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# **Insurance, Business & Financial Affairs Policy Committee**

**Thursday, March 11, 2010  
8:30 AM  
212 Knott Bldg.**

**Larry Cretul  
Speaker**

**Pat Patterson  
Chair**



**The Florida House of Representatives**  
**General Government Policy Council**  
**Insurance, Business & Financial Affairs Policy Committee**

**Larry Cretul**  
Speaker

**Pat Patterson**  
Chair

**AGENDA**

March 11, 2010  
212 Knott Building

**I. Opening Remarks by Chair**

**II. Consideration of the following bill(s):**

HB 629 – Firesafety Inspections by Rep. Burgin

HB 633 – Human Trafficking by Rep. Burgin

HB 661 – Minimum Surplus Requirements for Mortgage Guaranty Insurers by  
Rep. Nelson

HB 821 – International Commercial Arbitration by Rep. Thurston

HB 1281 – Loan Origination by Rep. Workman

HB 1299 – Streamlining the Issuance of Licenses, Certifications and Registrations Issued  
by State Agencies by Rep. Horner

**III. Adjournment**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 629

Firesafety Inspections

**SPONSOR(S):** Burgin

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1136

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Vickroy <i>LV</i>	Cooper <i>TC</i>
2)	Military & Local Affairs Policy Committee			
3)	General Government Policy Council			
4)				
5)				

**SUMMARY ANALYSIS**

In 2006, legislation was passed to ensure that all privately-owned fire hydrants would be inspected and maintained by a certified firesafety inspector or fire protection contractor. The catalyst for the legislation was a lack of standards for maintenance and inspection of privately-owned hydrants. Fire departments were encountering broken or malfunctioning hydrants, resulting in additional property loss in the event of a fire.

However, the resulting legislation created ambiguity as to whether public utilities could continue to designate a certified employee to perform inspections of their fire hydrants, as had traditionally been the case. Before the 2006 legislation, public utilities could either contract for a certified firesafety inspector or fire protection contractor to perform fire hydrant inspections, or designate a properly qualified employee to perform such inspections. Designating an employee has generally provided some cost savings to the public utility.

The bill provides that public utilities may designate properly qualified employees to perform fire hydrant inspections. It also states that such employees may inspect fire hydrants in accordance with either the standard adopted by the State Fire Marshal, or the American Water Works Association (AWWA), a standard considered to meet and exceed that which has been adopted by the State Fire Marshal.

The bill may result in some cost savings to public utilities that will not have to contract for a firesafety inspector to perform fire hydrant inspections.

The bill takes effect upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

The Division of State Fire Marshal (Division), among other responsibilities, establishes the standards and qualifications of firesafety inspectors<sup>1</sup> and fire protection system contractors,<sup>2</sup> as well as adopts and updates the Florida Fire Prevention Code (FFPC).<sup>3</sup> The FFPC provides that fire hydrants must be inspected, tested, and maintained on an annual basis.<sup>4</sup> It also provides that the Division has the right to inspect any fire hydrant to determine if it meets the standards of the FFPC.<sup>5</sup> However, it is not the responsibility of the Division to inspect each private and public fire hydrant annually to ensure compliance with the FFPC.

As the result of problems with privately-owned fire hydrants not being properly maintained, 2006 legislation created an affirmative duty on private fire hydrant owners to ensure their fire hydrants are maintained and inspected in accordance with the FFPC.<sup>6</sup>

Thus, privately-owned fire hydrants are required to be inspected by a person certified as a firesafety inspector.<sup>7</sup> In addition, private hydrant owners must ensure that their hydrants are maintained between inspections.<sup>8</sup> Fire protection system contractors may be utilized for this purpose. A firesafety inspector is an individual who conducts firesafety inspections on a recurring basis on behalf of the state or any local government with firesafety responsibilities.<sup>9</sup> Similarly, a fire protection system contractor is an individual who contracts with a person or entity to lay out, fabricate, install, inspect, alter, repair, or service certain kinds of fire protection systems, depending on the type of permit issued by the Division.<sup>10</sup> Fire hydrants are one type of fire protection system.<sup>11</sup>

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<sup>1</sup> Section 633.01(3), F.S.

<sup>2</sup> Section 633.01(2)(c)(2), F.S.

<sup>3</sup> Section 633.025(1), F.S.

<sup>4</sup> Section 633.082(2), F.S.

<sup>5</sup> Section 633.082(1), F.S.

<sup>6</sup> See section 633.082(2), F.S.; see also Ch. 2006-65, The Laws of Florida.

<sup>7</sup> See section 633.082(2), F.S.; see also section 633.521, F.S.

<sup>8</sup> F.A.C. 69A-46.041(9).

<sup>9</sup> Section 633.021(10), F.S.

<sup>10</sup> Section 633.021(5)(a)-(e), F.S.

<sup>11</sup> Section 633.021(9), F.S.

In contrast, publically-owned fire hydrants have traditionally been permitted to be inspected by a designated and qualified employee, instead of a fire protection system contractor, or firesafety inspector. However, as a result of the legislation creating an affirmative duty on private fire hydrant owners, it is somewhat unclear if publically-owned hydrants may continue to be inspected by designated and qualified employees.

**Changes Proposed by the Bill:**

The bill provides that while privately-owned fire hydrants must be inspected by a firesafety inspector, publically-owned fire hydrants may be inspected by a designated and qualified employee. However, if a local government or special district uses such designated employees, it is responsible for ensuring that the employees are qualified to perform such inspections.

The bill also provides that such employees may inspect fire hydrants using the standard adopted by the State Fire Marshal<sup>12</sup> or those adopted by the American Water Works Association (AWWA), a standard considered to meet and exceed the standard adopted by the State Fire Marshal. Thus, publically-owned fire hydrants may be subject to two different inspection standards.

**B. SECTION DIRECTORY:**

**Section 1** clarifies that inspections conducted pursuant to local and state requirements and that are performed under section 633.081, F.S., do not include inspections required to be performed by section 633.082(2), F.S.

**Section 2** provides that county, municipal, and special district utilities may perform fire hydrant inspections using their own designated employees. It also requires such inspections to be conducted in accordance with either the standards adopted by the State Fire Marshal, or the AWWA.

**Section 3** provides that the bill will take effect upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The bill may result in indeterminate cost savings associated with the public utility designating an employee to perform inspections rather than contracting with an outside source for fire hydrant inspections.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

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<sup>12</sup> This would be the standard set out in the National Fire Protection Association's (NFPA) national standards. In the case of fire hydrant inspection, NFPA-24 and 25 are the applicable chapters.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
2           An act relating to firesafety inspections; amending s.  
3           633.081, F.S.; providing exceptions to certain local  
4           government firesafety inspection requirements; amending s.  
5           633.082, F.S.; specifying inspection requirements for fire  
6           hydrants owned by governmental entities; authorizing local  
7           government utilities to comply using designated employees;  
8           specifying responsibility for ensuring the qualification  
9           of designated employees to make inspections; providing an  
10          effective date.

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14          Section 1. Subsections (1) and (2) of section 633.081,  
15 Florida Statutes, are amended to read:  
16          633.081 Inspection of buildings and equipment; orders;  
17 firesafety inspection training requirements; certification;  
18 disciplinary action.—The State Fire Marshal and her or his  
19 agents shall, at any reasonable hour, when the department has  
20 reasonable cause to believe that a violation of this chapter or  
21 s. 509.215, or a rule promulgated thereunder, or a minimum  
22 firesafety code adopted by a local authority, may exist, inspect  
23 any and all buildings and structures which are subject to the  
24 requirements of this chapter or s. 509.215 and rules promulgated  
25 thereunder. The authority to inspect shall extend to all  
26 equipment, vehicles, and chemicals which are located within the  
27 premises of any such building or structure.



28           (1) Each county, municipality, and special district that  
 29 has firesafety enforcement responsibilities shall employ or  
 30 contract with a firesafety inspector. Except as provided in s.  
 31 633.082(2), the firesafety inspector must conduct all firesafety  
 32 inspections that are required by law. The governing body of a  
 33 county, municipality, or special district that has firesafety  
 34 enforcement responsibilities may provide a schedule of fees to  
 35 pay only the costs of inspections conducted pursuant to this  
 36 subsection and related administrative expenses. Two or more  
 37 counties, municipalities, or special districts that have  
 38 firesafety enforcement responsibilities may jointly employ or  
 39 contract with a firesafety inspector.

40           (2) Except as provided in s. 633.082(2), every firesafety  
 41 inspection conducted pursuant to state or local firesafety  
 42 requirements shall be by a person certified as having met the  
 43 inspection training requirements set by the State Fire Marshal.  
 44 Such person shall:

45           (a) Be a high school graduate or the equivalent as  
 46 determined by the department;

47           (b) Not have been found guilty of, or having pleaded  
 48 guilty or nolo contendere to, a felony or a crime punishable by  
 49 imprisonment of 1 year or more under the law of the United  
 50 States, or of any state thereof, which involves moral turpitude,  
 51 without regard to whether a judgment of conviction has been  
 52 entered by the court having jurisdiction of such cases;

53           (c) Have her or his fingerprints on file with the  
 54 department or with an agency designated by the department;

55 (d) Have good moral character as determined by the  
56 department;

57 (e) Be at least 18 years of age;

58 (f) Have satisfactorily completed the firesafety inspector  
59 certification examination as prescribed by the department; and

60 (g)1. Have satisfactorily completed, as determined by the  
61 department, a firesafety inspector training program of not less  
62 than 200 hours established by the department and administered by  
63 agencies and institutions approved by the department for the  
64 purpose of providing basic certification training for firesafety  
65 inspectors; or

66 2. Have received in another state training which is  
67 determined by the department to be at least equivalent to that  
68 required by the department for approved firesafety inspector  
69 education and training programs in this state.

70 Section 2. Subsection (2) of section 633.082, Florida  
71 Statutes, is amended to read:

72 633.082 Inspection of fire control systems, fire hydrants,  
73 and fire protection systems.—

74 (2) Fire hydrants and fire protection systems installed in  
75 public and private properties, except one-family or two-family  
76 dwellings, ~~in this state~~ shall be inspected following procedures  
77 established in the nationally recognized inspection, testing,  
78 and maintenance standards publications NFPA-24 and NFPA-25 as  
79 set forth in the edition adopted by the State Fire Marshal.  
80 Quarterly, annual, 3-year, and 5-year inspections consistent  
81 with the contractual provisions with the owner shall be

82 conducted by the certificateholder or permittees employed by the  
 83 certificateholder pursuant to s. 633.521, except that:

84 (a) Public fire hydrants owned by a governmental entity  
 85 shall be inspected following procedures established in the  
 86 inspection, testing, and maintenance standards adopted by the  
 87 State Fire Marshal or equivalent standards such as those  
 88 contained in the latest edition of the American Water Works  
 89 Association's Manual M17, "Installation, Field Testing, and  
 90 Maintenance of Fire Hydrants."


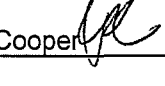
91 (b) County, municipal, and special district utilities may  
 92 perform fire hydrant inspections required by this section using  
 93 designated employees. Such designated employees need not be  
 94 certified under this chapter. However, counties, municipalities,  
 95 or special districts that use designated employees are  
 96 responsible for ensuring that the designated employees are  
 97 qualified to perform such inspections.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 633 Human Trafficking  
**SPONSOR(S):** Burgin and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 966

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Marras 	Cooper 
2) Full Appropriations Council on Education & Economic Development			
3) General Government Policy Council			
4)			
5)			

**SUMMARY ANALYSIS**

Human trafficking, specifically trafficking for the purpose of sex exploitation, is a growing problem, both in Florida and globally. Increasingly, human trafficking victims are being forced to work in massage parlors, providing sexual services under the guise of performing massage therapy.

Currently, in order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years old;
- Complete board-approved massage school or apprenticeship program; and
- Pass an examination, currently offered in Spanish and English.

In order to be licensed as a massage establishment, an establishment must:

- Be in compliance with building codes;
- Meet safety and sanitary requirements;
- Maintain a licensed massage therapist onsite anytime a client is receiving massage services; and
- Maintain liability insurance.

Upon receiving an application, DOH inspects the establishment to ensure it meets all regulatory requirements. Once licensed, the DOH inspects the establishment at least annually.

Sexual activity, both by licensed massage therapists and at massage establishments, is strictly prohibited.

The bill increases regulation of massage therapy in the following ways:

- Requires massage therapy license examinations be given in English only and requires each applicant demonstrate English proficiency as a prerequisite to licensure.
- Adds a requirement to pass a background check as a prerequisite for obtaining a massage establishment license and for renewing such a license.
- Adds reporting requirements for licensed massage establishments to report the license number of each massage therapist it employs and for licensed massage therapists to report the license number of massage establishments where they work. Noncompliance is grounds for discipline.
- Authorizes the Board of Massage Therapy to disapprove massage schools where the majority of the school's graduates have engaged in a pattern of misconduct, defined as at least one conviction of prostitution during a 2-year period, while providing massage services at a massage establishment.

The Department of Health reports it will need 3 FTEs and will incur a significant fiscal impact in implementing the bill's background check requirements.

The bill has an effective date of July 1, 2010.

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

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 DATE: 3/8/2010

## HOUSE PRINCIPLES

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- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

### FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### **Sex Trafficking in Florida**

An estimated 2.4 million people throughout the world are victims of human trafficking at any given time. The United Nations estimates the total market value of illicit human trafficking at \$32 billion. Women and girls account for about 80% of the detected victims of human trafficking, and sexual exploitation accounts for about 80% of the detected cases of human trafficking.<sup>1</sup>

The United States is a destination country for thousands of men, women, and children trafficked largely from Mexico and East Asia, as well as countries in South Asia, Central America, Africa, and Europe, for the purposes of sexual and labor exploitation.<sup>2</sup> An estimated 18,000-20,000 people are trafficked into the United States annually.<sup>3</sup>

The number of instances of trafficking in Florida is difficult to estimate. However, Florida is often cited as one of the top three states (with New York and California) receiving the majority of the women and children trafficked annually into the U.S.<sup>4</sup> Between 2001 and 2005, 14 percent of the human trafficking matters opened by U.S. attorneys were in Florida.<sup>5</sup>

##### *Federal Trafficking Law*

In 2000, Congress enacted the Trafficking Victims Protection Act<sup>6</sup> (TVPA) to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children." The TVPA not only criminalizes human trafficking, but requires victims, who might otherwise

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<sup>1</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, HUMAN TRAFFICKING: THE FACTS 1 (2009), available at [http://www.unodc.org/documents/blueheart/Fact\\_sheet\\_english.pdf](http://www.unodc.org/documents/blueheart/Fact_sheet_english.pdf).

<sup>2</sup> U.S. DEPT. OF STATE, 2009 TRAFFICKING IN PERSONS REPORT 57 (June 2009), available at <http://www.state.gov/g/tip/rls/tiprpt/2009/index.htm>.

<sup>3</sup> U.S. DEPT. OF STATE, 2003 TRAFFICKING IN PERSONS REPORT 7 (June 2003), available at <http://www.state.gov/g/tip/rls/tiprpt/2003>.

<sup>4</sup> See, e.g., RAYMOND, J. G., ET AL., SEX TRAFFICKING OF WOMEN IN THE UNITED STATES: INTERNATIONAL AND DOMESTIC TRENDS, (2001), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/187774.pdf>; FLORIDA COALITION AGAINST HUMAN TRAFFICKING, <http://www.stophumantrafficking.org/activism.html>, last visited March 5, 2010.

<sup>5</sup> MARK MOTIVANS, TRACEY KYCKELHAHN, AND BJS STATISTICIANS, FEDERAL PROSECUTION OF HUMAN TRAFFICKING, 2001-2005, U.S. Bureau of Justice (2006), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/fpht05.pdf>.

<sup>6</sup> Trafficking Victims Protection Act of 2000, Pub.L. No. 106-386, (2000).

be treated as criminals (because of engagement in prostitution), be treated as victims of crime and be provided health and human services, if they cooperate with prosecutions.

Between fiscal years 2001-2008, the FBI's Civil Rights Division and U.S. Attorneys' Offices prosecuted 531 defendants, secured 419 convictions and guilty pleas, and opened 998 new investigations.<sup>7</sup>

### *State Trafficking Law*

Section 787.06, F.S., defines "human trafficking" as "transporting, soliciting, recruiting, harboring, providing, or obtaining another person for transport."

Sex trafficking is defined as knowingly recruiting, enticing, harboring, transporting, providing, or obtaining by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution.<sup>8</sup>

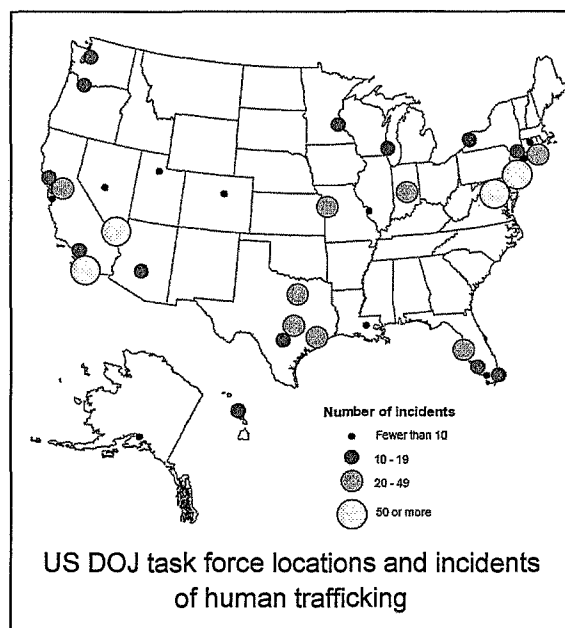
Florida law punishes human trafficking, attempted human trafficking, knowingly benefitting from human trafficking and sex trafficking as second-degree felonies.<sup>9</sup>

However, a person commits a first degree felony if the offense of sex trafficking results in death; is committed against a person who is under the age of 14; or if he or she sells or transfers custody of a minor with knowledge he or she will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking.<sup>10</sup>

### *Increased enforcement efforts*

Over the past few years, enforcement efforts have been increased. Currently, the U.S. Justice Department operates task forces in Miami, Homestead, Collier County (Naples), Lee County (Fort Myers), and Tampa-Clearwater. All state law enforcement recruits receive mandatory training in recognizing and investigating human trafficking cases, and an advanced investigators training has been designed by the Florida Regional Community Policing Institute.<sup>11</sup>

Between January 2007 and September 2008, federal task forces throughout the country reported their involvement in 1,018 investigations into claims of sex trafficking.<sup>12</sup> Local or state law enforcement acted as the lead investigating agency in 86% of those cases. Of the 1,070 alleged victims, 99% were female and 34% were undocumented aliens.<sup>13</sup>



<sup>7</sup> ATTORNEY GENERAL'S ANNUAL REPORT TO CONGRESS AND ASSESSMENT OF U.S. GOVERNMENT ACTIVITIES TO COMBAT TRAFFICKING IN PERSONS 42 (June 2009), available at <http://www.justice.gov/ag/annualreports/tr2008/agreporthumantrafficking2008.pdf>.

<sup>8</sup> Section 796.045, F.S.

<sup>9</sup> Sections 787.06 and 796.045, F.S.

<sup>10</sup> Section 796.035, F.S.

<sup>11</sup> FSU CENTER FOR ADVANCEMENT OF HUMAN RIGHTS. DRAFT STRATEGIC PLAN ON HUMAN TRAFFICKING 1 (2009) [hereinafter FSU DRAFT STRATEGIC PLAN], available at <http://www.dcf.state.fl.us/admin/HumanTrafficking/docs/FSUStrategicPlanDraft103009.pdf>.

<sup>12</sup> BUREAU OF JUSTICE STATISTICS, HUMAN TRAFFICKING/TRAFFICKING IN PERSONS, <http://bjs.ojp.usdoj.gov/index.cfm?ty=tp&tid=40>, last visited March 5, 2010.

<sup>13</sup> BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT: CHARACTERISTICS OF SUSPECTED HUMAN TRAFFICKING INCIDENTS, 2007-08, 3-5, available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/cshti08.pdf>.

There is a growing perception that despite increased efforts and resources, sex trafficking may be on the increase in Florida and elsewhere in the United States. Speaking of both sex trafficking and labor trafficking, one Florida law enforcement investigator noted: "Given the low risk and the tremendous profits generated by human trafficking, it is simply too lucrative a business right now. Both the corporations that profit from trafficking and those actively engaged in the exploitation still have too much to gain—and so little to lose—even as new cases are prosecuted."<sup>14</sup>

### *Florida Statewide Strategic Plan*

During the 2009 regular session, the Legislature created the Florida Statewide Task Force on Human Trafficking within the Department of Children and Family Services. FSU's Center for Advancement of Human Rights (Center) was directed to establish a statewide strategic plan to better investigate trafficking cases, and provide more comprehensive care for trafficking victims. The final version of the Strategic Plan will be available by October 1, 2010.

To date, the Center's research<sup>15</sup> has uncovered the following:

- Florida sex trafficking has become a circuit. Victims appear to be moved frequently, often being brought in from out-of-state to a variety of Florida cities for short periods of time.
- Victims of sex trafficking are being found alongside women who have willingly migrated for sex work, some of whom were recruited to Florida as sex workers, only to be forced into sex slavery upon their arrival.
- Coercion methods are often invisible and include debt servitude, threats against the victim's family, or threats of deportation.
- Florida police and prosecutors report their investigating of trafficking cases has been almost exclusively reactive.
- State regulatory agencies that include licensing or investigative branches can play a crucial role in countering human trafficking. Licensing and regulatory officials have routine access to sites where trafficking occurs but where sworn law enforcement officials might require a warrant to search, including massage parlors.

### *Sex Trafficking in Massage Establishments*

The Center's research has shown an increasing amount of sex trafficking occurring in Asian massage parlors throughout Florida,<sup>16</sup> especially in Tampa, Orlando<sup>17</sup> and Miami, and the country.<sup>18</sup>

The Center has found that Asian massage parlors are often used to disguise sex trafficking. Traffickers bring girls from Korea, Thailand and China using tourist visas. The girls are then forced to work off the debt of being smuggled in – often an amount reaching tens of thousands of dollars. Trafficking is increasingly tied to organized crime in foreign countries and victims know if they escape, their families will bear their debt. Further decreasing the opportunity for escape, some establishments operate a

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<sup>14</sup> FSU DRAFT STRATEGIC PLAN, *supra* note 11, at 2.

<sup>15</sup> *Id.* at 4-11.

<sup>16</sup> See, e.g., Christina Denardo, *Police Shut Down Illegal Delray Beach Massage Parlor; Arrest Two Advertising on Craigslist*, THE PALM BEACH POST, Apr. 29, 2009, available at [http://www.palmbeachpost.com/local\\_news/content/local\\_news/epaper/2009/04/29/0429dbmassage.html](http://www.palmbeachpost.com/local_news/content/local_news/epaper/2009/04/29/0429dbmassage.html) (Owner had been convicted in January 2009 for operating without a license the year before at a location that was shut down in 2007 as an illegal massage parlor); Elliot James, *Two Vero Beach Massage Parlors Involved in Prostitution Arrests*, TCPALM.COM, Dec. 31, 2008, available at <http://www.tcpalm.com/news/2008/dec/31/two-massage-parlors-involved-in-prostitution> (Raid of two massage parlors led to arrest warrants for solicitation of prostitution being issued for 35 men).

<sup>17</sup> See, e.g., *Prostitution Suspected in Raid of Massage Parlor; 4 Women Arrested*, CLICK ORLANDO WKMG, Dec. 10, 2008, available at <http://www.clickorlando.com/print/18247031/detail.html> (Owner also had previous parlor in Winter Park raided the previous year).

<sup>18</sup> See, e.g., Emily Vasquez, *31 Arrested in Human-Trafficking Case*, N.Y. TIMES, Aug. 16, 2006, available at <http://www.nytimes.com/2006/08/16/nyregion/17ringcnd.html?hp&ex=1155787200&en=674f71cddf5222c5&ei=5094&partner=homepage> (Human trafficking ring spanning the Northeast with at least 20 brothels posed as massage parlors, health spas and acupuncture clinics and approximately 67 victims — all young Korean women).



“Taxi Service,” transporting girls to other massage parlors throughout the country every so often. This makes it more difficult for girls to develop relationships or find resources to help them escape.<sup>19</sup>

Law enforcement cannot enter a massage parlor without the owner’s permission or a warrant, which requires probable cause to believe a crime is occurring. The Department of Health, however, inspects licensed massage parlors to ensure regulatory compliance.

### **Current regulation of massage therapists and establishments**

The Massage Practice Act applies to the regulation and licensing of massage therapists and massage service establishments by the Department of Health (DOH).<sup>20</sup>

In order to be licensed as a massage therapist, an applicant must:

- Be at least 18 years old;
- Complete board-approved massage school or apprenticeship program; and
- Pass an examination, currently offered in Spanish and English.<sup>21</sup>

Licensed massage therapists may practice in a licensed massage establishment, at a client’s residence or office, or at a sports event, convention or trade show. Licensees must report to DOH their mailing address and practice location. Sexual misconduct, defined as a violation of the professional relationship through the use of such relationship to engage or attempt to engage in verbal or physical sexual activity outside the scope of the profession, is strictly prohibited.<sup>22</sup>

Section 480.43, F.S., provides that a massage establishment license is required at any facility where massage therapy services are offered by a licensed massage therapist and directs the board to adopt application criteria. It also provides that massage establishment licenses may not be transferred to a new owner, but may be transferred to a new location or business name.

The board’s rules include insurance requirements, compliance with building codes, and safety and sanitary requirements, and require a licensed massage therapist be onsite anytime a client is receiving massage services.<sup>23</sup> Sexual activity is strictly prohibited.<sup>24</sup> Upon receiving an application, DOH inspects the establishment to ensure it meets the requirements.<sup>25</sup> Once licensed, the DOH inspects the establishment at least annually.<sup>26</sup>

An application for a massage establishment license may be denied for an applicant’s conviction of crimes related to the practice of massage, and must be denied for convictions of enumerated crimes within 15 years of application<sup>27</sup> and for past sexual misconduct.<sup>28</sup>

Operation of an unlicensed massage establishment is considered a misdemeanor of the first degree. Currently, upon receiving a complaint that unlicensed activity is occurring, DOH’s Medical Quality Insurance inspectors coordinate with local law enforcement. Unlicensed practice of massage therapy is punishable as a third degree felony.<sup>29</sup> The DOH may issue cease and desist notices, enforceable by filing for an injunction or writ of mandamus and seek civil penalties against the unlicensed party in

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<sup>19</sup> Telephone interview with Terry Coonan, Executive Director of the Center for the Advancement of Human Rights, Tallahassee, Fla., (Mar. 3, 2010).

<sup>20</sup> Chapter 480, F.S.

<sup>21</sup> Section 480.041, F.S.

<sup>22</sup> Section 480.0485, F.S.

<sup>23</sup> Rule 64B7-26.003, F.A.C.

<sup>24</sup> Rule 64B7-26.010, F.A.C.

<sup>25</sup> Rule 64B7-26.004, F.A.C.

<sup>26</sup> Rule 64B7-26.005, F.A.C.

<sup>27</sup> Section 456.0635, F.S.

<sup>28</sup> Section 456.063, F.S.

<sup>29</sup> Section 456.065, F.S.

circuit court.<sup>30</sup> The DOH may also impose, by citation, an administrative penalty up to \$5,000. While DOH has investigative authority, it does not have arrest authority or sworn law enforcement personnel.

### Proposed Changes

The bill provides Legislative intent, including a finding that perpetrators of human smuggling are shielding their crime behind counterfeit or valid state professional or occupational licenses, and the intent to provide law enforcement agencies and the DOH with the means to combat human trafficking committed under the guise of massage services.

The bill also amends Legislative findings concerning human trafficking to include a finding that "massage therapy and work within a specialty salon, cosmetology salon or spa" may be a form of forced labor through human trafficking.

The bill increases the prerequisites to obtaining a massage establishment license to include:

- Applicants not already holding state health care licenses must submit fingerprints to DOH for a background check, paid for by the applicant.
- Background checks exposing a conviction of one of the bill's enumerated sexual, violent or drug trafficking offenses may be denied. The bill provides a definition of 'conviction' consistent with current law.

The bill specifically requires operators of cosmetology salons, public lodging establishments and health studios providing massage services to obtain a massage establishment license.

The bill requires licensed massage establishments to report to the board the license number of each massage therapist it employs.

The bill authorizes the Board of Massage Therapy to adopt rules providing for the disapproval of board-approved massage schools where the majority of the school's graduates have engaged in a pattern of misconduct, defined as at least one conviction of prostitution during a 2-year period, while providing massage services at a massage establishment.

The bill requires massage therapy license examinations be given in English only and requires each applicant demonstrate English proficiency as a prerequisite to licensure.

The bill adds to the grounds for license denial or disciplinary action against a licensed massage therapist the failure to report to the board the license number of any massage establishment in which they practice.

The bill adds to the grounds for license denial or disciplinary action against a licensed massage establishment the establishment's employment of an unlicensed person to provide massage services and the establishment's failure to report to the board the license number of any massage therapist in its employ.

#### **B. SECTION DIRECTORY:**

Section 1 provides legislative findings and intent.

Section 2 creates s. 480.054, F.S., requiring criminal history checks for massage establishment license applicants.

Section 3 amends s. 477.025, F.S., to require cosmetology salons offering massage services obtain a massage establishment license.

Section 4 amends s. 480.033, F.S., to define the term "convicted" or "conviction"

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<sup>30</sup> Section 456.065, F.S.

Section 5 amends s. 480.035, F.S., to provide the Board of Massage Therapy with rule-making authority.

Section 6 amends s. 480.042, F.S., to require massage therapist licensing examinations to be conducted in English

Section 7 amends s. 480.043, F.S., to require certain reports from massage establishments and massage therapists.

Section 8 amends s. 480.046, F.S., to provide new grounds for discipline for a massage therapist or massage establishment licensee.

Section 9 amends s. 501.015, F.S., to require health studios offering massage services obtain a massage establishment license.

Section 10 amends s. 509.241, F.S., to require public lodging establishments offering massage services obtain a massage establishment license.

Section 11 amends s. 787.06, F.S., concerning legislative findings relating to human trafficking.

Section 12 provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill would allow the Department of Health to collect fees to cover the cost of processing initial background checks. The bill does not include the same provision as to background checks necessitated by a license's renewal.

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	4 <sup>th</sup> Year
Background Check Fee (Initial)	\$453,979	\$450,102	\$450,102	\$450,102
Total	\$453,979	\$450,102	\$450,102	\$450,102

#### 2. Expenditures:

The Department of Health reports it will require 3 FTEs and increased expenditures to implement the bill's requirements for background checks and to handle an expected increase in complaints and subsequent investigations.

	1 <sup>st</sup> Year	2 <sup>nd</sup> Year	3 <sup>rd</sup> Year	4 <sup>th</sup> Year
3 FTEs (Operations Analyst II)	\$157,856	\$146,225	\$146,225	\$146,225
Contracted Services				
Background Check Processing (Initial)	\$401,360	\$401,360	\$401,360	\$401,360
Background Check Processing (Renewal)	-	\$802,720	-	\$802,720
Background Check-Employment	\$12,024	\$12,024	\$12,024	\$12,024
Total	\$571,239	\$1,362,328	\$559,608	\$1,362,328

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Massage therapists and massage establishments would experience increased costs for licensure to cover initial background checks.

**D. FISCAL COMMENTS:**

The Department of Health reports it would require 3 FTEs to implement the requirements of the bill. While DOH's costs associated with initial background checks would be covered by applicants, the DOH would experience some expenditures for background checks associated with license renewals.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants the Board of Massage Therapy rulemaking authority to disapprove massage schools under certain circumstances, and to govern massage establishments' reporting requirements.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

The Department of Health provided the following:

The Board of Massage Therapy supports the intent of this bill, but not the language as currently written. They have stated the following concerns:

- No budget authority has been provided.
- The exams have been limited to only English.
- The reporting requirements would place an undue burden on licensees and delay the licensure process.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to human trafficking; providing  
 3       legislative findings and intent; creating s. 480.054,  
 4       F.S.; requiring criminal history checks for certain  
 5       persons applying for a massage establishment license or  
 6       renewal of such a license; providing requirements for the  
 7       criminal history checks; requiring certain new employees  
 8       to notify the Department of Health when there is a change  
 9       of employment and to submit information necessary to  
 10      conduct a criminal history check; authorizing a new  
 11      employee to serve in his or her capacity pending a report  
 12      of the criminal history check from the Federal Bureau of  
 13      Investigation under certain circumstances; authorizing the  
 14      department to deny an application for a massage  
 15      establishment license under certain circumstances;  
 16      amending s. 477.025, F.S.; requiring any person, firm, or  
 17      corporation that operates a cosmetology salon or specialty  
 18      salon that provides massage services to obtain a massage  
 19      establishment license; amending s. 480.033, F.S.; defining  
 20      the term "convicted" or "conviction" for purposes of ch.  
 21      480, F.S., relating to massage practice; amending s.  
 22      480.035, F.S.; authorizing the Board of Massage Therapy to  
 23      adopt rules that provide for the disapproval of a massage  
 24      school under certain circumstances; providing a  
 25      definition; amending s. 480.042, F.S.; requiring massage  
 26      therapist licensing examinations to be conducted in the  
 27      English language; requiring each applicant for licensure  
 28      to demonstrate his or her ability to communicate in

29 English; amending s. 480.043, F.S.; requiring a person,  
 30 firm, or corporation to report to the board the license  
 31 number of each massage therapist employed or otherwise  
 32 engaged to provide massages services; requiring each  
 33 massage therapist to report to the board the license  
 34 number of any massage establishment in which he or she  
 35 provides massage services; authorizing the board to adopt  
 36 rules; amending s. 480.046, F.S.; providing that the  
 37 failure of a massage therapist to report to the board the  
 38 license number of a massage establishment before providing  
 39 massages services is grounds for disciplinary action;  
 40 revising grounds under which the board may revoke or  
 41 suspend the license of a massage establishment; amending  
 42 s. 501.015, F.S.; requiring health studios that provide  
 43 massage services to obtain a massage establishment  
 44 license; amending s. 509.241, F.S.; requiring public  
 45 lodging establishments that provide massage services to  
 46 obtain a massage establishment license; amending s.  
 47 787.06, F.S.; revising legislative findings relating to  
 48 the forms in which human trafficking occurs; providing an  
 49 effective date.

50  
 51 Be It Enacted by the Legislature of the State of Florida:

52  
 53 Section 1. The Legislature finds that many perpetrators of  
 54 human trafficking are shielding this activity behind counterfeit  
 55 or valid professional or occupational licenses issued by the  
 56 state. It is the Legislature's intent to provide law enforcement

57 agencies in this state and the Department of Health the means to  
 58 investigate, arrest, and prosecute any person, firm, or  
 59 corporation that engages in human trafficking and prostitution  
 60 under the guise of providing massage services or as a massage  
 61 establishment.

62 Section 2. Section 480.054, Florida Statutes, is created  
 63 to read:

64 480.054 Massage establishments; criminal history checks;  
 65 prohibited offenses.—

66 (1) Except for a person licensed as a health care provider  
 67 by the department; a person, firm, or corporation licensed as a  
 68 health care clinic under part X of chapter 400; a public lodging  
 69 establishment licensed under chapter 509; or a cosmetology salon  
 70 or specialty salon licensed under chapter 477, the following  
 71 persons applying for a massage establishment license shall  
 72 submit to the department a set of fingerprints on a form under  
 73 procedures specified by the department, along with a payment in  
 74 an amount equal to the costs incurred by the department for a  
 75 criminal history check:

76 (a) The applicant, if an individual.

77 (b) The administrator or a similarly titled person who is  
 78 responsible for the day-to-day operation of the massage  
 79 establishment.

80 (c) The financial officer or similarly titled individual  
 81 who is responsible for the financial operation of the licensee  
 82 or massage establishment.

83 (d) Any person who has a controlling interest, if the  
 84 department has reason to believe that such person has been



85 convicted of any offense listed in subsection (3). For each  
 86 person who has a controlling interest and has been convicted of  
 87 any such offense, the applicant shall submit to the department a  
 88 description and explanation of the conviction on his or her  
 89 application for a license.

90 (2) (a) The department shall submit the fingerprints  
 91 provided by an applicant for initial licensure to the Department  
 92 of Law Enforcement for a statewide criminal history check, and  
 93 the Department of Law Enforcement shall forward the fingerprints  
 94 to the Federal Bureau of Investigation for a national criminal  
 95 history check of the applicant.

96 (b) For the initial renewal of an applicant's license  
 97 occurring on or after July 1, 2010, the department shall submit  
 98 the fingerprints provided by an applicant to the Department of  
 99 Law Enforcement for a statewide criminal history check, and the  
 100 Department of Law Enforcement shall forward the fingerprints to  
 101 the Federal Bureau of Investigation for a national criminal  
 102 history check.

103 (3) The criminal history check under this section must  
 104 ensure that a person subject to this section has not been  
 105 convicted of any offense prohibited under any of the following  
 106 provisions of the Florida Statutes or under any similar statute  
 107 of another jurisdiction:

108 (a) Section 393.135, relating to sexual misconduct with  
 109 certain developmentally disabled clients and reporting of such  
 110 sexual misconduct.

111 (b) Section 394.4593, relating to sexual misconduct with  
 112 certain mental health patients and reporting of such sexual

- 113 misconduct.
- 114 (c) Section 415.111, relating to adult abuse, neglect, or
- 115 exploitation of aged persons or disabled adults.
- 116 (d) Section 782.04, relating to murder.
- 117 (e) Section 782.07, relating to manslaughter, aggravated
- 118 manslaughter of an elderly person or disabled adult, or
- 119 aggravated manslaughter of a child.
- 120 (f) Section 782.071, relating to vehicular homicide.
- 121 (g) Section 782.09, relating to killing of an unborn quick
- 122 child by injury to the mother.
- 123 (h) Section 784.011, relating to assault, if the victim of
- 124 the offense was a minor.
- 125 (i) Section 784.021, relating to aggravated assault.
- 126 (j) Section 784.03, relating to battery, if the victim of
- 127 the offense was a minor.
- 128 (k) Section 784.045, relating to aggravated battery.
- 129 (l) Section 784.075, relating to battery on a detention or
- 130 commitment facility staff.
- 131 (m) Section 787.01, relating to kidnapping.
- 132 (n) Section 787.02, relating to false imprisonment.
- 133 (o) Section 790.115(1), relating to exhibiting firearms or
- 134 weapons within 1,000 feet of a school.
- 135 (p) Section 790.115(2)(b), relating to possessing an
- 136 electric weapon or device, destructive device, or other weapon
- 137 on school property.
- 138 (q) Section 794.011, relating to sexual battery.
- 139 (r) Former s. 794.041, relating to prohibited acts of
- 140 persons in familial or custodial authority.

- 141        (s) Chapter 796, relating to prostitution.
- 142        (t) Section 798.02, relating to lewd and lascivious
- 143 behavior.
- 144        (u) Chapter 800, relating to lewdness and indecent
- 145 exposure.
- 146        (v) Section 806.01, relating to arson.
- 147        (w) Section 810.02, relating to burglary, if the offense
- 148 was a felony.
- 149        (x) Chapter 812, relating to theft, robbery, and related
- 150 crimes, if the offense was a felony.
- 151        (y) Section 817.563, relating to the fraudulent sale of
- 152 controlled substances, if the offense was a felony.
- 153        (z) Section 825.102, relating to abuse, aggravated abuse,
- 154 or neglect of an elderly person or disabled adult.
- 155        (aa) Section 825.1025, relating to lewd or lascivious
- 156 offenses committed upon or in the presence of an elderly person
- 157 or disabled adult.
- 158        (bb) Section 825.103, relating to exploitation of an
- 159 elderly person or disabled adult, if the offense was a felony.
- 160        (cc) Section 826.04, relating to incest.
- 161        (dd) Section 827.03, relating to child abuse, aggravated
- 162 child abuse, or neglect of a child.
- 163        (ee) Section 827.04, relating to contributing to the
- 164 delinquency or dependency of a child.
- 165        (ff) Former s. 827.05, relating to negligent treatment of
- 166 children.
- 167        (gg) Section 827.071, relating to sexual performance by a
- 168 child.

169        (hh) Section 843.01, relating to resisting arrest with  
 170 violence.

171        (ii) Section 843.025, relating to depriving a law  
 172 enforcement, correctional, or correctional probation officer of  
 173 means of protection or communication.

174        (jj) Section 843.12, relating to aiding in an escape.

175        (kk) Section 843.13, relating to aiding in the escape of  
 176 juvenile inmates in correctional institutions.

177        (ll) Chapter 847, relating to obscene literature.

178        (mm) Section 874.05(1), relating to encouraging or  
 179 recruiting another to join a criminal gang.

180        (nn) Chapter 893, relating to drug abuse prevention and  
 181 control, if the offense was a felony or if any other person  
 182 involved in the offense was a minor.

183        (oo) Section 944.35(3), relating to inflicting cruel or  
 184 inhuman treatment on an inmate resulting in great bodily harm.

185        (pp) Section 944.46, relating to harboring, concealing, or  
 186 aiding an escaped prisoner.

187        (qq) Section 944.47, relating to introduction of  
 188 contraband into a correctional facility.

189        (rr) Section 985.701, relating to sexual misconduct in  
 190 juvenile justice programs.

191        (ss) Section 985.711, relating to contraband introduced  
 192 into detention facilities.

193        (4) A person who is newly employed in a capacity that  
 194 requires a criminal history check under this section shall  
 195 notify the department of his or her change in employment and  
 196 submit to the department information necessary to conduct a

197 criminal history check or provide evidence of compliance with  
 198 the requirements for a criminal history check within 30 days  
 199 after being employed. The person may serve in his or her  
 200 capacity pending the department's receipt of the report from the  
 201 Federal Bureau of Investigation if he or she has met the  
 202 standards set forth in subsections (1) and (3) of the criminal  
 203 history check from the Department of Law Enforcement. However,  
 204 the person may not continue to serve in his or her capacity if  
 205 the report indicates any violation of the standards set forth in  
 206 subsections (1) and (3) of the criminal history check unless an  
 207 exemption from disqualification has been granted by the  
 208 Department of Health.

209 (5) The department may deny the application for a massage  
 210 establishment license or the renewal of a massage establishment  
 211 license if the application reveals that the applicant has been  
 212 convicted of any offense listed in subsection (3) or under any  
 213 similar statute of another jurisdiction.

214 Section 3. Subsection (12) is added to section 477.025,  
 215 Florida Statutes, to read:

216 477.025 Cosmetology salons; specialty salons; requisites;  
 217 licensure; inspection; mobile cosmetology salons.—

218 (12) Any person, firm, or corporation operating a  
 219 cosmetology salon or specialty salon in this state that provides  
 220 massage services shall obtain a massage establishment license  
 221 pursuant to s. 480.043 before providing any massage services.

222 Section 4. Subsection (10) is added to section 480.033,  
 223 Florida Statutes, to read:

224 480.033 Definitions.—As used in this act:

225 (10) "Convicted" or "conviction" means a determination of  
 226 guilt that is the result of a trial or the entry of a plea of  
 227 guilty or nolo contendere, regardless of whether adjudication is  
 228 withheld.

229 Section 5. Subsection (8) is added to section 480.035,  
 230 Florida Statutes, to read:

231 480.035 Board of Massage Therapy.—

232 (8) The board may adopt rules that provide for the  
 233 disapproval of a board-approved massage school where the  
 234 majority of the graduates of such a school have engaged in a  
 235 pattern of misconduct while providing massage services at a  
 236 massage establishment. As used in this subsection, the term  
 237 "pattern of misconduct" means being convicted at least once of  
 238 violating s. 796.07, relating to prostitution, during any 2-year  
 239 period.

240 Section 6. Subsection (5) of section 480.042, Florida  
 241 Statutes, is amended to read:

242 480.042 Examinations.—

243 (5) All licensing examinations shall be conducted in such  
 244 manner that the applicant shall be known to the department by  
 245 number until her or his examination is completed and the proper  
 246 grade determined. An accurate record of each examination shall  
 247 be made; and that record, together with all examination papers,  
 248 shall be filed with the State Surgeon General and shall be kept  
 249 for reference and inspection for a period of not less than 2  
 250 years immediately following the examination. All licensing  
 251 examinations shall be conducted in the English language, and  
 252 each applicant shall demonstrate that he or she has the ability

253 to communicate in English.

254 Section 7. Section 480.043, Florida Statutes, is amended  
 255 to read:

256 480.043 Massage establishments; requisites; licensure;  
 257 inspection; reports.—

258 (1) A ~~No~~ massage establishment may not ~~shall be allowed to~~  
 259 operate without a license granted by the department in  
 260 accordance with rules adopted by the board.

261 (2) The board shall adopt rules governing the operation of  
 262 establishments and their facilities, personnel, safety and  
 263 sanitary requirements, financial responsibility, insurance  
 264 coverage, and the license application and granting process.

265 (3) Any person, firm, or corporation desiring to operate a  
 266 massage establishment in the state shall submit to the  
 267 department an application, upon forms provided by the  
 268 department, accompanied by any information requested by the  
 269 department and an application fee.

270 (4) Upon receiving the application, the department may  
 271 cause an investigation to be made of the proposed massage  
 272 establishment.

273 (5) If, based upon the application and any necessary  
 274 investigation, the department determines that the proposed  
 275 establishment would fail to meet the standards adopted by the  
 276 board under subsection (2), the department shall deny the  
 277 application for license. Such denial shall be in writing and  
 278 shall list the reasons for denial. Upon correction of any  
 279 deficiencies, an applicant previously denied permission to  
 280 operate a massage establishment may reapply for licensure.

281 (6) If, based upon the application and any necessary  
 282 investigation, the department determines that the proposed  
 283 massage establishment may reasonably be expected to meet the  
 284 standards adopted by the department under subsection (2), the  
 285 department shall grant the license under such restrictions as it  
 286 shall deem proper as soon as the original licensing fee is paid.

287 (7) (a) Once issued, a ~~no~~ license for the operation of a  
 288 massage establishment may not be transferred from one owner to  
 289 another.

290 (b) A license may be transferred from one location to  
 291 another only after inspection and approval by the board and  
 292 receipt of an application and inspection fee set by rule of the  
 293 board, not to exceed \$125.

294 (c) A license may be transferred from one business name to  
 295 another after approval by the board and receipt of an  
 296 application fee set by rule of the board, not to exceed \$25.

297 (8) Renewal of license registration for massage  
 298 establishments shall be accomplished pursuant to rules adopted  
 299 by the board. The board may ~~is further authorized to~~ adopt rules  
 300 governing delinquent renewal of licenses and ~~may~~ impose penalty  
 301 fees for delinquent renewal.

302 (9) The board may ~~is authorized to~~ adopt rules governing  
 303 the periodic inspection of massage establishments licensed under  
 304 this act.

305 (10) A person, firm, or corporation operating a massage  
 306 establishment shall report to the board the license number of  
 307 each massage therapist employed or otherwise engaged to provide  
 308 massage services. The reporting must be completed before



309 employing or otherwise engaging the massage therapist to provide  
 310 massage services at the massage establishment. The board may  
 311 adopt rules governing such reporting.

312 (11) Each massage therapist shall report to the board the  
 313 license number of any massage establishment at which the massage  
 314 therapist provides massage services. The board may adopt rules  
 315 governing such reporting.

316 Section 8. Paragraph (p) is added to subsection (1) of  
 317 section 480.046, Florida Statutes, and subsection (3) of that  
 318 section is amended, to read:

319 480.046 Grounds for disciplinary action by the board.—

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

322 (p) Failure of a massage therapist to report to the board  
 323 the license number of any massage establishment before providing  
 324 massage services at the massage establishment.

325 (3) The board shall have the power to revoke or suspend  
 326 the license of a massage establishment licensed under this act,  
 327 or to deny subsequent licensure of such an establishment, in any  
 328 ~~either~~ of the following cases:

329 (a) Upon proof that a license has been obtained by fraud  
 330 or misrepresentation.

331 (b) Upon proof that the holder of a license is guilty of  
 332 fraud or deceit or of gross negligence, incompetency, or  
 333 misconduct in the operation of the establishment so licensed.

334 (c) Upon proof that a massage establishment has employed  
 335 or otherwise engaged a person to provide massage services who  
 336 does not hold a valid license issued pursuant to this chapter.

337 (d) Upon proof that a massage establishment has employed  
 338 or otherwise engaged a massage therapist to provide massage  
 339 services without reporting to the board the license number of  
 340 the massage therapist before employing or otherwise engaging the  
 341 massage therapist.

342 Section 9. Section 501.015, Florida Statutes, is amended  
 343 to read:

344 501.015 Health studios; registration requirements and  
 345 fees.—

346 (1) Each health studio shall:

347 (a)~~(1)~~ Register each of its business locations with the  
 348 department in a form and manner as required by the department.

349 (b)~~(2)~~ Remit an annual registration fee of \$300 to the  
 350 department at the time of registration for each of the health  
 351 studio's business locations.

352 (c)~~(3)~~ File a security as required by s. 501.016 at the  
 353 time of registration.

354 (d)~~(4)~~ Post at the registration desk or front desk,  
 355 whichever is more prominent, at each business location the proof  
 356 of registration certificate provided by the department at the  
 357 time of registration or renewal.

358 (e)~~(5)~~ Include the registration number issued by the  
 359 department in all printed advertisements, contracts, and  
 360 publications utilized by the health studio for a business  
 361 location.

362 (f)~~(6)~~ Be considered a new health studio and shall be  
 363 subject to the requirements of s. 501.016 each time the health  
 364 studio changes ownership or, in the case of corporate ownership,

365 each time the stock ownership is changed so as to effectively  
 366 put the health studio under new management or control,  
 367 notwithstanding the provisions of s. 501.016(6). A change of  
 368 ownership does not occur within the meaning of this paragraph  
 369 subsection if:

370 1.(a) Substantially the same stockholders form a new  
 371 corporate entity;

372 2.(b) In the opinion of the department, the change does  
 373 not effectively place the health studio under new management and  
 374 control; and

375 3.(c) The health studio has a satisfactory complaint  
 376 history with the department.

377 (2)(7) Any person applying for or renewing a local  
 378 occupational license to engage in business as a health studio  
 379 must exhibit an active registration certificate from the  
 380 Department of Agriculture and Consumer Services before the local  
 381 occupational license may be issued or reissued.

382 (3)(8) All moneys collected pursuant to this section shall  
 383 be deposited into the General Inspection Trust Fund.

384 (4) Each health studio that offers massage services shall  
 385 obtain a massage establishment license issued pursuant to s.  
 386 480.043 before providing any massage services.

387 Section 10. Subsection (4) is added to section 509.241,  
 388 Florida Statutes, to read:

389 509.241 Licenses required; exceptions.-

390 (4) MASSAGE ESTABLISHMENT LICENSE.-Each public lodging  
 391 establishment that offers massage services shall obtain a  
 392 massage establishment license issued pursuant to s. 480.043

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393 before providing any massage services.

394 Section 11. Paragraph (b) of subsection (1) of section  
395 787.06, Florida Statutes, is amended to read:

396 787.06 Human trafficking.—

397 (1)

398 (b) The Legislature finds that while many victims of human  
399 trafficking are forced to work in prostitution or the sexual  
400 entertainment industry, trafficking also occurs in forms of  
401 labor exploitation, such as domestic servitude, restaurant work,  
402 janitorial work, sweatshop factory work, ~~and~~ migrant  
403 agricultural work, massage therapy, and work within a specialty  
404 salon, cosmetology salon, or spa.

405 Section 12. This act shall take effect July 1, 2010.

**INSURANCE, BUSINESS &  
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 633 by Rep. Burgin  
Human Trafficking**

**AMENDMENT SUMMARY**

**March 11, 2010**

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Strike all amendment by Rep. Burgin with title amendment

The strike all makes substantial changes to the bill and removes the fiscal impact.

Under the strike all, the bill provides:

**Identification verification requirements**

- Requires each person providing or offering massage therapy services to have in his or her possession a Dept. of Health issued license and one of the following:
  - Current driver's license or state-issued identification,
  - Valid U.S. passport,
  - Valid I-551 permanent resident card, or
  - Valid employment authorization document.

Requires such a person present his or her massage therapist license and one of the listed documents to a law enforcement officer upon request.

- Requires the operator of any massage establishment maintain valid work authorization documents onsite for each employee who is not a U.S. citizen and to present such documents to a requesting law enforcement officer.

**Criminal penalties**

- Provides it is unlawful to knowingly use a massage establishment license for lewdness, assignation, or prostitution.  
First offenses are punished as second degree misdemeanors; second offenses are punished as first degree misdemeanors; and third or subsequent offenses are punished as third degree felonies.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 633 (2010)

Amendment No.

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee  
3 Representative Burgin offered the following:

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 480.0535, Florida Statutes, is created  
8 to read:

9 480.0535 Documents required while offering or providing  
10 massage services.-

11 (1) To provide law enforcement the means to more  
12 effectively identify, investigate, and arrest persons engaging  
13 in human trafficking as defined in s. 787.06 or prostitution as  
14 proscribed by chapter 796 by the fraudulent or valid use of a  
15 license to practice massage therapy or operate a massage  
16 establishment:

17 (a) Each person providing or offering to provide massage  
18 services must have in his or her possession, and it is unlawful  
19 to provide or offer to provide massage services without, a

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 633 (2010)

Amendment No.

20 wallet-size identification license card or wall license card  
21 issued by the Department of Health pursuant to s. 456.013, plus  
22 one of the following documents specifically issued to such  
23 person:

24 1. A current driver's license or identification card  
25 issued by a state.

26 2. A valid passport issued by the United States of  
27 America.

28 3. A valid I-551 permanent resident card.

29 4. A valid employment authorization document.

30 (b) Upon request by a law enforcement officer, each person  
31 providing or offering to provide massage services must present  
32 the wallet-size identification license card or wall license card  
33 issued by the Department of Health pursuant to s. 456.013, plus  
34 one of the additional documents specified in paragraph (a).

35 (2)(a) Any person, firm, or corporation operating a  
36 massage establishment pursuant to s. 480.043 shall maintain, and  
37 it is unlawful to operate a massage establishment without, a  
38 valid work authorization document on the premises for each  
39 employee who is not a United States citizen. Valid work  
40 authorization documents for an employee who is not a United  
41 States citizen include:

42 1. A valid I-551 permanent resident card.

43 2. A valid employment authorization document.

44 (b) Upon request by a law enforcement officer, any person,  
45 firm, or corporation operating a massage establishment must  
46 present one of the documents specified in paragraph (a) for each  
47 employee who is not a United States citizen.

Amendment No.

48       (3) It is unlawful to knowingly use a massage  
49 establishment license issued under s. 480.043 for the purpose of  
50 lewdness, assignation, or prostitution at any massage  
51 establishment location or structure, or any part thereof,  
52 including any trailer or other conveyance.

53       (4) A person who violates any provision of this section  
54 commits:

55       (a) A misdemeanor of the second degree for a first  
56 violation, punishable as provided in s. 775.082 or s. 775.083.

57       (b) A misdemeanor of the first degree for a second  
58 violation, punishable as provided in s. 775.082 or s. 775.083.

59       (c) A felony of the third degree for a third or subsequent  
60 violation, punishable as provided in s. 775.082, s. 775.083, or  
61 s. 775.084.

62       Section 2. This act shall take effect July 1, 2010.

63  
64 -----  
65                   **T I T L E   A M E N D M E N T**

66       Remove the entire title and insert:

67                   A bill to be entitled

68       An act relating to human trafficking; creating s.  
69       480.0535, F.S.; specifying documents that must be  
70       possessed by each person providing or offering to provide  
71       massage services; requiring presentation of such documents  
72       upon request of a law enforcement officer; requiring  
73       operators of massage establishments to maintain valid work  
74       authorization documents on the premises for each employee  
75       who is not a United States citizen; requiring presentation



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 633 (2010)

Amendment No.

76 | of such documents upon request of a law enforcement  
77 | officer; prohibiting the use of a massage establishment  
78 | license for the purpose of lewdness, assignation, or  
79 | prostitution; providing criminal penalties; providing an  
80 | effective date.

HB 661

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 661

Minimum Surplus Requirements for Mortgage Guaranty Insurers

**SPONSOR(S):** Nelson

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2084

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Reilly <i>RJR</i>	Cooper <i>PC</i>
2)	Policy Council			
3)	General Government Policy Council			
4)				
5)				

**SUMMARY ANALYSIS**

Mortgage guaranty insurance protects lenders, usually a bank or mortgage company, against loss of all or a portion of the principal amount of a mortgage loan if a homeowner defaults on a loan. Lenders generally require mortgage guaranty insurance when a borrower is unable to make a down payment of 20 percent of the home's value.

In Florida, mortgage guaranty insurers are required to maintain a minimum surplus of the greater of \$4 million or 10 percent of the insurer's liabilities, but not more than \$100 million. They must also have sufficient capital and surplus so that the outstanding aggregate exposure (net of reinsurance) does not exceed 25 times the insurer's paid-in-capital, surplus, and contingency reserve combined. In effect, mortgage guaranty insurers are required to set aside \$1 of capital for every \$25 of risk they insure, and are prohibited from writing new business when their risk-to-capital ratio reaches 25 to 1. The Office of Insurance Regulation (OIR) informs that as of December 31, 2008, 18 companies have reported premiums for mortgage insurance policies written in Florida. Two of these companies have risk-to-capital ratios that exceed 20 to 1.

House Bill 661 authorizes the Commissioner of Insurance Regulation, upon written request of a mortgage guaranty insurer, to temporarily permit the insurer to continue writing new business if its risk-to-capital ratio reaches 25 to 1. The request may be granted if the Commissioner finds that the insurer's financial position is reasonable in relation to its aggregate insured risk and financial needs, i.e., that the insurer's resources are adequate to satisfy policyholder claims to continue writing new business. The bill permits the OIR to take action against any mortgage guaranty insurer that does not obtain a temporary exception, but continues to write new business after its risk-to-capital ratio reaches 25 to 1.

The bill takes effect on July 1, 2010, and does not appear to have a financial impact on state or local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Mortgage Guaranty Insurance**

Mortgage guaranty insurance protects lenders, usually a bank or mortgage company, against loss of all or a portion of the principal amount of a mortgage loan if a homeowner defaults on a loan.<sup>1, 2</sup> Lenders generally require mortgage guaranty insurance when a borrower is unable to make a down payment of 20 percent of the home's value.

In Florida, mortgage guaranty insurance is defined in s. 635, 011, F.S., as a form of casualty insurance that insures lenders against:

(a) Financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid under the terms of any note, bond, or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate which contains a residential building or a building designed to be occupied for industrial or commercial purposes.

(b) Financial loss by reason of nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use, or occupancy of real estate, provided such real estate is designed to be occupied for industrial or commercial purposes.

The Office of Insurance Regulation (OIR) informs that there are 79 companies with a mortgage guaranty line of business that are eligible to write these policies, As of December 31, 2008, 18 of these companies have reported premiums for mortgage insurance policies written in Florida.

##### **Regulatory Requirements for Mortgage Guaranty Insurers**

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<sup>1</sup> Mortgage guaranty insurance obtained from an insurance company in the private sector is referred to as private mortgage insurance. It is the private sector alternative to non-conventional, government-insured mortgages, which include mortgages insured by the Federal Housing Administration (FHA) or guaranteed by the Department of Veterans Affairs or the U.S. Department of Agriculture's Rural Housing Service. See Mortgage Insurance Companies of America, "2009-2010 Fact Book & Member Directory." Available at: <http://www.privatemi.com> (last accessed February 25, 2010).

<sup>2</sup> Unlike FHA-insured loans, private mortgage insurance does not insure the total balance of the loan Typically, private mortgage insurance pays the lender 20% to 30% of the mortgage balance in case of default. To be considered for private mortgage insurance, a prospective homeowner must generally be able to make a down payment of at least 5% of the home's value. *Id.* at 5, 13.

Minimum surplus and capital requirements for mortgage guaranty insurers writing business in Florida are found in s. 635.042, F.S. The requisite minimum surplus is the greater of \$4 million or 10 percent of the insurer's liabilities other than the required contingency reserve, but not more than \$100 million. Insurers must also possess sufficient capital and surplus so that their outstanding aggregate exposure (net of reinsurance) does not exceed 25 times the insurer's paid-in-capital, surplus, and contingency reserve combined. In effect, insurers are required to set aside \$1 of capital for every \$25 of risk they insure, and are prohibited from writing new business when their risk-to-capital ratio reaches 25 to 1. Florida is among 16 states<sup>3</sup> with a risk-to-capital limitation, or its technical equivalent,<sup>4</sup> for mortgage guaranty insurers. Mortgage Insurance Companies of America, the trade association for the private mortgage insurance industry, informs that in each of these states mortgage guaranty insurers are prohibited from writing new business when their risk-to-capital ratio reaches 25 to 1.

Mortgage guaranty insurers also are required to establish and maintain a contingency reserve pursuant to s. 635.041, F.S. This reserve, which is in addition to other premium reserves required by law, requires insurers to set aside 50 percent of every premium dollar earned and to maintain contributions made to the reserve during each calendar year for 10 years. Upon approval by the mortgage guaranty insurer's state of domicile and 30 days' notice to the OIR, the contingency reserve will be made available to a mortgage guaranty insurer at an earlier time for loss payments only when the insurer's incurred losses in a calendar year exceed 35 percent of earned premiums

As of the end of 2008, the OIR reports that no mortgage guaranty insurer had reached the maximum allowable risk-to-capital ratio.<sup>5</sup> However, two mortgage guaranty insurers writing business in Florida had risk-to-capital ratios in excess of 20 to 1. These companies had risk-to-capital ratios of 23.6 to 1 (over \$51 million in Florida direct written premiums in 2008) and 21.1 to 1 (nearly \$84 million in Florida direct written premiums in 2008), respectively. Additionally, one mortgage guaranty insurer is not writing new business,<sup>6</sup> but is continuing to service existing policies.

## Effect of Bill

House Bill 661 authorizes the Commissioner of Insurance Regulation, upon written request of a mortgage guaranty insurer, to temporarily permit the insurer to continue writing new policies in the event the insurer's risk-to-capital ratio reaches 25 to 1. Such request may be granted if the Commissioner finds that the insurer's financial position is reasonable in relation to its aggregate insured risk and financial needs, i.e., that the Commissioner finds that the insurer's resources are adequate to satisfy policyholder claims to continue writing new business.

The bill also permits the OIR to take action against any mortgage guaranty insurer that does not obtain a temporary exception, but continues to write new business when its risk-to-capital ratio is at the maximum allowable level.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 635.042, F.S., Minimum surplus requirements for mortgage guaranty insurers.

**Section 2.** Provides an effective date of July 1, 2010.

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<sup>3</sup> See Mortgage Insurance Companies of America (MICA), "Florida Risk-to-Capital Ratio Requirements" (August 2009). A copy of the white paper is on file with the Insurance, Business & Financial Affairs Policy Committee.

<sup>4</sup>*Id.* at 1 and correspondence between representatives of MICA (Meredith Woodrum Snowden) and staff of the Insurance, Business & Financial Affairs Policy Committee. In addition to Florida, MICA informs that mortgage guaranty insurers in Arizona, California, Idaho, Illinois, Iowa, Kansas, Kentucky, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Texas, and Wisconsin are subject to risk-to-capital requirements, or its technical equivalent. Several of these states, e.g., Arizona, California, and Wisconsin, make reference in statute or rule to terms such as "minimum policyholder position" or "minimum policy surplus." For practical purposes, MICA reports these are the equivalent of a maximum allowable risk-to-capital ratio of 25 to 1.

<sup>5</sup> Risk-to-capital ratios for 2009 will not be available until June 1, 2010, when insurers are required to file audited financial statements.

<sup>6</sup> OIR reports that this insurer had \$9,063 in Florida direct written premiums in 2008.

## 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:

To the extent that mortgage guaranty insurers with a strong financial position are allowed to temporarily continue to write new business when their risk-to-capital ratio reaches 25 to 1, the bill may increase the availability of mortgage guaranty insurance in Florida and the willingness of lenders to make mortgages available to individuals unable to make a down payment of 20% of a home's value.

### D. FISCAL COMMENTS:

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows the Commissioner of Insurance Regulation to issue a "temporary" exception to the maximum allowable risk-to-capital ratio for a mortgage guaranty insurer upon finding that the insurer's financial position is "reasonable" in relation to the insurer's aggregate insured risk and financial needs. The bill does not specify when the request for an exception is to be made (when the insurer begins to write business in Florida, when it is on the verge of reaching the maximum allowable risk-to-capital ratio, etc.), and does not provide a durational limit or risk-to-capital limit for the temporary exception.

The bill also does not define what a reasonable financial position would be to allow a mortgage guaranty insurer to continue to write new business.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
 2           An act relating to minimum surplus requirements for  
 3           mortgage guaranty insurers; amending s. 635.042, F.S.;  
 4           authorizing the Commissioner of Insurance Regulation to  
 5           permit a temporary exception to certain requirements under  
 6           certain circumstances; revising authority of the Office of  
 7           Insurance Regulation to take action against a noncomplying  
 8           insurer under certain circumstances; providing an  
 9           effective date.

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

12  
 13           Section 1. Section 635.042, Florida Statutes, is amended  
 14 to read:

15           635.042 Minimum surplus requirement.—

16           (1) A mortgage guaranty insurer shall maintain a minimum  
 17 surplus of not less than the greater of \$4 million or 10 percent  
 18 of the insurer's total outstanding liabilities other than the  
 19 required contingency reserve. A mortgage guaranty insurer is not  
 20 required to have a surplus as to policyholders greater than \$100  
 21 million.

22           (2) A mortgage guaranty insurer must possess sufficient  
 23 capital and surplus so that the total outstanding aggregate  
 24 exposure net of reinsurance under mortgage guaranty policies  
 25 written by the insurer does not exceed 25 times its paid-in  
 26 capital, surplus, and contingency reserve combined. A mortgage  
 27 guaranty insurer shall disclose in the audited financial reports  
 28 required under s. 624.424(8), the total aggregate exposure net



29 of reinsurance under mortgage guaranty policies written by the  
 30 insurer. The Commissioner of Insurance Regulation may permit a  
 31 temporary exception to the requirements of this subsection at  
 32 the written request of a mortgage guaranty insurer upon a  
 33 finding that the mortgage guaranty insurer's financial position  
 34 is reasonable in relationship to the mortgage guaranty insurer's  
 35 aggregate insured risk and financial needs.

36 (3) If a mortgage guaranty insurer is not in compliance  
 37 with this section and has not been permitted an exception as  
 38 provided in subsection (2), the office may take any action  
 39 against the insurer that the office may take against an insurer  
 40 that is not in compliance with s. 624.408.

41 Section 2. This act shall take effect July 1, 2010.

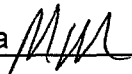



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 821  
SPONSOR(S): Thurston  
TIED BILLS:

International Commercial Arbitration

IDEN./SIM. BILLS: SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Marra 	Cooper 
2) Criminal & Civil Justice Policy Council			
3) General Government Policy Council			
4)			
5)			

SUMMARY ANALYSIS

Arbitration is an alternative to litigation, under which parties agree to have their disputes settled by a neutral third party. Parties choose what rules will apply to the arbitration, but uncertainty in the agreement is settled by state or federal law. An arbitration award is binding on the parties and may only be set aside by a court under special circumstances.

Arbitration has become favored for disputes involving international trade because it offers increased certainty as to outcomes and enforceability of awards.

In crafting an arbitration agreement, agreeing to the seat of arbitration is very important. This will be the place where the arbitration will actually occur, whose courts will provide supervisory jurisdiction over the arbitration, and whose procedural law will provide the backdrop of the arbitration. Notably, in the absence of an agreement otherwise, the law of the seat of arbitration is applied. Florida ranks as the second U.S. venue of choice.

International arbitration in Florida is governed by the Florida International Arbitration Act (FIAA). Many other jurisdictions are enacting the Model International Commercial Arbitration Law (Model Law) drafted under the supervision of the United Nations Commission on International Trade Law.

This bill would repeal the FIAA and enact the Model Law.

The FIAA and Model Law are substantially similar, but have key differences in their approach to:

- applicability to certain disputes,
- arbitrator appointment and removal,
- arbitral tribunal authority to issue interim relief,
- termination of proceedings not ending in settlement,
- consolidation of similar arbitration actions,
- parties' right to representation,
- publication of arbitration awards, and
- specific grounds for judicial vacating of arbitration awards.

The bill is expected to have an indeterminable and insignificant fiscal impact due to an increase in circuit court filings.

The bill has an effective date of July 1, 2010.

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

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## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

Arbitration is an alternative to litigation, under which disputes are settled by a neutral third party pursuant to the parties' agreement. Contracting parties are free to choose what rules will apply to the arbitration and where there is uncertainty in the agreement state or federal law fills the gaps. A decision of the arbitrator – or arbitrators – is binding on the parties and may only be set aside by a court under special circumstances.

Arbitration has become favored for disputes involving international trade, where results of litigation can hinge on where the suit is brought and judgments can be difficult to enforce internationally.

Arbitration awards are more easily enforced worldwide under several multi-national agreements, the most prominent of which is the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"). The New York Convention, ratified by more than 120 nations, including the United States, obliges member states to recognize and enforce both international commercial arbitration agreements and awards, with limited exceptions. Additionally, most developed trading states have enacted national arbitration legislation that provides for enforcement of international arbitration agreements and awards, limits judicial interference in the arbitration process, and authorizes judicial support for the arbitral process.

The United States, for example, has adopted the Federal Arbitration Act<sup>1</sup> (FAA) governing all arbitration and providing for the enforcement of foreign arbitration awards. Where state law discriminates against arbitration agreements, FAA's federal rules of enforceability preempt the state law;<sup>2</sup> however state law regulating the formation, validity and enforceability of contracts in general is not preempted.<sup>3</sup>

In crafting an arbitration agreement, agreeing to the seat of arbitration is key. This will be the place where the arbitration will actually occur, whose courts will provide supervisory jurisdiction over the

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<sup>1</sup> 9 U.S.C. § 1, et seq.

<sup>2</sup> See *Southland Corp. v. Keating*, 465 U.S. 1, 16 (1984) ("In creating a substantive rule applicable in state as well as federal courts, Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements.").

<sup>3</sup> See *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987) ("Thus state law, whether of legislative or judicial origin, is applicable *if* that law arose to govern issues concerning the validity, revocability, and enforceability of contracts generally. A state-law principle that takes its meaning precisely from the fact that a contract to arbitrate is at issue does not comport with this requirement of § 2.").

arbitration, and whose procedural law will provide the backdrop of the arbitration. Notably, in the absence of an agreement otherwise, the law of the seat of arbitration is applied.<sup>4</sup>

Florida currently ranks as the second U.S. venue of choice for international arbitration, behind New York.<sup>5</sup> Houston and Chicago rank third and fourth, respectively.<sup>6</sup>

Florida adopted the Florida International Arbitration Act (FIAA) in 1986. Many states have since enacted similar laws, and other states,<sup>7</sup> along with 61 countries, are adopting the Model International Commercial Arbitration Law (Model Law) drafted in 1986 under the supervision of the United Nations Commission on International Trade Law (UNCITRAL). In drafting the FIAA, Florida considered the Model Law, which was in draft form at the time.<sup>8</sup>

The FIAA rules, like most rules governing arbitration, establish a framework upon which parties to a dispute may draw in crafting their arbitration process. Many rules may be avoided by the parties' agreement.

Notable differences between current law and that adopted by the bill are highlighted below. Where no difference is noted, current law is substantially similar to the bill.

### Proposed Changes

The bill repeals the Florida International Arbitration Act and enacts the Florida International Commercial Arbitration Act, codifying the Model International Commercial Arbitration Law.

### **Applicability**

Under the bill the Act would apply to international arbitration and would be subject to any agreement between the United States and any other country.

The bill only applies to arbitration conducted in the state, except provisions relating to court-enforcement of arbitration awards, requests for interim measures of protection, and grounds for refusing award recognition or enforcement. This is different from current law, which applies regardless of where the arbitration takes place.

The bill defines the scope of international arbitration to include:

- Agreements between parties who have their places of business, or for nonbusinesses - residence, in different countries at the time of the agreement's conclusion.
- Agreements between parties, where one of the following is situated in a different country than a party's place of business:
  - The seat of arbitration,
  - The place where a substantial part of the agreement's obligations is to be performed, or
  - The place where the subject matter of the dispute is most closely connected.
- Agreements under which the parties have expressly agreed that the matter relates to more than one country.

This is different from current law, which specifically excludes from international arbitration disputes over real property within the state, except by express agreement, and any dispute involving domestic relations or of a political nature between two or more governments. Under the bill, parties could agree to submit such claims to international arbitration.

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<sup>4</sup> GARY B. BORN, INTERNATIONAL COMMERCIAL ARBITRATION: COMMENTARY AND MATERIALS 43 (2nd ed. 2001).

<sup>5</sup> New York hosts the International Centre for Dispute Resolution, the international arbitration arm of the American Arbitration Association, which is staffed by specialized attorneys with language skills.

<sup>6</sup> Julie Kay, *Miami Ramps up Efforts to be the Seat of International Arbitration*, SOUTH FLORIDA BUSINESS JOURNAL, Dec. 4, 2009, available at <http://southflorida.bizjournals.com/southflorida/stories/2009/12/07/focus6.html>.

<sup>7</sup> California, Connecticut, Illinois, Louisiana, Oregon and Texas have all adopted the Model Law.

<sup>8</sup> Carlos E. Loumiet, et al., *Proposed Florida International Arbitration Act*, 16 U. MIAMI INTER-AM. L REV. 591, 594 n.2 (1985).

The bill provides definitions for the terms, 'arbitration,' 'arbitration agreement,' and 'court.' It also provides rules of interpretation, including:

- Parties are able to delegate authority to determine issues to third parties, including institutions.
- Parties' ability to adopt alternative procedures under the bill includes the ability to adopt arbitration rules by reference.
- The act should be interpreted in light of its international origin and to promote international uniformity in its application.

The bill provides for the interpretation of arbitration agreements, as follows:

- Arbitration agreements are deemed separate and independent from the underlying contract and may survive even if the contract is deemed invalid.

The bill provides for the substantive resolution of disputes:

- Disputes shall be determined pursuant to substantive rules of law chosen by the parties.
- If the parties fail to choose the applicable law, the tribunal may determine the applicable law by the choice-of-law provision it deems applicable.

The bill includes **procedural rules of arbitration**, including:

*Treatment of parties:* All parties are to be treated equally and given equal opportunity to present their cases.

No similar provision exists under current law.

*Conduct of proceedings:* Absent an agreement otherwise, the arbitral tribunal may conduct proceedings as it sees fit, in the language it chooses and has the authority to determine matters of evidence, to choose the place of arbitration, and to appoint experts.

*Claims and Defenses:* Unless otherwise agreed and within the time agreed to or adopted by the tribunal, the claimant submits a statement of its claim, including the remedy sought. The respondent then submits a statement of its defense. Unless otherwise agreed or determined by the tribunal, parties may amend their statements at any time.

Unless otherwise agreed, if a claimant, without a showing of sufficient cause, fails to provide its statement of claim, the tribunal shall terminate the arbitration. If a respondent fails to provide its defense, the tribunal shall continue the arbitration. The tribunal shall also continue the arbitration if a party who fails to appear or produce evidence.

*Jurisdiction of the arbitral tribunal:* An arbitral tribunal has the ability to rule on its own jurisdiction, including any challenges to the validity of the parties' agreement to arbitrate. Jurisdictional challenges must be submitted with the statement of defense. Claims that the tribunal is exceeding its authority must be raised as soon as such matter arises. The tribunal has discretion to hear justifiably untimely challenges. A party may appeal the tribunal's decisions on jurisdiction to a circuit court.<sup>9</sup>

*Arbitrator selection and immunity:* There are to be three arbitrators, unless the parties agree otherwise, and a procedure for appointment is provided. Arbitrators shall have the same immunity as a judge.

Under current law, there is to be one arbitrator, unless the parties agree otherwise.

*Arbitrator challenges:* Circumstances giving rise to justifiable doubts as to an arbitrator's impartiality and independence are grounds for challenging the arbitrator. Arbitrators must continuously disclose any such circumstances. An arbitrator may also be challenged for lacking the qualifications agreed to by the parties. Challenges may only be based on information learned after an arbitrator's appointment. In the

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<sup>9</sup> See discussion concerning circuit court oversight of arbitration proceedings *infra* p. 7.

absence of an agreement otherwise, the bill provides a process by which arbitrators may be challenged.

No similar provisions exist under current law; however, under s. 684.25(1)(e), F.S., a final award may be vacated if an arbitrator had a material conflict of interest, unless the challenging party had timely notice of the conflict and proceeded without objection.

*Arbitrator termination:* An arbitrator's mandate terminates if he or she is actually or legally unable to perform or fails to timely perform. The parties may agree to such termination, the arbitrator may withdraw, or a party can seek judicial termination. A substitute arbitrator is appointed using the same procedures used for the initial arbitrator.

No similar provisions exist under current law.

*Decisionmaking:* In arbitrations with multiple arbitrators, decisions are to be made by a majority of arbitrators, unless otherwise agreed by the parties. Questions of procedures may, however, be decided by the presiding arbitrator, if authorized by the parties or all the members of the arbitral tribunal.

*Service:* Written communications, outside of court proceedings, are deemed received when delivered personally, or at the addressee's place of business, habitual residence or mailing address.

Current law does not specify when a written communication is deemed to be "received" by a party to the arbitration. However, s. 684.08, F.S., specifies that notice commencing arbitration shall be served on the parties, and s. 48.196, F.S., provides a specific process for service of notice.

*Waiver of objections:* A party who fails to timely object to a known violation of any requirement of the act or the agreement waives the right to object to such noncompliance.

*Interim measures:* Unless otherwise agreed by the parties, the tribunal has the ability to issue interim measures at the request of a party. Interim measures are binding on the parties and may be enforced in any court, in any country. The court may only refuse to enforce a measure if the tribunal's order of security has not been met, on one of the grounds for refusing to enforce an arbitration award,<sup>10</sup> or if the court finds that the measure is incompatible with the powers of the court. A court also shares the same authority to issue interim measures as the tribunal.

Interim measures are temporary and may include orders to: (1) maintain or restore the status quo, (2) prevent current or imminent harm or prejudice to the arbitral process, (3) preserve assets out of which a subsequent award may be satisfied, or (4) preserve evidence. The requesting party must prove that: (1) harm not adequately reparable by money damages is likely to result and such harm substantially outweighs harm likely to result from issuing the measure, and (2) there is a reasonable possibility that the requesting party will succeed on the merits.

The tribunal may require the requesting party post security and to disclose any change in the circumstances supporting the measure. The requesting party is liable for costs and damages arising from a granted interim measure that the tribunal later determines should not have been granted.

*Preliminary orders:* A party requesting an interim measure may also request a preliminary order prohibiting a party from frustrating the purpose of the interim measure. The tribunal may grant such a request if it finds that prior disclosure of the request for the interim measure risks frustrating the measure's purpose and the request meets the same conditions as those applicable for interim measures. A specific process for issuing preliminary orders is detailed. A preliminary order, while binding on the parties, is not enforceable by a court and does not constitute an award.

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<sup>10</sup> See discussion concerning grounds for setting aside or refusing to enforce an arbitration award *infra* p. 7.

The tribunal must require the requesting party post security and to disclose any change in the circumstances supporting the measure. The requesting party is liable for costs and damages arising from a granted preliminary order that the tribunal later determines should not have been granted.

No similar provisions exist under current law; however, under s. 684.19, F.S., an arbitral tribunal may issue an "interim award," which may be issued in the same manner as any other award. Under s. 684.23(3), F.S., interim relief includes temporary restraining orders, preliminary injunctions, attachments, garnishments, or writs of replevin. The granting of such interim relief is subject to such procedural requirements and other conditions as would apply in a comparable action not pertaining to arbitration.

*Modification:* An arbitral tribunal may modify, suspend or terminate an interim measure or preliminary order at the request of any party or, in exceptional circumstances and with notice to the parties, at its own initiative.

*Settlement:* Parties may settle during the arbitration, and if they do so, the tribunal is to terminate the proceeding and, if requested by the parties and not objected to by the tribunal, shall record the settlement as an arbitral award.

*Awards:* An arbitration award must be made in writing, signed by a majority of the arbitrators, and state the date and place it was made. An award also states the reasons upon which it is based, unless the parties agree otherwise. An award is binding on the parties and enforceable in any court of competent jurisdiction.

A party may request a court set an award aside within three months.<sup>11</sup> A party may also apply to the court to enforce the award.

*Termination:* A final award terminates the arbitration. A tribunal may also terminate the arbitration by order, if the claimant withdraws his or her claim, absent objection by the respondent, and the tribunal finds the respondent has an interest in a final settlement; the parties agree; or the tribunal finds that continuation of the arbitration has become unnecessary or impossible.

Current law only provides for the termination of arbitration proceedings when a settlement has been reached.

*Correction and Interpretation of Awards:* Either party may request the tribunal correct any computation, clerical or typographical errors and a detailed process for correction is provided. Either party may also request interpretation of any part of the award.

Current law authorizes an arbitral tribunal to vacate, clarify, correct, or amend an award. Section 684.24(4), F.S., also allows a court reviewing an award to request a tribunal to clarify, modify, or correct an award for any evident miscalculation or mistake in the description of any person or property or for any imperfection of form not affecting the merits.

The bill also provides rules governing the circumstance where both arbitration and a court action are initiated:

- A court hearing a claim that is subject to an arbitration agreement *shall*, if requested by a party in its initial answer, refer the agreement to arbitration, unless it finds the agreement is null and void, inoperative, or incapable of performance.
- If an action has been brought, arbitration may also be commenced or continued, and an arbitration award may be made, while the issue is pending in the court.

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<sup>11</sup> See discussion concerning circuit court oversight of arbitration proceedings *infra* p. 7.



The bill provides for supervisory oversight by a circuit court in the county where the arbitration is occurring. The court may, at a party's request:

- Unless the parties agree otherwise, appoint an arbitrator, if the party, or arbitrators appointed by the parties, fails to do so as the agreement or act requires. The court's decision is not appealable.
- Hear a challenge to an arbitrator that the arbitral tribunal rejected. The court's decision is not appealable, and the arbitration may continue while the court hears the challenge.
- Determine whether an arbitrator's mandate should be terminated if the arbitrator becomes actually or legally unable to perform or fails to act without undue delay. The party may only make such a request if the parties fail to agree on the arbitrator's termination and the arbitrator fails to withdraw from office. The court's decision is not appealable.
- Decide jurisdictional issues of the arbitral tribunal. The court's decision is not appealable, and the arbitration may continue while the court hears the issue.
- Issue an interim measure of protection (injunction) before or during the arbitration.
- Set aside an arbitral award under certain circumstances. The court may suspend such a hearing to give the tribunal an opportunity to resume arbitration or cure the grounds to set aside the award.
- Enforce or refuse to enforce an arbitral award.

The court may also, at the tribunal's request, assist the tribunal in taking evidence. The court may not intervene otherwise.

The bill provides grounds for setting aside or refusing to enforce an arbitration award, which are limited to:

- The complaining party to the agreement was under some incapacity;
- The arbitration agreement is invalid under the law the parties designated or state law, if no law has been designated;
- The complaining party was not given notice of the appointment of an arbitrator or the proceedings, or was unable to present its case;
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- The composition of the tribunal or the procedure violated the parties' agreement, unless the agreement violated law; or
- The court finds that the subject matter of the dispute may not be arbitrated under state law or the award is contrary to the public policy of the state; and
- In the case of refusing to enforce an award, a finding that the award has not yet become binding on the parties or has previously been set aside.

Current law also provides grounds for vacating or refusing to confirm an arbitration award, which are limited to:

- There was no written arbitration agreement;
- The arbitration agreement was induced by fraud;
- The complaining party was not given notice of the proceedings;
- The arbitration was conducted so unfairly as to substantially prejudice the rights of the challenging party;
- The award was obtained by corruption, fraud or undue influence or is contrary to the public policy of the United States or this state;
- Any arbitrator had a conflict of interest, unless waived;
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration; or
- The composition of the tribunal or the procedure violated the parties' agreement.

The bill expressly does not limit the Legislature's ability to prohibit certain matters from arbitration or to specify the manner in which a specific matter may be arbitrated.

The bill, in repealing the FIAA would repeal the following procedural rules of arbitration, which are not expressly addressed by the bill:

*Consolidation:* If two or more disputes have common questions of law or fact or arise out of a single transaction or enterprise and if at least one of the disputes is subject to the FIAA and the parties agree, the disputes may be consolidated and heard by the tribunal.

While the bill does not directly address consolidation, consolidation is a procedural issue, decided by the arbitral tribunal, so will likely still be possible under the bill.<sup>12</sup>

*Representation:* A party to an arbitration has a right to be represented by counsel and any waiver of that right before a proceeding is ineffective.

While the bill does not directly address the right to representation, it does require each party be given a full opportunity to present its case.

*Publication of Awards:* An arbitration award may be made public only if all parties consent in writing, disclosure is necessary by law or disclosure is necessary in connection with judicial or official proceeding concerning the award.

While the bill does not directly address publication of awards, it does allow the parties to agree that no reasons are to be given in the award. Parties may also stipulate to nonpublication requirements in the contract or settlement.

## B. SECTION DIRECTORY:

Section 1 creates s. 684.0001, F.S., providing a short title.

Section 2 creates s. 684.0002, F.S., defining the applicability of the act.

Section 3 creates s. 684.0003, F.S., providing definitions and rules of interpretation.

Section 4 creates s. 684.0004, F.S., providing principles for interpretation of the act.

Section 5 creates s. 684.0005, F.S., specifying when written communications are received.

Section 6 creates s. 684.0006, F.S., providing for waivers of the right to object.

Section 7 creates s. 684.0007, F.S., limiting the ability of a court to intervene in an arbitral proceeding.

Section 8 creates s. 684.0008, F.S., authorizing the circuit court to take certain actions.

Section 9 creates s. 684.0009, F.S., requiring courts refer matters governed by an arbitration agreement to arbitration.

Section 10 creates s. 684.001, F.S., authorizing courts to grant interim protection before or during an arbitral proceeding.

Section 11 creates s. 684.0011, F.S., providing for the number of arbitrators, in the absence of an agreement.

Section 12 creates s. 684.0012, F.S., specifying procedures for the appointment of an arbitrator.

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<sup>12</sup> See *Protective Life Ins. v. Lincoln Nat. Life Ins.*, 873 F.2d 281 (11<sup>th</sup> Cir. 1989)(Court cannot consolidate proceedings if parties have not agreed to consolidation); *Certain Underwriters at Lloyd's London v. Westchester Fire Inc.*, 489 F.3d 580 (3d Cir. 2007)(In line with decisions out of the 1<sup>st</sup>, 4<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> circuits, the 3<sup>rd</sup> circuit held that consolidation is an issue for the arbitrator.)

Section 13 creates s. 684.0013, F.S., requiring certain disclosures and providing grounds to challenge an arbitrator's appointment.

Section 14 creates s. 684.0014, F.S., providing procedures to challenge an arbitrator's appointment.

Section 15 creates s. 684.0015, F.S., terminating an arbitrator's mandate in cases of failure or impossibility to act.

Section 16 creates s. 684.0016, F.S., providing for the appointment of a substitute arbitrator.

Section 17 creates s. 684.0017, F.S., authorizing an arbitral tribunal or a court to determine the tribunal's jurisdiction.

Section 18 creates s. 684.0018, F.S., authorizing an arbitral tribunal to grant an interim measure.

Section 19 creates s. 684.0019, F.S., providing conditions for granting interim measure.

Section 20 creates s. 684.002, F.S., providing conditions for granting interim orders to prevent a party from frustrating the purpose of an interim measure.

Section 21 creates s. 684.0021, F.S., requiring a party to be given notice of and an opportunity to object to an interim measure or preliminary order.

Section 22 creates s. 684.0022, F.S., authorizing an arbitral tribunal to modify, suspend, or terminate an interim measure or preliminary order under certain circumstances.

Section 23 creates s. 684.0023, F.S., authorizing a security requirement as a condition of granting an interim measure or preliminary order.

Section 24 creates s. 684.0024, F.S., requiring certain disclosures as a condition of granting or maintaining an interim measure or preliminary order.

Section 25 creates s. 684.0025, F.S., providing for awards of costs and damages.

Section 26 creates s. 684.0026, F.S., providing for court recognition and enforcement of interim measures.

Section 27 creates s. 684.0027, F.S., specifying grounds under which a court may refuse to enforce an interim measure.

Section 28 creates s. 684.0028, F.S., authorizing a court to grant an interim measure.

Section 29 creates s. 684.0029, F.S., requiring equal treatment and opportunity to be heard for parties.

Section 30 creates s. 684.003, F.S., providing arbitration procedures, in the absence of agreement.

Section 31 creates s. 684.0031, F.S., allowing parties and the tribunal to choose a place of arbitration.

Section 32 creates s. 684.0032, F.S., specifying an arbitral proceeding's date of commencement.

Section 33 creates s. 684.0033, F.S., authorizing parties to agree on the language to be used.

Section 34 creates s. 684.0034, F.S., providing for the submission of claims and defenses.

Section 35 creates s. 684.0035, F.S., providing for the determination of the method by which evidence will be presented before an arbitral proceeding.

Section 36 creates s. 684.0036, F.S., specifying actions constituting a default by a party.

Section 37 creates s. 684.0037, F.S., providing for the use of an expert.

Section 38 creates s. 684.0038, F.S., authorizing the court's assistance in taking evidence.

Section 39 creates s. 684.0039, F.S., providing for the choice of law applicable.

Section 40 creates s. 684.004, F.S., providing for decisionmaking by the arbitrators.

Section 41 creates s. 684.0041, F.S., providing for settlement agreements.

Section 42 creates s. 684.0042, F.S., specifying the form and content of an arbitral award.

Section 43 creates s. 684.0043, F.S., providing for the termination of arbitral proceedings.

Section 44 creates s. 684.0044, F.S., authorizing an arbitral tribunal to correct and interpret an arbitral award or make an additional award under certain conditions.

Section 45 creates s. 684.0045, F.S., providing judicial immunity to arbitrators.

Section 46 creates s. 684.0046, F.S., specifying conditions under which a court may set aside an arbitral award.

Section 47 creates s. 684.0047, F.S., providing for the recognition and enforcement of arbitral awards by a court.

Section 48 creates s. 684.0048, F.S., specifying grounds for a court to refuse to recognize or enforce an arbitral award.

Section 49 repeals parts I, II, and III of ch. 684, F.S., the Florida International Arbitration Act.

Section 50 provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Office of State Courts Administrator reports that the fiscal impact cannot be accurately determined, but expects an increase in circuit civil filings for ancillary legal proceedings. However, any impact is expected to be insignificant.

#### **2. Expenditures:**

The Office of State Courts Administrator reports that the fiscal impact cannot be accurately determined, but expects an increase in circuit civil filings for ancillary legal proceedings. However, any impact is expected to be insignificant.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Proponents of the bill, including the International Law Section of the Florida Bar, claim the adoption of the Model Law will make Florida a more attractive seat of arbitration, attracting more visitors who would increase the demand for ancillary legal services, hospitality services, and entertainment. Any such impact is indeterminate at this time.

D. FISCAL COMMENTS:

The bill may have some insignificant impact on court filings. It may also have a positive impact on private sector hospitality, legal and entertainment industries.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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 catch line, found in line 232 of the bill, states "Court or other authority." However, in the section there is no reference or explanation for "other authority." Because the section specifically says the court being referenced is a circuit court in the county in which the seat of the arbitration is located and does not provide for any other authority, the words "other authority" should be deleted. In addition, any reference to "other authority" in the bill should also be deleted.

In line 234 of the bill ss. 684.0013(3) and 684.0015(3), F.S., are referenced. However, neither of those sections contains a subsection (3).

Section 48.196, F.S., governs service of process requirements under the FIAA, including requirements for (1) who is to be served, (2) what is to be served, (3) how service is to be made, and (4) what proof of service is required. This section was enacted with the FIAA because other provisions of Florida law did not grant parties the ability to agree to process requirements.<sup>13</sup> Unless this section, and its cross-reference, is either repealed or corrected to apply to the bill, it will continue in law without applying to anything.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>13</sup> Loumiet, *supra* note 8 at 657-58.

1                                   A bill to be entitled  
 2           An act relating to international commercial arbitration;  
 3           creating s. 684.0001, F.S.; providing a short title;  
 4           creating s. 684.0002, F.S.; defining the scope of  
 5           application of the Florida International Commercial  
 6           Arbitration Act; creating s. 684.0003, F.S.; defining  
 7           terms; providing rules of interpretation for the act;  
 8           creating s. 684.0004, F.S.; providing intent that the act  
 9           be applied and interpreted with respect to its purpose;  
 10          creating s. 684.0005, F.S.; specifying when a written  
 11          communication is received; creating s. 684.0006, F.S.;  
 12          specifying circumstances that constitute a waiver of the  
 13          right to object; creating s. 684.0007, F.S.; limiting the  
 14          ability of a court to intervene in an arbitral proceeding;  
 15          creating s. 684.0008, F.S.; designating the circuit court  
 16          in which an arbitration is or will be held as the court  
 17          that may take certain actions authorized by the act;  
 18          creating s. 684.0009, F.S.; requiring a court to refer  
 19          matters governed by an arbitration agreement to  
 20          arbitration; creating s. 684.001, F.S.; authorizing a  
 21          court to grant an interim measure of protection before or  
 22          during an arbitral proceeding; creating s. 684.0011, F.S.;  
 23          authorizing the parties to an arbitration to determine the  
 24          number of arbitrators; specifying the number of  
 25          arbitrators for a proceeding if the number of arbitrators  
 26          is not determined by the parties; creating s. 684.0012,  
 27          F.S.; specifying procedures for the appointment of an  
 28          arbitrator; creating s. 684.0013, F.S.; requiring a person

29 | who is approached to be an arbitrator to make disclosures  
 30 | relating to conflicts of interest; authorizing the  
 31 | appointment of an arbitrator to be challenged based on a  
 32 | perceived conflict of interest or qualifications; creating  
 33 | s. 684.0014, F.S.; providing procedures to challenge the  
 34 | appointment of an arbitrator; creating s. 684.0015, F.S.;  
 35 | providing for the termination of the mandate of an  
 36 | arbitrator due to failure or impossibility to act;  
 37 | creating s. 684.0016, F.S.; providing a procedure for the  
 38 | appointment of a substitute arbitrator; creating s.  
 39 | 684.0017, F.S.; authorizing an arbitral tribunal to  
 40 | determine its jurisdiction; authorizing a court to  
 41 | determine the jurisdiction of an arbitral tribunal;  
 42 | creating s. 684.0018, F.S.; authorizing an arbitral  
 43 | tribunal to grant an interim measure; creating s.  
 44 | 684.0019, F.S.; specifying conditions under which an  
 45 | interim measure may be granted; creating s. 684.002, F.S.;  
 46 | specifying conditions under which an interim order may be  
 47 | granted to prevent a party from frustrating the purpose of  
 48 | an interim measure; creating s. 684.0021, F.S.; requiring  
 49 | a party to be notified of information relating to an  
 50 | interim measure or preliminary order; requiring that a  
 51 | party be given an opportunity to object to a preliminary  
 52 | order; creating s. 684.0022, F.S.; authorizing an arbitral  
 53 | tribunal to modify, suspend, or terminate an interim  
 54 | measure or preliminary order under certain circumstances;  
 55 | creating s. 684.0023, F.S.; authorizing an arbitral  
 56 | tribunal to require security as a condition of granting an

57 interim measure; requiring security as a condition of  
 --58 granting a preliminary order; creating s. 684.0024, F.S.;  
 59 requiring certain disclosures as a condition of granting  
 60 or maintaining an interim measure or preliminary order;  
 61 creating s. 684.0025, F.S.; providing for liability and an  
 62 award of costs and damages; creating s. 684.0026, F.S.;  
 63 providing for the recognition and enforcement of an  
 64 interim measure by a court; authorizing the court to  
 65 require security under certain circumstances; creating s.  
 66 684.0027, F.S.; specifying grounds under which a court may  
 67 refuse to enforce an interim measure; creating s.  
 68 684.0028, F.S.; authorizing a court to grant an interim  
 69 measure; creating s. 684.0029, F.S.; requiring parties to  
 70 an arbitral proceeding to be treated with equality and  
 71 given an opportunity to present their cases; creating s.  
 72 684.003, F.S.; authorizing parties to an arbitration to  
 73 agree to arbitration procedures; providing default  
 74 procedures; creating s. 684.0031, F.S.; authorizing  
 75 parties to an arbitration to agree on the place of  
 76 arbitration; providing criteria to determine a default  
 77 location for the arbitration; creating s. 684.0032, F.S.;  
 78 specifying the date of commencement of an arbitral  
 79 proceeding; creating s. 684.0033, F.S.; authorizing  
 80 parties to an arbitration to agree on the language to be  
 81 used in the proceeding; authorizing the arbitral tribunal  
 82 to determine the language in the absence of a decision by  
 83 the parties; creating s. 684.0034, F.S.; providing for the  
 84 submission of claims and defenses to an arbitral tribunal;



85 | creating s. 684.0035, F.S.; providing for the  
 86 | determination of the method by which evidence will be  
 87 | presented before an arbitral proceeding; creating s.  
 88 | 684.0036, F.S.; specifying actions that constitute a  
 89 | default by a party to an arbitral proceeding; creating s.  
 90 | 684.0037, F.S.; authorizing an arbitral tribunal to  
 91 | appoint an expert and for the parties to question and  
 92 | present other experts to the tribunal's expert, unless  
 93 | otherwise agreed by the parties; creating s. 684.0038,  
 94 | F.S.; authorizing a party or an arbitral tribunal to  
 95 | request the assistance of a court in taking evidence;  
 96 | creating s. 684.0039, F.S.; providing for the choice of  
 97 | law applicable in an arbitral proceeding; creating s.  
 98 | 684.004, F.S.; specifying the number of arbitrators who  
 99 | must make a decision, unless specified otherwise by the  
 100 | parties; creating s. 684.0041, F.S.; authorizing the  
 101 | parties to an arbitral proceeding to enter into a  
 102 | settlement that is recorded as an award by the arbitral  
 103 | tribunal; creating s. 684.0042, F.S.; specifying the form  
 104 | and content of an arbitral award; creating s. 684.0043,  
 105 | F.S.; specifying events that terminate or require an  
 106 | arbitral tribunal to terminate an arbitral proceeding;  
 107 | creating s. 684.0044, F.S.; authorizing an arbitral  
 108 | tribunal to correct and interpret an arbitral award or  
 109 | make an additional award under certain conditions;  
 110 | creating s. 684.0045, F.S.; providing judicial immunity to  
 111 | arbitrators acting under ch. 684, F.S.; creating s.  
 112 | 684.0046, F.S.; specifying conditions under which a court

113 may set aside an arbitral award; creating s. 684.0047,  
 114 F.S.; providing for the recognition and enforcement of  
 115 arbitral awards by a court; creating s. 684.0048, F.S.;  
 116 specifying grounds under which a court may refuse to  
 117 recognize or enforce an arbitral award; repealing parts I,  
 118 II, and III of ch. 684, F.S., which create the Florida  
 119 International Arbitration Act and provide procedures for  
 120 the conduct of international arbitrations and authorize  
 121 court proceedings in connection with such arbitrations;  
 122 providing an effective date.

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

126 Section 1. Section 684.0001, Florida Statutes, is created  
 127 to read:

128 684.0001 Short title.—This chapter may be cited as the  
 129 "Florida International Commercial Arbitration Act."

130 Section 2. Section 684.0002, Florida Statutes, is created  
 131 to read:

132 684.0002 Scope of application.—

133 (1) This chapter applies to international commercial  
 134 arbitration, subject to any agreement in force between the  
 135 United States of America and any other country or countries.

136 (2) This chapter, except ss. 684.0009, 684.001, 684.0026,  
 137 684.0027, 684.0028, 684.0047, and 684.0048, applies only if the  
 138 place of arbitration is in this state.

139 (3) An arbitration is international if:

140 (a) The parties to an arbitration agreement have, at the

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141 time of the conclusion of that agreement, their places of  
 142 business in different countries;

143 (b) One of the following places is situated outside the  
 144 country in which the parties have their places of business:

145 1. The place of arbitration if determined in, or pursuant  
 146 to, the arbitration agreement; or

147 2. Any place where a substantial part of the obligations  
 148 of the commercial relationship are to be performed or the place  
 149 with which the subject matter of the dispute is most closely  
 150 connected; or

151 (c) The parties have expressly agreed that the subject  
 152 matter of the arbitration agreement relates to more than one  
 153 country.

154 (4) For the purposes of subsection (3):

155 (a) If a party has more than one place of business, the  
 156 place of business is that which has the closest relationship to  
 157 the arbitration agreement.

158 (b) If a party does not have a place of business,  
 159 reference shall be made to his or her habitual residence.

160 (5) This chapter does not affect any law that may prohibit  
 161 a matter from being resolved by arbitration or that specifies  
 162 the manner in which a specific matter may be submitted or  
 163 resolved by arbitration.

164 Section 3. Section 684.0003, Florida Statutes, is created  
 165 to read:

166 684.0003 Definitions and rules of interpretation.-

167 (1) As used in this chapter, the term:

168 (a) "Arbitral tribunal" means a sole arbitrator or panel

169 of arbitrators.

170 (b) "Arbitration" means any arbitration whether or not  
 171 administered by a permanent arbitral institution.

172 (c) "Arbitration agreement" means an agreement by the  
 173 parties to submit to arbitration all or certain disputes that  
 174 have arisen or may arise between them in respect of a defined  
 175 legal relationship, whether contractual or not.

176 (d) "Court" means a circuit court of this state.

177 (2) A provision of this chapter, except s. 684.0038, which  
 178 leaves the parties free to determine a certain issue, includes  
 179 the right of the parties to authorize a third party, including  
 180 an institution, to make that determination.

181 (3) A provision of this chapter which refers to the fact  
 182 that the parties have agreed or that they may agree to a  
 183 procedure refers to an agreement of the parties. The agreement  
 184 includes any arbitration rules referenced in that agreement.

185 (4) A provision of this chapter, other than in s.  
 186 684.0036(1) or s. 684.0043(2)(a), which refers to a claim also  
 187 applies to a counter claim, and a provision that refers to a  
 188 defense also applies to a defense to such counter claim.

189 Section 4. Section 684.0004, Florida Statutes, is created  
 190 to read:

191 684.0004 International origin and general principles.—

192 (1) This chapter shall be interpreted with regard to its  
 193 international origin and to the need to promote uniformity in  
 194 its application and the observance of good faith.

195 (2) Questions concerning matters governed by this chapter  
 196 which are not expressly settled pursuant to it shall be settled

197 in conformity with the general principles on which this chapter  
 198 is based.

199 Section 5. Section 684.0005, Florida Statutes, is created  
 200 to read:

201 684.0005 Receipt of written communications.-

202 (1) Unless otherwise agreed by the parties, a written  
 203 communication is deemed to be received if it is delivered to the  
 204 addressee personally or if it is delivered to the addressee's  
 205 place of business, habitual residence, or mailing address. If  
 206 one of these locations cannot be found after a reasonable  
 207 inquiry, the written communication is deemed to be received if  
 208 it is sent to the addressee's last known place of business,  
 209 habitual residence, or mailing address by registered letter or  
 210 any other means that provides a record of the attempt to deliver  
 211 it. The communication is deemed to be received on the day it is  
 212 delivered.

213 (2) This section does not apply to communications in court  
 214 proceedings.

215 Section 6. Section 684.0006, Florida Statutes, is created  
 216 to read:

217 684.0006 Waiver of right to object.-A party who knows that  
 218 any provision of this chapter from which the parties may  
 219 derogate or any requirement under the arbitration agreement has  
 220 not been complied with and yet proceeds with the arbitration  
 221 without stating his or her objection to such noncompliance  
 222 without undue delay or, if a time limit is provided to object,  
 223 within such period of time, shall be deemed to have waived his  
 224 or her right to object.

225 Section 7. Section 684.0007, Florida Statutes, is created  
 226 to read:

227 684.0007 Extent of court intervention.—In matters governed  
 228 by this chapter, a court may not intervene except to the extent  
 229 authorized by this chapter.

230 Section 8. Section 684.0008, Florida Statutes, is created  
 231 to read:

232 684.0008 Court or other authority for certain functions of  
 233 arbitration assistance and supervision.—The functions referenced  
 234 in ss. 684.0012(3) and (4), 684.0013(3), 684.0014, 684.0015(3),  
 235 684.0017(3), and 684.0046(2) shall be performed by the circuit  
 236 court in the county in which the seat of the arbitration is  
 237 located.

238 Section 9. Section 684.0009, Florida Statutes, is created  
 239 to read:

240 684.0009 Arbitration agreement and substantive claim  
 241 before court.—

242 (1) A court before which an action is brought in a matter  
 243 that is the subject of an arbitration agreement shall, if a  
 244 party so requests not later than when submitting its first  
 245 statement on the substance of the dispute, refer the parties to  
 246 arbitration unless it finds that the agreement is null and void,  
 247 inoperative, or incapable of being performed.

248 (2) If an action described in subsection (1) has been  
 249 brought, arbitral proceedings may nevertheless be commenced or  
 250 continued, and an award may be made, while the issue is pending  
 251 before the court.

252 Section 10. Section 684.001, Florida Statutes, is created

253 to read:

254 684.001 Arbitration agreement and interim measures by a  
 255 court.—It is not incompatible with an arbitration agreement for  
 256 a party to request from a court, before or during arbitral  
 257 proceedings, an interim measure of protection and for a court to  
 258 grant such a measure.

259 Section 11. Section 684.0011, Florida Statutes, is created  
 260 to read:

261 684.0011 Number of arbitrators.—

262 (1) The parties may determine the number of arbitrators.

263 (2) If the parties fail to determine the number of  
 264 arbitrators, the number of arbitrators shall be three.

265 Section 12. Section 684.0012, Florida Statutes, is created  
 266 to read:

267 684.0012 Appointment of arbitrators.—

268 (1) A person is not precluded by reason of his or her  
 269 nationality from acting as an arbitrator, unless otherwise  
 270 agreed by the parties.

271 (2) The parties may agree on a procedure of appointing the  
 272 arbitrator or arbitrators, subject to subsections (4) and (5).

273 (3) Failing such agreement:

274 (a) In an arbitration having three arbitrators, each party  
 275 shall appoint one arbitrator, and the two arbitrators thus  
 276 appointed shall appoint the third arbitrator. If a party fails  
 277 to appoint the arbitrator within 30 days after receipt of a  
 278 request to do so from the other party, or if the two arbitrators  
 279 fail to agree on the third arbitrator within 30 days after their  
 280 appointment, the appointment shall be made, upon request of a

281 party, by the court or other authority specified in s. 684.0008.

282 (b) In an arbitration having a single arbitrator, if the  
 283 parties are unable to agree on the arbitrator, the arbitrator  
 284 shall be appointed, upon request of a party, by the court or  
 285 other authority specified in s. 684.0008.

286 (4) If, under an appointment procedure agreed upon by the  
 287 parties:

288 (a) A party fails to act as required under such procedure;

289 (b) The parties, or two arbitrators, are unable to reach  
 290 an agreement under such procedure; or

291 (c) A third party, including an institution, fails to  
 292 perform any function entrusted to it under such procedure,

293  
 294 any party may request the court or other authority specified in  
 295 s. 684.0008 to take the necessary measure, unless the agreement  
 296 on the appointment procedure provides other means for securing  
 297 the appointment.

298 (5) A decision on a matter entrusted by subsection (3) or  
 299 subsection (4) to the court or other authority specified in s.  
 300 684.0008 is not appealable. The court or other authority, in  
 301 appointing an arbitrator, shall have due regard to any  
 302 qualifications required by the arbitrator by the agreement of  
 303 the parties and to such considerations that are likely to secure  
 304 the appointment of an independent and impartial arbitrator. In  
 305 the case of the appointment of a sole or third arbitrator, the  
 306 court or other authority shall take into account the  
 307 advisability of appointing an arbitrator of a nationality other  
 308 than those of the parties.



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309 Section 13. Section 684.0013, Florida Statutes, is created  
 310 to read:

311 684.0013 Grounds for challenge.-

312 (1) When a person is approached in connection with a  
 313 possible appointment as an arbitrator, the person must disclose  
 314 any circumstances likely to give rise to justifiable doubts as  
 315 to the person's impartiality or independence. An arbitrator,  
 316 from the time of appointment and throughout the arbitral  
 317 proceedings, shall disclose any such circumstances to the  
 318 parties without delay, unless they have already been informed of  
 319 them by him or her.

320 (2) An arbitrator may be challenged only if circumstances  
 321 exist that give rise to justifiable doubts as to the  
 322 arbitrator's impartiality or independence, or if the arbitrator  
 323 does not possess qualifications agreed to by the parties. A  
 324 party may challenge an arbitrator appointed by it, or in whose  
 325 appointment the party participated, only for reasons of which  
 326 the party became aware after the appointment was made.

327 Section 14. Section 684.0014, Florida Statutes, is created  
 328 to read:

329 684.0014 Challenge procedure.-

330 (1) The parties may agree on a procedure for challenging  
 331 an arbitrator, subject to subsection (3).

332 (2) Failing such agreement, a party who intends to  
 333 challenge an arbitrator shall, within 15 days after becoming  
 334 aware of the constitution of the arbitral tribunal or after  
 335 becoming aware of any circumstance described in s. 684.0013(2),  
 336 send a written statement of the reasons for the challenge to the

337 arbitral tribunal. Unless the challenged arbitrator withdraws  
 338 from his or her office or the other party agrees to the  
 339 challenge, the arbitral tribunal shall decide on the challenge.

340 (3) If a challenge under any procedure agreed upon by the  
 341 parties or pursuant to subsection (2) is not successful, the  
 342 challenging party may request, within 30 days after having  
 343 received notice of the decision rejecting the challenge, the  
 344 court or other authority specified in s. 684.0008 to decide on  
 345 the challenge. The decision of the court is not appealable.  
 346 While such a request is pending, the arbitral tribunal,  
 347 including the challenged arbitrator, may continue the arbitral  
 348 proceedings and make an award.

349 Section 15. Section 684.0015, Florida Statutes, is created  
 350 to read:

351 684.0015 Failure or impossibility to act.-

352 (1) If an arbitrator becomes de jure or de facto unable to  
 353 perform his or her functions or for other reasons fails to act  
 354 without undue delay, his or her mandate terminates if he or she  
 355 withdraws from office or if the parties agree on the  
 356 termination. Otherwise, if a controversy remains concerning any  
 357 of these grounds, any party may request the court or other  
 358 authority specified in s. 684.0008 to decide on the termination  
 359 of the mandate. The decision of the court is not appealable.

360 (2) If, under this section or s. 684.0014(2), an  
 361 arbitrator withdraws from his or her office or a party agrees to  
 362 the termination of the mandate of an arbitrator, such actions do  
 363 not imply the acceptance of the validity of any ground described  
 364 in this section or in s. 684.0013(2).

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365 Section 16. Section 684.0016, Florida Statutes, is created  
 366 to read:

367 684.0016 Appointment of substitute arbitrator.—If the  
 368 mandate of an arbitrator terminates pursuant to s. 684.0014 or  
 369 s. 684.0015 or because of his or her withdrawal from office for  
 370 any other reason or because of the revocation of the mandate by  
 371 agreement of the parties or in any other case of termination of  
 372 the mandate, a substitute arbitrator shall be appointed pursuant  
 373 to the rules that applied to the appointment of the arbitrator  
 374 being replaced.

375 Section 17. Section 684.0017, Florida Statutes, is created  
 376 to read:

377 684.0017 Competence of arbitral tribunal to rule on its  
 378 jurisdiction.—

379 (1) The arbitral tribunal may rule on its own  
 380 jurisdiction, including any objections with respect to the  
 381 existence or validity of the arbitration agreement. For that  
 382 purpose, an arbitration clause that forms part of a contract  
 383 shall be treated as an agreement independent of the other terms  
 384 of the contract. A decision by the arbitral tribunal that the  
 385 contract is not valid does not entail ipso jure the invalidity  
 386 of the arbitration clause.

387 (2) A plea that the arbitral tribunal does not have  
 388 jurisdiction must be raised not later than the submission of the  
 389 statement of defense. A party is not precluded from raising such  
 390 a plea by the fact that the party appointed, or participated in  
 391 the appointment of, an arbitrator. A plea that the arbitral  
 392 tribunal is exceeding the scope of its authority must be raised

393 as soon as the matter alleged to be beyond the scope of its  
 394 authority is raised during the arbitral proceedings. The  
 395 arbitral tribunal may, in either case, admit a later plea it if  
 396 considers the delay justified.

397 (3) The arbitral tribunal may rule on a plea referenced in  
 398 subsection (2) as a preliminary question or in an award on the  
 399 merits. If the arbitral tribunal rules as a preliminary question  
 400 that it has jurisdiction, any party may request, within 30 days  
 401 after receiving notice of that ruling, that the court specified  
 402 in s. 684.0008 decide the matter. The decision of the court is  
 403 not appealable. While such a request is pending, the arbitral  
 404 tribunal may continue the arbitral proceedings and make an  
 405 award.

406 Section 18. Section 684.0018, Florida Statutes, is created  
 407 to read:

408 684.0018 Power of arbitral tribunal to order interim  
 409 measures.—Unless otherwise agreed by the parties, the arbitral  
 410 tribunal may, at the request of a party, grant interim measures.  
 411 An interim measure is any temporary measure, whether in the form  
 412 of an award or in another form, by which, at any time before the  
 413 issuance of the award by which the dispute is finally decided,  
 414 the arbitral tribunal orders a party to:

415 (1) Maintain or restore the status quo pending  
 416 determination of the dispute;

417 (2) Take action to prevent, or refrain from taking action  
 418 that is likely to cause, current or imminent harm or prejudice  
 419 to the arbitral process;

420 (3) Provide a means of preserving assets out of which a

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421 subsequent award may be satisfied; or

422 (4) Preserve evidence that may be relevant and material to  
 423 the resolution of the dispute.

424 Section 19. Section 684.0019, Florida Statutes, is created  
 425 to read:

426 684.0019 Conditions for granting interim measures.-

427 (1) The party requesting an interim measure under s.  
 428 684.0018 must satisfy the arbitral tribunal that:

429 (a) Harm not adequately reparable by an award of damages  
 430 is likely to result if the measure is not ordered, and such harm  
 431 substantially outweighs the harm that is likely to result to the  
 432 party against whom the measure is directed if the measure is  
 433 granted; and

434 (b) A reasonable possibility exists that the requesting  
 435 party will succeed on the merits of the claim. The determination  
 436 on this possibility does not affect the discretion of the  
 437 arbitral tribunal in making any subsequent determination.

438 (2) With regard to a request for an interim measure under  
 439 s. 684.0018, the requirements in subsection (1) apply only to  
 440 the extent the arbitral tribunal considers appropriate.

441 Section 20. Section 684.002, Florida Statutes, is created  
 442 to read:

443 684.002 Applications for preliminary orders and conditions  
 444 for granting preliminary orders.-

445 (1) Unless otherwise agreed by the parties, a party may,  
 446 without notice to any other party, make a request for an interim  
 447 measure together with an application for a preliminary order  
 448 prohibiting a party from frustrating the purpose of the interim

449 measure requested.

450 (2) The arbitral tribunal may grant a preliminary order if  
 451 it considers that prior disclosure of the request for the  
 452 interim measure to the party against whom it is directed risks  
 453 frustrating the purpose of the measure.

454 (3) The conditions described in s. 684.0019 apply to any  
 455 preliminary order if the harm assessed under s. 684.0019(1)(a)  
 456 is the harm likely to result from the order being granted or not  
 457 granted.

458 Section 21. Section 684.0021, Florida Statutes, is created  
 459 to read:

460 684.0021 Specific regime for preliminary orders.—

461 (1) Immediately after the arbitral tribunal makes a  
 462 determination in respect of an application for a preliminary  
 463 order, the arbitral tribunal shall give notice to all parties of  
 464 the request for the interim measure, the application for the  
 465 preliminary order, the preliminary order, if any, and all other  
 466 communications. The notice shall include a description of the  
 467 content of any oral communication between any party and the  
 468 arbitral tribunal in relation to any such request or  
 469 application.

470 (2) At the same time, the arbitral tribunal shall give an  
 471 opportunity to any party against whom a preliminary order is  
 472 directed to present its case at the earliest practicable time.

473 (3) The arbitral tribunal must decide promptly on any  
 474 objection to the preliminary order.

475 (4) A preliminary order expires 20 days after the date on  
 476 which it was issued by the arbitral tribunal. However, the

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477 arbitral tribunal may issue an interim measure adopting or  
 478 modifying the preliminary order after the party against whom the  
 479 preliminary order is directed is given notice and an opportunity  
 480 to present its case.

481 (5) A preliminary order is binding on the parties but is  
 482 not enforceable by a court. Such a preliminary order does not  
 483 constitute an award.

484 Section 22. Section 684.0022, Florida Statutes, is created  
 485 to read:

486 684.0022 Modification, suspension, or termination; interim  
 487 measure or preliminary order.—The arbitral tribunal may modify,  
 488 suspend, or terminate an interim measure or a preliminary order  
 489 it has granted upon application of any party or, in exceptional  
 490 circumstances and upon prior notice to the parties, on the  
 491 arbitral tribunal's own initiative.

492 Section 23. Section 684.0023, Florida Statutes, is created  
 493 to read:

494 684.0023 Provision of security.—

495 (1) The arbitral tribunal may require the party requesting  
 496 an interim measure to provide appropriate security in connection  
 497 with the measure.

498 (2) The arbitral tribunal shall require the party applying  
 499 for a preliminary order to provide security in connection with  
 500 the order unless the arbitral tribunal considers it  
 501 inappropriate or unnecessary to do so.

502 Section 24. Section 684.0024, Florida Statutes, is created  
 503 to read:

504 684.0024 Disclosure.—

505 (1) The arbitral tribunal may require any party promptly  
 506 to disclose any material change in the circumstances on the  
 507 basis of which the interim measure was requested or granted.

508 (2) The party applying for a preliminary order shall  
 509 disclose to the arbitral tribunal all circumstances that are  
 510 likely to be relevant to the arbitral tribunal's determination  
 511 whether to grant or maintain the order, and such obligation  
 512 continues until the party against whom the order has been  
 513 requested has had an opportunity to present its case.

514 Thereafter, subsection (1) applies.

515 Section 25. Section 684.0025, Florida Statutes, is created  
 516 to read:

517 684.0025 Costs and damages.—The party requesting an  
 518 interim measure or applying for a preliminary order is liable  
 519 for any costs and damages caused by the measure or the order to  
 520 any party if the arbitral tribunal later determines that the  
 521 measure or the order should not have been granted. The arbitral  
 522 tribunal may award such costs and damages at any point during  
 523 the proceedings.

524 Section 26. Section 684.0026, Florida Statutes, is created  
 525 to read:

526 684.0026 Recognition and enforcement.—

527 (1) An interim measure issued by an arbitral tribunal  
 528 shall be recognized as binding and, unless otherwise provided by  
 529 the arbitral tribunal, enforced upon application to the  
 530 competent court, irrespective of the country in which it was  
 531 issued, subject to s. 684.0019(1).

532 (2) The party who is seeking or has obtained recognition



533 or enforcement of an interim measure shall promptly inform the  
 534 court of the termination, suspension, or modification of the  
 535 interim measure.

536 (3) The court where recognition or enforcement is sought  
 537 may, if it considers it proper, order the requesting party to  
 538 provide appropriate security if the arbitral tribunal has not  
 539 already made a determination with respect to security or if such  
 540 a decision is necessary to protect the rights of third parties.

541 Section 27. Section 684.0027, Florida Statutes, is created  
 542 to read:

543 684.0027 Grounds for refusing recognition or enforcement.-

544 (1) Recognition or enforcement of an interim measure may  
 545 be refused only:

546 (a) At the request of the party against whom it is invoked  
 547 if the court is satisfied that:

548 1. Such refusal is warranted on the grounds set forth in  
 549 s. 684.0048(1)(a)1., 2., 3., or 4.;

550 2. The arbitral tribunal's decision with respect to the  
 551 provision of security in connection with the interim measure  
 552 issued by the arbitral tribunal has not been complied with; or

553 3. The interim measure was terminated or suspended by the  
 554 arbitral tribunal or, if so empowered, by the court of the state  
 555 or country in which the arbitration takes place or under the law  
 556 of which that interim measure was granted; or

557 (b) If the court finds that:

558 1. The interim measure is incompatible with the powers  
 559 conferred upon the court, unless the court decides to  
 560 reformulate the interim measure to the extent necessary to adapt

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561 it to its own powers and procedures for the purpose of enforcing  
 562 that interim measure and without modifying its substance; or

563 2. Any of the grounds set forth in s. 684.0048(1)(b)1. or  
 564 2. apply to the recognition and enforcement of the interim  
 565 measure.

566 (2) A determination made by the court on any ground in  
 567 subsection (1) is effective only for the purposes of the  
 568 application to recognize and enforce the interim measure. The  
 569 court may not in making that determination undertake a review of  
 570 the substance of the interim measure.

571 Section 28. Section 684.0028, Florida Statutes, is created  
 572 to read:

573 684.0028 Court-ordered interim measures.—A court has the  
 574 same power of issuing an interim measure in relation to  
 575 arbitration proceedings, irrespective of whether the arbitration  
 576 proceedings are held in this state, as it has in relation to the  
 577 proceedings in courts. The court shall exercise such power in  
 578 accordance with its own procedures and in consideration of the  
 579 specific features of international arbitration.

580 Section 29. Section 684.0029, Florida Statutes, is created  
 581 to read:

582 684.0029 Equal treatment of parties.—The parties shall be  
 583 treated with equality and each party shall be given a full  
 584 opportunity of presenting its case.

585 Section 30. Section 684.003, Florida Statutes, is created  
 586 to read:

587 684.003 Determination of rules of procedure.—Subject to  
 588 the provisions of this chapter, the parties may agree on the

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589 procedure to be followed by the arbitral tribunal in conducting  
 590 the proceedings. Failing such agreement, the arbitral tribunal  
 591 may, subject to the provisions of this chapter, conduct the  
 592 arbitration in such manner as it considers appropriate. The  
 593 power conferred upon the arbitral tribunal includes the power to  
 594 determine the admissibility, relevance, materiality, and weight  
 595 of evidence.

596 Section 31. Section 684.0031, Florida Statutes, is created  
 597 to read:

598 684.0031 Place of arbitration.-

599 (1) The parties may agree on the place of arbitration.  
 600 Failing such agreement, the place of arbitration shall be  
 601 determined by the arbitral tribunal having regard to the  
 602 circumstances of the case, including the convenience of the  
 603 parties.

604 (2) Notwithstanding subsection (1), the arbitral tribunal  
 605 may, unless otherwise agreed by the parties, meet at any place  
 606 it considers appropriate for consultation among its members, for  
 607 hearing witnesses, experts, or the parties, or for inspection of  
 608 goods, other property, or documents.

609 Section 32. Section 684.0032, Florida Statutes, is created  
 610 to read:

611 684.0032 Commencement of arbitral proceedings.-Unless  
 612 otherwise agreed by the parties, the arbitral proceedings in  
 613 respect of a particular dispute commence on the date on which a  
 614 request for that dispute to be referred to an arbitration is  
 615 received by the respondent.

616 Section 33. Section 684.0033, Florida Statutes, is created

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617 to read:

618 684.0033 Language.-

619 (1) The parties may agree on the language or languages to  
 620 be used in the arbitral proceedings. Failing such agreement, the  
 621 arbitral tribunal shall specify the language or languages to be  
 622 used in the proceedings. This agreement or determination, unless  
 623 otherwise specified therein, applies to any written statement by  
 624 a party, any hearing, and any award, decision, or other  
 625 communication by the arbitral tribunal.

626 (2) The arbitral tribunal may order that any documentary  
 627 evidence be accompanied by a translation into the language or  
 628 languages agreed upon by the parties or specified by the  
 629 arbitral tribunal.

630 Section 34. Section 684.0034, Florida Statutes, is created  
 631 to read:

632 684.0034 Statements of claim and defense.-

633 (1) Within the period of time agreed by the parties or  
 634 specified by the arbitral tribunal, the claimant shall state the  
 635 facts supporting its claim, the points at issue, and the relief  
 636 or remedy sought, and the respondent shall state its defense to  
 637 the claim, unless the parties have otherwise agreed as to the  
 638 required elements of such statements. The parties may submit  
 639 with their statements all documents they consider to be relevant  
 640 or may add a reference to the documents or other evidence they  
 641 will submit.

642 (2) Unless otherwise agreed by the parties, either party  
 643 may amend or supplement its claim or defense during the course  
 644 of the arbitral proceedings, unless the arbitral tribunal

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645 considers it inappropriate to allow such amendment having regard  
 646 to the delay in making it.

647 Section 35. Section 684.0035, Florida Statutes, is created  
 648 to read:

649 684.0035 Hearings and written proceedings.—

650 (1) Subject to any contrary agreement by the parties, the  
 651 arbitral tribunal shall decide whether to hold oral hearings for  
 652 the presentation of evidence or for oral argument, or whether  
 653 the proceedings shall be conducted on the basis of documents and  
 654 other materials. However, unless the parties have agreed that no  
 655 hearings will be held, the arbitral tribunal shall hold such  
 656 hearings at an appropriate stage of the proceedings, if so  
 657 requested by a party.

658 (2) The parties shall be given sufficient advance notice  
 659 of any hearing and of any meeting of the arbitral tribunal for  
 660 the purposes of inspection of goods, other property, or  
 661 documents.

662 (3) All statements, documents, or other information  
 663 supplied to the arbitral tribunal by one party shall be provided  
 664 to the other party. Also, any expert report or evidentiary  
 665 document on which the arbitral tribunal may rely in making its  
 666 decision shall be provided to the parties.

667 Section 36. Section 684.0036, Florida Statutes, is created  
 668 to read:

669 684.0036 Default of a party.—Unless otherwise agreed by  
 670 the parties, if, without showing sufficient cause:

671 (1) The claimant fails to provide its statement of claim  
 672 pursuant to s. 684.0034(1), the arbitral tribunal shall

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673 terminate the proceedings.

674 (2) The respondent fails to communicate its statement of  
 675 defense pursuant to s. 684.0034(1), the arbitral tribunal shall  
 676 continue the proceedings without treating such failure in itself  
 677 as an admission of the claimant's allegations.

678 (3) A party fails to appear at a hearing or to produce  
 679 documentary evidence, the arbitral tribunal may continue the  
 680 proceedings and make the award on the evidence before it.

681 Section 37. Section 684.0037, Florida Statutes, is created  
 682 to read:

683 684.0037 Expert appointed by arbitral tribunal.-

684 (1) Unless otherwise agreed by the parties, the arbitral  
 685 tribunal may:

686 (a) Appoint one or more experts to report to it on  
 687 specific issues to be determined by the arbitral tribunal.

688 (b) Require a party to give the expert any relevant  
 689 information or produce or provide access to any relevant  
 690 documents, goods, or other property for inspection by the  
 691 expert.

692 (2) Unless otherwise agreed by the parties, if a party so  
 693 requests or if the arbitral tribunal considers it necessary, the  
 694 expert shall, after delivery of a written or oral report,  
 695 participate in a hearing in which the parties have the  
 696 opportunity to question the expert and to present expert  
 697 witnesses in order to testify on the points at issue.

698 Section 38. Section 684.0038, Florida Statutes, is created  
 699 to read:

700 684.0038 Court assistance in taking evidence.-The arbitral

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701 tribunal, or a party upon the approval of the arbitral tribunal,  
 702 may request assistance in taking evidence from a competent court  
 703 of this state. The court may execute the request within its  
 704 competence and according to its rules on taking evidence.

705 Section 39. Section 684.0039, Florida Statutes, is created  
 706 to read:

707 684.0039 Rules applicable to substance of dispute.-

708 (1) The arbitral tribunal shall decide the dispute  
 709 pursuant to the rules of law chosen by the parties to apply to  
 710 the substance of the dispute. Any designation of the law or  
 711 legal system of a state or country shall be construed, unless  
 712 otherwise expressed, as directly referring to the substantive  
 713 law of that state or country and not to its conflict-of-laws  
 714 rule.

715 (2) Failing any designation by the parties, the arbitral  
 716 tribunal shall apply the law determined by the conflict-of-laws  
 717 rules that it considers applicable.

718 (3) The arbitral tribunal shall decide ex aequo et bono or  
 719 as amiable compositeur, only if the parties have expressly  
 720 authorized it to do so.

721 (4) In all cases, the arbitral tribunal shall decide in  
 722 accordance with the terms of the contract and shall take into  
 723 account the usages of the trade which apply to the transaction.

724 Section 40. Section 684.004, Florida Statutes, is created  
 725 to read:

726 684.004 Decisionmaking by panel of arbitrators.-In  
 727 arbitral proceedings having more than one arbitrator, any  
 728 decision of the arbitral tribunal shall be made, unless

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729 otherwise agreed by the parties, by a majority of all its  
 730 members. However, questions of procedure may be decided by a  
 731 presiding arbitrator, if so authorized by the parties or all  
 732 members of the arbitral tribunal.

733 Section 41. Section 684.0041, Florida Statutes, is created  
 734 to read:

735 684.0041 Settlement.—

736 (1) If, during arbitral proceedings, the parties settle  
 737 the dispute, the arbitral tribunal shall terminate the  
 738 proceedings and, if requested by the parties and not objected to  
 739 by the arbitral tribunal, record the settlement in the form of  
 740 an arbitral award on agreed terms.

741 (2) An award on agreed terms shall be made pursuant to s.  
 742 684.0042 and shall state that it is an award. Such an award has  
 743 the same status and effect as any other award on the merits of  
 744 the case.

745 Section 42. Section 684.0042, Florida Statutes, is created  
 746 to read:

747 684.0042 Form and contents of award.—

748 (1) The award shall be made in writing and shall be signed  
 749 by the arbitrator or arbitrators. In arbitral proceedings having  
 750 more than one arbitrator, the signatures of the majority of all  
 751 members of the arbitral tribunal shall suffice, if the reason  
 752 for any omitted signature is stated.

753 (2) The award shall state the reasons upon which it is  
 754 based, unless the parties have agreed that no reasons are to be  
 755 given or the award is an award on agreed terms under s.  
 756 684.0041.



757       (3) The award shall state its date and the place of  
 758 arbitration as determined pursuant to s. 684.0031(1). The award  
 759 shall be deemed to have been made at that place.

760       (4) After the award is made, a copy signed by the  
 761 arbitrators pursuant to subsection (1) shall be delivered to  
 762 each party.

763       Section 43. Section 684.0043, Florida Statutes, is created  
 764 to read:

765       684.0043 Termination of proceedings.-

766       (1) Arbitral proceedings are terminated by the final award  
 767 or by an order of the arbitral tribunal pursuant to subsection  
 768 (2).

769       (2) The arbitral tribunal shall issue an order for the  
 770 termination of the arbitral proceedings when:

771       (a) The claimant withdraws its claim, unless the  
 772 respondent objects to the withdrawal of the claim and the  
 773 arbitral tribunal recognizes that the respondent has a  
 774 legitimate interest in obtaining a final settlement of the  
 775 dispute;

776       (b) The parties agree on the termination of the  
 777 proceedings; or

778       (c) The arbitral tribunal finds that the continuation of  
 779 the proceedings has for any other reason become unnecessary or  
 780 impossible.

781       (3) The mandate of the arbitral tribunal terminates with  
 782 the termination of the arbitral proceedings, subject to ss.  
 783 684.0044 and 684.0046(4).

784       Section 44. Section 684.0044, Florida Statutes, is created

785 to read:

786 684.0044 Correction and interpretation of award;  
 787 additional award.-

788 (1) (a) Within 30 days after receipt of the award, unless  
 789 another period of time has been agreed upon by the parties:

790 1. A party, with notice to the other party, may request  
 791 the arbitral tribunal to correct in the award any errors in  
 792 computation, any clerical or typographical errors, or any errors  
 793 of similar nature.

794 2. If so agreed by the parties, a party, with notice to  
 795 the other party, may request the arbitral tribunal to give an  
 796 interpretation of a specific point or part of the award.

797 (b) If the arbitral tribunal considers the request to be  
 798 justified, it shall make the correction or give the  
 799 interpretation within 30 days after the request. The  
 800 interpretation becomes part of the award.

801 (2) The arbitral tribunal may correct any error described  
 802 in subparagraph (1) (a)1. on its own initiative within 30 days  
 803 after the date of the award.

804 (3) Unless otherwise agreed by the parties, a party, with  
 805 notice to the other party, may request, within 30 days after the  
 806 receipt of the award, the arbitral tribunal to make an  
 807 additional award as to claims presented in the arbitral  
 808 proceedings but omitted from the award. If the arbitral tribunal  
 809 considers the request to be justified, it shall make the  
 810 additional award within 60 days.

811 (4) The arbitral tribunal may extend, if necessary, the  
 812 period of time within which it shall make a correction,

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2010

813 interpretation, or additional award pursuant to subsection (1)  
 814 or subsection (3).

815 (5) Section 684.0042, specifying the form and contents of  
 816 an award, applies to a correction or interpretation of the award  
 817 or to an additional award.

818 Section 45. Section 684.0045, Florida Statutes, is created  
 819 to read:

820 684.0045 Immunity for arbitrators.—An arbitrator serving  
 821 under this chapter shall have judicial immunity in the same  
 822 manner and to the same extent as a judge.

823 Section 46. Section 684.0046, Florida Statutes, is created  
 824 to read:

825 684.0046 Application to set aside as exclusive recourse  
 826 against arbitral award.—

827 (1) Recourse to a court against an arbitral award may be  
 828 made only by an application to set aside an arbitral award  
 829 pursuant to subsections (2) and (3).

830 (2) An arbitral award may be set aside by the court  
 831 specified in s. 684.0008 only if:

832 (a) The party making the application furnishes proof that:

833 1. A party to the arbitration agreement defined in s.  
 834 684.0003(1)(c) was under some incapacity or the arbitration  
 835 agreement is not valid under the law to which the parties have  
 836 subjected it or, failing any indication thereon, under the law  
 837 of this state;

838 2. The party making the application was not given proper  
 839 notice of the appointment of an arbitrator or of the arbitral  
 840 proceedings or was otherwise unable to present its case;

841 3. The award deals with a dispute not contemplated by or  
 842 not falling within the terms of the submissions to arbitration,  
 843 or contains decisions on matters beyond the scope of the  
 844 submission to arbitration. However, if the decisions on matters  
 845 submitted to arbitration can be separated from those not so  
 846 submitted, only that part of the award which contains decisions  
 847 on matters not submitted to arbitration may be set aside; or

848 4. The composition of the arbitral tribunal or the  
 849 arbitral procedure was not in accordance with the agreement of  
 850 the parties, unless such agreement was in conflict with a  
 851 provision of this chapter from which the parties may not  
 852 derogate, or, failing such agreement, was not in accordance with  
 853 this chapter; or

854 (b) The court finds that:

855 1. The subject matter of the dispute is not capable of  
 856 settlement by arbitration under the law of this state; or

857 2. The award is in conflict with the public policy of this  
 858 state.

859 (3) An application to set aside an arbitral award may not  
 860 be made after 3 months have elapsed after the date on which the  
 861 party making that application receives the award or, if a  
 862 request had been made under s. 684.0044, after the date on which  
 863 that request had been disposed of by the arbitral tribunal.

864 (4) The court, when asked to set aside an award, may, if  
 865 appropriate and so requested by a party, suspend the proceedings  
 866 to set aside the award for a period of time determined by it in  
 867 order to give the arbitral tribunal an opportunity to resume the  
 868 arbitral proceedings or to take such other action as in the

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869 arbitral tribunal's opinion will eliminate the grounds to set  
 870 aside the award.

871 Section 47. Section 684.0047, Florida Statutes, is created  
 872 to read:

873 684.0047 Recognition and enforcement.-

874 (1) An arbitral award, irrespective of the country in  
 875 which it was made, shall be recognized as binding and, upon  
 876 application in writing to the competent court, shall be enforced  
 877 subject to this section and s. 684.0048.

878 (2) The party relying on an award or applying for its  
 879 enforcement shall supply the original or copy of the award. If  
 880 the award is not made in the English language, the court may  
 881 request the party to supply a translation of the award.

882 Section 48. Section 684.0048, Florida Statutes, is created  
 883 to read:

884 684.0048 Grounds for refusing recognition or enforcement.-

885 (1) Recognition or enforcement of an arbitral award,  
 886 irrespective of the country in which it was made, may be refused  
 887 only:

888 (a) At the request of the party against whom it is  
 889 invoked, if that party furnishes to the competent court where  
 890 recognition or enforcement is sought proof that:

891 1. A party to the arbitration agreement defined in s.  
 892 684.0003(1)(c) was under some incapacity or the arbitration  
 893 agreement is not valid under the law to which the parties have  
 894 subjected it or, failing any indication thereon, under the law  
 895 of the country where the award was made;

896 2. The party against whom the award is invoked was not

897 given proper notice of the appointment of an arbitrator or of  
 898 the arbitral proceedings or was otherwise unable to present its  
 899 case;

900 3. The award deals with a dispute not contemplated by or  
 901 not falling within the terms of the submission to arbitration,  
 902 or it contains decisions on matters beyond the scope of the  
 903 submission to arbitration. However, if the decisions on matters  
 904 submitted to arbitration can be separated from those not so  
 905 submitted, that part of the award which contains decisions on  
 906 matters submitted to arbitration may be recognized and enforced;

907 4. The composition of the arbitral tribunal or the  
 908 arbitral procedure was not in accordance with the agreement of  
 909 the parties or, failing such agreement, was not in accordance  
 910 with the law of the country where the arbitration took place; or

911 5. The award has not yet become binding on the parties or  
 912 has been set aside or suspended by a court of the country in  
 913 which, or under the law of which, that award was made; or

914 (b) If the court finds that:

915 1. The subject matter of the dispute is not capable of  
 916 settlement by arbitration under the laws of this state; or

917 2. The recognition or enforcement of the award would be  
 918 contrary to the public policy of this state.

919 (2) If an application for setting aside or suspension of  
 920 an award has been made to a court referenced in subparagraph  
 921 (1)(a)5., the court where recognition or enforcement is sought  
 922 may, if it considers it proper, adjourn its decision and may  
 923 also, on the application of the party claiming recognition or  
 924 enforcement of the award, order the other party to provide

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925 appropriate security.

926 Section 49. Parts I, II, and III of chapter 684, Florida  
927 Statutes, consisting of sections 684.01, 684.02, 684.03, 684.04,  
928 684.05, 684.06, 684.07, 684.08, 684.09, 684.10, 684.11, 684.12,  
929 684.13, 684.14, 684.15, 684.16, 684.17, 684.18, 684.19, 684.20,  
930 684.21, 684.22, 684.23, 684.24, 684.25, 684.26, 684.27, 684.28,  
931 684.29, 684.30, 684.31, 684.32, 684.33, 684.34, and 684.35, are  
932 repealed.

933 Section 50. This act shall take effect July 1, 2010.

**INSURANCE, BUSINESS &  
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 821 by Rep. Thurston  
International Commercial Arbitration**

**AMENDMENT SUMMARY**

**March 11, 2010**

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Amendment 1 (**line 125**) by Rep. Thurston - Corrects a cross reference, applying current service of process requirements to the new International Commercial Arbitration Act.

Amendment 2 (**lines 217-358**) by Rep. Thurston – Makes technical changes to conform the bill to the Senate companion, including clarifying the waiver of the right to object, correcting cross references and removing references to “other authority” throughout the bill.

Amendment 3 (**lines 810-863**) by Rep. Thurston – Clarifies applicable time limits for applications for the arbitral tribunal to make additional awards and for the court to set aside arbitral awards to conform the bill to the Senate companion.



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 821 (2010)

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee

3 Representative(s) Thurston offered the following:

4  
5 **Amendment (with title amendment)**

6 Between lines 125 and 126, insert:

7 Section 1. Subsection (1) of section 48.196, Florida  
8 Statutes, is amended to read:

9 48.196 Service of process in connection with actions under  
10 the Florida International Commercial Arbitration Act.—

11 (1) Any process in connection with the commencement of an  
12 action before the courts of this state under chapter 684, the  
13 Florida International Commercial Arbitration Act, shall be  
14 served:

15 (a) In the case of a natural person, by service upon:

16 1. That person;

17 2. Any agent for service of process appointed in, or  
18 pursuant to, any applicable agreement or by operation of any law  
19 of this state; or

Amendment No. 1

20 3. Any person authorized by the law of the jurisdiction  
21 where process is being served to accept service for that person.

22 (b) In the case of any person other than a natural person,  
23 by service upon:

24 1. Any agent for service of process appointed in, or  
25 pursuant to, any applicable agreement or by operation of any law  
26 of this state;

27 2. Any person authorized by the law of the jurisdiction  
28 where process is being served to accept service for that person;  
29 or

30 3. Any person, whether natural or otherwise and wherever  
31 located, who by operation of law or internal action is an  
32 officer, business agent, director, general partner, or managing  
33 agent or director of the person being served; or

34 4. Any partner, joint venturer, member or controlling  
35 shareholder, wherever located, of the person being served, if  
36 the person being served does not by law or internal action have  
37 any officer, business agent, director, general partner, or  
38 managing agent or director.

39

40

41 -----  
**T I T L E A M E N D M E N T**

42 Between lines 2 and 3, insert:

43 amending s. 48.196, F.S.; correcting a cross reference;

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 821 (2010)

Amendment No. 2

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee

3 Representative(s) Thurston offered the following:

4  
5 **Amendment**

6 Remove lines 217-358 and insert:

7 684.0006 Waiver of right to object.—A party waives its right to  
8 object if it proceeds with the arbitration and fails to object  
9 without undue delay or within a provided time limit to:

10 (1) Noncompliance of any provision of this chapter from  
11 which the parties may derogate and have not derogated; or

12 (2) Noncompliance of any requirement under the arbitration  
13 agreement.

14 Section 7. Section 684.0007, Florida Statutes, is created  
15 to read:

16 684.0007 Extent of court intervention.—In matters governed  
17 by this chapter, a court may not intervene except to the extent  
18 authorized by this chapter.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 821 (2010)

Amendment No. 2

19 Section 8. Section 684.0008, Florida Statutes, is created  
20 to read:

21 684.0008 Court for certain functions of arbitration  
22 assistance and supervision.—The functions referenced in ss.  
23 684.0012(3) and (4), 684.0014(3), 684.0015, 684.0017(3), and  
24 684.0046(2) shall be performed by the circuit court in the  
25 county in which the seat of the arbitration is located.

26 Section 9. Section 684.0009, Florida Statutes, is created  
27 to read:

28 684.0009 Arbitration agreement and substantive claim  
29 before court.—

30 (1) A court before which an action is brought in a matter  
31 that is the subject of an arbitration agreement shall, if a  
32 party so requests not later than when submitting its first  
33 statement on the substance of the dispute, refer the parties to  
34 arbitration unless it finds that the agreement is null and void,  
35 inoperative, or incapable of being performed.

36 (2) If an action described in subsection (1) has been  
37 brought, arbitral proceedings may nevertheless be commenced or  
38 continued, and an award may be made, while the issue is pending  
39 before the court.

40 Section 10. Section 684.001, Florida Statutes, is created  
41 to read:

42 684.001 Arbitration agreement and interim measures by a  
43 court.—It is not incompatible with an arbitration agreement for  
44 a party to request from a court, before or during arbitral  
45 proceedings, an interim measure of protection and for a court to  
46 grant such a measure.

Amendment No. 2

47 Section 11. Section 684.0011, Florida Statutes, is created  
48 to read:

49 684.0011 Number of arbitrators.-

50 (1) The parties may determine the number of arbitrators.

51 (2) If the parties fail to determine the number of  
52 arbitrators, the number of arbitrators shall be three.

53 Section 12. Section 684.0012, Florida Statutes, is created  
54 to read:

55 684.0012 Appointment of arbitrators.-

56 (1) A person is not precluded by reason of his or her  
57 nationality from acting as an arbitrator, unless otherwise  
58 agreed by the parties.

59 (2) The parties may agree on a procedure of appointing the  
60 arbitrator or arbitrators, subject to subsections (4) and (5).

61 (3) Failing such agreement:

62 (a) In an arbitration having three arbitrators, each party  
63 shall appoint one arbitrator, and the two arbitrators thus  
64 appointed shall appoint the third arbitrator. If a party fails  
65 to appoint the arbitrator within 30 days after receipt of a  
66 request to do so from the other party, or if the two arbitrators  
67 fail to agree on the third arbitrator within 30 days after their  
68 appointment, the appointment shall be made, upon request of a  
69 party, by the court specified in s. 684.0008.

70 (b) In an arbitration having a single arbitrator, if the  
71 parties are unable to agree on the arbitrator, the arbitrator  
72 shall be appointed, upon request of a party, by the court  
73 specified in s. 684.0008.

Amendment No. 2

74 (4) If, under an appointment procedure agreed upon by the  
75 parties:

76 (a) A party fails to act as required under such procedure;

77 (b) The parties, or two arbitrators, are unable to reach  
78 an agreement under such procedure; or

79 (c) A third party, including an institution, fails to  
80 perform any function entrusted to it under such procedure,

81

82 any party may request the court specified in s. 684.0008 to take  
83 the necessary measure, unless the agreement on the appointment  
84 procedure provides other means for securing the appointment.

85 (5) A decision on a matter entrusted by subsection (3) or  
86 subsection (4) to the court specified in s. 684.0008 is not  
87 appealable. The court, in appointing an arbitrator, shall have  
88 due regard to any qualifications required by the arbitrator by  
89 the agreement of the parties and to such considerations that are  
90 likely to secure the appointment of an independent and impartial  
91 arbitrator. In the case of the appointment of a sole or third  
92 arbitrator, the court shall take into account the advisability  
93 of appointing an arbitrator of a nationality other than those of  
94 the parties.

95 Section 13. Section 684.0013, Florida Statutes, is created  
96 to read:

97 684.0013 Grounds for challenge.—

98 (1) When a person is approached in connection with a  
99 possible appointment as an arbitrator, the person must disclose  
100 any circumstances likely to give rise to justifiable doubts as  
101 to the person's impartiality or independence. An arbitrator,

Amendment No. 2

102 from the time of appointment and throughout the arbitral  
103 proceedings, shall disclose any such circumstances to the  
104 parties without delay, unless they have already been informed of  
105 them by him or her.

106 (2) An arbitrator may be challenged only if circumstances  
107 exist that give rise to justifiable doubts as to the  
108 arbitrator's impartiality or independence, or if the arbitrator  
109 does not possess qualifications agreed to by the parties. A  
110 party may challenge an arbitrator appointed by it, or in whose  
111 appointment the party participated, only for reasons of which  
112 the party became aware after the appointment was made.

113 Section 14. Section 684.0014, Florida Statutes, is created  
114 to read:

115 684.0014 Challenge procedure.—

116 (1) The parties may agree on a procedure for challenging  
117 an arbitrator, subject to subsection (3).

118 (2) Failing such agreement, a party who intends to  
119 challenge an arbitrator shall, within 15 days after becoming  
120 aware of the constitution of the arbitral tribunal or after  
121 becoming aware of any circumstance described in s. 684.0013(2),  
122 send a written statement of the reasons for the challenge to the  
123 arbitral tribunal. Unless the challenged arbitrator withdraws  
124 from his or her office or the other party agrees to the  
125 challenge, the arbitral tribunal shall decide on the challenge.

126 (3) If a challenge under any procedure agreed upon by the  
127 parties or pursuant to subsection (2) is not successful, the  
128 challenging party may request, within 30 days after having  
129 received notice of the decision rejecting the challenge, the

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 821 (2010)

Amendment No. 2

130 court specified in s. 684.0008 to decide on the challenge. The  
131 decision of the court is not appealable. While such a request is  
132 pending, the arbitral tribunal, including the challenged  
133 arbitrator, may continue the arbitral proceedings and make an  
134 award.

135 Section 15. Section 684.0015, Florida Statutes, is created  
136 to read:

137 684.0015 Failure or impossibility to act.-

138 (1) If an arbitrator becomes de jure or de facto unable to  
139 perform his or her functions or for other reasons fails to act  
140 without undue delay, his or her mandate terminates if he or she  
141 withdraws from office or if the parties agree on the  
142 termination. Otherwise, if a controversy remains concerning any  
143 of these grounds, any party may request the court specified in  
144 s. 684.0008 to decide on the termination  
145



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 821 (2010)

Amendment No. 3

COUNCIL/COMMITTEE ACTION

ADOPTED                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED       \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION   \_\_\_ (Y/N)  
FAILED TO ADOPT           \_\_\_ (Y/N)  
WITHDRAWN                \_\_\_ (Y/N)  
OTHER                     \_\_\_\_\_

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1 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee  
3 Representative(s) Thurston offered the following:  
4

5                   **Amendment**

6                   Remove lines 810-863 and insert:  
7 additional award within 60 days of the request.

8                   (4) The arbitral tribunal may extend, if necessary, the  
9 period of time within which it shall make a correction,  
10 interpretation, or additional award pursuant to subsection (1)  
11 or subsection (3).

12                   (5) Section 684.0042, specifying the form and contents of  
13 an award, applies to a correction or interpretation of the award  
14 or to an additional award.

15                   Section 45. Section 684.0045, Florida Statutes, is created  
16 to read:

17                   684.0045 Immunity for arbitrators.—An arbitrator serving  
18 under this chapter shall have judicial immunity in the same  
19 manner and to the same extent as a judge.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 821 (2010)

Amendment No. 3

20 Section 46. Section 684.0046, Florida Statutes, is created  
21 to read:

22 684.0046 Application to set aside as exclusive recourse  
23 against arbitral award.-

24 (1) Recourse to a court against an arbitral award may be  
25 made only by an application to set aside an arbitral award  
26 pursuant to subsections (2) and (3).

27 (2) An arbitral award may be set aside by the court  
28 specified in s. 684.0008 only if:

29 (a) The party making the application furnishes proof that:

30 1. A party to the arbitration agreement defined in s.  
31 684.0003(1)(c) was under some incapacity; the arbitration  
32 agreement is not valid under the law to which the parties have  
33 subjected it; or failing any indication thereon, under the law  
34 of this state;

35 2. The party making the application was not given proper  
36 notice of the appointment of an arbitrator or of the arbitral  
37 proceedings or was otherwise unable to present its case;

38 3. The award deals with a dispute not contemplated by or  
39 not falling within the terms of the submissions to arbitration,  
40 or contains decisions on matters beyond the scope of the  
41 submission to arbitration. However, if the decisions on matters  
42 submitted to arbitration can be separated from those not so  
43 submitted, only that part of the award which contains decisions  
44 on matters not submitted to arbitration may be set aside; or

45 4. The composition of the arbitral tribunal or the  
46 arbitral procedure was not in accordance with the agreement of  
47 the parties, unless such agreement was in conflict with a

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48 provision of this chapter from which the parties may not  
49 derogate, or, failing such agreement, was not in accordance with  
50 this chapter; or

51 (b) The court finds that:

52 1. The subject matter of the dispute is not capable of  
53 settlement by arbitration under the law of this state; or

54 2. The award is in conflict with the public policy of this  
55 state.

56 (3) An application to set aside an arbitral award may not be  
57 made after 3 months have elapsed after the date on which the  
58 party making that application receives the award or, if a  
59 request had been made under s. 684.0044, after 3 months have  
60 elapsed after the date on which that request had been disposed  
61 of by the arbitral tribunal.

62



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**



**BILL #:** HB 1281

Loan Origination

**SPONSOR(S):** Workman

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2548

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee		Barnum 	Cooper 
2)	Government Operations Appropriations Committee			
3)	General Government Policy Council			
4)				
5)				

**SUMMARY ANALYSIS**

In 2009, the Legislature passed a bill which brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008”. The S.A.F.E. Act provides for greater accountability and regulation of loan originators and enhances consumer protections. It establishes regulatory requirements for individuals, collectively known as loan originators, rather than businesses. The law provides for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

HB 1281 defines a loan processor, consistent with the S.A.F.E. Act, as an individual licensed as a loan originator but only performing clerical or support duties. If the individual wishes to work for multiple employers, (s)he must file a “declaration of intent to engage solely in loan processing” with the Office of Financial Regulation.

Because a loan processor may be employed by a company other than a mortgage broker or mortgage lender, HB 1281 provides an exception to Florida Statutes which prohibit the payment of fees or commissions in any mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or lender.

The bill provides clarifications as to disclosures provided as part of the good faith estimate process, and requires the borrower acknowledge receipt of the disclosure by signing and dating the document.

HB 1281 also reenacts s 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by the Office of Financial Regulation for violating provisions of the federal Real Estate Settlement Procedures Act, the federal Truth in Lending Act, or any regulations adopted under such acts, regarding mortgage transactions.

The bill has no fiscal impact.

HB 1281 provides for an October 1, 2010 effective date.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background:**

In 2009, the Legislature passed a bill which brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008<sup>1</sup> or "S.A.F.E. Mortgage Licensing Act of 2008". The S.A.F.E. Act provides for greater accountability and regulation of loan originators and enhances consumer protections. It establishes regulatory requirements for individuals, rather than businesses, licensed or registered as mortgage brokers and lenders, collectively known as loan originators. The bill provided for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements.

Presently, Florida requires licensure of individual mortgage brokers, mortgage broker and mortgage lender businesses, however employees of those businesses are not separately licensed. In addition to satisfying other minimum requirements, effective October 1, 2010, Florida Statutes require state licensure and annual renewal of individual loan originators, including employees of mortgage broker and mortgage lender businesses.

The law changes definitions and creates new sections of Florida Statutes, while repealing others. Effective October 1, 2010, loan originators, mortgage brokers, and mortgage lenders will be subject to administrative penalties under ch 494 in a single statutory section. Currently, mortgage brokers and mortgage lenders are treated separately in s. 494.0041(2)(v), F.S. and s. 494.0072(2)(v), F.S., respectively. Those sections are repealed effective October 1, 2010.<sup>1,2</sup>

In 2008, the Board of Governors of the Federal Reserve System published its final rule amending Regulation Z of the Truth in Lending Act creating new restrictions or requirements for mortgage lending and servicing.<sup>3</sup> With one exception,<sup>4</sup> those changes were effective October 1, 2009.

Also in 2008, the United States Department of Housing and Urban Development published its final rule amending parts of Regulation X of the Real Estate Settlement Procedures Act, to include substantially revising the Good Faith Estimate and required settlement disclosures.<sup>5</sup> Those changes were effective January 16, 2009.

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<sup>1</sup> S. 37 ch 2009-241, L.O.F.

<sup>2</sup> S. 56 ch 2009-241, L.O.F.

<sup>3</sup> 12 CFR Part 226 (Federal Register / Vol. 73, No. 147 / Wednesday, July 30, 2008 )

<sup>4</sup> Mortgages secured by manufactured housing.

<sup>5</sup> 24 CFR Part 3500 (Federal Register / Vol. 73, No. 222 / Monday, November 17, 2008)

As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.<sup>6</sup>

### Effect of Bill:

HB 1281 makes a technical change to subsection (5) of s. 494.00255, F.S. Effective October 1, 2010, a principal loan originator of a mortgage lender is held responsible for the violations of supervised loan originators in certain situations.<sup>7</sup> The bill provides for a conforming cross-reference, whereby the reference to an "associate" is replaced with the correct nomenclature of "loan originator".

Normally, loan originators are prohibited from working for more than one mortgage broker or mortgage lender, whether as an employee or as an independent contractor. HB 1281 provides an exception for "loan processors," who are individuals licensed as loan originators but only performing clerical or support duties. In that role, they may contract with or be employed by multiple companies. In defining "loan processor", the new statutory language is consistent with and borrows from the definition found in the "Secure and Fair Enforcement for Mortgage Licensing Act of 2008" or "S.A.F.E. Mortgage Licensing Act of 2008".<sup>8</sup>

A loan processor will still need to be licensed as a loan originator, but in addition, have a "declaration of intent" filed with the OFR, if (s)he wishes to engage solely in loan processing and work for multiple employers.<sup>9</sup> The bill provides that if a loan processor wishes to return to standard loan origination activities, the individual can withdraw the declaration of intent. Subsequent to withdrawal of the declaration of intent to engage solely in loan processing, the individual will again be subject to the general prohibition against working for multiple employers or contractors.

The bill provides an exception to Florida Statutes which prohibit the payment of fees or commissions in mortgage loan transactions to any person or entity other than a licensed or exempt mortgage broker or mortgage lender.<sup>10</sup> This exception is necessary because a loan processor working for multiple employers may earn fees which would be paid to the appropriate employing or contracting entity, and that organization need not be a licensed mortgage broker or mortgage lender.

HB 1281 provides clarifications relating to disclosures provided as part of the good faith estimate (GFE) process. The bill provides that identification of the recipient of all payments charged the borrower must be made in writing at the time the GFE is provided. In addition, it requires that the borrower acknowledge receipt of the disclosure by signing and dating the document.

HB 1281 reenacts s 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by the Office of Financial Regulation for violating provisions of the federal Real Estate Settlement Procedures Act, as amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any regulations adopted under such acts, regarding mortgage transactions. Reenactment of this provision is necessary for purposes of constitutionality and statutory construction.<sup>11</sup>

### B. SECTION DIRECTORY:

Section 1. Reenacts s. 494.00255(1)(m), F.S., and amends s. 494.00255(5), F.S., providing for enforcement and administrative penalties.

Section 2. Amends s. 494.00331, F.S., as amended by ch. 2009-241, L.O.F., providing for loan processors.

<sup>6</sup> See *State v. J.R. M.*, 388 So.2d 1227 (Fla. 1980); *Overstreet v. Blum*, 227 So.2d 197 (Fla. 1969).

<sup>7</sup> s. 494.00255(5), F.S. effective October 1, 2010 (s.15, ch. 2009-241 L.O.F.)

<sup>8</sup> H.R. 3221, Public Law 110-289, Title V, sec. 1503(4)

<sup>9</sup> Proposed statutory language is consistent with s. 560.403, F.S., which require every licensed money services business that engages in deferred presentment transactions to file a declaration of intent with the OFR.

<sup>10</sup> s. 494.0025(8), F.S.

<sup>11</sup> See *State v. Camil*, 279 So.2d 832 (Fla.1973); *Freimuth v. State*, 272 So.2d 473 (Fla.1972).

Section 3. Amends s. 494.0038(3)(c), F.S., as amended by ch. 2009-241, L.O.F., providing for disclosure clarifications, plus a signed and dated good faith estimate disclosure.

Section 4. Provides for an October 1, 2010 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:

None.

### D. FISCAL COMMENTS:

## 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 an 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:

C. The bill authorizes the Financial Services Commission to adopt rules relating to a loan processor's declaration of intent to engage solely in loan processing.

### D. DRAFTING ISSUES OR OTHER COMMENTS:

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES



1                   A bill to be entitled  
 2           An act relating to loan origination; amending s.  
 3           494.00255, F.S.; reenacting a reference to certain federal  
 4           laws for purposes of incorporating rules adopted under  
 5           such laws; specifying application of disciplinary  
 6           procedures to principal loan originators for actions of  
 7           loan originators; amending s. 494.00331, F.S.; specifying  
 8           nonapplication of certain limitations to licensed loan  
 9           originators operating solely as loan processors; providing  
 10          a definition; prohibiting acting as a loan processor  
 11          unless licensed as a loan originator; requiring a  
 12          declaration of intent to engage solely in loan processing;  
 13          authorizing withdrawal of a declaration of intent;  
 14          authorizing payment of a loan processor's fee without  
 15          violating certain restrictions; amending s. 494.0038,  
 16          F.S.; revising requirements relating to a good faith  
 17          estimate by a loan originator; requiring a disclosure  
 18          document to be signed and dated by the borrower; providing  
 19          an effective date.

20  
 21   Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Paragraph (m) of subsection (1) of section  
 24           494.00255, Florida Statutes, is reenacted, and subsection (5) of  
 25           that section is amended, to read:

26           494.00255   Administrative penalties and fines; license  
 27           violations.—

28           (1) Each of the following acts constitutes a ground for

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29 | which the disciplinary actions specified in subsection (2) may  
 30 | be taken against a person licensed or required to be licensed  
 31 | under part II or part III of this chapter:

32 |       (m) In any mortgage transaction, violating any provision  
 33 | of the federal Real Estate Settlement Procedures Act, as  
 34 | amended, 12 U.S.C. ss. 2601 et seq.; the federal Truth in  
 35 | Lending Act, as amended, 15 U.S.C. ss. 1601 et seq.; or any  
 36 | regulations adopted under such acts.

37 |       (5) A principal loan originator of a mortgage lender is  
 38 | subject to the disciplinary actions specified in subsection (2)  
 39 | for violations of subsection (1) by a loan originator ~~an~~  
 40 | ~~associate of a mortgage lender~~ if there is a pattern of repeated  
 41 | violations by the loan originator ~~associate~~ or if the principal  
 42 | loan originator has knowledge of the violations.

43 |       Section 2. Section 494.00331, Florida Statutes, as amended  
 44 | by chapter 2009-241, Laws of Florida, is amended to read:

45 |       494.00331 Loan originator employment.—

46 |       (1) An individual may not act as a loan originator unless  
 47 | he or she is an employee of, or an independent contractor for, a  
 48 | mortgage broker or a mortgage lender, and may not be employed by  
 49 | or contract with more than one mortgage broker or mortgage  
 50 | lender, or either simultaneously. However, this provision does  
 51 | not apply to any licensed loan originator who acts solely as a  
 52 | loan processor and contracts with more than one mortgage broker  
 53 | or mortgage lender, or either simultaneously.

54 |       (2) For purposes of this section, the term "loan  
 55 | processor" means an individual who is licensed as a loan  
 56 | originator who engages only in:

57 (a) The receipt, collection, distribution, and analysis of  
 58 information common for the processing or underwriting of a  
 59 residential mortgage loan; or

60 (b) Communication with consumers to obtain the information  
 61 necessary for the processing or underwriting of a loan, to the  
 62 extent that such communication does not include offering or  
 63 negotiating loan rates or terms or does not include counseling  
 64 consumers about residential mortgage loan rates or terms.

65 (3) A person may not act as a loan processor unless the  
 66 person is licensed as a loan originator under this chapter and  
 67 has on file with the office a declaration of intent to engage  
 68 solely in loan processing. The declaration of intent must be on  
 69 such form as prescribed by the commission by rule.

70 (4) A loan originator that currently has a declaration of  
 71 intent to engage solely in loan processing on file with the  
 72 office may withdraw his or her declaration of intent to engage  
 73 solely in loan processing. The withdrawal of declaration of  
 74 intent must on such form as prescribed by commission rule.

75 (5) A declaration of intent or a withdrawal of declaration  
 76 of intent is effective upon receipt by the office.

77 (6) The fee earned by a loan processor may be paid to the  
 78 company that employs the loan processor without violating the  
 79 restriction in s. 494.0025(7) requiring fees or commissions to  
 80 be paid to a licensed mortgage broker or mortgage lender or a  
 81 person exempt from licensure under this chapter.

82 Section 3. Paragraph (c) of subsection (3) of section  
 83 494.0038, Florida Statutes, as amended by chapter 2009-241, Laws  
 84 of Florida, is amended to read:

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85 494.0038 Loan origination and mortgage broker fees and  
 86 disclosures.-

87 (3) At the time a written mortgage broker agreement is  
 88 signed by the borrower or forwarded to the borrower for  
 89 signature, or at the time the mortgage broker business accepts  
 90 an application fee, credit report fee, property appraisal fee,  
 91 or any other third-party fee, but at least 3 business days  
 92 before execution of the closing or settlement statement, the  
 93 mortgage broker shall disclose in writing to any applicant for a  
 94 mortgage loan the following information:

95 (c) A good faith estimate, signed and dated by the  
 96 borrower, which discloses the total amount of each of the fees  
 97 the borrower may reasonably expect to pay if the loan is closed,  
 98 including, but not limited to, fees earned by the mortgage  
 99 broker, lender fees, third-party fees, and official fees,  
 100 together with the terms and conditions for obtaining a refund of  
 101 such fees, if any.

102 1. Any amount collected in excess of the actual cost shall  
 103 be returned within 60 days after rejection, withdrawal, or  
 104 closing.

105 2. At the time a ~~The~~ good faith estimate is provided to  
 106 the borrower, the loan originator must identify in writing the  
 107 recipient of all payments charged the borrower, which ~~and,~~  
 108 except for all fees to be received by the mortgage broker, may  
 109 be disclosed in generic terms, such as, but not limited to, paid  
 110 to lender, appraiser, officials, title company, or any other  
 111 third-party service provider. This requirement does not supplant  
 112 or is not a substitute for the written mortgage broker agreement

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113 | described in subsection (1). The disclosure required under this  
114 | subparagraph must be signed and dated by the borrower.

115 |       Section 4. This act shall take effect October 1, 2010.

**INSURANCE, BUSINESS &  
FINANCIAL AFFAIRS POLICY COMMITTEE**

**HB 1281 by Rep. Workman  
Loan Origination**

**AMENDMENT SUMMARY**

**March 11, 2010**

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Amendment 1 (**Between lines 81 and 82**) by Rep. Workman. Provides that a mobile home dealer licensed under ch. 494 is not also required to be licensed under ch. 520. In addition, an employee of a mobile home dealer licensed as a mortgage broker or mortgage lender who performs only administrative or clerical tasks is not required to be licensed as a "loan originator".

Amendment 2 (**line 115**) by Rep. Workman. A technical amendment. It removes the requirement that mortgage lenders file a new license application as the result of a change of control in a business. The same requirement for mortgage brokers was removed during last year's revision of Chapter 494.

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee

3 Representative(s) Workman offered the following:  
4

5           **Amendment (with title amendment)**

6           Between lines 81 and 82, insert:

7           Section 3. Section 494.00335, Florida Statutes, is created  
8 to read:

9           494.00335 Mobile home dealers.-

10          (1) A dealer, as defined in s. 320.77, is exempt from the  
11 licensure requirements under s. 520.03 if the dealer holds a  
12 mortgage broker or mortgage lender license issued under this  
13 chapter; holds a dealer license issued under ch. 320; and  
14 engages only in the sale of tangible personal property  
15 dwellings.

16          (2) An employee of a dealer licensed as a mortgage broker or  
17 mortgage lender who performs only administrative or clerical  
18 tasks as described in s. 494.001(14) is not included in the  
19 definition of the term "loan originator".

Amendment No. 1

20  
21  
22  
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27  
28  
29

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**T I T L E   A M E N D M E N T**

Remove line 15 and insert:  
violating certain restrictions; creating s. 494.00335, F.S.;  
exempting mobile home dealers licensed under ch. 494, F.S. from  
licensure under ch. 520, F.S.; providing that mobile home dealer  
employees are not loan originators under certain conditions;  
amending s. 494.0038



Amendment No. 2

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Insurance, Business & Financial  
2 Affairs Policy Committee

3 Representative(s) Workman offered the following:

4  
5           **Amendment (with title amendment)**

6           Remove line 115 and insert:

7           Section 4. Subsection (4) of section 494.0067, Florida  
8 Statutes, as amended by chapter 2009-241, Laws of Florida, is  
9 amended to read:

10           494.0067 Requirements of mortgage lenders.—

11           (4) A mortgage lender shall report any changes in the  
12 principal loan originator, any addition or subtraction of a  
13 control person, or any change in the form of business  
14 organization by written amendment in such form and at such time  
15 that the commission specifies by rule.

16           ~~(a) In any case in which a person or a group of persons,~~  
17 ~~directly or indirectly or acting by or through one or more~~  
18 ~~persons, proposes to purchase or acquire a controlling interest~~  
19 ~~in a licensee, such person or group must submit an initial~~

Amendment No. 2

20 ~~application for licensure as a mortgage lender before such~~  
21 ~~purchase or acquisition and at the time and in the form~~  
22 ~~prescribed by the commission by rule.~~

23 (b) Any addition of a control person who has not  
24 previously filed a Uniform Mortgage Biographical Statement &  
25 Consent Form, MU2, or has not previously complied with the  
26 fingerprinting and credit report requirements of s. 494.00611 is  
27 subject to the provisions of this section. If, after the  
28 addition of a control person, the office determines that the  
29 licensee does not continue to meet licensure requirements, the  
30 office may bring administrative action in accordance with s.  
31 494.00255 to enforce this section.

32 Section 5. This act shall take effect October 1, 2010.

33

34

35

-----  
**T I T L E A M E N D M E N T**

36  
37 Remove line 18 and insert:  
38 document to be signed and dated by the borrower; amending s.  
39 494.0067, F.S.; removing the requirement for licensure  
40 application under certain conditions; providing

HB 1299

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1299 Streamlining the Issuance of Licenses, Certifications, and Registrations Issued by State Agencies  
**SPONSOR(S):** Horner  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 2378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Livingston <i>[Signature]</i>	Cooper <i>[Signature]</i>
2) Full Appropriations Council on Education & Economic Development			
3) General Government Policy Council			
4)			
5)			

**SUMMARY ANALYSIS**

The license process is one of the core functions performed by agencies in protecting the health, safety, and welfare of the public. The public recognizes the importance of a professional license as an indicator that the business or individual has met the minimum legal qualifications to perform services.

The bill requires the Governor to establish a "One-Stop Business Connect Workgroup" composed of:

1. The Agency for Health Care Administration;
2. The Department of Business and Professional Regulation (workgroup chair);
3. The Department of Children and Family Services;
4. The Department of Health;
5. The Department of State; and
6. The Department of Revenue.

The bill requires the workgroup to:

- compile a complete, categorical inventory of all business licenses, certifications, and registrations required by each participating agency, including information regarding relevant laws and rules;
- analyze the business licensing, certification, and registration processes for each agency and identify processes that disrupt workflow and result in duplication, waste, unnecessary complexity, and errors and the root causes of those errors; and
- recommend the standardization and automation of business licensing, certification, and registration processes where appropriate.

The bill requires the workgroup to submit a plan, by February 15, 2011, for establishing a "licensing portal," to the Governor, the President of the Senate, and the Speaker of the House of Representatives that identifies:

- business requirements and the costs associated with implementation of a technology solution for businesses and individuals that provides easy access to state business licensing, certification, and registration requirements through MyFlorida.com;
- clear system wide objectives, a governance structure, accountability measures, and an opportunity for stakeholders to make suggestions regarding the use of the licensing portal; and
- issues that need to be addressed before a technology solution is implemented.

The bill is not anticipated to have a significant fiscal impact on state or local governments. The bill specifies that the workgroup be supported by staff from the participating agencies.

The effective date of the bill is upon becoming a law.

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

**STORAGE NAME:** h1299.IBFA.doc  
**DATE:** 3/7/2010

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation

MyFlorida.com is "The Official Portal of The State of Florida" and, in part, provides:

From architects to medical doctors to yacht brokers, Florida requires many professional activities to be state-licensed. This is a listing of regulated professions and businesses, including links to websites that allow you to lookup individual names, license numbers and more.<sup>1</sup>

This site lists 327 categories of business activities that are licensed by the state.

The "Florida Statutes 2009 Definitions Index" prepared by the Division of Statutory Revision, includes twenty two categories of definitions for the term "license". The index lists thirteen separate definitions for the term "certificate." The term "registration" is identified by six different definitions.

Included in the index is a frequently referenced statutory definition in s. 455.01, F.S., under the general powers chapter of the Department of Business and Professional Regulation:

- 4) "License" means any permit, registration, certificate, or license issued by the department.

The "Administrative Procedure act," chapter 120, F.S., specifies under s. 120.52, F.S.:

(10) "License" means a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act.

(11) "Licensing" means the agency process respecting the issuance, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license or imposition of terms for the exercise of a license.

The license process is one of the core functions performed by agencies in protecting the health, safety, and welfare of the public. The public recognizes the importance of a professional license as an indicator that the business or individual has met the minimum legal qualifications to perform services.

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<sup>1</sup> <http://www.myflorida.com/licensee/>

An accurate and reliable licensing system is also emphasized because fees, taxes, and fines are annually collected from licensees.

The license requirements are set in statute and amount to a different set of standards that apply to each activity, either for initial licensure or as a practitioner. For instance, some acts require an academic degree for licensure, while others allow a variety of paths, including qualification through experience, internship training, or other specific training.

The practice requirements for most, but not all, businesses require an examination. The practice requirements may require a multi-part examination which must be taken when available and usually includes several days of testing. Other professions are subject to less time consuming examinations, usually developed by the state or by a vendor through a contract with the state.

Licensure requirements that apply to a particular practice will inevitably affect the application and licensure process. The time frame between the initial license application and the actual issuance of the license may vary as a result of the requirements applicable to that particular business activity. w

### Effect of proposed changes

The bill requires the Governor to establish a "One-Stop Business Connect Workgroup" composed of, at a minimum, the secretary or agency head, or his or her designee, of the following state agencies:

1. The Agency for Health Care Administration.
2. The Department of Business and Professional Regulation.
3. The Department of Children and Family Services.
4. The Department of Health.
5. The Department of State.
6. The Department of Revenue.

The Secretary of Business and Professional Regulation is designated as the chair of the workgroup. The mission statement of the DBPR is "*License Efficiently, Regulate Fairly.*"<sup>2</sup>

The bill also recognizes other agencies may have useful expertise and specifies that the workgroup seek consultation with these other agencies, such as the "Agency for Enterprise Information Technology."

The bill requires the workgroup to:

- compile a complete, categorical inventory of all business licenses, certifications, and registrations required by each participating agency, including information regarding relevant laws and rules;
- analyze the business licensing, certification, and registration processes for each agency and identify processes that disrupt workflow and result in duplication, waste, unnecessary complexity, and errors and the root causes of those errors; and
- recommend the standardization and automation of business licensing, certification, and registration processes where appropriate.

The bill requires the workgroup to submit a plan, by February 15, 2011, for establishing the licensing portal to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill requires the workgroup plan to identify:

- business requirements and the costs associated with implementation of a technology solution for businesses and individuals that provides easy access to state business licensing, certification, and registration requirements through MyFlorida.com;

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<sup>2</sup> <http://www.myfloridalicense.com/dbpr/index.html>

- clear system wide objectives, a governance structure, accountability measures, and an opportunity for stakeholders to make suggestions regarding the use of the licensing portal; and
- issues that need to be addressed before a technology solution is implemented.

**B. SECTION DIRECTORY:**

Section 1. Creates the "Florida's One-Stop Business Connect Act" and requires the Governor to create a work group to recommend a plan to implement a technology solution that provides businesses and individuals with access to state requirements for business licenses, certifications, and registrations.

Section 2. Effective date – upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None anticipated. The bill specifies that "to the extent that funds are available within the participating agencies' budgets, the workgroup may use services of consultants."

2. Expenditures:

The bill specifies that the workgroup be supported by staff from the participating agencies.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Indeterminate.

**D. FISCAL COMMENTS:**

Currently s. 20.051, F.S., in part, provides:

To achieve maximum efficiency and effectiveness of government as intended by s. 6, Art. IV of the State Constitution, and to promote quality management and accountability as required in s. 19, Art. III of the State Constitution, all programs, functions, and entities must be reviewed by the executive and the legislative branches. Reviews must determine whether the function, program, or entity:

- serves a beneficial purpose to state agencies in improving the effectiveness and efficiency of the operations of the state and
- is situated within an organizational structure that promotes its efficient and effective administration and does not duplicate activities conducted in other agencies of the state;<sup>3</sup>

The bill specifies:

It is the intent of the Legislature that by July 1, 2014, the state establish an online connection that is easily accessible through the state's official portal, "MyFlorida.com," and that provides an

<sup>3</sup> These categories are only a partial listing of review determinations.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

NA

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES



1                                   A bill to be entitled  
 2           An act relating to streamlining the issuance of licenses,  
 3           certifications, and registrations issued by state  
 4           agencies; providing a short title; providing legislative  
 5           findings and intent; requiring the Governor to establish  
 6           the One-Stop Business Workgroup; providing for the  
 7           membership of the workgroup; authorizing the workgroup to  
 8           consult with other agencies and use consultants; providing  
 9           duties of the workgroup; requiring that the workgroup  
 10          submit a plan for establishing a licensing portal to the  
 11          Governor and Legislature by a specified date; providing  
 12          requirements for the plan to implement a technology  
 13          solution that provides businesses and individuals with  
 14          easy access to state requirements for business licenses,  
 15          certifications, and registrations; providing an effective  
 16          date.

17  
 18 Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. (1) This act may be cited as "Florida's One-  
 21 Stop Business Connect Act."

22           (2) The Legislature finds that:

23           (a) Individuals who start and operate businesses in this  
 24 state must interact with multiple state agencies to obtain  
 25 licenses, registrations, and tax certificates needed to legally  
 26 operate in this state. This process can be time-consuming and  
 27 frustrating for businesses and often requires business owners to  
 28 provide similar information to multiple agencies.

29 (b) State government requirements for starting and  
 30 operating a business in this state are often cumbersome and  
 31 place avoidable burdens on business owners. For several years,  
 32 the Legislature has recognized that these requirements do not  
 33 serve to promote this state as a business-friendly state that  
 34 actively supports the growth of jobs, businesses, and economic  
 35 opportunities.

36 (c) A phased, deliberative, and collaborative approach is  
 37 necessary to streamline and automate the state's business  
 38 processes; to simplify business requirements and eliminate  
 39 unnecessary business requirements; and to provide a single point  
 40 of entry for businesses to complete business transactions with  
 41 the state.

42 (3) It is the intent of the Legislature that by July 1,  
 43 2014, the state establish an online connection that is easily  
 44 accessible through the state's official portal, "MyFlorida.com,"  
 45 and that provides an efficient and effective online, self-  
 46 service method for an individual to access state requirements  
 47 for starting and operating a business.

48 (4) (a) The Governor shall establish a One-Stop Business  
 49 Connect Workgroup composed of, at a minimum, the secretary or  
 50 agency head, or his or her designee, of the following state  
 51 agencies:

- 52 1. The Agency for Health Care Administration.
- 53 2. The Department of Business and Professional Regulation.
- 54 3. The Department of Children and Family Services.
- 55 4. The Department of Health.
- 56 5. The Department of State.

57 6. The Department of Revenue.

58 (b) The Secretary of Business and Professional Regulation  
 59 shall serve as the chair of the workgroup. The workgroup shall  
 60 be supported by staff from the participating agencies.

61 (c) The workgroup may consult with other agencies  
 62 throughout the state, including the Agency for Enterprise  
 63 Information Technology, and those agencies must provide  
 64 requested assistance to the workgroup.

65 (d) To the extent that funds are available within the  
 66 participating agencies' budgets, the workgroup may use the  
 67 services of consultants.

68 (5) (a) The workgroup shall:

69 1. Compile a complete, categorical inventory of all  
 70 business licenses, certifications, and registrations required by  
 71 each participating agency, including information regarding  
 72 relevant laws and rules.

73 2. Analyze the business licensing, certification, and  
 74 registration processes for each agency and identify processes  
 75 that disrupt workflow and result in duplication, waste,  
 76 unnecessary complexity, and errors and the root causes of those  
 77 errors.

78 3. Recommend the standardization and automation of  
 79 business licensing, certification, and registration processes  
 80 where appropriate.

81 (b) By February 15, 2011, the workgroup shall submit a  
 82 plan for establishing the licensing portal to the Governor, the  
 83 President of the Senate, and the Speaker of the House of  
 84 Representatives that identifies:

85        1. Business requirements and the costs associated with  
86 implementation of a technology solution for businesses and  
87 individuals that provides easy access to state business  
88 licensing, certification, and registration requirements through  
89 MyFlorida.com.

90        2. Clear systemwide objectives, a governance structure,  
91 accountability measures, and an opportunity for stakeholders to  
92 make suggestions regarding the use of the licensing portal.

93        3. Issues that need to be addressed before a technology  
94 solution is implemented.

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