the emergency room, testified in the trial held in this matter that he could not determine whether or not Ermini was impaired or intoxicated based on her blood alcohol content alone, as the effects alcohol has on an individual vary based on how much alcohol that person regularly consumes.

¹⁷ Ermini was never transported to or held in jail; she was placed under arrest while in the hospital but eventually posted bail and thus was able to return to her home upon her discharge from the hospital. Aggravated assault on a law enforcement officer is a second-degree felony, punishable by up to 15 years' imprisonment and a \$10,000 fine. Ss. 775.082 and 775.083, F.S.

¹⁸ See Case No. 2:15-cv-701-FtM-99CM.

¹⁹ S. 768.36, F.S., prohibits a plaintiff in a civil action from recovering any damages if the trier of fact finds that, at the time the plaintiff was injured, the plaintiff was under the influence of any alcoholic beverage to the extent that the plaintiff's normal faculties were impaired or had a blood or breath alcohol level of 0.08 or higher, and as a result of the influence of such alcoholic beverage, the plaintiff was more than 50 percent at fault for his or her own harm.

Further, on January 19, 2017, Sheriff Scott filed a Motion for Summary Judgment; the LCSO detective and deputies filed their own Motion for Summary Judgment the next day. On April 5, 2017, the Court granted the Motion filed by the LCSO detective and deputies, thereby dismissing all counts against them. The Court also granted in part and denied in part the Motion filed by Sheriff Scott, dismissing all counts against him except for the portion of Count XII which alleged that he was negligent through the actions of his deputies.²⁰

Jury Trial

On January 9, 2018, the Court convened a jury trial to hear the sole remaining count of Ermini's Complaint. At the conclusion of Ermini's case-in-chief, Sheriff Scott elected not to present a case, instead moving for a Judgment as a Matter of Law, wherein the Sheriff alleged that Ermini failed to meet her burden of proving that the Sheriff, through his deputies, breached a duty owed to her. The Court denied the Motion and sent the matter to the jury.

On January 11, 2018, the jury returned a verdict finding that Sheriff Scott was negligent, through the actions of his deputies, which negligence was a legal cause of Ermini's injuries. The jury also found that Ermini was herself negligent, which negligence was also a legal cause of her injuries. Ultimately, the jury attributed 75 percent of the negligence to Sheriff Scott and 25 percent of the negligence to Ermini, awarding her \$1,000,000 in damages and reducing that award by her percentage of fault, for a total award of \$750,000, plus interest and taxable trial and appellate costs in the amount of \$76,769.93.

Motions for New Trial and Judgment as a Matter of Law

On February 7, 2018, Sheriff Scott filed a Motion for New Trial, wherein he asked the Court to vacate the judgment against him and order a new trial on the grounds that he believed the Court improperly admitted evidence,²¹ and that Ermini's counsel improperly pursued a non-existent "negligent use of force" claim. The Sheriff also renewed his Motion for Judgment as a Matter of Law, asking the Court to set aside the judgment and dismiss the lawsuit. The Court ultimately denied both Motions on March 2, 2018.

Appeals

On August 1, 2018, Sheriff Scott appealed the judgment entered against him to the United States Court of Appeals for the Eleventh Circuit.²² In his Initial Brief, the Sheriff argued that:

- The trial court improperly instructed the jury about the legal consequences for accepting his alcoholic beverages defense – that is, that Ermini would be unable to recover any damages;
- Ermini impermissibly pursued a non-existent "negligent use of force" claim;
- Ermini's counsel made a forbidden "golden-rule" argument; and
- The trial court abused its discretion by admitting immaterial character evidence pertaining to Deputies Hamer and Lisenbee.

On September 10, 2019, the Court affirmed the judgment in Ermini's favor. Sheriff Scott then filed Petitions for Rehearing and Rehearing En Banc, but the Court ultimately denied these Petitions on November 7, 2019.

Payment and Excess Judgment

On December 9, 2019, the LCSO paid \$200,000 to Ermini, which amount is the maximum

²⁰ The order dismissed that portion of the count relating to the actions of the LCSO detective, but did not dismiss those portions of the count relating to the actions of the deputies.

²¹ The evidence in question pertained to the apparently unrelated firing of Deputies Hamer and Lisenbee by the LCSO shortly after the March 23, 2012, shooting of Ermini. The undersigned has not considered this evidence in making her recommendation.

²² See Case No. 18-11220-H.

amount the LCSO was statutorily authorized to pay her under Florida's sovereign immunity law, codified in s. 768.28, F.S. This leaves in question an excess judgment of \$550,000, plus interest and taxable trial and appellate costs awarded to Ermini in the amount of \$76,769.93.

CONCLUSIONS OF LAW

House Rule 5.6(b)

Pursuant to House Rule 5.6(b), judgments are not binding on the Special Master or the House or any of its committees of reference. Thus, each claim is heard *de novo*, and the Special Master must make findings of fact and conclusions of law which support the claim.

Negligence

In the instant matter, Ermini raises a negligence claim, the elements of which are duty, breach, causation, and damages, and argues that Sheriff Scott was negligent through the actions of his deputies under the *respondeat superior* doctrine. In turn, the LCSO alleges that the shooting of Ermini was justified, that it was Ermini who was negligent, and, in any event, that there is no cause of action for "negligent use of excessive force."

Though the LCSO is correct that there is no such cause of action,²³ Ermini does not argue that the shooting itself was negligent; rather, she argues that the shooting was the consequence of the negligent conduct of Hamer, Lisenbee, and Palmese on March 23, 2012. Thus, the undersigned finds it appropriate to consider Ermini's negligence claim.²⁴

Duty

For a defendant to be liable for negligence, there must be either an underlying statutory or common law duty of care with respect to the conduct at issue.²⁵ Though there is no statutory or common law duty of care for exercising discretionary police power (that is, in choosing whether or not to make an arrest or otherwise enforce the law), law enforcement activities involving general health and welfare services may give rise to a common law duty of care.²⁶

In the case of a welfare check, the Florida Supreme Court has found that a Sheriff owes a common law duty of care to the person whose welfare his deputies are dispatched to verify pursuant to the "undertaker's doctrine."²⁷ In accordance with this doctrine, a person who undertakes to render services to another, which services he should recognize as necessary for the protection of the other person, is subject to liability to the other person for physical harm resulting from his failure to exercise reasonable care in performing his undertaking, if his failure to exercise such care increases the risk of such harm.²⁸

In the instant matter, Sheriff Scott, through the actions of Hamer, Lisenbee, and Palmese, voluntarily undertook to perform a check of Ermini's welfare at the request of LaCasse, which welfare check the Sheriff recognized was necessary for the protection of Ermini. Thus, the undersigned finds that the Sheriff owed a common law duty of care to Ermini.

Breach

The existence of a duty of care is alone insufficient to sustain a claim of negligence.²⁹ Once the

²³ *City of Miami v. Sanders*, 672 So. 2d 46 (Fla. 3d DCA 1996) (finding that there is no cause of action for "negligent use of excessive force" because there is no such thing as the negligent commission of an intentional tort).

²⁴ Courts have found evidence of a law enforcement officer's conduct, which conduct culminated in the officer shooting an innocent person, sufficient to support a finding of negligence. *Mazzilli v. Doud*, 485 So. 2d 477 (Fla. 3d DCA 1986).

²⁵ *Trianon Park v. Condo Assoc. v. City of Hialeah*, 468 So. 2d 912 (Fla. 1985).

²⁶ *Wallace v. Dean*, 3 So. 3d 1035 (Fla. 2009).

²⁷ *Id.*

²⁸ Rest. 2d Torts § 323.

²⁹ *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001).

existence of a duty has been established, it merely “opens the courthouse doors”; a plaintiff must still prove the remaining elements of negligence, the next of which is a breach of the duty of care.³⁰ In the instant matter, Hamer, Lisenbee, and Palmese knew that Ermini was an elderly female who lived alone; that Ermini had a gun for self-protection; and that Ermini had likely consumed alcohol and could, therefore, be intoxicated, or at least impaired. The deputies also knew that it was not Ermini who had contacted the LCSO, and therefore, that she might be frightened or confused by their unexpected appearance inside her home.

However, Hamer, Lisenbee, and Palmese chose to enter Ermini’s home after only briefly attempting to establish contact with her by banging on her door and shouting inside. Further, due to Lisenbee’s interference with the scene before Palmese and Hamer arrived, and their subsequent failure to communicate the fact of this interference to Hamer, Hamer entered the home in the mistaken impression that the front door had been found wide open.

Unfortunately, the communication failures did not stop there. Once at the primary bedroom, Lisenbee threw open Ermini’s bedroom door without first attempting to establish contact with Ermini; it was only once the door was open that he announced “Sheriff’s Office” and attempted to make their presence known to her. Such actions directly conflict with the procedures Riordan testified a deputy should generally follow when confronted with the possibility that an armed person may be behind a closed door; in proceeding as he did, Lisenbee put himself, and consequently Hamer and Palmese, in what could have been the direct line of fire, thus heightening the risk for the deputies and, consequently, Ermini.

Furthermore, once Lisenbee began communicating with Ermini, it became apparent to the deputies that Ermini was confused; however, the deputies failed to ensure that Ermini knew they were in fact law enforcement officers; failed to inform Ermini of why they were there, or who had sent them; and failed to order Ermini to drop her gun. Indeed, given that it was a matter of seconds from the time the deputies opened the sleeping Ermini’s bedroom door to the time Hamer shot her, it is apparent that the deputies failed to give Ermini sufficient time to comprehend that they were not intruders or otherwise a threat to her safety, and to consequently decide to put down her gun and exit the room unarmed.

Though the undersigned has no doubt that Hamer feared for his own life, and the lives of Lisenbee and Palmese, at the time he shot Ermini, it appears that the deputies, through a persistent failure of communication, created a situation that put Ermini in fear for her life and, consequently thereafter, put the deputies in fear for their own lives. Based on the foregoing, the undersigned finds that Sheriff Scott, through the actions of his deputies, failed to exercise reasonable care in conducting the check of Ermini’s welfare he had undertaken to perform, thereby increasing the risk of Ermini’s harm, and, thus, breached the duty of care he owed to Ermini.

Causation

Once a duty and a breach thereof are established, causation must be determined. In making such a determination, Florida courts follow the “more likely than not” standard, requiring proof that the negligence proximately caused the plaintiff’s injuries.³¹ In determining whether a defendant’s conduct proximately caused a plaintiff’s injury, the factfinder must analyze whether the injury was a reasonably foreseeable consequence of the danger created by the defendant’s negligent conduct.³² This analysis does not require the defendant’s conduct to be the exclusive, or even the primary, cause of the injury suffered; instead, the plaintiff must only show that the defendant’s conduct was a substantial cause of the injury.³³

In the instant matter, Hamer shot Ermini several times, causing her physical injury and impairment and related psychological harm. Thus, the record is clear that Ermini suffered injuries as a result of Sheriff’s Scott’s breach of the duty of care.

³⁰ *Id.* at 221.

³¹ *Gooding v University Hosp. Bldg., Inc.*, 445 So. 2d 1015 (Fla. 1984); *Ruiz v. Tenent Hialeah Healthsystem, Inc.*, 260 So. 3d 977 (Fla. 2018).

³² *Ruiz*, 260 So. 3d at 981-982.

³³ *Id.* at 982.

In analyzing whether such injuries were a reasonably foreseeable consequence of the danger created by Sheriff's Scott's negligence, and thus the proximate cause of Ermini's injury, the undersigned gives weight to the information the deputies possessed (that is, that Ermini was an elderly female who lived alone; that she likely did not know that law enforcement was coming to her home, or for what reason; that she had a gun for self-protection; and that she had likely consumed alcohol and could, therefore, be intoxicated, or at least impaired). Given this information, the undersigned believes that it was reasonably foreseeable that a person who lives alone might fear for her safety if she hears uninvited, unknown persons inside her home at night; that a person who possesses a gun for self-protection might draw said gun, and keep it drawn while she fears for her safety; and that a person who may be impaired, or at the very least frightened, might need more than seconds and a shout of "Sherriff's Office" to comprehend that she was not in danger.

Taking all of this together, the undersigned believes that Ermini's actions were reasonably foreseeable to the deputies, and yet the deputies proceeded without sufficient caution, thereby creating the situation that ultimately put them in fear for their lives. Further, the deputies entered Ermini's home prepared to respond to threats to their safety with firepower. Though the undersigned does not fault the deputies for having their weapons at the ready in the face of an uncertain situation, the undersigned believes that it was reasonably foreseeable that a deputy might shoot Ermini for responding to their unexpected presence and failure to effectively communicate in the manner that she did. Thus, the undersigned believes that Sheriff Scott's negligence was the proximate cause of Ermini's injuries.³⁴

³⁴ In coming to this conclusion, the undersigned considered the jury's determination that Ermini was 25 percent at fault for her own harm and, thus, a proximate cause of her own injuries. While the undersigned wonders how an officer-involved shooting is a reasonably foreseeable consequence of a person drinking alcohol alone; getting upset during a phone call with a family member; playing "phone tag" with such family member; and then going to sleep in her own bed, all without ever leaving her home or calling law enforcement herself, the undersigned accepts the jury's apportionment of fault as reasonable. The undersigned also rejects any argument that Ermini was more than 50 percent at fault for her own harm due to intoxication; though she had consumed alcohol and had a blood alcohol content of .148, Ermini's treating emergency room physician could not say with any certainty that she was intoxicated, or even impaired. Furthermore, even if Ermini was intoxicated or impaired, it does not logically follow that she should be more responsible for her injuries than the LCSO, as she did not know the deputies were coming to her home and thus could not have prepared for their arrival by abstaining from alcohol.

Damages

To sustain a negligence claim, the plaintiff must prove actual loss or damages resulting from the injury, and the amount awarded must be precisely commensurate with the injury suffered.³⁵ Actual damages may be “economic damages,” that is, financial losses that would not have occurred but for the injury giving rise to the cause of action, such as lost wages and costs of medical care. Actual damages may also be “non-economic damages,” that is, nonfinancial losses that would not have occurred but for the injury giving rise to the cause of action, such as pain and suffering, physical impairment, and other nonfinancial losses authorized under general law.³⁶

In the instant matter, Ermini testified to non-economic damages, including severe and crippling permanent bodily injury; pain and suffering; humiliation; mental anguish; and loss of capacity for the enjoyment of life. The jury ultimately awarded Ermini \$1,000,000 for said damages; however, the jury also assigned her 25 percent of the fault for her own harm.

Under the “pure comparative negligence” standard in effect at the time of Ermini’s trial, a plaintiff could only recover damages proportional to the percentage of fault assigned to her by the jury.³⁷ Accordingly, the jury reduced Ermini’s \$1,000,000 damages award by 25 percent, for a total award of \$750,000, plus costs and interest. The LCSO has since paid Ermini \$200,000 of this amount, which is the maximum amount Florida’s sovereign immunity law authorized it to pay, leaving Ermini with an excess judgment claim for \$626,769.93. Thus, the undersigned finds that Ermini suffered actual damages resulting from her injuries.³⁸

Respondeat Superior

Under the common law *respondeat superior* doctrine, an employer is liable for the negligence of its employee when the:

- Individual was an employee when the negligence occurred;
- Employee was acting within the scope of his or her employment; and
- Employee’s activities were of a benefit to the employer.³⁹

For conduct to be considered within the course and scope of the employee’s employment, such conduct must have:

- Been of the kind for which the employee was employed to perform;
- Occurred within the time and space limits of his employment; and
- Been due at least in part to a purpose serving the employment.⁴⁰

Because Hamer, Lisenbee, and Palmese were at all times relevant to the instant matter employed by Sheriff Scott as deputy sheriffs and were acting within the scope of their employment, which employment benefitted the Sheriff, and by extension, the LCSO, the LCSO is liable for their negligence under the common law *respondeat superior* doctrine.

POSITIONS OF CLAIMANT AND RESPONDENT

Claimant’s Position

Ermini asserts that she is entitled to the excess judgment amount of \$626,769.93 requested in the claim bill. In support of her position, Ermini alleges that Sheriff Scott was negligent through the actions of his deputies, which negligence culminated in an LCSO deputy shooting Ermini.

Respondent’s Position

³⁵ *McKinley v. Gualtieri*, 338 So. 3d 429 (Fla. 2d DCA 2022); *Birdsall v. Coolidge*, 93 U.S. 64 (1876).

³⁶ FLJUR MEDMALP § 107.

³⁷ *Hoffman v. Jones*, 280 So. 2d 431 (Fla. 1973).

³⁸ The undersigned finds that the \$1,000,000 jury verdict, offset by the percentage of fault the jury apportioned to Ermini, was a reasonable award in light of Ermini’s continued physical impairments and psychological suffering.

³⁹ *Iglesia Cristiana La Casa Del Senor, Inc. v. L.M.*, 783 So. 2d 353 (Fla. 3d DCA 2001).

⁴⁰ *Spencer v. Assurance Co. of Am.*, 39 F.3d 1146 (11th Cir. 1994) (applying Florida law).

The LCSO contests the passage of this claim bill, as it is the LCSO's position that Ermini was negligent and therefore caused her own harm. However, should the claim bill pass, the LCSO, through counsel, indicated that payment of the requested amount would not impact the LCSO's operations as it is self-insured through the Sheriffs Risk Management Fund, which fund has sufficient resources to pay the requested amount.

ATTORNEY AND LOBBYING FEES

Under the terms of the claim bill, attorney fees may not exceed 25 percent of the total award – that is, \$156,692.48. Because Claimant's counsel is also acting as her lobbyist, there are no separate lobbying fees requested.

RECOMMENDATION

Based on the foregoing, I recommend that House Bill 6009 be reported FAVORABLY.

Respectfully submitted,



CAITLIN R. MAWN,
House Special Master

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1 A bill to be entitled
2 An act for the relief of Patricia Ermini by the Lee
3 County Sheriff's Office; providing for an
4 appropriation to compensate her for injuries sustained
5 as a result of the negligence of the Lee County
6 Sheriff's Office; providing a limitation on the
7 payment of attorney fees; providing an effective date.
8

9 WHEREAS, on the evening of March 23, 2012, 71-year-old
10 Patricia Ermini spoke on the telephone with her daughter, Robin
11 Lacasse, who found that her mother was extremely upset in the
12 wake of her contentious and expensive divorce after a brief
13 marriage, and

14 WHEREAS, Ms. Lacasse suggested to her mother that she hang
15 up, take some time to calm down, and, afterward, call her back,
16 which her mother did; however, Ms. Lacasse missed her mother's
17 call, and

18 WHEREAS, when Ms. Ermini failed to reach her daughter, she
19 went to bed in her bedroom, which was being cooled by a window
20 unit air conditioner, and

21 WHEREAS, over the course of half an hour, Ms. Lacasse
22 repeatedly tried to return her mother's call and, when her
23 mother did not answer, called the Lee County Sheriff's Office
24 (LCSO) to request that a well-being check be conducted to
25 determine whether her mother was safe, and

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26 WHEREAS, shortly before 9 p.m., LCSO dispatch relayed the
27 call for a well-being check to Deputy Charlene Palmese, with
28 Deputies Richard Lisenbee and Robert Hamer also responding to
29 the call, conveying the following information to the deputies:
30 Ms. Ermini's name and age; that the request for a well-being
31 check had been initiated by Ms. Ermini's daughter, who did not
32 reside in Lee County and was afraid for her mother's life; that
33 Ms. Ermini was in the middle of a difficult divorce; that Ms.
34 Ermini had told her daughter that she "couldn't take it
35 anymore"; that Ms. Ermini's daughter was worried that Ms. Ermini
36 might commit suicide; that Ms. Ermini had never threatened
37 suicide before; that Ms. Ermini did not suffer from mental
38 illness; and that Ms. Ermini had a gun and might have been
39 drinking, and

40 WHEREAS, at the time of the call, Deputy Lisenbee was on
41 probation and undergoing remedial training, in part because of
42 his demonstrated inability to control scenes or suspects through
43 verbal commands, and he later told investigators that he could
44 not recall receiving training in the conduct of well-being
45 checks, and

46 WHEREAS, Deputy Palmese had completed her field training
47 only a few days prior to the call, during which she received
48 instruction on how to respond to a well-being check, but she
49 later told investigators that she could not recall whether, at
50 the time of the call, she had ever actually participated in a

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51 well-being check, and

52 WHEREAS, Deputy Hamer had been to many suicide threat
 53 calls, and he made it a practice to carry his rifle when it was
 54 known that a firearm was present on the premises where the
 55 subject of the call was located, and

56 WHEREAS, Deputy Lisenbee, who was the first to arrive at
 57 Ms. Ermini's home in response to the call, observed that there
 58 were no lights on in the home when he arrived and, after a brief
 59 exterior check, went to the front door, where he secured a
 60 screen door in the open position, knocked on the door, and
 61 announced, "Sheriff's Office," to no response, and

62 WHEREAS, Deputy Lisenbee determined that the front door was
 63 unlocked, opened the door, and again said, "Sheriff's Office,"
 64 followed by "Anyone here? Anyone home?" to no response, and

65 WHEREAS, Deputy Palmese was second to arrive, followed by
 66 Deputy Hamer, who, like the other deputies, parked out of view
 67 from inside the residence, and

68 WHEREAS, Deputy Hamer retrieved from the trunk of his
 69 vehicle his AR-15 rifle, which was equipped with a flashlight
 70 and a sighting device that allowed him to find his target more
 71 quickly and easily, and

72 WHEREAS, Deputy Hamer determined that the three deputies,
 73 all of whom were wearing dark green uniforms, should go into the
 74 residence to clear the house, and

75 WHEREAS, Deputy Hamer activated the flashlight on his rifle

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76 and Deputy Lisenbee announced "Sheriff's Office" once or twice
77 more before they entered the home, after which they proceeded to
78 move about the dark residence in silence as they cleared the
79 living room, finally arriving at the master bedroom, which had
80 double doors, both of which were closed, and

81 WHEREAS, without knocking or further announcing their
82 presence, Deputy Lisenbee opened the right-hand bedroom door and
83 shined his flashlight on a female, who appeared to be asleep on
84 the bed wearing only undergarments, and

85 WHEREAS, after Deputy Lisenbee entered the bedroom doorway,
86 he announced, "Sheriff's Office. Are you okay?" to which the
87 woman responded, "Who's there? Who's there?", and

88 WHEREAS, Deputy Lisenbee said, "Sheriff's Office. We're
89 here to make sure you're okay. Are you okay?", and

90 WHEREAS, Deputy Lisenbee said that, although the woman may
91 have sounded frightened, he did not temper his tone, nor did he
92 ever shine his flashlight on himself to allow Ms. Ermini to see
93 that he was, in fact, a uniformed officer, and

94 WHEREAS, Deputy Hamer said he heard Ms. Ermini say, "What
95 are you doing here? I have a gun," and

96 WHEREAS, Deputy Hamer later acknowledged that he didn't
97 know whether Ms. Ermini had heard or understood Deputy Lisenbee,
98 yet nonetheless, he turned off the flashlight on his gun, "took
99 the point," and stepped in front of Deputy Lisenbee because, he
100 said, he had more weaponry, was the senior officer on scene, and

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101 had significantly more gun range time, and

102 WHEREAS, terrified, Ms. Ermini told the person at the
103 doorway, whom she perceived as an intruder, to get out of her
104 house "because (she had) a gun" and, with that, jumped up from
105 the bed and hid behind the still-closed left-hand bedroom door,
106 and

107 WHEREAS, it remains unclear whether Ms. Ermini grabbed her
108 gun as she ran to shelter behind the door, and

109 WHEREAS, as Ms. Ermini tried to look around the bedroom
110 door, she was shot multiple times, with Deputy Hamer firing
111 seven rounds from his rifle through the closed bedroom door, and

112 WHEREAS, according to the chief crime scene investigator, a
113 bullet fired through the middle of the door struck Ms. Ermini in
114 her left leg, shattering her femur and causing her to fall
115 backward onto the floor; another bullet hit her in the upper
116 right arm, leaving a portion of her upper arm missing; and a
117 third bullet caused a graze wound across the back of her head,
118 and

119 WHEREAS, a wood splinter from the door lodged in her right
120 eye, temporarily blinding her in that eye, and

121 WHEREAS, it was less than two minutes from the time of
122 entry until Ms. Ermini was shot multiple times and fell to the
123 floor, and

124 WHEREAS, Deputy Hamer notified dispatch of the shooting and
125 continued to sweep the bedroom before finally delivering first

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126 aid to Ms. Ermini, whom he handcuffed because she was still
 127 alive and therefore posed a continuing threat to the deputies,
 128 and

129 WHEREAS, Lee County Emergency Medical Services (EMS) was
 130 dispatched at the same time as the officers and were waiting
 131 just two blocks away, which likely saved Ms. Ermini's life, and

132 WHEREAS, when the lead paramedic for EMS arrived, he
 133 determined that Ms. Ermini had life-threatening injuries to the
 134 front and back of her left leg and to the front and back of her
 135 right arm, and a laceration to the back of her head just above
 136 the neckline, and

137 WHEREAS, Ms. Ermini repeatedly asked the paramedic why she
 138 had been shot, who the intruders were, and why they were in her
 139 home, and

140 WHEREAS, Ms. Ermini's most grievous injury was the
 141 shattered femur in her left leg, and moving her caused her
 142 significant blood loss and excruciating pain, and

143 WHEREAS, Ms. Ermini was taken to Lee Memorial Hospital in
 144 critical condition and later admitted to the intensive care
 145 unit, and

146 WHEREAS, in addition to the gunshot wounds, Ms. Ermini had
 147 numerous wounds on her face from the wood splinters from the
 148 bedroom door, and

149 WHEREAS, an LCSO lieutenant who followed the ambulance to
 150 the hospital initially refused the emergency room doctor's

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151 request to remove the handcuffs from Ms. Ermini; emergency room
 152 staff were told that Ms. Ermini "tried to kill a cop"; and Ms.
 153 Ermini's family members were denied visitation, and

154 WHEREAS, doctors were able to save Ms. Ermini's eye with
 155 surgery, but her vision has deteriorated since the incident, and

156 WHEREAS, Ms. Ermini required multiple surgeries to repair
 157 her femur and address her wounds, including multiple skin grafts
 158 on her shoulder, and

159 WHEREAS, after discharge, she suffered a severe septic
 160 infection that caused her tremendous pain, and the pain
 161 medications she was prescribed induced debilitating paranoia,
 162 and

163 WHEREAS, on March 24, 2012, Sheriff Mike Scott told the
 164 news media that Ms. Ermini shot at deputies who had responded to
 165 a well-being check and that they returned fire, which directly
 166 contradicts Deputy Hamer's statement, in which he indicated that
 167 he shot first, and

168 WHEREAS, on March 29, 2012, Ms. Ermini was arrested in the
 169 intensive care unit on two counts of aggravated assault on a law
 170 enforcement officer, which the state attorney declined to
 171 prosecute, and

172 WHEREAS, Ms. Ermini was an emergency room nurse in South
 173 Florida for many years and had worked hand-in-hand with law
 174 enforcement officers, no evidence was ever produced that she had
 175 any animus toward law enforcement officers, and it is still

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176 | disputed that Ms. Ermini's weapon was discharged during the
177 | encounter, and

178 | WHEREAS, Ms. Ermini remained hospitalized for about 30 days
179 | and has never fully recovered from her injuries, and

180 | WHEREAS, Ms. Ermini continues to suffer from acute pain and
181 | fatigue and limited range of motion due to the gunshot wound to
182 | her upper arm, which impairs her ability to accomplish many of
183 | the activities of daily living, and she suffers from
184 | debilitating posttraumatic stress disorder, and

185 | WHEREAS, Ms. Ermini was forced to sell her home because she
186 | cannot afford in-home assistance, and

187 | WHEREAS, Deputy Lisenbee and Deputy Hamer were terminated
188 | by the LCSO shortly after the incident, the latter for "conduct
189 | unbecoming," and

190 | WHEREAS, in November 2015, Ms. Ermini filed suit against
191 | LCSO and the individual deputies involved in the call, and

192 | WHEREAS, on January 12, 2018, after a four-day trial, a
193 | jury that included a retired law enforcement officer awarded \$1
194 | million dollars in damages to Ms. Ermini for her pain and
195 | suffering, and

196 | WHEREAS, after apportionment of 75 percent of the fault to
197 | LCSO, a judgment was entered in Ms. Ermini's favor for \$750,000,
198 | and

199 | WHEREAS, ultimately, after numerous procedural attempts by
200 | LCSO to overturn the judgment, the United States Court of

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201 Appeals for the Eleventh Circuit affirmed the judgment of the
 202 United States District Court in Ms. Ermini's favor, and on or
 203 about December 9, 2019, the Florida Sheriffs Self Insurance
 204 Fund, on behalf of its insured, the Lee County Sheriff's Office,
 205 paid the statutory limit of \$200,000 in damages under section
 206 768.28, Florida Statutes, and

207 WHEREAS, this claim bill is for recovery of the excess
 208 judgment in the amount of \$550,000, plus interest and taxable
 209 trial costs and appellate costs awarded to Ms. Ermini in the
 210 amount of \$76,769.93, for a total claim of \$626,769.93, NOW,
 211 THEREFORE,

212

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

214

215 Section 1. The facts stated in the preamble to this act
 216 are found and declared to be true.

217 Section 2. The Florida Sheriffs Risk Management Fund is
 218 authorized and directed to appropriate from funds not otherwise
 219 encumbered and to draw a warrant in the sum of \$626,769.93
 220 payable to Patricia Ermini as compensation for injuries and
 221 damages sustained.

222 Section 3. The amount paid by the Florida Sheriffs Self
 223 Insurance Fund, on behalf of its insured, the Lee County
 224 Sheriff's Office, pursuant to s. 768.28, Florida Statutes, and
 225 the amount awarded under this act are intended to provide the

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226 | sole compensation for all present and future claims arising out
227 | of the factual situation described in this act which resulted in
228 | injuries and damages to Patricia Ermini. The total amount paid
229 | for attorney fees relating to this claim may not exceed 25
230 | percent of the total amount awarded under this act.

231 | Section 4. This act shall take effect upon becoming a law.