Judiciary Committee

Friday, February 24, 2012
8:00 AM
404 HOB

Meeting Packet

Dean Cannon
Speaker

William Snyder
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Friday, February 24, 2012 08:00 am

End Date and Time: Friday, February 24, 2012 12:00 pm

Location: 404 HOB

Duration: 4.00 hrs

Consideration of the following bill(s):

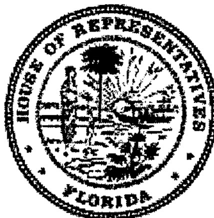
CS/HB 43 Relief/Ronald Miller/City of Hollywood by Civil Justice Subcommittee, Jenne
CS/HB 293 Relief/Matute, Torres, De Mayne, Torres, and Barahona/Palm Beach County Sheriff's Office by Civil Justice Subcommittee, Rooney
CS/HB 367 Restraint of Incarcerated Pregnant Women by Criminal Justice Subcommittee, Reed
CS/HB 429 Robbery by Sudden Snatching by Criminal Justice Subcommittee, Hudson
CS/HB 451 Fraudulent Transfers by Civil Justice Subcommittee, Steube
PCS for CS/HB 445 -- Relief/Eric Brody/Broward County Sheriff's Office
CS/HB 457 Relief/Denise Gordon Brown & David Brown/North Broward Hospital District by Civil Justice Subcommittee, Nehr
CS/CS/HB 497 Juvenile Expunction by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Porth
CS/HB 579 Relief/Lopez, Guzman, Lopez, Jr., Lopez-Velasquez, and Guzman/Miami-Dade County by Civil Justice Subcommittee, Nuñez
CS/HB 697 Relief/Donald Brown/District School Board of Sumter County by Civil Justice Subcommittee, McBurney
CS/HB 701 Florida Evidence Code by Civil Justice Subcommittee, Logan, Holder
CS/HB 855 Relief/Carl Abbott/Palm Beach County School Board by Civil Justice Subcommittee, Workman
CS/HB 877 Relief/Odette Acanda and Alexis Rodriguez/Public Health Trust of Miami-Dade County by Civil Justice Subcommittee, Trujillo
CS/HB 909 Relief/Anais Cruz Peinado/School Board of Miami-Dade County by Civil Justice Subcommittee, Gonzalez
HB 963 Dispute Resolution by Harrison
PCS for CS/HB 965 -- Relief/Aaron Edwards, Mitzi Roden, and Mark Edwards/Lee Memorial Health System/Lee County
CS/HB 967 Relief/Kristi Mellen/North Broward Hospital District by Civil Justice Subcommittee, Diaz
PCS for CS/HB 969 -- Relief/Melvin and Alma Colindres/City of Miami
CS/HB 1023 Suspension of Driver Licenses and Motor Vehicle Registrations by Civil Justice Subcommittee, Costello
CS/HB 1029 Relief/Thomas and Karen Brandi/City of Haines City by Civil Justice Subcommittee, Rouson
CS/HB 1039 Relief/James Feurtado/Miami-Dade County by Civil Justice Subcommittee, Steube
CS/HB 1485 Relief/Monica Cantillo Acosta and Luis Alberto Cantilla Acosta/Miami-Dade County by Civil Justice Subcommittee, Steube

Consideration of the following proposed committee bill(s):

PCB JDC 12-04 -- Relief/Irving Hoffman and Marjorie Weiss/City of Tallahassee

NOTICE FINALIZED on 02/23/2012 16:27 by Jones.Missy

CS/HB 43



STORAGE NAME: h0043.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 43; Relief/Ronald Miller/City of Hollywood
Sponsor: Representative Jenne
Companion Bill: SB 8 by Senator Sobel
Special Master: Tom Thomas

Basic Information:

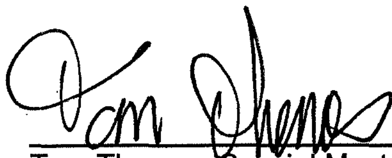
Claimants:	Ronald Miller
Respondent:	City of Hollywood
Amount Requested:	$100,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Agrees that the settlement in this matter and the passage of this claim bill are appropriate.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 191 by Representative Gibson and Senate Bill 60 by Senator Rich were filed during the 2009 Legislative Session. Neither of these bills received a hearing. House Bill 519 by Representative Gibson and Senate Bill 44 by Senator Gelber were filed during the 2010 Legislative Session. Neither of these bills received a hearing. House Bill 569 by Representative Cruz and Senate Bill 64 by Senator Siplin were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice) but died on the Calendar. The Senate Bill was never heard in any Committee.

Procedural Summary: In January 2005, Mr. Miller filed suit in the Circuit Court of the 17th Judicial Circuit in and for Broward County. After trial, the jury found in favor of Ronald Miller and a final judgment was entered in the amount of $1,130,731.89, which included approximately $75,000 for past medical bills and $415,000 for future medical expenses, $200,000 for past pain and suffering, and $500,000 for future pain and suffering. A cost Judgment was entered in favor of Mr. Miller for $17,257.82. The City of Hollywood appealed and the Fourth District Court of Appeal affirmed the judgment per curiam. The City has paid $100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, F.S. The parties have now settled the matter and the City has agreed to pay Mr. Miller an additional $100,000 to resolve this claim.

Facts of Case: This case arises out of a motor vehicle accident that occurred on July 30, 2002. Mr. Miller was traveling northbound in his pickup truck on North Federal Highway, just south of Sheridan Street in the City of Hollywood, Florida. At approximately 5:30 p.m., Mr. Miller entered the center lane, planning on turning left at Sherman Street, the westbound street immediately south of Sheridan Street, traveling at approximately 15 miles-per-hour. At the same time, Robert Mettler, an employee of the City of Hollywood driving a City utilities truck, was exiting a Burger King Restaurant immediately to the right (on the east side of North Federal Highway). Stopped northbound traffic on North Federal Highway parted to allow Mr. Mettler to drive across the two northbound lanes into the center lane. As Mr. Mettler entered the center lane, he turned left in order to merge onto southbound North Federal Highway where he collided head-on into Mr. Miller. Mr. Miller was wearing his seatbelt and did not seek medical treatment at the scene of the accident. Though belted, Mr. Miller later testified that he banged his knees on the dashboard of his truck as a result of the crash impact. Later that night, Mr. Miller went to the emergency room to seek medical treatment.

In March of 2003, Dr. Steven Wender, M.D., performed extensive knee surgery on Mr. Miller (a right knee partial medial and lateral menisectomy and tricompartmental chondroplasty, and a left knee lateral menisectomy and chondroplasty of the medial compartment and lateral compartmental and patella with synovectomy). Mr. Miller developed post operative complications including pneumonia and deep vein thrombosis. Dr. Wender testified that Mr. Miller will need to have at least one bilateral knee replacement surgery in the future. Mr. Miller did have knee surgeries prior to the accident. The City's expert, Dr. Phillip Averbach, testified at trial that Mr. Miller did not sustain any permanent orthopedic or neurological injuries related to the accident. Dr. Averbach also testified that he believed at least 90 percent of Mr. Miller's current complaints and injuries were pre-existing to the accident. While there is testimony on both sides of how extensively Mr. Miller was injured as a result of the accident, the parties have agreed to settle the matter.

Recommendation: I respectfully recommend that House Bill 43 be reported **FAVORABLY**.



Tom Thomas, Special Master　　　　Date: February 15, 2012

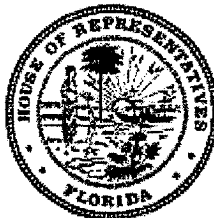
cc:　Representative Jenne, House Sponsor
　　Senator Sobel, Senate Sponsor
　　Judge John G. Van Laningham, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Ronald Miller by the City of
3 Hollywood; providing for an appropriation to
4 compensate him for injuries sustained as a result of
5 the negligence of the City of Hollywood; providing a
6 limitation on the payment of fees and costs; providing
7 an effective date.
8
9 WHEREAS, on July 30, 2002, Ronald Miller was driving his
10 pickup truck home from work, northbound on Federal Highway in
11 the left-turn lane, and
12 WHEREAS, at that time, a City of Hollywood employee, Robert
13 Mettler, who was driving a city utilities truck, cut across the
14 lanes of northbound traffic and crashed into Mr. Miller's
15 vehicle head-on, and
16 WHEREAS, the impact of the crash caused Mr. Miller to have
17 corrective surgeries for damage to both knees, and
18 WHEREAS, the jury found in favor of Ronald Miller and a
19 Final Judgment was entered in the amount of $1,130,731.89, and a
20 cost judgment was entered in the amount of $17,257.82, and
21 WHEREAS, the City of Hollywood has paid $100,000 to Ronald
22 Miller under the statutory limits of liability set forth in s.
23 768.28, Florida Statutes, and
24 WHEREAS, the parties have negotiated in good faith and have
25 arrived at a stipulated resolution of this matter by the payment
26 by the City of Hollywood of an additional $100,000 to Ronald
27 Miller, NOW, THEREFORE,
28

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

29 Be It Enacted by the Legislature of the State of Florida:
30
31 Section 1. The facts stated in the preamble to this act
32 are found and declared to be true.
33 Section 2. The City of Hollywood is authorized and
34 directed to appropriate from funds of the city and to draw a
35 warrant, payable to Ronald Miller, for the total amount of
36 $100,000 as compensation for injuries and damages sustained as a
37 result of the negligence of the City of Hollywood.
38 Section 3. The amount paid by the City of Hollywood
39 pursuant to s. 768.28, Florida Statutes, and the amount awarded
40 under this act are the sole and final compensation for all
41 present and future claims arising out of the facts described in
42 this act which resulted in injuries to Ronald Miller. All
43 expenses which constituted part of Ronald Miller's judgments
44 described herein shall be paid from the amount awarded under
45 this act on a pro rata basis. The total amount paid from all
46 sources for attorney's fees, lobbying fees, costs, and other
47 similar expenses relating to this claim may not exceed 15
48 percent of the amount awarded under this act.
49 Section 4. This act shall take effect upon becoming a law.

CS/HB 293



STORAGE NAME: h0293.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 293; Relief of Matute, Torres, De Mayne, Torres, and Barahona/Palm Beach County Sheriff's Office
Sponsor: Representative Rooney, Jr.
Companion Bill: SB 52 by Senator Negron
Special Master: Tom Thomas

Basic Information:

Claimants:	Criss Matute, Christian Manuel Torres, Eddna Torres De Mayne, Lansky Torres, and Nasdry Yamileth Torres Barahona
Respondent:	Palm Beach County Sheriff's Office
Amount Requested:	$371,850.98
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County Sheriff's Office admits responsibility for the accident and does not object to this claim bill.
Collateral Sources:	As part of its settlement, $75,000 was paid to the Claimants by Republic Services of Florida, owner of one of the vehicles, a Mack truck, involved in the accident.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

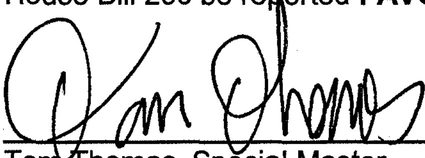
Procedural Summary: Mr. Matute's surviving child, Eddna Torres De Mayne, brought a wrongful-death action against the Palm Beach County Sheriff's Office seeking damages for her siblings, Criss Matute, Christian Manuel Torres, Lansky Torres, and Nasdry Yamileth Torres Barahona, and herself for their anguish and mental pain and suffering due to the tragic death of their father. On January 4, 2011, the Palm Beach County Sheriff's Office agreed to settle the claim in the amount of $500,000. In May 2011, the Palm Beach County Sheriff's Office tendered to Eddna Torres De Mayne, as personal representative of the Estate of Manuel A. Matute, a payment of $128,149.02 in

accordance with the statutory limits of liability set forth in s. 768.28, F.S.

Facts of Case: Manuel Antonio Matute, age 60, was killed on October 29, 2008, when he was hit head-on by a sheriff's office vehicle. The accident occurred at 5:58 a.m. The sheriff's vehicle was driven by a deputy employed by the Palm Beach County Sheriff's Office. The deputy fell asleep and lost control of his vehicle as he was travelling northbound on U.S. Highway 441 in West Palm Beach. The Sheriff's vehicle drifted to the right, hit the median, crossed the center island, and entered the southbound lane, finally impacting directly into the vehicle driven by Mr. Matute. As a result of the crash, two other southbound vehicles ran into the accident. Mr. Matute was declared dead at the scene of the accident.

Mr. Matute is survived by three sons and two daughters. Mr. Matute was not responsible in any way for causing the accident.

Recommendation: The bill should be amended to name the correct roadway where the accident occurred. The correct roadway is U.S. Highway 441, not Military Trail. I respectfully recommend House Bill 293 be reported **FAVORABLY,** as amended.



Tom Thomas, Special Master Date: February 15, 2012

cc: Representative Rooney, House Sponsor
Senator Negron, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Criss Matute, Christian
3 Manuel Torres, Eddna Torres De Mayne, Lansky Torres,
4 and Nasdry Yamileth Torres Barahona by the Palm Beach
5 County Sheriff's Office; providing for an
6 appropriation to compensate them for injuries
7 sustained as a result of the negligence of the Palm
8 Beach County Sheriff's Office for the wrongful death
9 of their father, Manuel Antonio Matute; providing a
10 limitation on the payment of fees and costs; providing
11 an effective date.
12
13 WHEREAS, Manuel Antonio Matute, age 60, was killed on
14 October 29, 2008, when he was hit head-on by a sheriff's office
15 vehicle whose driver, a Palm Beach County Deputy Sheriff, lost
16 control of the vehicle on U.S. Highway 441 in West Palm Beach,
17 Palm Beach County, and
18 WHEREAS, Manuel A. Matute's surviving child, Eddna Torres
19 De Mayne, brought a wrongful-death action against the Palm Beach
20 County Sheriff's Office seeking damages for her siblings, Criss
21 Matute, Christian Manuel Torres, Lansky Torres, and Nasdry
22 Yamileth Torres Barahona, and herself for their anguish and
23 mental pain and suffering due to the tragic death of their
24 father, and
25 WHEREAS, on January 4, 2011, the Palm Beach County
26 Sheriff's Office agreed to settle the claim in the amount of
27 $500,000, and

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

28 WHEREAS, in May 2011, the Palm Beach County Sheriff's
29 Office tendered to Eddna Torres De Mayne, as personal
30 representative of the Estate of Manuel A. Matute, a payment of
31 $128,149.02 in accordance with the statutory limits of liability
32 set forth in s. 768.28, Florida Statutes, and
33 WHEREAS, Eddna Torres De Mayne, as personal representative
34 of the Estate of Manuel A. Matute, seeks satisfaction of the
35 balance of the settlement agreement which is $371,850.98, NOW,
36 THEREFORE,
37
38 Be It Enacted by the Legislature of the State of Florida:
39
40 Section 1. The facts stated in the preamble to this act
41 are found and declared to be true.
42 Section 2. The Palm Beach County Sheriff's Office is
43 authorized and directed to appropriate from funds of the county
44 not otherwise appropriated and to draw a warrant in the sum of
45 $371,850.98, payable to Eddna Torres De Mayne, as personal
46 representative of the Estate of Manuel A. Matute, as
47 compensation for injuries and damages sustained due to the
48 wrongful death of Manuel Antonio Matute.
49 Section 3. The amount paid by the Palm Beach County
50 Sheriff's Office pursuant to s. 768.28, Florida Statutes, and
51 the amount awarded under this act are intended to provide the
52 sole compensation for all present and future claims arising out
53 of the factual situation described in this act which resulted in
54 the death of Manuel Antonio Matute. The total amount paid for
55 attorney's fees, lobbying fees, costs, and other similar

56 expenses relating to this claim may not exceed 15 percent of the
57 amount awarded under this act.
58 Section 4. This act shall take effect upon becoming a law.

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

CS/HB 367

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 367 Restraint of Incarcerated Pregnant Women
SPONSOR(S): Criminal Justice Subcommittee; Reed and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Krol	Cunningham
2) Rulemaking & Regulation Subcommittee	15 Y, 0 N	Rubottom	Rubottom
3) Justice Appropriations Subcommittee	14 Y, 0 N	Toms	Jones Darity
4) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

The bill prohibits the use of restraints on a prisoner who is known to be pregnant during labor, delivery, and postpartum recovery unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance.

The bill specifies that even if there are extraordinary circumstances:

(1) The corrections officer, correctional institution employee, or other officer accompanying the pregnant prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and
(2) The use of leg, ankle, and waist restraints is completely prohibited during labor and delivery.

The bill requires a corrections official to make written findings within 10 days after the use of restraints as to extraordinary circumstances that dictated the use of restraints. The correctional institution must maintain this documentation on file and make it available for public inspection for at least 5 years.

The bill also establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements can also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional.

The bill allows a prisoner who is restrained in violation of this section to file a grievance with the correctional institution within one year after the incident.

The bill authorizes the Department of Corrections (DOC) and the Department of Juvenile Justice (DJJ) to adopt rules to administer the new law.

There is an unknown fiscal associated with an unquantified workload increase. See "FISCAL SECTION".

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

On October 10, 2010, the National Commission on Correctional Health Care Board of Directors adopted the following Position Statement on Restraint of Pregnant Inmates:

> Restraint is potentially harmful to the expectant mother and fetus, especially in the third trimester as well as during labor and delivery. Restraint of pregnant inmates during labor and delivery should not be used. The application of restraints during all other pre-and postpartum periods should be restricted as much as possible and, when used, done so with consultation from medical staff. For the most successful outcome of a pregnancy, cooperation among custody staff, medical staff, and the patient is required.[1]

Federal Policies

In October 2008, the Federal Bureau of Prisons revised its policy regarding the shackling of pregnant women in their custody.[2] The policy states:

> Restraints should not be used when compelling medical reasons dictate, including when a pregnant prisoner is in labor, is delivering her baby, or is in immediate post-delivery recuperation... If a pregnant prisoner is restrained, the restraints used must be the least restrictive necessary to ensure safety and security. Any restraints used must not physically constrict the direct area of the pregnancy.[3]

In addition to this policy, Section 232 of the Second Chance Act requires the Attorney General to report to Congress on the use of physical restraints on pregnant prisoners by agencies within the Department of Justice (DOJ).[4] As an agency within DOJ, the Bureau of Prisons is required to report data regarding the use of restraints to the Attorney General.

Immigration and Customs Enforcement (ICE) allows restraints to be used on pregnant detainees. Specifically, ICE standards require medical staff to determine precautions required to protect the fetus, including:

- Safest method of restraint,
- Presence of a medical professional, and
- Medical necessity of restraining the detainee. [5]

The Second Chance Act also requires ICE to report on its use of restraints to the Department of Justice.[6]

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[1] Position Paper on Restraint of Pregnant Inmates, adopted by the National Commission on Correctional Health Care Board of Directors (October 10, 2010), http://www.ncchc.org/resources/statements/restraint_pregnant_inmates.html (last visited January 11, 2012).

[2] "Escorted Trips, Program Statement." Fed. Bureau of Prisons, No. 5538.05, 2008. http://www.bop.gov/policy/progstat/5538_005.pdf (last visited January 11, 2012).

[3] *Id.*

[4] The Second Chance Act, Pub. L. No. 110-199, 122 Stat. 657. 2008. (requiring agencies to report on the use of restraints during "pregnancy, labor, delivery of a child, or post-delivery recuperation" and "the reasons for the use of the physical restraints, the length of time that the physical restraints were used, and the security concerns that justified the use of the physical restraints").

[5] "ICE/DRO Detention Standard, Use of Force and Restraints." § 5.F1, http://www.ice.gov/doclib/dro/detention-standards/pdf/use_of_force_and_restraints.pdf (last visited January 11, 2012).

[6] *Supra*, the Second Chance Act.

Other States' Laws
According to a 2010 study, 10 states[7] have laws prohibiting the use of restraints on pregnant prisoners.[8]

The Department of Juvenile Justice
The Department of Juvenile Justice, through administrative rule, currently limits the use of mechanical restraints on pregnant youth: "If handcuffs are used on pregnant youth, they shall be cuffed in front. Leg restraints, waist chains, and the restraint belt shall not be used on pregnant youth."[9]

While this rule does not address the removal of restraints during labor and delivery, current practice is to remove the restraints during labor and delivery and any time a health care professional treating the youth requests the removal.[10]

County and Municipal Jails
The Florida Model Jail Standards contain the following provision related to the shackling of inmates:

> Shackles or other personal restraints may be used within the secured areas of the facility. This standard should apply to inmates in transit or to inmates whose behavior presents an immediate danger to themselves, other inmates, or staff. Such inmates may be temporarily restrained by such devices only upon orders of the Officer-in-Charge or designee. Restraints shall never be used as punishment.[11]

These standards currently have no provisions related to the shackling of pregnant inmates, however, the standards direct local jails' written policies and defined procedures to require that pregnant inmates receive advice on appropriate levels of safety precautions.[12]

The Department of Corrections
The Department of Corrections is responsible for the health care of inmates in its custody[13] and treats approximately 80 pregnant inmates per year.[14] Each pregnant inmate is referred to an OB/GYN physician to provide prenatal care and to follow her throughout her pregnancy. Inmates receive an extra nutritional meal each day, prenatal counseling, vitamins, and exams.[15]

DOC has an established procedure that limits the use of restraints on pregnant inmates.[16] Key components include:

- After it is learned that an inmate is pregnant (and during her postpartum period), her hands are not restrained behind her back and leg irons are not used. The use of waist chains or black boxes is also prohibited when there is any danger that they will cause harm to the inmate or fetus. The inmate's hands can be handcuffed in front of her body during transport and at the medical facility if required by security conditions due to her custody level and behavior. The shift supervisor's approval is required to remove handcuffs for medical reasons, except that approval is not required in an emergency situation.
- Unarmed escort officers are required to maintain close supervision of a pregnant inmate and to provide a "custodial touch" when necessary to prevent falls.

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[7] California, Colorado, Illinois, New Mexico, New York, Pennsylvania, Texas, Vermont, Washington, and West Virginia.
[8] "Mothers Behind Bars: A state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children." National Women's Law Center. October 2010.
[9] 63H-1.005(10), F.A.C.
[10] Department of Juvenile Justice 2012 Analysis of HB 367.
[11] "Chapter 11 Security and Control." 11.11. Florida Model Jail Standards. Effective 8/30/11. http://www.flsheriffs.org/uploads/FMJS%2008-30-11rev.doc (last visited January 11, 2012).
[12] *Ibid.* "Chapter 7 Medical." 7.25 - Prenatal Care.
[13] Section 945.6034, F.S.
[14] Department of Corrections 2012 Analysis of HB 367.
[15] *Id.*
[16] Department of Corrections Procedure 602.024 (The Utilization of Restraints on Inmates During Prenatal and Postpartum Periods.)

- An inmate in labor is not restrained, but after delivery she may be restrained to the bed with normal procedures (tethered to the bed by one ankle) for the remainder of her hospital stay. A correctional officer is stationed in the room with the inmate to be sure that she has access to the bathroom or can perform other needs that require movement.[17]

From 2001 to the present, DOC has had no formal inmate medical grievances submitted regarding the application of restraints during pregnancy.[18]

Effect of the Bill

The bill contains the following whereas clauses:

- Whereas, restraining a pregnant prisoner can pose undue health risks and increase the potential for physical harm to the woman and her pregnancy;
- Whereas, the vast majority of female prisoners in this state are nonviolent offenders;
- Whereas, the impact of such harm to a pregnant woman can negatively affect her pregnancy;
- Whereas, freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery as women often need to move around during labor and recovery, including moving their legs as part of the birthing process;
- Whereas, restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures; and
- Whereas, the Federal Bureau of Prisons, the United States Marshals Service, the American Correctional Association, the American College of Obstetricians and Gynecologists, and the American Public Health Association all oppose restraining women during labor, delivery, and postpartum recovery because it is unnecessary and dangerous to a woman's health and well-being.

The bill creates the following definitions:

- "Corrections official" as "the official who is responsible for oversight of a correctional institution, or his or her designee."
- "Correctional institution" as "any facility under the authority of DOC or DJJ, a county and municipal detention facility, or a detention facility operated by a private entity."
- "Department" as "the Department of Corrections."
- "Labor" as "the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix."
- "Postpartum recovery" as "the period immediately following delivery, including recovery period when a woman is in the hospital or infirmary following birth." The duration of postpartum recovery is determined by the physician.
- "Prisoner" as "any person incarcerated or detained in any correctional institution who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms and conditions of parole, probation, community control, pretrial release, or a diversionary program. For the purposes of this section, the term includes any woman detained under the immigration laws of the United States at any correctional institution."
- "Restraints" as "any physical restraint or mechanical device used to control the movement of a prisoner's body or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, chubb cuffs, leg irons, belly chains, a security or tether chain, or a convex shield."

The bill prohibits the use of restraints on a prisoner who is known to be pregnant during labor, delivery, and postpartum recovery unless the corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance. The bill defines "extraordinary circumstance" as an instance when:

(1) The prisoner presents a substantial flight risk; or

[17] *Id.* Department of Corrections 2012 Analysis of HB 367.

[18] Department of Corrections 2012 Analysis of HB 367.

(2) There is an extraordinary medical or security circumstance that dictates the use of restraints for the safety and security of the prisoner, correctional institution or medical facility staff, other prisoners, or the public.

The bill specifies that even if there are extraordinary circumstances:

(1) The corrections officer, correctional institution employee, or other officer accompanying the pregnant prisoner must remove all restraints if removal is requested by the treating doctor, nurse, or other health care professional; and
(2) The use of leg, ankle, and waist restraints is completely prohibited during labor and delivery.

If restraints are used on a pregnant prisoner during labor, delivery, and postpartum recovery, the bill requires that:

- The type of restraint applied and the application of the restraint be done in the least restrictive manner necessary.
- The corrections official make written findings within 10 days after the use of restraints as to extraordinary circumstances that dictated the use of restraints.
- The correctional institution maintain this documentation on file and make it available for public inspection for at least 5 years.

The bill establishes additional requirements regarding restraint of pregnant prisoners during the last trimester of pregnancy. These additional requirements also apply at any time during pregnancy if requested by the treating doctor, nurse, or other health care professional. These requirements are:

- Waist restraints that directly constrict the area of pregnancy cannot be used.
- Any wrist restraints must be applied so that the pregnant prisoner can protect herself in the event of a forward fall (handcuff must be in front).
- Leg and ankle restraints that restrain the legs close together cannot be used when the prisoner is required to walk or stand.

The bill also requires that any restraint of a prisoner known to be pregnant (at any stage of pregnancy) must be done in the least restrictive manner necessary in other to mitigate the possibility of adverse clinical consequences.

In addition to maintaining findings as to the extraordinary circumstances that required use of restraint during labor and delivery, the bill requires the secretaries of DOC and DJJ and the official responsible for any local correctional facility to, where an exception was made to allow restraint or where the restraint requirements have been violated during the previous year, submit an annual written report to the Governor with an account of every such instance. The bill provides that these reports will be made available to the public.

The bill authorizes DOC and DJJ to adopt rules to administer the new law.

The bill requires each correctional institution to inform female prisoners of the rules when they are admitted to the institution, include the policies and practices in the prisoner handbook, and post the policies and practices in appropriate places within the institution, including common housing areas and medical care facilities.

The bill allows a prisoner who is restrained in violation of this section to file a grievance with the correctional institution within one year after the incident and does not prevent her from filing a complaint under any other relevant provision of federal or state law.

B. SECTION DIRECTORY:

Section 1. Creates a new section of statute relating to shackling of incarcerated pregnant women.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will create additional staff workload for private prison facilities and private DJJ residential facility providers to update procedures and training materials; document the use of restraints; maintain documentation for five years and make it available for public inspection; and prepare any needed annual reports.

D. FISCAL COMMENTS:

The Department of Corrections reports that the bill would create an additional workload for staff to track the details of each delivery for reporting.[19] However DOC was unable to quantify any fiscal impact.[20]

There will be an insignificant workload impact to DJJ residential facilities and to county juvenile detention centers. The Department of Juvenile Justice reports no fiscal impact.[21]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

[19] Department of Corrections, Legislative Affairs, HB 367 Analysis
[20]. E-mail from Tommy Maggitas, Department of Corrections, Legislative Affairs, February 7, 2012., on file with Justice Appropriations staff.
[21] Department of Juvenile Justice 2012 Analysis of HB 367.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Corrections and the Department of Juvenile Justice to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to administer the bill's provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill requires an officer to remove all restraints from a pregnant prisoner if the removal is requested by the treating doctor, nurse, or other health care professional, even if the officer believes that an extraordinary circumstance exists as cause to restrain the prisoner. The Department of Corrections reports that the removal of the restraints should be done *in consultation with* the healthcare professional and the officer to ensure that security risks are appropriately evaluated.[22]

- The bill requires a correctional official to make written findings within 10 days after using restraints in an extraordinary circumstance that dictated the use of restraints on a pregnant prisoner. These findings must be kept on file at the institution for at least 5 years. This is contrary to current file maintenance practices at the Department of Corrections which provides for files to follow a prisoner as he or she is transferred among institutions.[23] This provision of the bill is also contrary to current filing practices for prisoners who are released from DOC custody.[24]

- The written findings and annual report to the Governor are required by the bill to be available for public inspection. The Department of Corrections has concerns that broad public access to the reports could pose a potential conflict with the Health Insurance Portability and Accountability Act (HIPPA) and s. 945.10(1)(a), F.S., as the findings and report would necessarily contain some amount of protected health information.[25] While DOC reports that these files would not be kept as health records, they would contain information related to pregnancy, labor, delivery, and other health-related topics.[26] These reports may have to be heavily redacted in order to maintain the requirements of HIPPA and s. 945.10(1)(a), F.S.[27]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 17, 2012, the Criminal Justice Subcommittee approved one amendment and reported the bill favorably as a committee substitute. The amendment:

- Allows a prisoner who is restrained in violation of this section to file a grievance with the appropriate correctional institution within one year after the incident.
- Removes redundant language.

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

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[22] Department of Corrections 2012 Analysis of HB 367.
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] Department of Corrections General Counsel. Phone Conversation. January 11, 2012.
[27] *Id.*

A bill to be entitled

An act relating to the restraint of incarcerated pregnant women; providing a short title; defining terms; prohibiting use of restraints on a prisoner known to be pregnant during labor, delivery, and postpartum recovery unless a corrections official makes an individualized determination that the prisoner presents an extraordinary circumstance requiring restraints; providing that a doctor, nurse, or other health care professional treating the prisoner may request that restraints not be used, in which case the corrections officer or other official accompanying the prisoner shall remove all restraints; requiring that any restraint applied must be done in the least restrictive manner necessary; requiring the corrections official to make written findings within 10 days as to the extraordinary circumstance that dictated the use of restraints; restricting the use of waist, wrist, or leg and ankle restraints during the third trimester of pregnancy or when requested by a doctor, nurse, or other health care professional treating the prisoner; providing that the use of restraints at any time after it is known that a prisoner is pregnant must be by the least restrictive manner necessary in order to mitigate the possibility of adverse clinical consequences; requiring that the findings be kept on file by the correctional institution or detention facility for at least 5 years

29 and be made available for public inspection under
30 certain circumstances; authorizing any woman who is
31 restrained in violation of the act to file a grievance
32 within a specified period; providing that these
33 remedies do not prevent a woman harmed from filing a
34 complaint under any other relevant provision of
35 federal or state law; directing the Department of
36 Corrections and the Department of Juvenile Justice to
37 adopt rules; requiring correctional institutions and
38 detention facilities to inform female prisoners of the
39 rules upon admission, include the policies and
40 practices in the prisoner handbook, and post the
41 policies and practices in the correctional institution
42 or detention facility; requiring the Secretary of
43 Corrections, the Secretary of Juvenile Justice, and
44 county and municipal corrections officials to annually
45 file written reports with the Executive Office of the
46 Governor detailing each incident of restraint in
47 violation of law or as an authorized exception;
48 providing an effective date.
49
50 WHEREAS, restraining a pregnant prisoner can pose undue
51 health risks and increase the potential for physical harm to the
52 woman and her pregnancy, and
53 WHEREAS, the vast majority of female prisoners in this
54 state are nonviolent offenders, and
55 WHEREAS, the impact of such harm to a pregnant woman can
56 negatively affect her pregnancy, and

57 WHEREAS, freedom from physical restraints is especially
58 critical during labor, delivery, and postpartum recovery after
59 delivery as women often need to move around during labor and
60 recovery, including moving their legs as part of the birthing
61 process, and
62 WHEREAS, restraints on a pregnant woman can interfere with
63 the medical staff's ability to appropriately assist in
64 childbirth or to conduct sudden emergency procedures, and
65 WHEREAS, the Federal Bureau of Prisons, the United States
66 Marshals Service, the American Correctional Association, the
67 American College of Obstetricians and Gynecologists, and the
68 American Public Health Association all oppose restraining women
69 during labor, delivery, and postpartum recovery because it is
70 unnecessary and dangerous to a woman's health and well-being,
71 NOW, THEREFORE,
72
73 Be It Enacted by the Legislature of the State of Florida:
74
75 Section 1. Shackling of incarcerated pregnant women.—
76 (1) SHORT TITLE.—This section may be cited as the "Healthy
77 Pregnancies for Incarcerated Women Act."
78 (2) DEFINITIONS.—As used in this section, the term:
79 (a) "Correctional institution" means any facility under
80 the authority of the department or the Department of Juvenile
81 Justice, a county or municipal detention facility, or a
82 detention facility operated by a private entity.
83 (b) "Corrections official" means the official who is
84 responsible for oversight of a correctional institution, or his

85 or her designee.
86 (c) "Department" means the Department of Corrections.
87 (d) "Extraordinary circumstance" means a substantial
88 flight risk or some other extraordinary medical or security
89 circumstance that dictates restraints be used to ensure the
90 safety and security of the prisoner, the staff of the
91 correctional institution or medical facility, other prisoners,
92 or the public.
93 (e) "Labor" means the period of time before a birth during
94 which contractions are of sufficient frequency, intensity, and
95 duration to bring about effacement and progressive dilation of
96 the cervix.
97 (f) "Postpartum recovery" means, as determined by her
98 physician, the period immediately following delivery, including
99 the recovery period when a woman is in the hospital or infirmary
100 following birth.
101 (g) "Prisoner" means any person incarcerated or detained
102 in any correctional institution who is accused of, convicted of,
103 sentenced for, or adjudicated delinquent for a violation of
104 criminal law or the terms and conditions of parole, probation,
105 community control, pretrial release, or a diversionary program.
106 For purposes of this section, the term includes any woman
107 detained under the immigration laws of the United States at any
108 correctional institution.
109 (h) "Restraints" means any physical restraint or
110 mechanical device used to control the movement of a prisoner's
111 body or limbs, including, but not limited to, flex cuffs, soft
112 restraints, hard metal handcuffs, a black box, chubb cuffs, leg

113 irons, belly chains, a security or tether chain, or a convex
114 shield.
115 (3) RESTRAINT OF PRISONERS.—
116 (a) Restraints may not be used on a prisoner who is known
117 to be pregnant during labor, delivery, and postpartum recovery,
118 unless the corrections official makes an individualized
119 determination that the prisoner presents an extraordinary
120 circumstance, except that:
121 1. If the doctor, nurse, or other health care professional
122 treating the prisoner requests that restraints not be used, the
123 corrections officer, correctional institution employee, or other
124 officer accompanying the pregnant prisoner shall remove all
125 restraints; and
126 2. Under no circumstances shall leg, ankle, or waist
127 restraints be used on any pregnant prisoner who is in labor or
128 delivery.
129 (b) If restraints are used on a pregnant prisoner pursuant
130 to paragraph (a):
131 1. The type of restraint applied and the application of
132 the restraint must be done in the least restrictive manner
133 necessary; and
134 2. The corrections official shall make written findings
135 within 10 days after the use of restraints as to the
136 extraordinary circumstance that dictated the use of the
137 restraints. These findings shall be kept on file by the
138 correctional institution for at least 5 years and be made
139 available for public inspection.
140 (c) During the third trimester of pregnancy, or when

141 requested by the doctor, nurse, or other health care
142 professional treating the pregnant prisoner:
143 1. Waist restraints that directly constrict the area of
144 pregnancy may not be used;
145 2. If wrist restraints are used, they must be applied in
146 such a way that the pregnant prisoner is able to protect herself
147 in the event of a forward fall; and
148 3. Leg and ankle restraints that restrain the legs close
149 together may not be used when the prisoner is required to walk
150 or stand.
151 (d) In addition to the specific requirements of paragraphs
152 (a)-(c), any restraint of a prisoner who is known to be pregnant
153 must be done in the least restrictive manner necessary in order
154 to mitigate the possibility of adverse clinical consequences.
155 (4) ENFORCEMENT.—
156 (a) Notwithstanding any relief or claims afforded by
157 federal or state law, any prisoner who is restrained in
158 violation of this section may file a grievance with the
159 correctional institution within 1 year after the incident.
160 (b) This section does not prevent a woman harmed under
161 this section from filing a complaint under any other relevant
162 provision of federal or state law.
163 (5) NOTICE TO PRISONERS.—
164 (a) By September 1, 2012, the department and the
165 Department of Juvenile Justice shall adopt rules pursuant to ss.
166 120.536(1) and 120.54, Florida Statutes, to administer this
167 section.
168 (b) Each correctional institution shall inform female

169 prisoners of the rules developed pursuant to paragraph (a) upon
170 admission to the correctional institution, including the
171 policies and practices in the prisoner handbook, and post the
172 policies and practices in locations in the correctional
173 institution where such notices are commonly posted and will be
174 seen by female prisoners, including common housing areas and
175 medical care facilities.
176 (6) ANNUAL REPORT.—By June 30 of each year, the Secretary
177 of Corrections, the Secretary of Juvenile Justice, and the
178 corrections official of each municipal and county detention
179 facility where a pregnant prisoner has been restrained pursuant
180 to paragraph (3)(a), or in violation of subsection (3), during
181 the previous year shall submit a written report to the Executive
182 Office of the Governor which includes an account of every such
183 instance. Such reports shall be made available for public
184 inspection.
185 Section 2. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Reed offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Shackling of incarcerated pregnant women.—
7 (1) SHORT TITLE.—This section may be cited as the "Healthy
8 Pregnancies for Incarcerated Women Act."
9 (2) DEFINITIONS.—As used in this section, the term:
10 (a) "Correctional institution" means any facility under
11 the authority of the department or the Department of Juvenile
12 Justice, a county or municipal detention facility, or a
13 detention facility operated by a private entity.
14 (b) "Corrections official" means the official who is
15 responsible for oversight of a correctional institution, or his
16 or her designee.
17 (c) "Department" means the Department of Corrections.
18 (d) "Extraordinary circumstance" means a substantial
19 flight risk or some other extraordinary medical or security

20 circumstance that dictates restraints be used to ensure the
21 safety and security of the prisoner, the staff of the
22 correctional institution or medical facility, other prisoners,
23 or the public.
24 (e) "Labor" means the period of time before a birth during
25 which contractions are of sufficient frequency, intensity, and
26 duration to bring about effacement and progressive dilation of
27 the cervix.
28 (f) "Postpartum recovery" means, as determined by her
29 physician, the period immediately following delivery, including
30 the recovery period when a woman is in the hospital or infirmary
31 following birth, up to 24 hours after delivery unless the
32 physician after consultation with the department or correctional
33 institution recommends a longer period of time.
34 (g) "Prisoner" means any person incarcerated or detained
35 in any correctional institution who is accused of, convicted of,
36 sentenced for, or adjudicated delinquent for a violation of
37 criminal law or the terms and conditions of parole, probation,
38 community control, pretrial release, or a diversionary program.
39 For purposes of this section, the term includes any woman
40 detained under the immigration laws of the United States at any
41 correctional institution.
42 (h) "Restraints" means any physical restraint or
43 mechanical device used to control the movement of a prisoner's
44 body or limbs, including, but not limited to, flex cuffs, soft
45 restraints, hard metal handcuffs, a black box, chubb cuffs, leg
46 irons, belly chains, a security or tether chain, or a convex
47 shield.

48 (3) RESTRAINT OF PRISONERS.—
49 (a) Restraints may not be used on a prisoner who is known
50 to be pregnant during labor, delivery, and postpartum recovery,
51 unless the corrections official makes an individualized
52 determination that the prisoner presents an extraordinary
53 circumstance, except that:
54 1. The physician may request that restraints not be used
55 for documentable medical purposes. The correctional officer,
56 correctional institution employee, or other officer accompanying
57 the pregnant prisoner may consult with the medical staff;
58 however, if the officer determines there is an extraordinary
59 public safety risk, the officer is authorized to apply
60 restraints as limited by subparagraph 2.
61 2. Under no circumstances shall leg, ankle, or waist
62 restraints be used on any pregnant prisoner who is in labor or
63 delivery.
64 (b) If restraints are used on a pregnant prisoner pursuant
65 to paragraph (a):
66 1. The type of restraint applied and the application of
67 the restraint must be done in the least restrictive manner
68 necessary; and
69 2. The corrections official shall make written findings
70 within 10 days after the use of restraints as to the
71 extraordinary circumstance that dictated the use of the
72 restraints. These findings shall be kept on file by the
73 department or correctional institution for at least 5 years.
74 (c) During the third trimester of pregnancy or when
75 requested by the physician treating a pregnant prisoner, unless

76 there are significant documentable security reasons noted by the
77 department or correctional institution to the contrary that
78 would threaten the safety of the prisoner, the unborn child, or
79 the public in general:
80 1. Leg, ankle, and waist restraints may not be used; and
81 2. If wrist restraints are used, they must be applied in
82 the front so the pregnant prisoner is able to protect herself in
83 the event of a forward fall.
84 (d) In addition to the specific requirements of paragraphs
85 (a)-(c), any restraint of a prisoner who is known to be pregnant
86 must be done in the least restrictive manner necessary in order
87 to mitigate the possibility of adverse clinical consequences.
88 (4) ENFORCEMENT.—
89 (a) Notwithstanding any relief or claims afforded by
90 federal or state law, any prisoner who is restrained in
91 violation of this section may file a grievance with the
92 correctional institution, and be granted a 45 day extension if
93 requested in writing pursuant to rules promulgated by the
94 correctional institution.
95 (b) This section does not prevent a woman harmed through
96 the use of restraints under this section from filing a complaint
97 under any other relevant provision of federal or state law.
98 (5) NOTICE TO PRISONERS.—
99 (a) By September 1, 2012, the department and the
100 Department of Juvenile Justice shall adopt rules pursuant to ss.
101 120.536(1) and 120.54, Florida Statutes, to administer this
102 section.
103 (b) Each correctional institution shall inform female

104 prisoners of the rules developed pursuant to paragraph (a) upon
105 admission to the correctional institution, including the
106 policies and practices in the prisoner handbook, and post the
107 policies and practices in locations in the correctional
108 institution where such notices are commonly posted and will be
109 seen by female prisoners, including common housing areas and
110 medical care facilities.
111 Section 2. This act shall take effect July 1, 2012.
112
113
114
115 ---
116 **T I T L E A M E N D M E N T**
117 Remove the entire title and insert:
118 An act relating to the restraint of incarcerated pregnant women;
119 providing a short title; defining terms; prohibiting use of
120 restraints on a prisoner known to be pregnant during labor,
121 delivery, and postpartum recovery unless a corrections official
122 makes an individualized determination that the prisoner presents
123 an extraordinary circumstance requiring restraints; authorizing
124 an officer to apply restraints after consulting with medical
125 staff; requiring that any restraint applied must be done in the
126 least restrictive manner necessary; requiring the corrections
127 official to make written findings as to the extraordinary
128 circumstance requiring restraints; restricting the use of
129 certain restraints during the third trimester of pregnancy
130 unless there are significant security concerns documented by the
131 department or correctional institution; requiring that the

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132 findings be kept on file by the department or correctional
133 institution for at least 5 years; authorizing any woman who is
134 restrained in violation of the act to file a grievance within a
135 specified period; providing that these remedies do not prevent a
136 woman harmed through the use of restraints from filing a
137 complaint under federal or state law; directing the Department
138 of Corrections and the Department of Juvenile Justice to adopt
139 rules; requiring correctional institutions to inform female
140 prisoners of the rules upon admission, include the policies and
141 practices in the prisoner handbook, and post the policies and
142 practices in the correctional institution; providing an
143 effective date.
144
145 WHEREAS, restraining a pregnant prisoner can pose undue
146 health risks and increase the potential for physical harm to the
147 woman and her pregnancy, and
148 WHEREAS, the vast majority of female prisoners in this
149 state are nonviolent offenders, and
150 WHEREAS, the impact of such harm to a pregnant woman can
151 negatively affect her pregnancy, and
152 WHEREAS, freedom from physical restraints is especially
153 critical during labor, delivery, and postpartum recovery after
154 delivery as women often need to move around during labor and
155 recovery, including moving their legs as part of the birthing
156 process, and
157 WHEREAS, restraints on a pregnant woman can interfere with
158 the medical staff's ability to appropriately assist in
159 childbirth or to conduct sudden emergency procedures, and

160 WHEREAS, the Federal Bureau of Prisons, the United States
161 Marshals Service, the American Correctional Association, the
162 American College of Obstetricians and Gynecologists, and the
163 American Public Health Association all oppose restraining women
164 during labor, delivery, and postpartum recovery because it is
165 unnecessary and dangerous to a woman's health and well-being,
166 NOW, THEREFORE,

CS/HB 429

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 429 Robbery by Sudden Snatching
SPONSOR(S): Criminal Justice Subcommittee; Hudson and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 1 N, As CS	Williams	Cunningham
2) Justice Appropriations Subcommittee	15 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Williams	Havlicak

SUMMARY ANALYSIS

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property *from the victim's person*, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking, the victim was or became aware of the taking. Robbery by sudden snatching is generally a third degree felony.

Recently, Florida's 1st District Court of Appeal reviewed a case where the defendant was charged with robbery by sudden snatching after he took a victim's purse. At the time of the taking, the victim was sitting on a park bench and her purse was next to her, touching her right hip. The court held that the defendant could not be charged with robbery by sudden snatching because the statute required that the property actually be "on" the victim's person, not simply next to her. Several other courts have reached the same conclusion when presented with similar facts.

The bill amends s. 812.131, F.S., to provide that the offense of robbery by sudden snatching include the taking of money or other property from the victim's person or from the area within the victim's immediate reach or control.

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because the number of persons that would be convicted of robbery by sudden snatching when the property is within immediate reach of the victim is unknown. Since such offenses were previously punishable as a misdemeanor theft offense with a possible local jail sentence, and would now be a third degree felony with a possible state prison sentence, this bill will likely have a negative impact on state prison beds, but that impact is unknown. This bill may also have a positive jail bed impact on local governments, and could increase the workload for state attorneys. See fiscal section.

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Theft

Section 812.014, F.S., provides that a person commits theft if he or she knowingly obtains or uses,[1] or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

- Deprive the other person of a right to the property or a benefit from the property; or
- Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.[2]

The penalties for a violation of s. 812.014, F.S., are generally tied to the value of stolen goods.[3] For example:

- If the value of the stolen property is $100,000 or greater, the offense is punishable as a first degree felony.[4]
- If the value of the stolen property is between $20,000 and $100,000, the offense is a second degree felony.[5]
- If the value of the stolen property is between $300 and $20,000, the offense is a third degree felony.[6]
- If the value of the stolen goods is between $100 and $300, the offense is a first degree misdemeanor.[7]
- If the value of the stolen goods is valued at less than $100, the offense is a second degree misdemeanor[8].[9]

Additionally, theft of specifically identified property may be subject to greater penalties regardless of the value of the stolen items.[10]

Robbery

Section 812.13, F.S., defines "robbery" as the taking of money or other property which may be the subject of larceny[11] from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the money or other property, when in the course of the taking[12] there is the use of force, violence, assault, or putting in fear. Robbery is generally a second degree felony.[13] However, if in the course of committing the robbery[14] the offender carried a firearm or

[1] The term "obtains or uses" means any manner of: taking or exercising control over property; making an unauthorized use, disposition, or transfer of property; obtaining property by fraud, willful misrepresentation of a future act, or false promise; conduct previously known as stealing, larceny, purloining, abstracting, embezzlement, misapplication, misappropriation, conversion, obtaining money or property by false pretenses, fraud, or deception; or other conduct similar in nature. Section 812.012(3), F.S.
[2] Section 812.014(1), F.S.
[3] *See* s. 812.014(3)(a), F.S.
[4] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[5] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Sections 775.082 and 775.083, F.S.
[6] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[7] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine. Sections 775.082 and 775.083, F.S.
[8] A second degree misdemeanor is punishable by up to 60 days in county jail and a $500 fine. Sections 775.082 and 775.083, F.S.
[9] Section 812.14(2) and (3), F.S.
[10] For example, s. 812.14, F.S., provides that theft of a stop sign is a third degree felony.
[11] In 1977, the legislature amended ch. 812, F.S., extensively and replaced the term "larceny" with the term "theft." *See* Ch. 77-342, L.O.F., and *Daniels v. State*, 587 So.2d 460, 462 (Fla. 1991). However, the legislature has not changed the term "larceny" in the statute prohibiting robbery.
[12] Section 812.13(3)(b), F.S., specifies that an act is "in the course of the taking" if it occurs either prior to, contemporaneous with, or subsequent to the taking of the property and if it and the act of taking constitute a continuous series of acts or events.
[13] Section 812.13(2)(c), F.S.
[14] Section 812.13(3)(a), F.S., specifies that an act is "in the course of committing the robbery" if it occurs in an attempt to commit robbery or in flight after the attempt or commission.

other deadly weapon, the offense is a first degree felony, punishable by imprisonment for a term of years not exceeding life imprisonment.[15] Robbery where the offender carried a weapon (other than a deadly weapon) is a first degree felony.[16]

Robbery by Sudden Snatching

Section 812.131, F.S., defines "robbery by sudden snatching" as the taking of money or other property from the victim's person, with intent to permanently or temporarily deprive the victim or the owner of the money or other property, when, in the course of the taking,[17] the victim was or became aware of the taking.[18] Robbery by sudden snatching, as opposed to robbery, does not require proof of force, violence, assault, or putting in fear.

Robbery by sudden snatching is generally a third degree felony.[19] However, if in the course of committing robbery by sudden snatching[20] the offender carried a firearm or other deadly weapon, the offense is a second degree felony.[21]

Recently, Florida's 1st District Court of Appeal reviewed a case where the defendant was charged with robbery by sudden snatching after he took a victim's purse.[22] At the time of the taking, the victim was sitting on a park bench and her purse was next to her, touching her right hip.[23] The court held that the defendant could not be charged with robbery by sudden snatching because the statute required that the property actually be "on" the victim's person, not simply next to her.[24] Several other courts have reached the same conclusion when presented with similar facts.[25]

Effect of the Bill

As noted above, robbery by sudden snatching currently requires that the property being taken be on the victim's person. The bill amends s. 812.131, F.S., to provide that the offense of robbery by sudden snatching includes the taking of money or other property from the victim's person *or from the area within the victim's immediate reach or control.*

B. SECTION DIRECTORY:

Section 1. Amends s. 812.131, F.S., relating to robbery by sudden snatching.

Section 2. Provides and effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state government revenues.

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[15] Section 812.13(2)(a), F.S.

[16] Section 812.13(2)(b), F.S.

[17] Section 812.131(3)(b), F.S., specifies that an act is "in the course of the taking" if the act occurs prior to, contemporaneous with, or subsequent to the taking of the property and if such act and the act of taking constitute a continuous series of acts or events.

[18] In order to satisfy this definition, it is not necessary to show that the offender used any amount of force beyond that effort necessary to obtain possession of the money or other property, or that there was any resistance offered by the victim to the offender or that there was injury to the victim's person. *See* s. 812.131(1)(a) and (b), F.S.

[19] Section 812.131(2)(b), F.S.

[20] Section 812.131(3)(a), F.S., specifies that an act is "in the course of committing a robbery by sudden snatching" if the act occurs in an attempt to commit robbery by sudden snatching or in fleeing after the attempt or commission.

[21] Section 812.131(2)(a), F.S.

[22] *Wess v. State*, 67 So.3d 1133 (Fla. 1st DCA 2011).

[23] *Id.*

[24] *Id.*

[25] *See, e.g., Nichols v. State,* 927 So.2d 90 (Fla. 1st DCA 2006); *State v. Floyd,* 872 So.2d 445 (Fla. 2d DCA 2004); and *Brown v. State,* 848 So.2d 361, 364 (Fla. 4th DCA 2003).

2. Expenditures:

The Criminal Justice Impact Conference met December 14, 2011, and found the prison bed impact of this bill to be indeterminate because the number of persons that would be convicted of robbery by sudden snatching when the property is within immediate reach of the victim is unknown. Since such offenses were previously punishable as a misdemeanor theft offense with a possible local jail sentence, and would now be a third degree felony with a possible state prison sentence, this bill will likely have a negative impact on state prison beds, but that impact is unknown.

Additionally, the bill could have a workload impact on state attorneys. According to the Florida Prosecuting Attorneys Association, "cases now prosecuted as simple theft could become sudden snatching robbery, and carry greater penalty exposure, thus increasing workload if more defendants insisted on a trial."[26] However, the number of such cases is unknown.[27]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

Certain theft offenses are punishable as misdemeanors. Robbery by sudden snatching is generally punishable as a third degree felony. Because the bill expands the definition of "robbery by sudden snatching" to include conduct that was previously only punishable as a misdemeanor theft offense, it could have a positive jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

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[26] Email from William Cervone, Florida Prosecuting Attorneys Association. November 9, 2011. (On file with House Criminal Justice Subcommittee staff).

[27] *Id.*

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides an effective date of July 1, 2012. Generally, bills that impose or increase criminal penalties are effective on October 1 in order to give adequate notice to the public, state attorneys, public defenders, etc., of the new law's provisions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2011, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment specifies that robbery by sudden snatching includes the taking of money or property from the area within the victim's immediate reach or control.

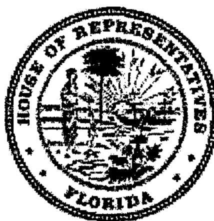
This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

1 A bill to be entitled
2 An act relating to robbery by sudden snatching;
3 amending s. 812.131, F.S.; clarifying that the offense
4 of robbery by sudden snatching includes the taking of
5 money or other property from the victim's person or
6 from the area within the victim's immediate reach or
7 control; providing criminal penalties; providing an
8 effective date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 812.131, Florida Statutes, is amended
13 to read:
14 812.131 Robbery by sudden snatching.—
15 (1)(a) "Robbery by sudden snatching" means the taking of
16 money or other property from the victim's person or from the
17 area within the victim's immediate reach or control, with intent
18 to permanently or temporarily deprive the victim or the owner of
19 the money or other property, when, in the course of the taking,
20 the victim was or became aware of the taking. In order to
21 satisfy this definition, it is not necessary to show that:
22 1.~~(a)~~ The offender used any amount of force beyond that
23 effort necessary to obtain possession of the money or other
24 property; or
25 2.~~(b)~~ There was any resistance offered by the victim to
26 the offender or that there was injury to the victim's person.
27 (b)~~(3)(a)~~ An act shall be deemed:
28 1. "In the course of committing a robbery by sudden

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

29 snatching" if the act occurs in an attempt to commit robbery by
30 sudden snatching or in fleeing after the attempt or commission.
31 2.~~(b) An act shall be deemed~~ "In the course of the taking"
32 if the act occurs prior to, contemporaneous with, or subsequent
33 to the taking of the property and if such act and the act of
34 taking constitute a continuous series of acts or events.
35 (2)~~(a)~~ If, in the course of committing a robbery by sudden
36 snatching, the offender:
37 (a) Carried a firearm or other deadly weapon, the offense
38 ~~robbery by sudden snatching~~ is a felony of the second degree,
39 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
40 (b) ~~If, in the course of committing a robbery by sudden~~
41 ~~snatching, the offender~~ Carried no firearm or other deadly
42 weapon, the offense ~~robbery by sudden snatching~~ is a felony of
43 the third degree, punishable as provided in s. 775.082, s.
44 775.083, or s. 775.084.
45 Section 2. This act shall take effect July 1, 2012.

PCS for HB 445



STORAGE NAME: h0445.CVJS
DATE: 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 445 – Representative Grant
Relief/Eric Brody/Broward County Sheriff's Office

THIS IS A SETTLED EXCESS JUDGMENT CLAIM FOR $10,750,000, BASED ON A SETTLEMENT BY THE PARENTS AND GUARDIANSHIP OF ERIC BRODY FOR INJURIES HE SUFFERED DUE TO THE NEGLIGENCE OF AN EMPLOYEE OF THE BROWARD COUNTY SHERIFF'S OFFICE. THE BCSO HAS ALREADY PAID THE $200,000 STATUTORY LIMIT AS PROVIDED IN SECTION 768.28, F.S.

FINDING OF FACT:

THE ACCIDENT: This case arises out of a tragic motor vehicle accident that occurred on March 13, 1998, at the intersection of Oakland Park Boulevard and 117th Lane in Broward County, Florida. At approximately 10:36 p.m., Eric Brody was making a left-hand turn into a subdivision on 117th Lane when Deputy Sheriff Christopher Thieman, operating a Broward County Sheriff's Office (BCSO) cruiser, proceeding westbound on Oakland Park Boulevard, collided with the vehicle operated by Eric, causing Eric to sustain catastrophic injuries. At trial, experts for the claimant and the defendant testified that Deputy Thieman was driving at a braking speed of between 53 mph and 70 mph when he struck the passenger side of Eric Brody's car. The lawful speed limit was 45 mph. Although he was out of his seat belt when emergency personnel arrived, the belt

was photographed at the scene, fully spooled out with the retractor jammed. The greater weight of the evidence supports the conclusion that Eric Brody was buckled in his seatbelt at the time of the accident.

Eric was transported by helicopter to Broward General Hospital, where he was diagnosed with broken ribs, a skull fracture, blood clots in his brain, and a large accumulation of blood on the right side of his head. He underwent an emergency craniotomy to reduce the brain swelling. The surgery was successful; however, Eric remained in a coma. Eric remained in the intensive care unit at Broward General Hospital for four weeks, and then was transferred to Health South Rehabilitation Facility, where there is a coma stimulation program. Thereafter, Eric was transferred to a nursing home where he remained in a coma for approximately six months. After regaining consciousness, Eric remains mostly confined to a wheelchair, with limited ability to speak and with severe brain damage.

As a result of the closed head trauma Eric Brody received during the accident, he suffers from static encephalopathy, spastic quadriplegia, neuromuscular scoliosis, multiple contractions of the left upper and lower extremities, and abnormalities of gait and standing.

PROCEDURAL HISTORY: In February of 2003, the parents of Eric Brody, as his natural parents and guardians, filed a negligence proceeding against the BCSO in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida. A trial was held in the Fall of 2005 and on December 1, 2005, the jury found that Deputy Thieman and the BCSO were 100 percent negligent and Eric Brody was not comparatively negligent. The trial lasted almost 2 months, including a 2-week break due to Hurricane Wilma.

Judgment was entered shortly after the jury verdict for the full amount of $30,609,298, and the court entered a cost judgment for $270,372.30, for a total judgment of $30,879,670.30. The trial court denied the BCSO's posttrial motions for judgment notwithstanding the verdict, new trial, or remittitur. The BCSO appealed the final judgment but not the cost judgment. The Fourth District Court of Appeal upheld the verdict and the amount of the verdict in the fall of 2007. The BCSO subsequently petitioned the Florida Supreme Court, which denied the petition in April of 2008. The BCSO has paid the $200,000 allowed under s. 768.28, F.S., and the remainder is sought through this claim bill.

The parties recently settled this matter for $10,750,000.

DAMAGES: Eric Brody, who is now 31-years-old, has been left profoundly brain-injured and lives with his parents. His speech is barely intelligible, he has significant memory loss and

cognitive dysfunction, and he has visual problems. Eric also has impaired fine and gross motor skills and has very poor balance. Although Eric is able to use a walker for short distances, he must mostly use a wheelchair to get around. The entire left side of his body is partially paralyzed and spastic, and he needs help with many of his daily functions. Eric is permanently and totally disabled. However, Eric has a normal life expectancy.

LEGAL ISSUES: Eric Brody alleged in his lawsuit that Deputy Thieman was negligent in the operation of his vehicle by driving too fast and by steering his vehicle two lanes to the right where the impact occurred. At trial, the BCSO took the position that Deputy Theiman's driving was not negligent and was not the proximate cause of the accident; that Eric Brody acted negligently by making a left-hand turn into the path of the oncoming police vehicle and by not wearing a seat belt. The BCSO took the postion that Eric Brody's negligence was the proximate cause of the accident and his resulting injuries.

At the Special Master hearing, the BCSO took the position that Deputy Theiman's negligence was only simple negligence, not gross negligence; that the jury ignored compelling evidence of comparative negligence; that the jury was motivated by emotion; that all jury determinations must be questioned; and that payment of a claim bill in the requested amount would exceed by far the award in any prior claims awarded by the Legislature. The BCSO further argued that this claim bill would impose a draconian economic impact on the BCSO.

CONCLUSION OF LAW:

Some see the Legislature's role in claim bills against the State of Florida as merely rubber stamping and "passing through" for payment those jury verdicts that have been reduced to judgment and survived appeal, if any. Others see the Legislature's role as a de novo responsibility to review, evaluate, and weigh the total circumstances and type of the state's liability in the case, and to consider those factors that might not have been perceived by or introduced to the jury or court. Whichever of these two views each lawmaker holds, at the Special Master's level every claim bill, whether based on a jury verdict or not, must be measured anew against the four standard elements of negligence.

While the BCSO took several positions at the claim bill hearing, I did not find these positions persuasive in leading to a conclusion different from that of the jury's. The BCSO argued that the BCSO itself did not commit any negligent act, that it did not negligently hire Deputy Theiman, and that the Legislature should require more than the underlying facts in this case to justify what it sees as an unprecedented and unwarranted award. While reasonable minds could differ on whether Deputy Theiman's conduct was merely simple negligence or whether it exceeded that standard, simple negligence is all that is

required to support the jury's decision.

The BCSO did not offer any evidence in support of its position that the jury ignored compelling evidence of comparative negligence. While the argument of comparative negligence was made at trial by the BCSO, there was no evidence presented that the jury ignored this argument. As mentioned above, while there was some conflicting expert testimony in the record, I find that the greater weight of the evidence supports the conclusion that Eric Brody was wearing his seatbelt when the accident occurred.

I do not find a comparison to past claim bills legally relevant in determining the outcome of the claim at hand. While members of the Legislature voting on this matter may want to consider such an argument, my role is to look at this claim independently, make findings based on this record, and to attribute liability and damages accordingly.

Finally, it is readily apparent that we are currently in very difficult economic times and that the amount of the award in this claim is substantial. However, I find that while this argument may be relevant to Legislators, it is outside the scope of my review.

DUTY - Deputy Theiman had a duty to exercise reasonable care in operating his vehicle. See s. 316.183(1), F.S. BCSO is responsible for any negligence of Deputy Theiman in operating the BCSO vehicle. The verdict against the BCSO was based upon a stipulation by the parties that the BCSO was legally responsible for any negligence of Deputy Theiman.

BREACH OF DUTY – Deputy Thieman breached his duty to use reasonable care by negligently operating his BCSO issued cruiser.

PROXIMATE CAUSE - The greater weight of the evidence clearly points to the conclusion that the accident was caused by Deputy Theiman and that this was the proximate cause of the injuries to Eric Brody. There is competent and substantial evidence to support a finding of liability on the part of the BCSO. I find Deputy Theiman exceeded the posted speed limit in violation of s. 316.183, F.S., and carelessly operated his vehicle in violation of s. 316.1925, F.S., causing the collision which resulted in the injuries to Eric Brody.

DAMAGES – The jury found BCSO to be 100% at fault for the accident and Eric Brody's injuries. The jury found damage amounts as follows:

Past medical expenses and lost earnings $ 1,439,675

Future medical expenses and lost earnings $ 9,656,541

Past Pain & Suffering	$ 2,703,627
Future Pain & Suffering	$ 16,609,455
Past expenses by his Parents	$ 200,000
TOTAL DAMAGES	$ 30,609,298

The judgment also awarded costs in the amount of $270,372.30. The total award was $30,960,372.30.

After conducting the hearing in this matter, and upon review of the records made available by the parties and their submissions, I find the determination of economic damages and costs in the amount of $11,647,290.30 to be reasonable and supported by competent and substantial evidence.

The determination of damages for pain and suffering is more difficult. The record clearly demonstrates that Eric Brody and his family have had life as they knew it completely changed. No amount of money can quantify what they have lost and the pain they must endure. The record does not reveal how the jury came to its determination. Their award for pain and suffering is almost twice that of the economic damages.

Generally speaking, there is no set rule for measuring damages for past, present, and future pain and suffering. The law declares that there is no standard for measuring pain and suffering damages other than "the enlightened conscience of impartial jurors . . . ."[1]

While the Legislature may determine that the amount awarded for pain and suffering in this matter should be adjusted, I cannot find any legal reason based on the record to depart from the jury's award.

At the time of the accident, the BCSO carried insurance coverage for vehicular negligence in the amount of $3 million that would be available to offset the award. As part of the settlement in this matter, the insurance company will pay the entire award.

ATTORNEY'S/ LOBBYING FEES:

The attorney for the claimant has provided an affidavit to the effect that his fees will be limited to 25 percent of all gross amounts paid to the Claimants as the result of a claim bill. The affidavit does not address the payment of costs. Outstanding costs are $1,115,771.69.

The affidavit states that costs for professional lobbying

[1] *Braddock v. Seaboard A. L. R. Co.*, 80 So.2d 662, 667 (Fla. 1955)(citing *Toll v. Waters*, 138 So. 393 (Fla. 1939)).

services, will be borne by the client in addition to the 25% for attorney's fees. The agreed upon lobbying fees for this claim are eight percent of any claim bill amount.

Regardless of the agreement between the guardianship of Eric Brody and his attorney and the lobbyists, the bill provides that the total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under the bill.

LEGISLATIVE HISTORY:

House Bill 789 by Representative Burgin and Senate Bill 52 by Senator Pruitt were filed during the 2009 Legislative Session. House Bill 789 was discussed in the Civil Justice & Courts Policy Committee but a vote was not taken. Senate Bill 52 passed the Senate and died on the House Calendar.

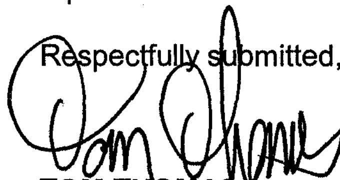
House Bill 1597 by Representative Bogdanoff and Senate Bill 68 by Senator Fasano were filed during the 2010 Legislative Session. Neither of these bills received a hearing in any Committee.

House Bill 1151 by Representative Grant and Senate Bill 42 by Senator Benacquisto were filed during the 2011 Legislative Session. House Bill 1151 was passed by the Civil Justice Subcommittee and died on the House Calendar. Senate Bill 42 passed the Senate and died on the House Calendar.

RECOMMENDATIONS:

Based on the record before me, I find that the Claimants have met their burden to demonstrate by a greater weight of the evidence that the injuries and damages sustained by Eric Brody were caused by the negligent act of the BCSO, through its employee, Deputy Theiman. I further find that the amount requested for this claim, the amount awarded by the jury, is justifiable. However, since the parties have settled at the lower amount of $10,750,000, I find that amount reasonable as a settlement. Therefore, I recommend that this claim bill be reported FAVORABLY.

Respectfully submitted,



TOM THOMAS
Special Master, House of Representatives

cc: Representative Grant, House Sponsor
Senator Benacquisto, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Eric Brody by the Broward
3 County Sheriff's Office; providing for an
4 appropriation to compensate Eric Brody for injuries
5 sustained as a result of the negligence of the Broward
6 County Sheriff's Office; providing a limitation on the
7 payment of fees and costs related to the claim against
8 the Broward County Sheriff's Office; providing
9 legislative intent regarding lien interests held by
10 the state; providing an effective date.
11
12 WHEREAS, on March 3, 1998, Eric Brody was driving home in
13 his 1982 AMC Concord eastbound on Oakland Park Boulevard in
14 Sunrise, Florida, and
15 WHEREAS, that same evening, Broward County Sheriff's Deputy
16 Christopher Thieman was driving his Broward County Sheriff's
17 Office cruiser on his way to work, and
18 WHEREAS, Deputy Thieman struck Eric Brody's car, leaving
19 Eric profoundly injured, and
20 WHEREAS, the case was tried to a jury and the court
21 rendered a final judgment of $30,879,670.30, and
22 WHEREAS, the parties have reached a settlement in the
23 amount of $10,750,000, with other terms of value, and $200,000
24 has been paid pursuant to the limits of liability set forth in
25 s. 768.28, Florida Statutes, NOW, THEREFORE,
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. The facts stated in the preamble to this act
30 are found and declared to be true.
31 Section 2. The insurer of the Sheriff of Broward County
32 has agreed to pay, and is authorized and directed to pay,
33 $10,750,000 on behalf of the Broward County Sheriff's Office to
34 the Guardianship of Eric Brody to be placed in a special needs
35 trust created for the exclusive use and benefit of Eric Brody as
36 compensation by the Broward County Sheriff's Office and its
37 insurer, Fairmont Specialty Insurance Company, f/k/a Ranger
38 Insurance Company, for injuries brought about by the facts set
39 forth in the preamble of this act.
40 Section 3. The amount awarded under this act is intended
41 to provide the sole compensation for all present and future
42 claims, including all attorney fees, lobbying fees, and related
43 costs, arising out of the factual situation described in this
44 act which resulted in the injuries to Eric Brody, and hereby
45 releases the Broward County Sheriff's Office and Fairmont
46 Specialty Insurance Company, f/k/a Ranger Insurance Company, the
47 Broward County Board of County Commissioners, Broward County,
48 and Christopher Thieman from any further liability. The total
49 amount of attorney fees, lobbying fees, and related costs may
50 not exceed 15 percent of the first $1,000,000 awarded under this
51 act, 10 percent of the second $1,000,000 awarded under this act,
52 and 5 percent of the next $3,000,000 awarded under this act, for
53 a total of $400,000.
54 Section 4. It is the intent of the Legislature that the
55 lien interests relating to the claim of the Guardianship of Eric
56 Brody for the treatment and care of Eric Brody, including

57 Medicaid liens in excess of the sovereign immunity cap, are
58 hereby waived or extinguished.
59 Section 5. This act shall take effect upon becoming a law.

CS/HB 451

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 451 Fraudulent Transfers
SPONSOR(S): Civil Justice Subcommittee; Steube and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Cary	Bond
2) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

The Uniform Fraudulent Transfer Act provides a creditor with the means to reach assets a debtor has transferred to another person. One form of fraudulent transfer is a transfer made without receiving a reasonably equivalent value in exchange for the transfer. Most fraudulent transfers may be recovered from the recipient up to 4 years after the transfer. A gift to charity is a transfer made without receiving a reasonably equivalent value in exchange.

The bill reduces the limitations period for recovery from a charity from 4 years to 2 years.

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

The bill provides an effective date of upon becoming a law and applies to any charitable contributions made after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 726, F.S., is Florida's Uniform Fraudulent Transfer Act (hereinafter referred to as the "Act"), It is based on the 1984 model act of the same name.[1] According to the National Conference of Commissioners on Uniform State Laws,

> The Uniform Act was a codification of the "better" decisions applying the Statute of 13 Elizabeth. See Analysis of H.R. 12339, 74th Cong., 2d Sess. 213 (1936). The English statute was enacted in some form in many states, but, whether or not so enacted, the voidability of fraudulent transfer was part of the law of every American jurisdiction. Since the intent to hinder, delay, or defraud creditors is seldom susceptible of direct proof, courts have relied on badges of fraud. The weight given these badges varied greatly from jurisdiction, and the Conference sought to minimize or eliminate the diversity by providing that proof of certain fact combinations would conclusively establish fraud. In the absence of evidence of the existence of such facts, proof of a fraudulent transfer was to depend on evidence of actual intent. An important reform effected by the Uniform Act was the elimination of any requirement that a creditor have obtained a judgment or execution returned unsatisfied before bringing an action to avoid a transfer as fraudulent.[2]

The Act provides a "claw back", whereby a creditor who is a victim of fraud may have some recourse against the recipient of a transfer from the debtor if the transfer was made with actual intent to hinder, delay, or defraud any creditor of the debtor, or if the transfer was made without receiving reasonably equivalent value in exchange for the transfer.[3] If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.[4] The Act provides a four-year statute of limitations on such an action.[5]

There is no exception in the Act for conveyances accepted by charitable organizations in good faith. A federal Circuit Court of Appeal ruled that a similar Illinois law that did not specifically exclude charities would not prevent a creditor from using the claw back to recover from the charity, even though the charity took the donation in good faith.[6] When a charity accepts a donation in good faith, it can create a great hardship to the charity to be forced to relinquish funds if the funds have already been obligated or spent.[7]

Effects of the Bill

The bill amends s. 726.102, F.S., to add a definition of "qualified charity" to mean an entity described as such in the federal Internal Revenue Code.

[1] Chapter 87-79, L.O.F.
[2] National Conference of Commissioners of Uniform State Laws, Uniform Fraudulent Transfer Act Prefatory Note.
[3] Section 726.105, F.S.
[4] Section 726.108, F.S.
[5] Section 726.110, F.S. In limited circumstances, when the transfer was made to an insider for an antecedent debt, with other conditions, there is a one-year statute of limitations.
[6] *Scholes v. Lehmann*, 56 F.3d 750, 761 (7th Cir. 1995).
[7] David Donell and Eric Rieder, *Charities Face Greater Threat From Ponzi Schemes Than Lost Investments*, Huffington Post Business, http://www.huffingtonpost.com/david-donell/charities-face-greater-th_b_223088.html (last visited January 28, 2012).

The bill amends s. 726.110, F.S., to create a two year statute of limitations for a creditor to bring an action against the recipient of a fraudulent transfer where the transfer was accepted by a qualified charity in good faith.

The bill provides an effective date upon becoming a law, and applies to any charitable contribution made on or after the effective date.

B. SECTION DIRECTORY:

Section 1 amends s. 726.102, F.S., relating to definitions.

Section 2 amends s. 726.110, F.S., relating to extinguishment of a cause of action.

Section 3 provides an effective date of upon becoming a law and an application date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Qualified charities will be able to keep charitable donations at the expense of creditors and victims of the person who made the fraudulent transfer if the cause of action is not brought within the shorter statute of limitation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The 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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Civil Justice Subcommittee reported the bill favorably as a committee substitute. The committee substitute differs from the filed bill:

- Changed the definition of "exempt organization" to "qualified charity".
- Removed the provision that considered a contribution for a charitable purpose to be deemed an exchange for reasonably equivalent value.
- Reduced the statute of limitations for the claw back from 4 years to 2 years.

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

1 A bill to be entitled
2 An act relating to fraudulent transfers; amending s.
3 726.102, F.S.; defining the term "qualified charity"
4 for purposes of the Uniform Fraudulent Transfer Act;
5 amending s. 726.110, F.S.; limiting the period during
6 which a cause of action with respect to a fraudulent
7 transfer or obligation may be brought under the
8 Uniform Fraudulent Transfer Act if the transfer was a
9 charitable contribution made to a qualified charity
10 and accepted by that qualified charity in good faith;
11 providing applicability; providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Subsections (11) through (13) of section
16 726.102, Florida Statutes, are renumbered as subsections (12)
17 through (14), respectively, and a new subsection (11) is added
18 to that section to read:
19 726.102 Definitions.—As used in ss. 726.101-726.112:
20 (11) "Qualified charity" means an entity described in 26
21 U.S.C. s. 501(c)(3).
22 Section 2. Section 726.110, Florida Statutes, is amended
23 to read:
24 726.110 Extinguishment of cause of action.—
25 (1) Except as provided in subsection (2), a cause of
26 action with respect to a fraudulent transfer or obligation under
27 ss. 726.101-726.112 is extinguished unless action is brought:
28 (a)~~(1)~~ Under s. 726.105(1)(a), within 4 years after the

29 transfer was made or the obligation was incurred or, if later,
30 within 1 year after the transfer or obligation was or could
31 reasonably have been discovered by the claimant;
32 (b) ~~(2)~~ Under s. 726.105(1)(b) or s. 726.106(1), within 4
33 years after the transfer was made or the obligation was
34 incurred; or
35 (c) ~~(3)~~ Under s. 726.106(2), within 1 year after the
36 transfer was made or the obligation was incurred.
37 (2) Notwithstanding paragraph (1)(b), a cause of action
38 with respect to a fraudulent transfer or obligation under ss.
39 726.101-726.112 is extinguished unless action is brought under
40 s. 726.105(1)(b) within 2 years after the transfer was made or
41 the obligation was incurred if the transfer was a charitable
42 contribution made to a qualified charity and accepted by that
43 qualified charity in good faith.
44 Section 3. This act shall take effect upon becoming a law
45 and shall apply to any charitable contribution made on or after
46 that date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

---

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Steube offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Subsections (3) through (10) and (11) through
7 (13) of section 726.102, Florida Statutes, are renumbered as
8 subsections (4) through (11) and (13) through (15),
9 respectively, and new subsections (3) and (12) are added to that
10 section to read:
11 726.102 Definitions.—As used in ss. 726.101-726.112:
12 (3) "Charitable contribution" means a charitable
13 contribution as that term is defined in s. 170(c) of the
14 Internal Revenue Code of 1986, if that contribution:
15 (a) Is made by a natural person or a qualified religious
16 or charitable entity or organization; and
17 (b) Consists of:
18 1. A financial instrument as that term is defined in s.
19 731(c)(2)(C) of the Internal Revenue Code of 1986; or

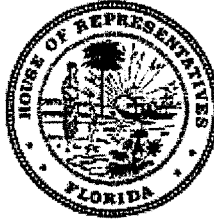
20 2. Cash.
21 (12) "Qualified religious or charitable entity or
22 organization" means:
23 (a) An entity described in s. 170(c)(1) of the Internal
24 Revenue Code of 1986; or
25 (b) An entity or organization described in s. 170(c)(2) of
26 the Internal Revenue Code of 1986.
27 Section 2. Subsection (7) is added to section 726.109,
28 Florida Statutes, to read:
29 726.109 Defenses, liability, and protection of
30 transferee.—
31 (7)(a) Except as provided in paragraph (b), a transfer of
32 a charitable contribution that is received in good faith by a
33 qualified religious or charitable entity or organization is not
34 considered a transfer covered by this chapter.
35 (b) A transfer of a charitable contribution that was
36 received on or within 2 years before the date of commencement of
37 an action under this chapter or the date of commencement of
38 proceedings under the law of any state or federal law, including
39 the appointment of an assignee for the benefit of creditors, the
40 appointment of a trustee or receiver, or the filing of a
41 petition under the federal Bankruptcy Code, is not entitled to
42 the protection under paragraph (a) unless the transfer was
43 received in good faith and:
44 1. The amount of the charitable contribution does not
45 exceed 15 percent of the gross annual income of the transferor
46 for the year in which the transfer of the charitable
47 contribution is made; or

Amendment No. 1

48 2. The charitable contribution made by a transferor
49 exceeded the percentage amount of gross annual income specified
50 in subparagraph 1., if the transfer was consistent with the
51 practices of the transferor in making charitable contributions.
52 Section 3. This act shall take effect July 1, 2012, but
53 shall not apply to transfers avoided by entry of a judgment
54 prior to July 1, 2012.
55
56
57 ---
58 **T I T L E A M E N D M E N T**
59 Remove the entire title and insert:
60 A bill to be entitled
61 An act relating to fraudulent transfers; amending s.
62 726.102, F.S.; defining the terms "charitable
63 contribution" and "qualified religious or charitable
64 entity or organization" for purposes of the Uniform
65 Fraudulent Transfer Act; amending s. 726.109, F.S.;
66 providing that certain transfers of charitable
67 contributions to a qualified religious or charitable
68 entity or organization in good faith are not covered
69 under the act; providing applicability; providing an
70 effective date.
71
72 WHEREAS, Florida's Uniform Fraudulent Transfer Act may
73 potentially be construed to require an exempt organization to
74 return a charitable contribution that was accepted in good
75 faith, and

76 WHEREAS, the application of Florida's Uniform Fraudulent
77 Transfer Act to an exempt organization has the potential to harm
78 an exempt organization that accepts, in good faith, a charitable
79 contribution for charitable purposes, and
80 WHEREAS, the Legislature desires to amend Florida's Uniform
81 Fraudulent Transfer Act to reflect the intent of the
82 Legislature, NOW, THEREFORE,

CS/HB 457



STORAGE NAME: h0457.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 457; Relief/Denise Gordon Brown & David Brown/North Broward Hospital District
Sponsor: Representative Nehr
Companion Bill: SB 6 by Senator Negron
Special Master: Tom Thomas

Basic Information:

Claimants:	Denise Gordon Brown and David Brown, parents of Darian Brown
Respondent:	North Broward Hospital District
Amount Requested:	$2,000,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	North Broward Hospital District agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of the claim bill.
Collateral Sources:	The Browns have received $10,550,000 from the District to date toward the settlement of this matter.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	In 2011, HB 855 by Representative Thurston, passed the Civil Justice Subcommittee, but died on the Calendar. SB 306 by Senator Rich passed the Rules Committee, but died on the Calendar.

Procedural Summary: The Browns filed a lawsuit against the Hospital District for negligence in the 17th Judicial Circuit Court, in and for Broward County. After trial, the jury returned a verdict in favor of the Browns, in the amount of $34,418,577. The jury's verdict was affirmed on appeal.

The District sued its insurers seeking a declaration of coverage for the damages awarded to the Browns. The coverage lawsuit led to a global settlement under which the District's insurers paid the

Browns $10.35 million, the district paid its sovereign immunity limit of $200,000, and the parties agreed that the plaintiffs could seek an additional $2 million through an uncontested claim bill. Under the settlement agreements, the plaintiffs' net recovery to date (after satisfying medical and legal expenses and attorneys' fees) is approximately $8.5 million. They have paid roughly $3.3 million to their attorneys.

Facts of Case: On January 10, 2000, Denise Gordon Brown, at 33 weeks gestation, was admitted as a high-risk obstetrical patient at Broward General Medical Center in Fort Lauderdale, Florida. Because the fetal heart rate of the baby she was carrying was elevated, her physician ordered continuous fetal monitoring. Mrs. Brown had delivered prematurely in the past.

On the evening of January 14, 2000, the fetal monitoring showed significant risk to the fetus. Denise Brown's obstetrician, Dr. Danoff, had given standing orders that the nurse on duty was to notify the obstetrician if the baby's heart rate ever exceeded 160 beats per minute.

On January 15, 2000, the monitoring indicated an accelerated heart rate (a condition known as tachycardia). The nursing staff did not notify the obstetrician of this development, despite the standing order to do so. Over the next few hours, the fetal monitoring strips showed increasingly worrisome signs, namely consistent fetal tachycardia and loss of fetal heart rate variability. Variability indicates fetal wellbeing.

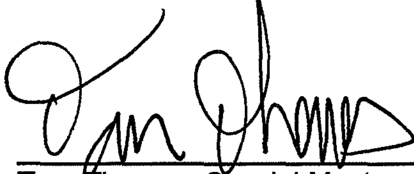
At 11:00 p.m., the baby's heart rate started to slow periodically after uterine contractions. When this occurs, it is called a "late deceleration." Late decelerations are an ominous sign, especially in conjunction with tachycardia and loss of variability. The nursing staff, however, did not notify the obstetrician, or any other physician, that Mrs. Brown's baby might be in trouble.

The continued fetal tachycardia and loss of reactivity, necessitated immediate delivery. Ms. Brown's child, Darian Brown, was not delivered immediately and sustained a hypoxic brain injury as a result of the delay. Darian had been oxygen-deprived in his mother's womb for hours before his birth. As a result, he was born with numerous complications, including respiratory distress syndrome, cystic kidney disease, neonatal jaundice, neonatal hypoglycemia, and newborn intraventricular hemorrhage. He required aggressive resuscitation. Eventually, Mrs. Brown and Darian were discharged from the hospital. The Browns were not told, however, that Darian might have suffered a serious brain injury.

In October 2000, Mrs. Brown became concerned that her son was not meeting developmental milestones. Her inquiries to the pediatrician resulted in a computed tomography (CT) scan of Darian's brain being ordered. The CT scan showed that Darian's brain had been seriously and irreversibly damaged by partial prolonged hypoxia (oxygen deprivation) in the hours before his birth. The damage to Darian's brain has left him suffering from cerebral palsy, spastic quadriplegia, and developmental delay.

Darian is unable to talk but smiles at family members and communicates basic needs by gesturing. Darian has no bladder or bowel control, cannot feed himself, and is unable to perform any activities of daily living. He will be totally dependent on others for care and treatment for the rest of his life. The economic report prepared by Raffa Consulting Economists, Inc., concludes that the present value of Daran's future medical needs is between $11.5 and $13.6 million, and that his estimated lost earning capacity, reduced to present value, is approximately $0.68 million.

Recommendation: I respectfully recommend that House Bill 457 be reported **FAVORABLY**.



Tom Thomas, Special Master   Date: February 15, 2012

cc: Representative Nehr, House Sponsor
Senator Negron, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Denise Gordon Brown and David
3 Brown by the North Broward Hospital District;
4 providing for an appropriation to compensate Denise
5 Gordon Brown and David Brown, parents of Darian Brown,
6 for injuries and damages sustained by Darian Brown as
7 result of the negligence of Broward General Medical
8 Center; providing a limitation on the payment of fees
9 and costs; providing an effective date.
10
11 WHEREAS, on January 10, 2000, Denise Gordon Brown was
12 admitted as a high-risk obstetrical patient at Broward General
13 Medical Center in Fort Lauderdale, Florida, and
14 WHEREAS, Denise Gordon Brown's physicians at Broward
15 General Medical Center ordered continuous fetal monitoring, and
16 WHEREAS, on the evening of January 14, 2000, the fetal
17 monitoring showed significant risk to the fetus, and
18 WHEREAS, on January 15, 2000, the monitoring indicated
19 continued fetal tachycardia and loss of reactivity,
20 necessitating immediate delivery, and
21 WHEREAS, Denise Gordon Brown's unborn child, Darian Brown,
22 was not delivered immediately and sustained a hypoxic brain
23 injury as a result of the delay, and
24 WHEREAS, Denise Gordon Brown and David Brown, the parents
25 of Darian Brown, sought medical care and treatment that
26 determined that Darian Brown's condition is permanent, has
27 resulted in severe neurological damage, and requires a lifetime
28 of round-the-clock care and treatment, and

29 WHEREAS, after a trial, a jury returned a verdict in favor
30 of Denise Gordon Brown and David Brown, as parents and guardians
31 of Darian Brown, in the amount of $35,236,000, for the cost of
32 care for Darian Brown, resulting in a final judgment, less
33 setoffs and costs, in the amount of $34,418,577, and
34 WHEREAS, the jury's verdict was affirmed on appeal, and
35 WHEREAS, pursuant to an agreement between the parties to
36 the lawsuit, the judgment has been partially satisfied in the
37 amount of $10,550,000, and
38 WHEREAS, pursuant to the agreement, the claim shall be
39 considered fully satisfied by the stipulation that the North
40 Broward Hospital District will seek its self-insured retention
41 in the amount of $2 million as authorized by the Florida
42 Legislature through a claim bill, NOW, THEREFORE,
43
44 Be It Enacted by the Legislature of the State of Florida:
45
46 Section 1. The facts stated in the preamble to this act
47 are found and declared to be true.
48 Section 2. The sum of $2 million is appropriated out of
49 funds not otherwise encumbered for payment by the North Broward
50 Hospital District for the relief of Denise Gordon Brown and
51 David Brown, as guardians of Darian Brown, for injuries and
52 damages sustained by Darian Brown due to the negligence of
53 Broward General Medical Center.
54 Section 3. A warrant shall be drawn in favor of Denise
55 Gordon Brown and David Brown, as guardians of Darian Brown, in
56 the amount of $2 million, to be placed in a special needs trust

57 created for the exclusive use and benefit of Darian Brown, a
58 minor, to compensate Darian Brown for injuries and damages
59 sustained.
60 Section 4. The amount paid pursuant to s. 768.28, Florida
61 Statutes, and the amount awarded under this act are intended to
62 provide the sole compensation for all present and future claims
63 arising out of the factual situation described in this act which
64 resulted in injuries sustained by Darian Brown. The total amount
65 of attorney fees, lobbying fees, and related costs may not
66 exceed 15 percent of the first $1,000,000 awarded under this act
67 and 10 percent of the second $1,000,000 awarded under this act,
68 for a total of $250,000.
69 Section 5. This act shall take effect upon becoming a law.

CS/CS/HB 497

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 497 Juvenile Expunction
SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Porth and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee	13 Y, 2 N, As CS	Toms	Jones Darity
3) Judiciary Committee		Krol TK	Havlicak RH

SUMMARY ANALYSIS

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days.

Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as defined in s. 741.28, F.S.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.
- Submits a $75 processing fee and necessary paperwork to FDLE within 6 months after completing the program.

Currently a juvenile with a felony arrest is not eligible for a juvenile diversion expunction under s. 943.0582, F.S.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies specified by the bill. The bill provides a list of felony offenses that are ineligible for a juvenile diversion expunction.

The bill also allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

No additional resources are needed to implement the provisions of the bill. See "FISCAL COMMENTS".

The bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Juvenile Prearrest or Postarrest Diversion Programs
Juvenile diversion programs are nonjudicial alternatives used to keep less serious juvenile offenders from being handled through the traditional juvenile justice system.[1] These programs are intended to intervene at an early stage of delinquency, decrease subsequent offenses during and after participation in the programs, and provide an array of services to juvenile offenders.[2]

Section 985.125, F.S., authorizes a law enforcement agency or school district, in cooperation with the state attorney, to establish a prearrest or postarrest diversion program. The statute is silent as to any program requirements, except that any program participant who is alleged to have committed a delinquent act may be required to surrender his or her driver's license, or refrain from applying for a driver's license, for no more than 90 days. If the juvenile fails to comply with the requirements of the program, the state attorney may notify the Department of Highway Safety and Motor Vehicles in writing to suspend the child's driver's license for a period that may not exceed 90 days.[3]

The diversion program may, upon agreement of the establishing agencies, provide for the expunction of the nonjudicial arrest record of a juvenile who successfully completes such a program pursuant to s. 943.0582, F.S.[4]

Juvenile Diversion Expunction
Section 943.0582(3), F.S., requires the Florida Department of Law Enforcement (FDLE) to expunge[5] a nonjudicial arrest record of a juvenile who has successfully completed a prearrest or postarrest diversion program if the juvenile:

- Submits an application for a juvenile diversion expunction, on a form prescribed by FDLE, signed by the juvenile's parent or legal guardian, or by the juvenile if he or she has reached the age of majority at the time of applying.
- Submits the application for a juvenile diversion expunction no later than 6 months after completion of the diversion program.
- Submits to FDLE, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that he or she has successfully completed that county's prearrest or postarrest diversion program, and that participation in the program is strictly limited to juveniles arrested for a nonviolent misdemeanor who have not otherwise been charged with or found to have committed any criminal offense or comparable ordinance violation.
- Participated in a prearrest or postarrest diversion program that expressly authorizes or permits such expunction to occur.
- Participated in a prearrest or postarrest diversion program based on an arrest for a nonviolent misdemeanor that would not qualify as an act of domestic violence as that term is defined in s. 741.28, F.S.[6]

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[1] "Probation 2010 Florida Comprehensive Accountability Report. Department of Juvenile Justice.
[2] *Id.*
[3] Section 985.125(2), F.S.
[4] Section 985.125(3), F.S.
[5] Section 943.0582(2), F.S., defines "Expunction" as the same meaning and effect as s. 943.0585, F.S., except that:
The provisions of s. 943.0585(4)(a), F.S., do not apply, except that the criminal history record of a juvenile whose record is expunged pursuant to this section is made available only to criminal justice agencies: for the purpose of determining eligibility for prearrest, postarrest, or teen court diversion programs; when the record is sought as part of a criminal investigation; or when the subject of the record is a candidate for employment with a criminal justice agency. Records maintained by local criminal justice agencies in the county in which the arrest occurred that are eligible for expunction pursuant to this section are sealed as the term is used in s. 943.059, F.S.

- Has never, prior to filing the application for expunction, been charged with or been found to have committed any criminal offense or comparable ordinance violation.

Section 943.0582(2), F.S., defines "nonviolent misdemeanor" as simple assault or battery when a juvenile diversion expunction is approved in writing by the state attorney for the county in which the arrest occurred.

Expunction or sealing granted under this section does not prevent the juvenile who receives such relief from petitioning for the expunction or sealing of a later criminal history record as an adult as provided in ss. 943.0585 and 943.059, F.S., if the juvenile is otherwise eligible under those sections.[7]

Effect of the Bill
As noted above, juveniles with felony arrests are not currently eligible for a juvenile diversion expunction.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program if the minor submits the application for prearrest or postarrest diversion expunction no later than 12 months after completion of the diversion program.

The bill amends s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile who successfully completes a prearrest or postarrest diversion program for any felony offense except for felonies directly related to a violation of:

- Section 393.135, F.S., relating to sexual misconduct with an individual with a developmental disability who is in the Department of Children and Families (DCF) custody, who resides in a residential facility, or who is eligible to receive services from a family care program;
- Section 394.4593, F.S., relating to sexual misconduct with a mental health patient who is in DCF custody or who resides in a receiving or treatment facility;
- Section 787.025, F.S., relating to luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Section 810.14, F.S., relating to voyeurism;
- Section 817.034, F.S., relating to the Florida Communications Fraud Act;
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person;
- Section 827.071, F.S., relating to sexual performance by a child;
- Chapter 839, F.S., relating to offenses by pubic officers and employees;
- Section 847.0133, F.S., relating to prohibition of certain acts in connection with obscenity;
- Section 847.0135, F.S., relating to computer pornography, traveling to meet minor;
- Section 847.0145, F.S., relating to selling or buying of minors;
- Section 893.135, F.S., relating to drug trafficking, conspiracy to engage in drug trafficking;
- Section 916.1075, F.S., relating to sexual misconduct with a client who resides in a civil or forensic facility;
- A violation enumerated in s. 907.041, F.S.;[8] or

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[6] Section 741.28(2), F.S., defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member."

[7] Section 943.0582(6), F.S.

[8] Section 907.041(4)(a), F.S., provides the following list of offenses: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse of an elderly person or disabled adult, or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and

- Any violation specified as a predicate offense for registration as a sexual predator pursuant to s. 775.21, F.S.,[9] without regard to whether that offense alone is sufficient to require such registration, or for registration as a sexual offender pursuant to s. 943.0435, F.S.[10]

The bill allows a juvenile with a nonviolent misdemeanor arrest for domestic violence to be eligible for a juvenile diversion expunction.

The bill removes the link between the expunction criteria and the diversion programs to ensure that diversion programs are not limited to only excepting minors who have committed specific offenses.

The bill provides a July 1, 2013, deadline for a minor to submit an application for expunction if the minor completes a diversion program before July 1, 2012.

B. SECTION DIRECTORY:

Section 1. Amends s. 943.0582, F.S., relating to prearrest, postarrest, or teen court diversion program expunction.

Section 2. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "fiscal comments."

2. Expenditures:

   See "fiscal comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; manufacturing any substances in violation of ch. 893, F.S.; and attempting or conspiring to commit any such crime.

[9] Section 775.21, F.S., specifies the following offenses: (1) A capital, life, or first-degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction: ss. 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 847.0145, F.S. (selling or buying of minors). (2) Any felony violation, or attempt thereof, of: ss. 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian; s. 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.; s. 794.05, F.S. (unlawful activity with certain minors); s. 796.03, F.S. (procuring a person under the age of 18 for prostitution); s.796.035, F.S. (selling or buying of minors into sex trafficking or prostitution); s. 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age); s. 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person; s. 827.071, F.S. (sexual performance by a child);s. 847.0135(5), F.S. (computer pornography); s. 847.0145, F.S. (selling or buying of minors); s. 985.701(1), F.S. (sexual misconduct with a juvenile offender); and s. 847.0133, F.S. (protection of minors / obscenity).

[10] Section 943.0435, F.S., provides many of the same offenses listed in s. 775.21, F.S., and specifies these additional offenses: s. 847.0137, F.S. (transmission of pornography by electronic device or equipment), and s. 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A juvenile applying for an expunction under s. 943.0582, F.S., will be required to pay a $75 processing fee to FDLE.[11]

D. FISCAL COMMENTS:

FDLE is authorized to charge a $75 processing fee for each request received for a juvenile diversion expunction.[12] FDLE reports there may be a slight increase in the number of juveniles who will become eligible for the juvenile diversion expunction, which could result in a minimal increase in revenue.[13] This could also create an insignificant workload increase. However, no additional resources are needed to implement this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Section 943.0582, F.S., provides FDLE rulemaking authority pursuant to ch. 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Clarification may be needed on whether expunction eligibility is limited to a juvenile arrested for a single qualifying misdemeanor or a single qualifying felony, or whether multiple charges could be expunged if none "relate to a violation of" the specified offenses. As worded, it appears that eligibility would be limited to an arrest for a single charge.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Criminal Justice Subcommittee adopted a strike all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes link between the expunction criteria and the diversion programs to ensure that diversion programs are not limited to only excepting minors who have committed specific offenses.
- Provides a July 1, 2013 deadline for a minor to submit an application for expunction if the minor completes a diversion program before July 1, 2012.
- Corrects the title to refer to FDLE as the agency with expunction power.

On February 14, 2012, the Justice Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changed s. 943.0582, F.S., to require FDLE to expunge the nonjudicial arrest record of a juvenile if the minor submits the application for expunction no later than 12 months after completion of the diversion program.

The analysis is drafted to the committee substitute as passed by the Justice Appropriations Subcommittee.

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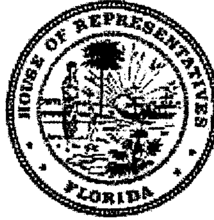
[11] *Supra* note 11.
[12] Section 943.0585(4), F.S. This fee may be waived by the executive director.
[13] Florida Department of Law Enforcement. 2012 Analysis of HB 497.

1 A bill to be entitled
2 An act relating to juvenile expunction; amending s.
3 943.0582, F.S.; allowing minors who have certain
4 felony arrests to have the Department of Law
5 Enforcement expunge their nonjudicial arrest record
6 upon successful completion of a prearrest or
7 postarrest diversion program; extending the
8 application submission period for minors who have
9 successfully completed a prearrest or postarrest
10 diversion program; extending the application
11 submission date for minors who completed the program
12 before a certain date; providing an effective date.
13
14 Be It Enacted by the Legislature of the State of Florida:
15
16 Section 1. Paragraphs (b), (c), (e), and (f) of subsection
17 (3) and subsection (5) of section 943.0582, Florida Statutes,
18 are amended to read:
19 943.0582 Prearrest, postarrest, or teen court diversion
20 program expunction.—
21 (3) The department shall expunge the nonjudicial arrest
22 record of a minor who has successfully completed a prearrest or
23 postarrest diversion program if that minor:
24 (b) Submits the application for prearrest or postarrest
25 diversion expunction no later than 12 ~~6~~ months after completion
26 of the diversion program.
27 (c) Submits to the department, with the application, an
28 official written statement from the state attorney for the

29 county in which the arrest occurred certifying that he or she
30 has successfully completed that county's prearrest or postarrest
31 diversion program, ~~and~~ that he or she participated ~~participation~~
32 in the program based on an arrest ~~is strictly limited to minors~~
33 ~~arrested~~ for a nonviolent misdemeanor, or for a felony that does
34 not relate to a violation of s. 393.135, s. 394.4593, s.
35 787.025, chapter 794, s. 796.03, s. 800.04, s. 810.14, s.
36 817.034, s. 825.1025, s. 827.071, chapter 839, s. 847.0133, s.
37 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a violation
38 enumerated in s. 907.041, or any violation specified as a
39 predicate offense for registration as a sexual predator pursuant
40 to s. 775.21, without regard to whether that offense alone is
41 sufficient to require such registration, or for registration as
42 a sexual offender pursuant to s. 943.0435, and that he or she
43 has ~~who have~~ not otherwise been charged with or found to have
44 committed any criminal offense or comparable ordinance
45 violation.
46 ~~(e) Participated in a prearrest or postarrest diversion~~
47 ~~program based on an arrest for a nonviolent misdemeanor that~~
48 ~~would not qualify as an act of domestic violence as that term is~~
49 ~~defined in s. 741.28.~~
50 (e)~~(f)~~ Has never, prior to filing the application for
51 expunction, been charged with or been found to have committed
52 any criminal offense or comparable ordinance violation.
53 (5) This section operates retroactively to permit the
54 expunction of any nonjudicial record of the arrest of a minor
55 who has successfully completed a prearrest or postarrest
56 diversion program on or after July 1, 2000; however, in the case

57 of a minor whose completion of the program occurred before July
58 1, 2012 ~~the effective date of this section~~, the application for
59 prearrest or postarrest diversion expunction must be submitted
60 within 12 ~~6~~ months after July 1, 2012 ~~the effective date of this~~
61 ~~section~~.
62 Section 2. This act shall take effect July 1, 2012.

CS/HB 579



STORAGE NAME: h0579.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 579; Relief/Lopez, Guzman, Lopez, Jr., Lopez-Velasquez, and Guzman/Miami-Dade County
Sponsor: Representative Nuñez
Companion Bill: SB 16 by Senator Braynon
Special Master: Tom Thomas

Basic Information:

Claimants:	Ronnie Lopez and Robert Guzman, as co-personal representatives of the Estate of Ana Yency Velasquez, deceased, for the benefit of Ronnie Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven Robert Guzman, minor children of Ana Yency Velasquez.
Respondent:	Miami-Dade County
Amount Requested:	$1,010,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County supports the passage of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1251 by Representative Pafford and Senate Bill 2222 by Senator Braynon were filed during the 2011 Legislative Session. Neither bill was ever heard in any committee

Procedural Summary: This case was successfully mediated prior to any litigation being filed. Mediation was held on November 17, 2010, whereupon the parties entered into a Mediation Settlement Agreement. The settlement called for the County to pay the Claimants $150,000 immediately and to support the passage of a claim bill for $1,010,000.

Facts of Case: On February 23, 2009, a Miami-Dade County police officer, when driving his marked police unit through an intersection, failed to obey a posted stop sign. The vehicle driven by the officer was reported to be in pursuit of a speeding vehicle but did not have his lights or siren engaged. Protocol for the Miami-Dade County Police Department requires that lights and sirens be engaged whenever any police vehicle is in pursuit of another vehicle. Section 316.271, F.S., requires that sirens be engaged whenever an authorized emergency vehicle is responding to an emergency or in immediate pursuit of an actual or suspected violator of the law.

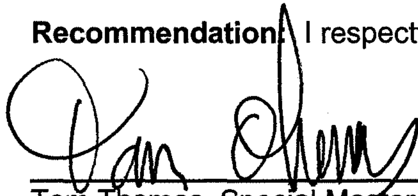
The Miami-Dade County police cruiser crashed into the vehicle operated by Ana Yency Velasquez at the intersection of N.W. 112th St. and N.W. 12th Ave. The impact caused Ms. Velasquez's automobile to crash into the bedroom of a nearby residence. Ms. Velasquez was killed as a result of the accident. At the time of the accident, Ms. Velasquez was 23 years old and the mother of three minor children.

Ronnie Lopez, a co-personal representative of the Estate of Ana Yency Velasquez, is the father of Ronnie Lopez, Jr., age 5 and Ashley Lorena Lopez-Velasquez, age 4. Ana Yency Velasquez was the mother of Ronnie Lopez, Jr., and Ashley Lorena Lopez-Velasquez.

Robert Guzman, a co-personal representative of the Estate of Ana Yency Velasquez, is the father of Steven Robert Guzman, age 9. Ana Yency Velasquez, was the mother of Steven Robert Guzman.

Any funds awarded by the claim bill will go into a depository for equal distribution on behalf of the three children.

Recommendation: I respectfully recommend House Bill 579 be reported **FAVORABLY**.



Tom Thomas, Special Master   Date: February 15, 2012

cc: Representative Nunez, House Sponsor
Senator Braynon, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Ronnie Lopez and Robert
3 Guzman, as co-personal representatives of the Estate
4 of Ana-Yency Velasquez, deceased, and for Ronnie
5 Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven
6 Robert Guzman, minor children of Ana-Yency Velasquez,
7 by Miami-Dade County; providing for an appropriation
8 to compensate the estate and the minor children for
9 the death of Ana-Yency Velasquez as a result of the
10 negligence of an employee of Miami-Dade County;
11 providing a limitation on the payment of fees and
12 costs; providing an effective date.
13
14 WHEREAS, Ronnie Lopez, co-personal representative of the
15 Estate of Ana-Yency Velasquez, deceased, is the father of Ronnie
16 Lopez, Jr., age 5, and Ashley Lorena Lopez-Velasquez, age 4, and
17 Ana-Yency Velasquez, deceased, was the mother of Ronnie Lopez,
18 Jr., and Ashley Lorena Lopez-Velasquez, and
19 WHEREAS, Robert Guzman, co-personal representative of the
20 Estate of Ana-Yency Velasquez, deceased, is the father of minor
21 child, Steven Robert Guzman, age 9, and Ana-Yency Velasquez,
22 deceased, was the mother of Steven Robert Guzman, and
23 WHEREAS, on February 23, 2009, a Miami-Dade County Police
24 Officer, when driving his marked police unit through an
25 intersection, failed to obey a posted stop sign and also did not
26 engage his lights or sirens, and
27 WHEREAS, protocol for the Miami-Dade County Police
28 Department requires that lights and sirens be engaged whenever

29 any police vehicle is in pursuit of another vehicle, and
30 WHEREAS, s. 316.271, Florida Statutes, requires that sirens
31 be engaged whenever an authorized emergency vehicle is
32 responding to an emergency or in immediate pursuit of an actual
33 or suspected violator of the law, and
34 WHEREAS, the vehicle driven by the Miami-Dade County police
35 unit was in pursuit of a phantom speeding vehicle at the time of
36 the collision, and
37 WHEREAS, the Miami-Dade County police cruiser crashed into
38 and broadsided the vehicle operated by Ana-Yency Velasquez, then
39 23 years of age and the mother of three minor children, at the
40 intersection of N.W. 112th St. and N.W. 12th Ave., and
41 WHEREAS, the Miami-Dade County police cruiser operated by
42 the officer struck the vehicle driven by Ana-Yency Velasquez
43 with such force that her automobile crashed into the bedroom of
44 a nearby residence, throwing debris from the automobile onto the
45 roof of the residence, and
46 WHEREAS, Ana-Yency Velasquez was killed as a result of the
47 negligence of an employee of Miami-Dade County, Florida, and
48 WHEREAS, mediation of the claims of this matter was held on
49 November 17, 2010, and
50 WHEREAS, at mediation, Miami-Dade County acknowledged that
51 the damages far exceeded the statutory limit of $200,000
52 established under s. 768.28, Florida Statutes, and the
53 representatives of Miami-Dade County agreed and entered into a
54 Mediation Settlement Agreement, and
55 WHEREAS, Miami-Dade County has paid $150,000 to the co-
56 personal representatives of the Estate of Ana-Yency Velasquez

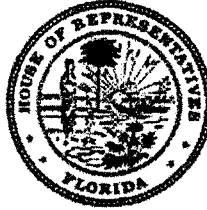
57 under the statutory limits of liability set forth in s. 768.28,
58 Florida Statutes, and
59 WHEREAS, Miami-Dade County has agreed in the Mediation
60 Settlement Agreement to actively support the passage of a claim
61 bill in the amount of $1,010,000, NOW, THEREFORE,
62
63 Be It Enacted by the Legislature of the State of Florida:
64
65 Section 1. The facts stated in the preamble to this act
66 are found and declared to be true.
67 Section 2. Miami-Dade County is authorized and directed to
68 appropriate from funds of the county not otherwise appropriated
69 and to draw a warrant in the sum of $1,010,000, payable to
70 Ronnie Lopez and Robert Guzman, as co-personal representatives
71 of the Estate of Ana-Yency Velasquez, deceased, for the benefit
72 of Ronnie Lopez, Jr., Ashley Lorena Lopez-Velasquez, and Steven
73 Robert Guzman, minor children of Ana-Yency Velasquez, as
74 compensation for the death of Ana-Yency Velasquez as a result of
75 the negligence of an employee of Miami-Dade County.
76 Section 3. The amount paid by Miami-Dade County pursuant
77 to s. 768.28, Florida Statutes, and the amount awarded under
78 this act are intended to provide the sole compensation for all
79 present and future claims arising out of the factual situation
80 described in the preamble to this act which resulted in the
81 death of Ana-Yency Velasquez. The total amount paid for
82 attorney's fees, lobbying fees, costs, and similar expenses
83 relating to this claim may not exceed 15 percent of the first
84 $1,000,000 awarded under this act and 10 percent of the

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

85 remainder awarded under this act, for a total of $151,000.

86 Section 4. This act shall take effect upon becoming a law.

CS/HB 697



STORAGE NAME: h0697a.CVJS
DATE: 2/17/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 697 – Representative McBurney
Relief/Don Brown/District School Board of Sumter County

THIS IS A CONTESTED CLAIM FOR $2,583,049.95 BASED ON A JURY VERDICT AGAINST THE DISTRICT SCHOOL BOARD OF SUMTER COUNTY, IN WHICH THE JURY DETERMINED THAT THE SCHOOL BOARD WAS 100 PERCENT RESPONSIBLE FOR INJURIES SUSTAINED BY DON BROWN DUE TO THE NEGLIGENT OPERATION OF A SCHOOL BUS BY ONE OF ITS EMPLOYEES.

FINDING OF FACT:

On October 18, 2004, at approximately 6:45 a.m., Donald Brown was driving his Harley-Davidson motorcycle heading to work at the Federal Bureau of Prisons in Coleman, Florida. Mr. Brown was driving eastbound on County Road 470 and was approaching the intersection with County Road 475 in Bushnell, Florida. Patsy C. Foxworth was operating a school bus, owned by the District School Board of Sumter County (School Board), heading north on County Road 475 in Bushnell, Florida. The school bus came to a stop at the meeting point of County Road 475 (its terminus) with County Road 470. After stopping at the stop sign, in an attempt to make a left turn and head west on County Road 470, Ms. Foxworth pulled in front of Mr. Brown causing a collision with his motorcycle.

Upon the impact with the bus, Mr. Brown sustained serious

injuries and his leg was severed below the knee. Mr. Brown was airlifted to Orlando Regional Medical Center where he was taken to surgery to complete a below-the-knee amputation of his right leg. Mr. Brown was hospitalized from October 18, 2004, to October 27, 2004, and underwent additional surgeries on October 25, 2004, and October 28, 2004, to care for the wound and to do skin grafts from his left thigh.

Mr. Brown was transferred to Shands Hospital in Gainesville, Florida, for rehabilitation from November 2, 2004, to November 12, 2004. As a result of the injuries, Mr. Brown required the use of a prosthetic leg, which resulted in ulcers requiring additional surgery on January 17, 2006.

Mr. Brown incurred medical expenses in the amount of $421,693.60 and medically retired from his federal employment at the Federal Bureau of Prisons where his salary was $42,000 a year. Prior to the accident, Mr. Brown lived a full life and was very active in recreational, social, and sporting activities.

Mr. Brown is receiving continuous medical care for his injuries, including two surgeries after the trial, the first surgery occurring on September 16 and 17, 2009, at Orlando Regional Medical Center due to a bone infection on his right leg, and the second surgery occurring on August 27, 2010, at the Jewish Hospital in Louisville, Kentucky, due to complications with his right leg resulting in an above-the-knee amputation.

The School Board argued that Mr. Brown was at fault for the accident – that he was tailgating the car in front of him and swerved around that car. However, the greater weight of the evidence supports the jury's finding that Ms. Foxworth was 100 percent at fault for the accident. Ms. Foxworth was cited for running the stop sign and pled guilty to the charge.

Litigation History: A lawsuit was brought against the School Board by Mr. Brown. After a jury trial, the jury found the School Board liable for Mr. Brown's injuries and awarded him damages in the amount of $2,941,383:

$421,963 for past medical bills;
$92,690 for past lost wages;
$972,730 for future medical bills;
$554,000 for future loss of earning capacity;
$630,000 for past pain and suffering; and
$270,000 for future pain and suffering.

A final judgment on March 2, 2009, reduced the final verdict to $2,651,375.83 (reductions were made for set-offs related to actual medical bills and disability payments), plus taxable costs in the amount of $31,674.12. The School Board appealed the judgment on March 30, 2009, which was affirmed by the Fifth District Court of Appeal on February 18, 2011. The School

Board has paid $100,000 in accordance with the statutory limits of liability in s. 768.28, Florida Statutes.

CONCLUSION OF LAW:

Like any motorist, Ms. Foxworth had a duty to operate her vehicle with consideration for the safety of other drivers.[1] By pulling in front of Mr. Brown, Ms. Foxworth breached her duty of care, which was a direct and proximate cause of Mr. Brown's injuries. The School Board, as Ms. Foxworth's employer, is liable for her negligent act.[2]

As discussed above, the jury determined that Ms. Foxworth, based upon the negligent operation of her vehicle, was 100 percent at fault in this accident. This conclusion is supported by the greater weight of the evidence and is affirmed by the undersigned.

The School Board argued that the damages awarded were too high. While, in hindsight, the jury's award may be questioned as being too high on lost future wages, it can also be said that the jury underestimated future medical expenses and pain and suffering. The jury did not foresee the additional surgeries Mr. Brown would undergo and the increased related suffering. It also appears the jury underestimated the amount of pain and suffering resulting from the loss of his leg – only awarding $270,000 for related pain and suffering going forward for a lifetime of the loss of his leg and the related pain and medical treatment resulting from that loss. The undersigned concludes that the damages awarded by the jury are appropriate and are affirmed.

The School Board argued that the injuries in this case do not rise to the level of passing a claim bill. It argued that while death, paralysis, or brain injury could justify a passage of a claim bill, that the injuries suffered by Mr. Brown, including the loss of his leg, do not rise to that level. I can find no support for this argument and find that his injuries are significant and consistent with those of prior claim bills passed by the Legislature.

Finally, the School Board argued that the underlying negligence in this matter does not rise to the level to support passage of a claim bill. It argued that the negligence in this case is only simple negligence and that something greater should be

---

[1] *Pedigo v. Smith*, 395 So.2d 615, 616 (Fla. 5th DCA 1981).

[2] *Mercury Motors Express v. Smith*, 393 So.2d 545, 549 (Fla. 1981)(holding that an employer is vicariously liable for compensatory damages resulting from the negligent acts of employees committed within the scope of their employment); *see also Aurbach v. Gallina*, 753 So.2d 60, 62 (Fla. 2000)(holding that the dangerous instrumentality doctrine "imposes strict vicarious liability upon the owner of a motor vehicle who voluntarily entrusts that motor vehicle to an individual whose negligent operation causes damage to another"). Also, *see* s. 768.28(9)(a), F.S., which provides that "[t]he exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity… of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property."

required to justify the passage of a claim bill. I can find no support for this argument and find that the negligence in this matter is consistent with that of prior claim bills passed by the Legislature.

Prior Legislative History: This is the first year this claim has been filed.

Source of funds: The School Board has liability insurance with Preferred Governmental Insurance Trust that will pay $900,000 of the award under this claim should it be passed.

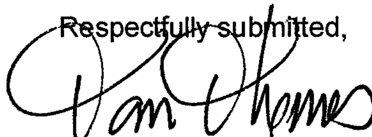
ATTORNEY'S/ LOBBYING FEES:

The Claimant's attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that House Bill 697 be reported FAVORABLY.

Respectfully submitted,



TOM THOMAS
Special Master

cc: Representative McBurney, House Sponsor
Senator Garcia, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Donald Brown by the District
3 School Board of Sumter County; providing for an
4 appropriation to compensate Donald Brown for injuries
5 sustained as a result of the negligence of an employee
6 of the District School Board of Sumter County;
7 providing a limitation on the payment of fees and
8 costs; providing an effective date.
9
10 WHEREAS, on October 18, 2004, at approximately 6:45 a.m.,
11 Donald Brown was driving his Harley-Davidson motorcycle
12 eastbound on County Road 470 and was approaching the
13 intersection with County Road 475 in Bushnell, Florida, and
14 WHEREAS, Patsy C. Foxworth was operating a school bus,
15 owned by the District School Board of Sumter County, on County
16 Road 475 in Bushnell, Florida, and
17 WHEREAS, Patsy C. Foxworth was operating and driving the
18 motor vehicle with the permission and consent of its owner, the
19 District School Board of Sumter County, and
20 WHEREAS, at that time and place, Patsy C. Foxworth
21 negligently operated the Sumter County school bus by pulling in
22 front of Donald Brown in an attempt to make a left turn, which
23 caused a collision with his motorcycle, and
24 WHEREAS, the District School Board of Sumter County is
25 vicariously liable for the negligence of Patsy C. Foxworth under
26 the doctrine of respondeat superior, s. 768.28(9)(a), Florida
27 Statutes, and
28 WHEREAS, upon the impact with the Sumter County school bus,

29 Donald Brown sustained a life-changing injury, and his right
30 lower leg was amputated instantly below the knee as his leg and
31 foot were pinned between the bumper of the bus and motorcycle,
32 and
33 WHEREAS, Donald Brown seeks to recover damages for his
34 bodily injury, including a permanent injury to the body as a
35 whole, past and future pain and suffering of both a physical and
36 mental nature, disability, physical impairment, disfigurement,
37 mental anguish, inconvenience, loss of capacity for the
38 enjoyment of life, expense of hospitalization, medical and
39 nursing care and treatment, loss of earnings, loss of ability to
40 earn money, and loss of ability to lead and enjoy a normal life,
41 and
42 WHEREAS, Donald Brown was airlifted to Orlando Regional
43 Medical Center and was hospitalized from October 18, 2004, to
44 October 27, 2004, where he was taken to surgery on October 18,
45 2004, to complete a below-the-knee amputation of his right leg,
46 and
47 WHEREAS, Donald Brown underwent additional surgeries on
48 October 25, 2004, and October 28, 2004, to care for the wound
49 and to do skin grafts from his left thigh to cover an area of
50 approximately 45 by 30 cm on his right leg, and
51 WHEREAS, Donald Brown was transferred to Shands Hospital in
52 Gainesville, Florida, for rehabilitation from November 2, 2004,
53 to November 12, 2004, and
54 WHEREAS, as a result of the injuries incurred on October
55 18, 2004, Donald Brown required the use of a prosthetic leg,
56 which resulted in ulcers requiring additional surgery on January

57 17, 2006, and
58 WHEREAS, the effects of the injuries have been devastating,
59 restricting Donald Brown's ability to work and enjoy life, and
60 WHEREAS, Donald Brown incurred medical expenses in the
61 amount of $421,693.60 and was medically retired from his federal
62 employment at the Federal Bureau of Prisons in Coleman, Florida,
63 where he was earning $42,000 a year, and
64 WHEREAS, Donald Brown lived a full life before his accident
65 on October 18, 2004, had a zest and vigor for life, and was very
66 active in recreational, social, and sporting activities, and
67 WHEREAS, a lawsuit was brought against the District School
68 Board of Sumter County by Donald Brown, and, after a lengthy
69 jury trial, the jury found the school board liable for Donald
70 Brown's injuries and awarded him damages in the amount of
71 $2,941,240.60, and
72 WHEREAS, the Honorable Michelle T. Morley, Circuit Court
73 Judge from the Fifth Judicial Circuit in Sumter County, entered
74 a final judgment on March 2, 2009, reducing the final verdict to
75 $2,651,375.83, plus taxable costs in the amount of $31,674.12
76 and interest to accrue on the amount of the judgment at a rate
77 of 11 percent per annum from the date that the judgment was
78 rendered until payment, and
79 WHEREAS, the District School Board of Sumter County filed a
80 notice of appeal of the judgment on March 30, 2009, which was
81 affirmed by the Fifth District Court of Appeal on February 18,
82 2011, and
83 WHEREAS, Donald Brown is receiving continuous medical care
84 for his injuries, including two surgeries after the trial, the

85 first surgery occurring on September 16 and 17, 2009, at Orlando
86 Regional Medical Center due to a bone infection on his right
87 leg, and the second surgery occurring on August 27, 2010, at the
88 Jewish Hospital in Louisville, Kentucky, due to complications
89 with his right leg resulting in an above-the-knee amputation,
90 and
91 WHEREAS, the District School Board of Sumter County has
92 paid $100,000 pursuant to the statutory limits of liability set
93 forth in s. 768.28, Florida Statutes, and
94 WHEREAS, the $2,551,375.83 remainder of the judgment is
95 sought through the submission of a claim bill to the
96 Legislature, NOW, THEREFORE,
97
98 Be It Enacted by the Legislature of the State of Florida:
99
100 Section 1. The facts stated in the preamble to this act
101 are found and declared to be true.
102 Section 2. The District School Board of Sumter County is
103 authorized and directed to appropriate from funds of the school
104 board not otherwise appropriated and to draw a warrant payable
105 to Donald Brown, in the amount of $2,551,375.83, plus the
106 taxable costs of $31,674.12, for a total of $2,583,049.95.
107 Section 3. The compensation awarded under this act is
108 intended to provide the sole compensation for all present and
109 future claims arising out of the factual situation described in
110 this act which resulted in the injuries to Donald Brown. The
111 total amount paid for attorney's fees, lobbying fees, costs, and
112 other similar expenses relating to this claim may not exceed 15

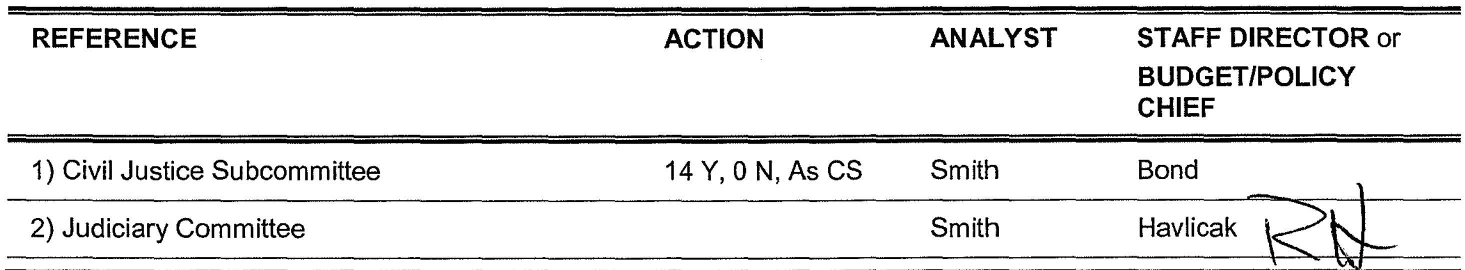
113 percent of the first $1,000,000 awarded under this act, 10
114 percent of the second $1,000,000 awarded under this act, and 5
115 percent of the remainder awarded under this act, for a total of
116 $279,152.
117 Section 4. This act shall take effect upon becoming a law.

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

CS/HB 701

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 701 Florida Evidence Code
SPONSOR(S): Civil Justice Subcommittee; Logan and Holder
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 782



REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Smith	Bond
2) Judiciary Committee		Smith	Havlicak RH

SUMMARY ANALYSIS

Currently, a hearsay statement is not admissible in court, unless an exception applies. Under Florida law, exceptions fall into two categories: those where the availability of the person who made the statement is irrelevant, and those where the person who made the statement must be unavailable to testify in court.

The Federal Rules of Evidence provide an exception to the hearsay rule when the unavailability of a witness is caused by the opposing party's wrongful conduct. Florida law does not provide such an exception.

The bill creates a "forfeiture by wrongdoing" hearsay exception. The exception mirrors the language in the Federal Rules of Evidence. Under the exception, a hearsay statement would be admissible if the party against whom it is offered engaged in wrongdoing that caused the person who made the statement to be unavailable to testify.

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

The bill is effective upon becoming law.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Hearsay Rule

"Hearsay"[1] is a statement,[2] other than one made by the declarant[3] while testifying at trial or a hearing,[4] offered in evidence to prove the truth of the matter asserted.[5]

For example, a victim of domestic violence calls the police. When a police officer arrives, she tells him that "John Doe hit me." If the officer then testifies for the State at trial that he heard the victim say "John Doe hit me," the officer's testimony would be hearsay because "John Doe hit me" is:

- A statement;
- Made outside of the court proceeding; and
- Offered to prove the truth of what it asserts (i.e., that John Doe hit the victim).[6]

Current law provides that hearsay statements are not admissible at trial unless a statutory exception applies.[7] The reasoning behind excluding hearsay statements is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including: the statement is not made under oath; jurors cannot observe the demeanor of the declarant and judge the witness' credibility; and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.[8]

Exceptions to the Hearsay Rule

Exceptions to the hearsay rule fall into two categories: those under s. 90.803, F.S., where the availability of the declarant is irrelevant, and those under s. 90.804, F.S., where the declarant must be unavailable to testify in court. Section 90.804, F.S., provides that a declarant is "unavailable" as a witness if the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement (for example, a declarant is unavailable if the trial court sustains an assertion of the Fifth Amendment privilege against self-incrimination);[9]
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite a court order to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;

---

[1] Section 90.801, F.S.
[2] A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion. Section 90.801(1)(a), F.S. For example, the act of pointing to a suspect in a lineup in order to identify her is a "statement." *See* Fed. R. Evid. 801 Advisory Committee Note.
[3] The "declarant" is the person who made the statement. Section 90.801(1)(b), F.S.
[4] Often referred to simply as an "out-of-court statement."
[5] Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.
[6] *Rodriguez v. State*, 9 So.3d 745, 745-46 (Fla. 2d DCA 2009).
[7] Section 90.802, F.S.
[8] *Lyles v. State*, 412 So.2d 458, 459 (Fla. 2d DCA 1982); *see also* Charles W. Ehrhardt, *Florida Evidence*, s. 801.1, 770 (2008 ed.).
[9] *Perry v. State*, 675 So.2d 976, 980 (Fla. 4th DCA 1996).

- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.[10]

The section also provides that a witness is not unavailable if the party who seeks to admit the statement caused the unavailability by wrongful conduct.[11]

The party seeking to introduce a hearsay statement under the exception at s. 90.804, F.S., bears the burden of establishing that the declarant is unavailable as a witness. The trial judge makes the determination of such unavailability at a pretrial hearing.[12]

Forfeiture by Wrongdoing of the Opposing Party

The Federal Rules of Evidence, and the evidence laws of some other states, provide an exception to the hearsay rule when the unavailability of a witness is caused by the opposing party's wrongful conduct. The Federal Rules of Evidence provide that a statement by an unavailable witness is admissible if the statement is "offered against a party that wrongfully caused — or acquiesced in wrongfully causing — the declarant's unavailability as a witness, and did so intending that result."[13] Several states have passed legislation adopting the Federal hearsay exception.[14] Florida does not have a forfeiture-by-wrongdoing exception.

Effect of the Bill

The bill creates a new hearsay exception under s. 90.804(2)(f), F.S., that adopts the language of the Federal Rules of Evidence's "forfeiture by wrongdoing" exception.[15] Under the exception, a statement offered against a party is admissible if that party wrongfully caused, or acquiesced in wrongfully causing, the declarant's unavailability as a witness, and did so intending that result.

B. SECTION DIRECTORY:

Section 1 amends s. 90.804, F.S., relating to hearsay exceptions where the declarant is unavailable as a witness.

Section 2 provides for an effective date upon the bill becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

---

[10] Section 90.804, F.S.
[11] *Id.*
[12] *See Jones v. State*, 678 So.2d 309, 314 (Fla. 1996).
[13] Fed. R. Evid. 804(b)(6).
[14] *See, e.g.*: California (Cal. Evid. Code § 1350 (West 1995)); Delaware (Del. R. Evid. 804(b)(6)); Hawaii (Haw. R. Evid. 804(b)(7)); Louisiana (La. Code Evid. Ann. art. 804)); Michigan (Mich. R. Evid. 804(b)(6)); North Dakota (N.D. R. Evid. 804(b)(6)); Pennsylvania (Pa. R. Evid. 804(b)(6)); South Dakota (S.D. R. Evid. 804(b)(6)); Tennessee (Tenn. R. Evid. 804(b)(6)); Illinois (limited to domestic violence cases (725 Ill. Comp. Stat. Ann 5/115-10.2a (West 2004)).
[15] Fed. R. Evid. 804(b)(6).

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact local government revenues.

2. Expenditures:

The bill does not appear to have any impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The Confrontation Clause of the Sixth Amendment provides, in part, that "in all criminal prosecutions, the accused shall enjoy the right...to be confronted with the witnesses against him."[16] In *Crawford v. Washington*, the U.S. Supreme Court held that the Confrontation Clause applies to testimonial statements.[17] The Court has emphasized that there is no bright-line test to determine whether a statement is testimonial, the determination involves a "highly context-dependent inquiry."[18]

An out-of-court statement by a witness that is testimonial is inadmissible at trial under the Confrontation Clause unless the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness.[19] An out-of-court statement that violates the Confrontation Clause is inadmissible at trial even if it falls within a state's statutory hearsay exception.[20] In contrast, if a statement is non-testimonial, it does not implicate the Confrontation Clause, and therefore admission of such statements is determined by state hearsay exceptions.[21]

---

[16] Amend. VI, U.S. Const.

[17] The definition of a "testimonial statement" includes statements made during police interrogations. *Crawford*, 541 U.S. 36, 68 (2004). The Court has since clarified that "police interrogations" are not defined in the "technical, legal sense." *Davis v. Washington*, 547 U.S. 813, 822 (2006).

[18] *Michigan v. Bryant*, 131 S.Ct 1143, 1158 (2011); *see also Davis*, 547 at 822 (The Court explained that in general, statements made to law enforcement where the circumstances indicate that the "primary purpose" of the statement is to aid the police in addressing an ongoing emergency are not testimonial. On the other hand, statements made to law enforcement where the circumstances indicate that the primary purpose of the statement is to establish the facts of a past event that may be relevant in prosecuting a defendant at trial are testimonial.).

[19] *Crawford*, 541 U.S. at 54.

[20] *Id.* at 51 (2004) (finding that CC applies to out-of-court statements introduced at trial, regardless of admissibility of statements under law of evidence); *see also State v. Lopez*, 974 So.2d 340, 345 (Fla. 2008); *22 Fla. Prac., Criminal Procedure* § 12:6 (2011 ed.).

[21] *Id.* at 68 ("Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law.").

However, in *Crawford*, the Court recognized the constitutional validity of the "forfeiture by wrongdoing" exception to excluding testimonial statements. Such wrongdoing "extinguishes [defendant's] confrontation claims on essentially equitable grounds."[22]

B. RULE-MAKING AUTHORITY:

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.[23] The case law interpreting Art. V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Art. V, s. 2.[24] On the other hand, legislation concerning matters of practice and procedure, are within the Court's "exclusive authority to regulate."[25] However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."[26] Evidence law is considered by the court to be procedural, although the court usually accedes to changes in the statutory evidence laws.

The Florida Supreme Court held in one case involving the hearsay exception at s. 921.141, F.S., does not violate art. V, s. 2(a).[27] In contrast, the First District Court of Appeals held that s. 90.803(22), F.S., the "former testimony" hearsay exception, violated Art. V, s. 2 because it infringed on the Court's authority to adopt procedural rules.[28] The court noted that one of the reasons the exception was different than other hearsay exceptions adopted by the Court was that it was not modeled after the Federal Rules of Evidence.[29] The bill adopts a portion of the Federal Rules of Evidence hearsay exception.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Civil Justice Subcommittee adopted a Proposed Committee Substitute ("PCS") for HB 701. The PCS deleted provisions regarding the spontaneous statement hearsay exception, the excited utterance hearsay exception, statements of a victim of domestic violence in a criminal proceeding, and a residual hearsay exception where certain guarantees of trustworthiness are established. The PCS also simplified the forfeiture by wrongdoing hearsay exception.

The analysis is drafted to the Committee Substitute as passed by the Civil Justice Subcommittee.

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[22] *Crawford*, 541 U.S. at 62 (citing *Reynolds v. United States*, 98 U.S. 145, 158 (1878) ("The Constitution does not guarantee an accused person against the legitimate consequences of his own wrongful acts. It grants him the privilege of being confronted with the witnesses against him; but if he voluntarily keeps the witnesses away, he cannot insist on his privilege. If, therefore, when absent by his procurement, their evidence is supplied in some lawful way, he is in no condition to assert that his constitutional rights have been violated.").

[23] Art. V, s. 2(a), Fla. Const.

[24] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So.2d 730, 732 (Fla. 1991).

[25] *Id.*

[26] *In re Commitment of Cartwright*, 870 So.2d 152, 158 (Fla. 2d DCA 2004) (citing *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53-54 (Fla. 2000)).

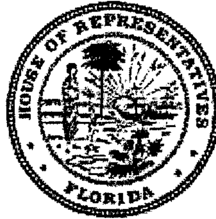
[27] *Cartwright*, 870 So.2d at 161 (citing *Booker v. State*, 397 So.2d 910, 918 (Fla. 1981) (rejecting the challenge under article V, section 2(a), to the provision in section 921.141, Florida Statutes (1977), permitting the admission of hearsay evidence).

[28] *Grabau v. Dep't of Health, Bd. of Psychology*, 816 So.2d 701, 709 (Fla. 1st DCA 2002) (holding section 90.803(22) to be unconstitutional on various grounds, including "as an infringement on the authority conferred on the Florida Supreme Court by article V, section 2(a)")

[29] *Id.* at 708 (citing *In re Amendments to the Florida Evidence Code*, 782 So.2d 339, 340-42 (Fla. 2000)).

1 A bill to be entitled
2 An act relating to the Florida Evidence Code; amending
3 s. 90.804, F.S.; providing that a statement offered
4 against a party that wrongfully caused the declarant's
5 unavailability is not excluded as hearsay; providing
6 an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (f) is added to subsection (2) of
11 section 90.804, Florida Statutes, to read:
12 90.804 Hearsay exceptions; declarant unavailable.—
13 (2) HEARSAY EXCEPTIONS.—The following are not excluded
14 under s. 90.802, provided that the declarant is unavailable as a
15 witness:
16 (f) *Statement offered against a party that wrongfully*
17 *caused the declarant's unavailability.*—A statement offered
18 against a party that wrongfully caused, or acquiesced in
19 wrongfully causing, the declarant's unavailability as a witness,
20 and did so intending that result.
21 Section 2. This act shall take effect upon becoming a law.

CS/HB 855



STORAGE NAME: h0855.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 855; Relief/Carl Abbott/Palm Beach County School Board
Sponsor: Representative Workman
Companion Bill: SB 54 by Senator Negron
Special Master: Tom Thomas

Basic Information:

Claimants:	David Abbott, guardian of Carl Abbott
Respondent:	Palm Beach County School Board
Amount Requested:	$1,900,000; to be made in payments of $211,111.11 each fiscal year beginning in 2012 through 2019, inclusive, and $211,111.12 in the 2020 fiscal year.
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Palm Beach County School Board does not oppose the enactment of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1487 by Representative Workman and Senate Bill 70 by Senator Negron were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

Procedural Summary: David Abbott, the son and guardian of Carl Abbott, brought suit in 2008 claiming negligence against the School Board of Palm Beach County. The action was filed in the 15th Judicial Circuit Court, in and for Palm Beach County, Florida.

Prior to trial, the parties came to an agreement through mediation to settle the case for $2 million,

$100,000 of which the School Board has already paid. Pursuant to the settlement agreement, the $1.9 million balance will be paid in eight yearly installments of $211,111.11, plus a ninth and final annual payment of $211,111.12. These yearly payments will commence on the effective date of the claim bill, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments, guaranteeing a minimum payout of $633.333.33. Out of the $100,000 settlement proceeds he has already received, Mr. Abbott paid $25,000 in attorney's fees and, after paying some expenses, netted $51,905.65. This amount was paid to Mr. Abbott's guardian, David Abbott.

Facts of Case: On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk.

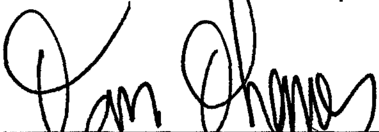
At the time Mr. Abbott began to cross U.S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed north on U.S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U.S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation (CPR) at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

Mr. Abbott presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbott has neurogenic bladder and bowels and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about $4 million, before a reduction to present value. The school Board is self-insured and will pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of $100,000.

Recommendation: I respectfully recommend House Bill 855 be reported **FAVORABLY**.



Tom Thomas, Special Master　　　　　　Date: February 15, 2012

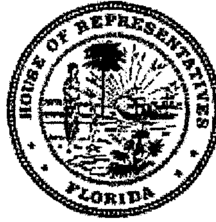
cc: Representative Workman, House Sponsor
Senator Negron, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Carl Abbott by the Palm Beach
3 County School Board; providing for an appropriation to
4 compensate Carl Abbott for injuries sustained as a
5 result of the negligence of the Palm Beach County
6 School District; providing a limitation on the payment
7 of fees and costs; providing an effective date.
8
9 WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was
10 struck by a school bus driven by an employee of the Palm Beach
11 County School District while Mr. Abbott was crossing the street
12 in a designated crosswalk at the intersection of South Anchorage
13 Drive and U.S. 1 in Palm Beach County, and
14 WHEREAS, as a result of the accident, Carl Abbott suffered
15 a closed-head injury, traumatic brain injury, subdural hematoma,
16 and subarachnoid hemorrhage, and
17 WHEREAS, as a result of his injuries, Carl Abbott must now
18 reside in a nursing home, suffers from loss of cognitive
19 function, right-sided paralysis, immobility, urinary
20 incontinence, bowel incontinence, delirium, and an inability to
21 speak, and must obtain nutrition through a feeding tube, and
22 WHEREAS, the Palm Beach County School Board unanimously
23 passed a resolution in support of settling the lawsuit that was
24 filed in this case, tendered payment of $100,000 to Carl Abbott,
25 in accordance with the statutory limits of liability set forth
26 in s. 768.28, Florida Statutes, and does not oppose the passage
27 of this claim bill in favor of Carl Abbott in the amount of
28 $1,900,000, as structured, NOW, THEREFORE,

29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. The facts stated in the preamble to this act
33 are found and declared to be true.
34 Section 2. The Palm Beach County School Board is
35 authorized and directed to appropriate from funds of the school
36 board not otherwise appropriated and to draw warrants in the
37 amount of $211,111.11 each fiscal year beginning in 2012 through
38 2019, inclusive, and $211,111.12 in the 2020 fiscal year for a
39 total of $1,900,000, payable to David Abbott, guardian of Carl
40 Abbott, as compensation for injuries and damages sustained as a
41 result of the negligence of an employee of the Palm Beach County
42 School District. The payments shall cease upon the death of Carl
43 Abbott if he dies prior to the last payment being made. However,
44 David Abbott, as guardian of Carl Abbott, shall be guaranteed a
45 minimum payment amount of $633,333.33 if Carl Abbott dies within
46 3 years after the effective date of this act. The amount
47 represents three annual payments and shall be payable on the
48 annual due dates.
49 Section 3. The amount paid by the Palm Beach County School
50 Board pursuant to s. 768.28, Florida Statutes, and this award
51 are intended to provide the sole compensation for all present
52 and future claims against the Palm Beach County School District
53 arising out of the factual situation that resulted in the
54 injuries to Carl Abbott as described in this act. The total
55 amount paid for attorney's fees, lobbying fees, costs, and
56 similar expenses relating to this claim may not exceed 15

57 percent of the first $1,000,000 awarded under this act and 10
58 percent of the remainder awarded under this act, for a total of
59 $240,000.
60 Section 4. This act shall take effect upon becoming a law.

CS/HB 877



STORAGE NAME: h0877.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 877; Relief/Odette Acanda and Alexis Rodriquez/Public Health Trust of Miami-Dade County
Sponsor: Representative Trujillo
Companion Bill: SB 48 by Senator Montford
Special Master: Tom Thomas

Basic Information:

Claimants:	Odette Acanda and Alexis Rodriquez
Respondent:	Public Health Trust of Miami-Dade County
Amount Requested:	$799,999
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The Trust does not admit liability, but does support the claim bill in the amount of $799,000.
Collateral Sources:	$462,500 was paid to the Claimants from the University of Miami.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

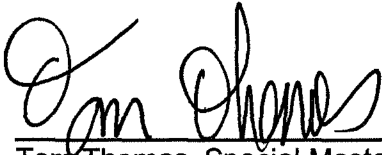
Procedural Summary: A civil suit was filed in 2006 in the Eleventh Judicial Circuit in and for Miami-Dade County. After trial, the jury returned a verdict in favor of the plaintiffs, finding that the hospital was 100 percent responsible for the death of Ryan Rodriguez, and awarded damages in the amount of $2 million. The defendant appealed the jury verdict, and the verdict was upheld by the Third District Court of Appeal. The parties entered into a settlement agreement wherein they agreed to settle the case for $999,000, of which $200,000 has been paid in accordance with the statutory limits of liability in s. 768.28, Florida Statutes.

Facts of Case: Ryan Rodriguez, the son of Odette Acanda and Alexis Rodriguez, was born prematurely on February 5, 2005, to Odette Acanda at Jackson Memorial Hospital After delivery,

Ryan was provided with oxygen through respiratory equipment that was later discovered to have been contaminated with Pseudomonas bacteria, due to improper infection control measures by employees of the hospital. On February 8, 2005, a positive nasopharyngeal culture revealed that Ryan suffered from a Pseudomonas infection. However, physicians and other hospital employees failed to review the lab report, failed to recognize the signs and symptoms of the infection, and failed to follow physician orders.

An order for antibiotics was not written until February 10, 2005, and antibiotics were not provided until after Ryan went into distress. As a result of the failure to timely identify and treat the infection, Ryan died on February 10, 2005. An autopsy report indicated that Ryan died as a result of the bacterial infection he acquired at the hospital.

Recommendation: The claim bill should be amended to reflect the agreed upon amount of $799,000. I respectfully recommend House Bill 877 be reported **FAVORABLY**, as amended.



Tom Thomas, Special Master   Date: February 15, 2012

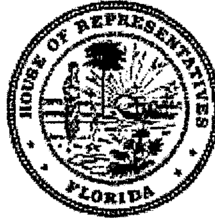
cc: Representative Trujillo, House Sponsor
Senator Montford, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Odette Acanda and Alexis
3 Rodriguez by the Public Health Trust of Miami-Dade
4 County, d/b/a Jackson Memorial Hospital; providing for
5 an appropriation to compensate Odette Acanda and
6 Alexis Rodriguez for the death of their son, Ryan
7 Rodriguez, as a result of the negligence of employees
8 of the Public Health Trust of Miami-Dade County;
9 providing a limitation on the payment of fees and
10 costs; providing an effective date.
11
12 WHEREAS, Ryan Rodriguez, the son of Odette Acanda and
13 Alexis Rodriguez, was born prematurely on February 5, 2005, to
14 Odette Acanda at Jackson Memorial Hospital, and
15 WHEREAS, after delivery, Ryan Rodriguez was provided with
16 oxygen through respiratory equipment that was contaminated with
17 Pseudomonas bacteria, due to improper infection control measures
18 by employees of the hospital, and
19 WHEREAS, on February 8, 2005, a positive nasopharyngeal
20 culture revealed that Ryan Rodriguez suffered from a Pseudomonas
21 infection, and
22 WHEREAS, physicians and other hospital employees failed to
23 review the lab report, failed to recognize the signs and
24 symptoms of the infection, and failed to follow physician
25 orders, and
26 WHEREAS, an order for antibiotics was not written until
27 February 10, 2005, and antibiotics were not provided until after
28 Ryan Rodriguez went into distress, and

29 WHEREAS, as a result of the failure of employees to timely
30 identify and treat the infection, Ryan Rodriguez died on
31 February 10, 2005, and
32 WHEREAS, an autopsy report indicated that Ryan Rodriguez
33 died as a result of the bacterial infection he acquired at the
34 hospital, and
35 WHEREAS, suit was filed in the Eleventh Judicial Circuit in
36 and for Miami-Dade County and a jury returned a verdict in favor
37 of the plaintiffs, finding that the hospital was 100 percent
38 responsible for the death of Ryan Rodriguez, and awarded damages
39 in the amount of $2 million, and
40 WHEREAS, the defendant appealed the jury verdict, and the
41 final judgment entered in the plaintiff's favor was upheld by
42 the Third District Court of Appeal, and
43 WHEREAS, the defendant appealed the ruling of the Third
44 District Court of Appeal, and the Supreme Court of Florida
45 affirmed the ruling, and
46 WHEREAS, the parties entered into a settlement agreement
47 wherein they agreed to settle the case for $999,999, of which
48 $200,000 has been paid in accordance with the statutory limits
49 of liability in s. 768.28, Florida Statutes, and $799,999
50 remains to be paid, NOW, THEREFORE,
51
52 Be It Enacted by the Legislature of the State of Florida:
53
54 Section 1. The facts stated in the preamble to this act
55 are found and declared to be true.
56 Section 2. The Public Health Trust of Miami-Dade County,

57 d/b/a Jackson Memorial Hospital, is authorized and directed to
58 appropriate from funds not otherwise encumbered and to draw a
59 warrant in the sum of $799,999, payable to Odette Acanda and
60 Alexis Rodriguez, parents of decedent Ryan Rodriguez, as
61 compensation for the death of Ryan Rodriguez as a result of the
62 negligence of employees of the Public Health Trust of Miami-Dade
63 County.
64 Section 3. The amount paid by the Public Health Trust of
65 Miami-Dade County, d/b/a Jackson Memorial Hospital, pursuant to
66 s. 768.28, Florida Statutes, and the amount awarded under this
67 act are intended to provide the sole compensation for all
68 present and future claims arising out of the factual situation
69 described in the preamble to this act which resulted in the
70 death of Ryan Rodriguez. The total amount paid for attorney's
71 fees, lobbying fees, costs, and similar expenses relating to
72 this claim may not exceed 15 percent of the total amount awarded
73 under section 2 of this act.
74 Section 4. This act shall take effect upon becoming a law.

CS/HB 909



STORAGE NAME: h0909.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 909; Relief/Anais Cruz Peinado and Juan Carlos Rivera/School Board of Miami-Dade County
Sponsor: Representative Gonzalez
Companion Bill: SB 1076 by Senator Gibson
Special Master: Tom Thomas

Basic Information:

Claimants:	Anais Cruz Peinado and Juan Carlos Rivera
Respondent:	School Board of Miami-Dade County
Amount Requested:	$1,175,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The School Board of Miami-Dade County does not object to the passage of this claim bill.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

Procedural Summary: The Estate of Juan Carlos Rivera has alleged, through a lawsuit filed April 28, 2010, in Miami-Dade County, that the negligence of the School Board of Miami-Dade County was the proximate cause of the death of Juan Carlos Rivera. The Estate of Juan Carlos Rivera and the School Board of Miami-Dade County, Florida reached a compromise settlement in the amount of $1,875,000, which was approved by the school board on October 17, 2011. Pursuant to the agreement between the parties, the settlement has been partially satisfied in the amount of $700,000, $200,000 in accordance with the statutory limits of liability set forth in s. 768.28, F.S., and $500,000 from insurance.

Facts of Case: Juan Carlos Rivera was attacked, stabbed, and murdered on the grounds of Coral Gables Senior High School by another student. On the date of his death, September 15, 2009,

Juan Carlos Rivera was 17 years old and a student at Coral Gables Senior High School in the care and custody of the School Board of Miami-Dade County, Florida. It is the Claimant's position that this incident was foreseeable based on the inadequacy of the school's security plan and the history of crime at the school and throughout the School District.

The school had hired nine monitors (in-house security personnel) for the purpose of security who were stationed throughout the school. However, a monitor was not assigned to the corridor where the attack occurred – a location that was well know to school officials as an area for fights between students.

Recommendation: I respectfully recommend House Bill 909 be reported **FAVORABLY**.

Tom Thomas, Special Master Date: February 9, 2012

cc: Representative Gonzalez, House Sponsor
Senator Gibson, Senate Sponsor
Judge Jessica E. Varn, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Anais Cruz Peinado by the
3 School Board of Miami-Dade County; providing for an
4 appropriation to compensate Anais Cruz Peinado, mother
5 of Juan Carlos Rivera, deceased, for the death of Juan
6 Carlos Rivera as a result of the negligence of the
7 School Board of Miami-Dade County; providing a
8 limitation on the payment of fees and costs; providing
9 an effective date.
10
11 WHEREAS, on September 15, 2009, Juan Carlos Rivera was a
12 student at Coral Gables Senior High School in the care and
13 custody of the School Board of Miami-Dade County, Florida, and
14 WHEREAS, on September 15, 2009, Juan Carlos Rivera was
15 attacked, stabbed, and murdered on the grounds of Coral Gables
16 Senior High School by another student, and
17 WHEREAS, the Estate of Juan Carlos Rivera has alleged,
18 through a lawsuit filed April 28, 2010, in Miami-Dade County,
19 that the negligence of the School Board of Miami-Dade County was
20 the proximate cause of the death of Juan Carlos Rivera, and
21 WHEREAS, Anais Cruz Peinado has suffered extreme mental
22 anguish and undergone great suffering as a result of the loss of
23 her son, and
24 WHEREAS, the Estate of Juan Carlos Rivera and the School
25 Board of Miami-Dade County, Florida have reached a compromise
26 settlement in the amount of $1,875,000, which was approved by
27 the school board on October 17, 2011, and

28 WHEREAS, pursuant to the agreement between the parties, the
29 settlement has been partially satisfied in the amount of
30 $700,000, and
31 WHEREAS, the claim shall be considered fully satisfied upon
32 payment of an additional $1,175,000 by the School Board of
33 Miami-Dade County to Anais Cruz Peinado, as beneficiary of the
34 Estate of Juan Carlos Rivera, pursuant to a claim bill
35 authorized by the Florida Legislature, NOW, THEREFORE,
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. <u>The facts stated in the preamble to this act</u>
40 <u>are found and declared to be true.</u>
41 Section 2. <u>The School Board of Miami-Dade County is</u>
42 <u>authorized and directed to appropriate from funds not otherwise</u>
43 <u>encumbered and to draw a warrant in the sum of $1,175,000,</u>
44 <u>payable to Anais Cruz Peinado, mother of Juan Carlos Rivera, as</u>
45 <u>compensation for the death of Juan Carlos Rivera due to the</u>
46 <u>negligence of the School Board of Miami-Dade County.</u>
47 Section 3. <u>The amount paid by the School Board of Miami-</u>
48 <u>Dade County pursuant to s. 768.28, Florida Statutes, and the</u>
49 <u>amount awarded under this act are intended to provide the sole</u>
50 <u>compensation for all present and future claims arising out of</u>
51 <u>the factual situation described in this act which resulted in</u>
52 <u>the death of Juan Carlos Rivera. The total amount paid for</u>
53 <u>attorney's fees, lobbying fees, costs, and similar expenses</u>
54 <u>relating to this claim may not exceed 15 percent of the first</u>

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

55 $1,000,000 awarded under this act and 10 percent of the
56 remainder awarded under this act, for a total of $167,500.
57 Section 4. This act shall take effect upon becoming a law.

HB 963

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 963 Dispute Resolution
SPONSOR(S): Harrison
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Cary	Bond
2) Justice Appropriations Subcommittee	10 Y, 5 N	Toms	Jones Darity
3) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

The Florida Arbitration Act, based on a 1955 model act, was passed in 1957 and revised in 1967, and has since remained mostly unchanged. This bill creates the Revised Florida Arbitration Act based on the 2000 model act. The bill includes provisions that were not included in the original act, such as the ability for arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, conflict disclosure requirements, providing for immunity of arbitrators, and other important substantive changes to the law. The bill provides a detailed framework for arbitration conducted under Florida law.

This bill has an insignificant fiscal impact on the State Court System; see "fiscal section".

The effective date of this bill is July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Many contracts, especially in a commercial context, contain an agreement by the parties to submit to binding arbitration rather than litigation for disputes arising out of the contract. Florida's current arbitration code is based on the 1955 Uniform Arbitration Act (UAA). This bare bones act remains largely unchanged since Florida adopted the UAA in 1957[1] and modified it in 1967[2], even as the use of binding arbitration has become more widespread.

Effect of Proposed Changes

This bill largely adopts the provisions of the 2000 revision of the UAA, as approved by the National Conference of Commissioners on Uniform State Laws. The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is generally provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Delivery to the person's residence or place of business, or another location held out by the person as a place of delivery is also sufficient to provide notice.

Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate. It also applies retrospectively if all parties agree to apply the revised act. On July 1, 2015, the revised act will apply to all arbitration agreements, regardless of whether the parties agree to apply it retroactively or not.

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., providing that parties may waive procedural requirements of the revised act except that parties may not waive certain relief or remedies, jurisdiction, the right to appeal, notice, right to disclosure, or the right to an attorney, before a controversy arises. Parties may not waive other procedural requirements that would fundamentally undermine the arbitration agreement at any time.

Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition

[1] Chapter 57-402, L.O.F.

[2] Chapter 67-254, L.O.F.

precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration continues during a court challenge of this nature unless the court orders otherwise.

Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate, however the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court with jurisdiction, however if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely matter or provide an adequate remedy.

Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if there were separate arbitration proceedings; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately, however the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method or the agreed upon method fails, or one or more parties failed to respond to the demand for arbitration or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

Disclosure by Arbitrator

The bill creates s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. A neutral arbitrator is presumed to act with evident partiality. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator, powers of the arbitrator must be exercised by a majority of the arbitrators.

Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees if the court decides that the arbitrator has civil liability.

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary judgment if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least five days notice prior to the beginning of the hearing. The arbitrator then has control of the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena

laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

Judicial Enforcement of Preaward Ruling by an Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must summarily decide the motion and issue an order.

Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties of the arbitration.

Change of Award by Arbitrators

The bill amends s. 682.10, F.S., to provide conditions for the modification or correction of an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, resulted in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. A motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

Remedies, Fees and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may motion the court to confirm the award and provide a confirming order.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;
- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the act so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded the arbitrator's powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party should have known of

such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- There is an evident miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court will modify and correct the award. If not, the court shall confirm the award.

Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this act must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in that court. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse party has a residence or place of business in Florida, the petition may be filed in any Florida county.

Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying an application to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised act conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15. U.S.C. s. 7002.

Effective Date and Applicability

The bill provides an effective date of July 1, 2012. The revised act does not affect an action or proceeding commenced or right accrued before the revised act takes effect.

Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised act does not apply to any dispute involving child custody, visitation, or child support.

Mediation Alternatives to Judicial Action

The bill renames ch. 44, F.S., as "Alternative Dispute Resolution" and amends ss. 44.104, 44. 107, and 731.401 F.S., removing references to binding arbitration. This ensures that the revised act is the sole statute in Florida pertaining to binding arbitration. The bill also amends ss. 440.1926 and 489.144, F.S., to correctly cross-reference the revised act. The bill directs the Division of Statutory Revision to replace the phrase "the effective date of this act" with the date this act becomes a law.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 amends s. 682.01, F.S., relating to Florida Arbitration Code.

Section 2 creates s. 682.011, F.S., relating to definitions.

Section 3 creates s. 682.012, F.S., relating to notice.

Section 4 creates s. 682.013, F.S., relating to applicability of the revised code.

Section 5 creates s. 682.014, F.S., relating to effect of agreements to arbitrate.

Section 6 creates s. 682.015, F.S., relating to petition for judicial relief.

Section 7 amends s. 682.02, F.S., relating to arbitration agreements made valid, irrevocable and enforceable.

Section 8 amends s. 682.03, F.S., relating to proceedings to compel and to stay arbitration.

Section 9 creates s. 682.031, F.S., relating to provisional remedies.

Section 10 creates s. 682.032, F.S., relating to initiation of arbitration.

Section 11 creates s. 682.033, F.S., relating to consolidation of separate arbitration proceedings.

Section 12 amends s. 682.04, F.S., relating to appointment of arbitrators by court.

Section 13 creates s. 682.041, F.S., relating to disclosure by arbitrator.

Section 14 amends s. 682.05, F.S., relating to majority action by arbitrators.

Section 15 creates s. 682.051, F.S., relating to immunity of arbitrator.

Section 16 amends s. 682.06, F.S., relating to hearings.

Section 17 amends s. 682.07, F.S., relating to representation by attorney.

Section 18 amends s. 682.08, F.S., relating to witnesses, subpoenas, and depositions.

Section 19 creates s. 682.081, F.S., relating to judicial enforcement of a preaward ruling by arbitrator.

Section 20 amends s. 682.09, F.S., relating to awards.

Section 21 amends s. 682.10, F.S., relating to change of award by arbitrators.

Section 22 amends s. 682.11, F.S., relating to remedies, fees and expenses of arbitration.

Section 23 amends s. 682.12, F.S., relating to confirmation of an award.

Section 24 amends s. 682.13, F.S., relating to vacating an award.

Section 25 amends s. 682.14, F.S., relating to modification or correction of an award.

Section 26 amends s. 682.15, F.S., relating to judgment or decree on award.

Section 27 repeals s. 682.16, F.S., relating to judgment roll and docketing.

Section 28 repeals s. 682.17, F.S., relating to application to court.

Section 29 repeals s. 682.18, F.S., relating to court definition and jurisdiction.

Section 30 creates s. 682.181, F.S., relating to jurisdiction.

Section 31 amends s. 682.19, F.S., relating to venue.

Section 32 amends s. 682.20, F.S., relating to appeals.

Section 33 repeals s. 682.21, F.S., relating to retroactivity.

Section 34 repeals s. 682.22, F.S., relating to severability.

Section 35 creates s. 682.23, F.S., relating to relationship to electronic signatures in Global and National Commerce Act.

Section 36 creates s. 682.24, F.S., relating to effective date and applicability.

Section 37 creates s. 682.25, F.S., relating to excluded disputes.

Section 38 amends s. 44.104, F.S., relating to voluntary trial resolution.

Section 39 amends s. 44.107, F.S., relating to immunity for arbitrators.

Section 40 amends s. 440.1926, F.S., relating to alternate dispute resolution.

Section 41 amends s. 489.1402, F.S., relating to Homeowners' Construction Recovery Fund.

Section 42 amends s. 731.401, F.S., relating to arbitration of disputes.

Section 43 redesignates the title of chapter 44.

Section 44 provides direction to the Division of Statutory Revision.

Section 45 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The statutory changes in this bill could result in an increase in judicial workload. However, the increase should be insignificant and absorbed within existing resources.[3]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The 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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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[3] Email from Eric Maclure, Director of Community and Intergovernmental Relations, Office of State Courts Administrator, February 3, 2012, on file with Justice Appropriations Subcommittee staff.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to dispute resolution; amending s.
3 682.01, F.S.; revising the short title of the "Florida
4 Arbitration Code" to the "Revised Florida Arbitration
5 Code"; creating s. 682.011, F.S.; providing
6 definitions; creating s. 682.012, F.S.; specifying how
7 a person gives notice to another person and how a
8 person receives notice; creating s. 682.013, F.S.;
9 specifying the applicability of the revised code;
10 creating s. 682.014, F.S.; providing that an agreement
11 may waive or vary the effect of statutory arbitration
12 provisions; providing exceptions; creating s. 682.015,
13 F.S.; providing for petitions for judicial relief;
14 providing for service of notice of an initial petition
15 for such relief; amending s. 682.02, F.S.; revising
16 provisions relating to the making of arbitration
17 agreements; requiring a court to decide whether an
18 agreement to arbitrate exists or a controversy is
19 subject to an agreement to arbitrate; providing for
20 determination of specified issues by an arbitrator;
21 providing for continuation of an arbitration
22 proceeding pending resolution of certain issues by a
23 court; revising provisions relating to applicability
24 of provisions to certain interlocal agreements;
25 amending s. 682.03, F.S.; revising provisions relating
26 to proceedings to compel and to stay arbitration;
27 creating s. 682.031, F.S.; providing for a court to
28 order provisional remedies before an arbitrator is

29 appointed and is authorized and able to act; providing
30 for orders for provisional remedies by an arbitrator;
31 providing that a party does not waive a right of
32 arbitration by seeking provisional remedies in court;
33 creating s. 682.032, F.S.; providing for initiation of
34 arbitration; providing that a person waives any
35 objection to lack of or insufficiency of notice by
36 appearing at the arbitration hearing; providing an
37 exception; creating s. 682.033, F.S.; providing for
38 consolidation of separate arbitration proceedings as
39 to all or some of the claims in certain circumstances;
40 prohibiting consolidation if the agreement prohibits
41 consolidation; amending s. 682.04, F.S.; revising
42 provisions relating to appointment of an arbitrator;
43 prohibiting an individual with an interest in the
44 outcome of an arbitration from serving as a neutral
45 arbitrator; creating s. 682.041, F.S.; requiring
46 certain disclosures of interests and relationships by
47 a person before accepting appointment as an
48 arbitrator; providing a continuing obligation to make
49 such disclosures; providing for objections to an
50 arbitrator based on information disclosed; providing
51 for vacation of an award if an arbitrator failed to
52 disclose a fact as required; providing that an
53 arbitrator appointed as a neutral arbitrator who does
54 not disclose certain interests or relationships is
55 presumed to act with partiality for specified
56 purposes; requiring parties to substantially comply

57 with agreed to procedures of an arbitration
58 organization or any other procedures for challenges to
59 arbitrators before an award is made in order to seek
60 vacation of an award on specified grounds; amending s.
61 682.05, F.S.; requiring that if there is more than one
62 arbitrator, the powers of an arbitrator must be
63 exercised by a majority of the arbitrators; requiring
64 all arbitrators to conduct the arbitration hearing;
65 creating s. 682.051, F.S.; providing immunity from
66 civil liability for an arbitrator or an arbitration
67 organization acting in the capacity of an arbitrator;
68 providing that this immunity is supplemental to any
69 immunity under other law; providing that failure to
70 make a required disclosure does not remove immunity;
71 providing that an arbitrator or representative of an
72 arbitration organization is not competent to testify
73 and may not be required to produce records concerning
74 the arbitration; providing exceptions; providing for
75 awarding an arbitrator, arbitration organization, or
76 representative of an arbitration organization with
77 reasonable attorney fees and expenses of litigation
78 under certain circumstances; amending s. 682.06, F.S.;
79 revising provisions relating to the conduct of
80 arbitration hearings; providing for summary
81 disposition, notice of hearings, adjournment, and
82 rights of a party to the arbitration proceeding;
83 requiring appointment of a replacement arbitrator in
84 certain circumstances; amending s. 682.07, F.S.;

85 providing that a party to an arbitration proceeding
86 may be represented by an attorney; amending s. 682.08,
87 F.S.; revising provisions relating to the issuance,
88 service, and enforcement of subpoenas; revising
89 provisions relating to depositions; authorizing an
90 arbitrator to permit discovery in certain
91 circumstances; authorizing an arbitrator to order
92 compliance with discovery; authorizing protective
93 orders by an arbitrator; providing for applicability
94 of laws compelling a person under subpoena to testify
95 and all fees for attending a judicial proceeding, a
96 deposition, or a discovery proceeding as a witness;
97 providing for court enforcement of a subpoena or
98 discovery-related order; providing for witness fees;
99 creating s. 682.081, F.S.; providing for judicial
100 enforcement of a preaward ruling by an arbitrator in
101 certain circumstances; amending s. 682.09, F.S.;
102 revising provisions relating to the record needed for
103 an award; revising provisions relating to the time
104 within which an award must be made; amending s.
105 682.10, F.S.; revising provisions relating to
106 requirements for a motion to modify or correct an
107 award; amending s. 682.11, F.S.; revising provisions
108 relating to fees and expenses of arbitration;
109 authorizing punitive damages and other exemplary
110 relief and remedies; amending s. 682.12, F.S.;
111 revising provisions relating to confirmation of an
112 award; amending s. 682.13, F.S.; revising provisions

113 relating to grounds for vacating an award; revising
114 provisions relating to a motion for vacating an award;
115 providing for a rehearing in certain circumstances;
116 amending s. 682.14, F.S.; revising provisions relating
117 to the time for moving to modify or correct an award;
118 deleting references to the term "umpire"; revising a
119 provision concerning confirmation of awards; amending
120 s. 682.15, F.S.; revising provisions relating to a
121 court order confirming, vacating without directing a
122 rehearing, modifying, or correcting an award;
123 providing for award of costs and attorney fees in
124 certain circumstances; repealing s. 682.16, F.S.,
125 relating to judgment roll and docketing of certain
126 orders; repealing s. 682.17, F.S., relating to
127 application to court; repealing s. 682.18, F.S.,
128 relating to the definition of the term "court" and
129 jurisdiction; creating s. 682.181, F.S.; providing for
130 jurisdiction relating to the revised code; amending s.
131 682.19, F.S.; revising provisions relating to venue
132 for actions relating to the code; amending s. 682.20,
133 F.S.; providing that an appeal may be taken from an
134 order denying confirmation of an award unless the
135 court has entered an order under specified provisions;
136 providing that all other orders denying confirmation
137 of an award are final orders; repealing s. 682.21,
138 F.S., relating to the previous code not applying
139 retroactively; repealing s. 682.22, F.S., relating to
140 conflict of laws; creating s. 682.23, F.S.; specifying

141 the relationship of the code to the Electronic
142 Signatures in Global and National Commerce Act;
143 creating s. 682.24, F.S.; specifying the effective
144 date of the revised code; providing for applicability;
145 creating s. 682.25, F.S.; providing that the revised
146 code does not apply to any dispute involving child
147 custody, visitation, or child support; amending s.
148 44.104, F.S.; deleting references to binding
149 arbitration from provisions providing for voluntary
150 trial resolution; providing for temporary relief;
151 revising provisions relating to procedures in
152 voluntary trial resolution; providing that a judgment
153 is reviewable in the same manner as a judgment in a
154 civil action; deleting provisions relating to
155 applicability of the harmless error doctrine;
156 providing limitations on the jurisdiction of a trial
157 resolution judge; providing for the use of juries;
158 providing for the title of a trial resolution judge
159 and the use of judicial robes; amending s. 44.107,
160 F.S.; providing immunity for voluntary trial
161 resolution judges serving under specified provisions;
162 amending ss. 440.1926 and 489.1402, F.S.; conforming
163 cross-references; amending s. 731.401, F.S.; revising
164 a reference to binding arbitration under a specified
165 provision; providing directives to the Division of
166 Statutory Revision, including redesignating the title
167 of chapter 44, Florida Statutes, as "Alternative
168 Dispute Resolution"; providing an effective date.

169

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

171

172 Section 1. Section 682.01, Florida Statutes, is amended to
173 read:
174 682.01 Short title ~~Florida Arbitration Code~~.—This chapter
175 ~~Sections 682.01-682.22~~ may be cited as the "Revised Florida
176 Arbitration Code."
177 Section 2. Section 682.011, Florida Statutes, is created
178 to read:
179 682.011 Definitions.—As used in this chapter, the term:
180 (1) "Arbitration organization" means an association,
181 agency, board, commission, or other entity that is neutral and
182 initiates, sponsors, or administers an arbitration proceeding or
183 is involved in the appointment of an arbitrator.
184 (2) "Arbitrator" means an individual appointed to render
185 an award, alone or with others, in a controversy that is subject
186 to an agreement to arbitrate.
187 (3) "Court" means a court of competent jurisdiction in
188 this state.
189 (4) "Knowledge" means actual knowledge.
190 (5) "Person" means an individual, corporation, business
191 trust, estate, trust, partnership, limited liability company,
192 association, joint venture, or government; governmental
193 subdivision, agency, or instrumentality; public corporation; or
194 any other legal or commercial entity.

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195 (6) "Record" means information that is inscribed on a
196 tangible medium or that is stored in an electronic or other
197 medium and is retrievable in perceivable form.
198 Section 3. Section 682.012, Florida Statutes, is created
199 to read:
200 682.012 Notice.—
201 (1) Except as otherwise provided in the Revised Florida
202 Arbitration Code, a person gives notice to another person by
203 taking action that is reasonably necessary to inform the other
204 person in ordinary course, whether or not the other person
205 acquires knowledge of the notice.
206 (2) A person has notice if the person has knowledge of the
207 notice or has received notice.
208 (3) A person receives notice when it comes to the person's
209 attention or the notice is delivered at the person's place of
210 residence or place of business, or at another location held out
211 by the person as a place of delivery of such communications.
212 Section 4. Section 682.013, Florida Statutes, is created
213 to read:
214 682.013 Applicability of revised code.—
215 (1) The Revised Florida Arbitration Code governs an
216 agreement to arbitrate made on or after the effective date of
217 this act.
218 (2) The Revised Florida Arbitration Code governs an
219 agreement to arbitrate made before the effective date of this
220 act if all the parties to the agreement or to the arbitration
221 proceeding so agree in a record.

222 (3) Beginning July 1, 2015, the Revised Florida
223 Arbitration Code governs an agreement to arbitrate whenever
224 made.
225 Section 5. Section 682.014, Florida Statutes, is created
226 to read:
227 682.014 Effect of agreement to arbitrate; nonwaivable
228 provisions.—
229 (1) Except as otherwise provided in subsections (2) and
230 (3), a party to an agreement to arbitrate or to an arbitration
231 proceeding may waive, or the parties may vary the effect of, the
232 requirements of the Revised Florida Arbitration Code to the
233 extent permitted by law.
234 (2) Before a controversy arises that is subject to an
235 agreement to arbitrate, a party to the agreement may not:
236 (a) Waive or agree to vary the effect of the requirements
237 of s. 682.015(1), s. 682.02(1), s. 682.031, s. 682.08(1) or (2),
238 s. 682.181, or s. 682.20;
239 (b) Agree to unreasonably restrict the right under s.
240 682.032 to notice of the initiation of an arbitration
241 proceeding;
242 (c) Agree to unreasonably restrict the right under s.
243 682.041 to disclosure of any facts by a neutral arbitrator; or
244 (d) Waive the right under s. 682.07 of a party to an
245 agreement to arbitrate to be represented by an attorney at any
246 proceeding or hearing under the Revised Florida Arbitration
247 Code, but an employer and a labor organization may waive the
248 right to representation by an attorney in a labor arbitration.

249 (3) A party to an agreement to arbitrate or arbitration
250 proceeding may not waive, or the parties may not vary the effect
251 of, the requirements in this section or s. 682.013(1) or (3), s.
252 682.03, s. 682.051, s. 682.081, s. 682.10(4) or (5), s. 682.12,
253 s. 682.13, s. 682.14, s. 682.15(1) or (2), s. 682.23, s. 682.24,
254 or s. 682.25.
255 Section 6. Section 682.015, Florida Statutes, is created
256 to read:
257 682.015 Petition for judicial relief.—
258 (1) Except as otherwise provided in s. 682.20, a petition
259 for judicial relief under this chapter must be made to the court
260 and heard in the manner provided by law or rule of court for
261 making and hearing motions.
262 (2) Unless a civil action involving the agreement to
263 arbitrate is pending, notice of an initial petition to the court
264 under this chapter must be served in the manner provided by law
265 for the service of a summons in a civil action. Otherwise,
266 notice of the motion must be given in the manner provided by law
267 or rule of court for serving motions in pending cases.
268 Section 7. Section 682.02, Florida Statutes, is amended to
269 read:
270 682.02 Arbitration agreements made valid, irrevocable, and
271 enforceable; scope.—
272 (1) An agreement contained in a record to submit to
273 arbitration any existing or subsequent controversy arising
274 between the parties to the agreement is valid, enforceable, and
275 irrevocable except upon a ground that exists at law or in equity
276 for the revocation of a contract.

277 (2) The court shall decide whether an agreement to
278 arbitrate exists or a controversy is subject to an agreement to
279 arbitrate.
280 (3) An arbitrator shall decide whether a condition
281 precedent to arbitrability has been fulfilled and whether a
282 contract containing a valid agreement to arbitrate is
283 enforceable.
284 (4) If a party to a judicial proceeding challenges the
285 existence of, or claims that a controversy is not subject to, an
286 agreement to arbitrate, the arbitration proceeding may continue
287 pending final resolution of the issue by the court, unless the
288 court otherwise orders.
289 (5) ~~Two or more parties may agree in writing to submit to~~
290 ~~arbitration any controversy existing between them at the time of~~
291 ~~the agreement, or they may include in a written contract a~~
292 ~~provision for the settlement by arbitration of any controversy~~
293 ~~thereafter arising between them relating to such contract or the~~
294 ~~failure or refusal to perform the whole or any part thereof.~~
295 This section also applies to written interlocal agreements under
296 ss. 163.01 and 373.713 in which two or more parties agree to
297 submit to arbitration any controversy between them concerning
298 water use permit motions ~~applications~~ and other matters,
299 regardless of whether or not the water management district with
300 jurisdiction over the subject motion ~~application~~ is a party to
301 the interlocal agreement or a participant in the arbitration.
302 ~~Such agreement or provision shall be valid, enforceable, and~~
303 ~~irrevocable without regard to the justiciable character of the~~
304 ~~controversy; provided that this act shall not apply to any such~~

305 ~~agreement or provision to arbitrate in which it is stipulated~~
306 ~~that this law shall not apply or to any arbitration or award~~
307 ~~thereunder.~~
308 Section 8. Section 682.03, Florida Statutes, is amended to
309 read:
310 682.03 Proceedings to compel and to stay arbitration.—
311 (1) On motion of a person showing an agreement to
312 arbitrate and alleging another person's refusal to arbitrate
313 pursuant to the agreement:
314 (a) If the refusing party does not appear or does not
315 oppose the motion, the court shall order the parties to
316 arbitrate.
317 (b) If the refusing party opposes the motion, the court
318 shall proceed summarily to decide the issue and order the
319 parties to arbitrate unless it finds that there is no
320 enforceable agreement to arbitrate ~~A party to an agreement or~~
321 ~~provision for arbitration subject to this law claiming the~~
322 ~~neglect or refusal of another party thereto to comply therewith~~
323 ~~may make application to the court for an order directing the~~
324 ~~parties to proceed with arbitration in accordance with the terms~~
325 ~~thereof. If the court is satisfied that no substantial issue~~
326 ~~exists as to the making of the agreement or provision, it shall~~
327 ~~grant the application. If the court shall find that a~~
328 ~~substantial issue is raised as to the making of the agreement or~~
329 ~~provision, it shall summarily hear and determine the issue and,~~
330 ~~according to its determination, shall grant or deny the~~
331 ~~application~~.
332 (2) On motion of a person alleging that an arbitration

333 proceeding has been initiated or threatened but that there is no
334 agreement to arbitrate, the court shall proceed summarily to
335 decide the issue. If the court finds that there is an
336 enforceable agreement to arbitrate, it shall order the parties
337 to arbitrate ~~If an issue referable to arbitration under an~~
338 ~~agreement or provision for arbitration subject to this law~~
339 ~~becomes involved in an action or proceeding pending in a court~~
340 ~~having jurisdiction to hear an application under subsection (1),~~
341 ~~such application shall be made in said court. Otherwise and~~
342 ~~subject to s. 682.19, such application may be made in any court~~
343 ~~of competent jurisdiction~~.
344 (3) If the court finds that there is no enforceable
345 agreement to arbitrate, it may not order the parties to
346 arbitrate pursuant to subsection (1) or subsection (2) ~~Any~~
347 ~~action or proceeding involving an issue subject to arbitration~~
348 ~~under this law shall be stayed if an order for arbitration or an~~
349 ~~application therefor has been made under this section or, if the~~
350 ~~issue is severable, the stay may be with respect thereto only.~~
351 ~~When the application is made in such action or proceeding, the~~
352 ~~order for arbitration shall include such stay~~.
353 (4) The court may not refuse to order arbitration because
354 the claim subject to arbitration lacks merit or grounds for the
355 claim have not been established ~~On application the court may~~
356 ~~stay an arbitration proceeding commenced or about to be~~
357 ~~commenced, if it shall find that no agreement or provision for~~
358 ~~arbitration subject to this law exists between the party making~~
359 ~~the application and the party causing the arbitration to be had.~~
360 ~~The court shall summarily hear and determine the issue of the~~

361 ~~making of the agreement or provision and, according to its~~
362 ~~determination, shall grant or deny the application~~.
363 (5) If a proceeding involving a claim referable to
364 arbitration under an alleged agreement to arbitrate is pending
365 in court, a motion under this section must be made in that
366 court. Otherwise, a motion under this section may be made in any
367 court as provided in s. 682.19 ~~An order for arbitration shall~~
368 ~~not be refused on the ground that the claim in issue lacks merit~~
369 ~~or bona fides or because any fault or grounds for the claim~~
370 ~~sought to be arbitrated have not been shown~~.
371 (6) If a party makes a motion to the court to order
372 arbitration, the court on just terms shall stay any judicial
373 proceeding that involves a claim alleged to be subject to the
374 arbitration until the court renders a final decision under this
375 section.
376 (7) If the court orders arbitration, the court on just
377 terms shall stay any judicial proceeding that involves a claim
378 subject to the arbitration. If a claim subject to the
379 arbitration is severable, the court may limit the stay to that
380 claim.
381 Section 9. Section 682.031, Florida Statutes, is created
382 to read:
383 682.031 Provisional remedies.—
384 (1) Before an arbitrator is appointed and is authorized
385 and able to act, the court, upon motion of a party to an
386 arbitration proceeding and for good cause shown, may enter an
387 order for provisional remedies to protect the effectiveness of
388 the arbitration proceeding to the same extent and under the same

389 conditions as if the controversy were the subject of a civil
390 action.
391 (2) After an arbitrator is appointed and is authorized and
392 able to act:
393 (a) The arbitrator may issue such orders for provisional
394 remedies, including interim awards, as the arbitrator finds
395 necessary to protect the effectiveness of the arbitration
396 proceeding and to promote the fair and expeditious resolution of
397 the controversy, to the same extent and under the same
398 conditions as if the controversy were the subject of a civil
399 action.
400 (b) A party to an arbitration proceeding may move the
401 court for a provisional remedy only if the matter is urgent and
402 the arbitrator is not able to act timely or the arbitrator
403 cannot provide an adequate remedy.
404 (3) A party does not waive a right of arbitration by
405 making a motion under this section.
406 Section 10. Section 682.032, Florida Statutes, is created
407 to read:
408 682.032 Initiation of arbitration.—
409 (1) A person initiates an arbitration proceeding by giving
410 notice in a record to the other parties to the agreement to
411 arbitrate in the agreed manner between the parties or, in the
412 absence of agreement, by certified or registered mail, return
413 receipt requested and obtained, or by service as authorized for
414 the commencement of a civil action. The notice must describe the
415 nature of the controversy and the remedy sought.

416 (2) Unless a person objects for lack or insufficiency of
417 notice under s. 682.06(3) not later than the beginning of the
418 arbitration hearing, the person by appearing at the hearing
419 waives any objection to lack of or insufficiency of notice.
420 Section 11. Section 682.033, Florida Statutes, is created
421 to read:
422 682.033 Consolidation of separate arbitration
423 proceedings.—
424 (1) Except as otherwise provided in subsection (3), upon
425 motion of a party to an agreement to arbitrate or to an
426 arbitration proceeding, the court may order consolidation of
427 separate arbitration proceedings as to all or some of the claims
428 if:
429 (a) There are separate agreements to arbitrate or separate
430 arbitration proceedings between the same persons or one of them
431 is a party to a separate agreement to arbitrate or a separate
432 arbitration proceeding with a third person;
433 (b) The claims subject to the agreements to arbitrate
434 arise in substantial part from the same transaction or series of
435 related transactions;
436 (c) The existence of a common issue of law or fact creates
437 the possibility of conflicting decisions in the separate
438 arbitration proceedings; and
439 (d) Prejudice resulting from a failure to consolidate is
440 not outweighed by the risk of undue delay or prejudice to the
441 rights of or hardship to parties opposing consolidation.

442 (2) The court may order consolidation of separate
443 arbitration proceedings as to some claims and allow other claims
444 to be resolved in separate arbitration proceedings.
445 (3) The court may not order consolidation of the claims of
446 a party to an agreement to arbitrate if the agreement prohibits
447 consolidation.
448 Section 12. Section 682.04, Florida Statutes, is amended
449 to read:
450 682.04 Appointment of arbitrators by court.—
451 (1) If the parties to an agreement to arbitrate agree on
452 ~~or provision for arbitration subject to this law provides~~ a
453 method for appointing ~~the appointment of~~ arbitrators ~~or an~~
454 ~~umpire~~, this method must ~~shall~~ be followed, unless the method
455 fails.
456 (2) The court, on application of a party to an arbitration
457 agreement, shall appoint one or more arbitrators, if:
458 (a) The parties have not agreed on a method;
459 (b) The agreed method fails;
460 (c) One or more of the parties failed to respond to the
461 demand for arbitration; or
462 (d) An arbitrator fails to act and a successor has not
463 been appointed.
464 (3) ~~In the absence thereof, or if the agreed method fails~~
465 ~~or for any reason cannot be followed, or if an arbitrator or~~
466 ~~umpire who has been appointed fails to act and his or her~~
467 ~~successor has not been duly appointed, the court, on application~~
468 ~~of a party to such agreement or provision shall appoint one or~~
469 ~~more arbitrators or an umpire.~~ An arbitrator ~~or umpire~~ so

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470 appointed has all the ~~shall have like~~ powers of an arbitrator
471 designated ~~as if named or provided for~~ in the agreement to
472 arbitrate appointed pursuant to the agreed method ~~or provision~~.
473 (4) An individual who has a known, direct, and material
474 interest in the outcome of the arbitration proceeding or a
475 known, existing, and substantial relationship with a party may
476 not serve as an arbitrator required by an agreement to be
477 neutral.
478 Section 13. Section 682.041, Florida Statutes, is created
479 to read:
480 682.041 Disclosure by arbitrator.—
481 (1) Before accepting appointment, an individual who is
482 requested to serve as an arbitrator, after making a reasonable
483 inquiry, shall disclose to all parties to the agreement to
484 arbitrate and arbitration proceeding and to any other
485 arbitrators any known facts that a reasonable person would
486 consider likely to affect the person's impartiality as an
487 arbitrator in the arbitration proceeding, including:
488 (a) A financial or personal interest in the outcome of the
489 arbitration proceeding.
490 (b) An existing or past relationship with any of the
491 parties to the agreement to arbitrate or the arbitration
492 proceeding, their counsel or representative, a witness, or
493 another arbitrator.
494 (2) An arbitrator has a continuing obligation to disclose
495 to all parties to the agreement to arbitrate and arbitration
496 proceeding and to any other arbitrators any facts that the
497 arbitrator learns after accepting appointment that a reasonable

498 person would consider likely to affect the impartiality of the
499 arbitrator.
500 (3) If an arbitrator discloses a fact required by
501 subsection (1) or subsection (2) to be disclosed and a party
502 timely objects to the appointment or continued service of the
503 arbitrator based upon the fact disclosed, the objection may be a
504 ground under s. 682.13(1)(b) for vacating an award made by the
505 arbitrator.
506 (4) If the arbitrator did not disclose a fact as required
507 by subsection (1) or subsection (2), upon timely objection by a
508 party, the court may vacate an award under s. 682.13(1)(b).
509 (5) An arbitrator appointed as a neutral arbitrator who
510 does not disclose a known, direct, and material interest in the
511 outcome of the arbitration proceeding or a known, existing, and
512 substantial relationship with a party is presumed to act with
513 evident partiality under s. 682.13(1)(b).
514 (6) If the parties to an arbitration proceeding agree to
515 the procedures of an arbitration organization or any other
516 procedures for challenges to arbitrators before an award is
517 made, substantial compliance with those procedures is a
518 condition precedent to a motion to vacate an award on that
519 ground under s. 682.13(1)(b).
520 Section 14. Section 682.05, Florida Statutes, is amended
521 to read:
522 682.05 Majority action by arbitrators.—If there is more
523 than one arbitrator, the powers of an arbitrator must be
524 exercised by a majority of the arbitrators, but all of the
525 arbitrators shall conduct the hearing under s. 682.06(3) ~~The~~

526 ~~powers of the arbitrators may be exercised by a majority of~~
527 ~~their number unless otherwise provided in the agreement or~~
528 ~~provision for arbitration~~.
529 Section 15. Section 682.051, Florida Statutes, is created
530 to read:
531 682.051 Immunity of arbitrator; competency to testify;
532 attorney fees and costs.—
533 (1) An arbitrator or an arbitration organization acting in
534 the capacity of an arbitrator is immune from civil liability to
535 the same extent as a judge of a court of this state acting in a
536 judicial capacity.
537 (2) The immunity afforded under this section supplements
538 any immunity under other law.
539 (3) The failure of an arbitrator to make a disclosure
540 required by s. 682.041 does not cause any loss of immunity under
541 this section.
542 (4) In a judicial, administrative, or similar proceeding,
543 an arbitrator or representative of an arbitration organization
544 is not competent to testify, and may not be required to produce
545 records as to any statement, conduct, decision, or ruling
546 occurring during the arbitration proceeding, to the same extent
547 as a judge of a court of this state acting in a judicial
548 capacity. This subsection does not apply:
549 (a) To the extent necessary to determine the claim of an
550 arbitrator, arbitration organization, or representative of the
551 arbitration organization against a party to the arbitration
552 proceeding; or

553 (b) To a hearing on a motion to vacate an award under s.
554 682.13(1)(a) or (b) if the movant establishes prima facie that a
555 ground for vacating the award exists.
556 (5) If a person commences a civil action against an
557 arbitrator, arbitration organization, or representative of an
558 arbitration organization arising from the services of the
559 arbitrator, organization, or representative or if a person seeks
560 to compel an arbitrator or a representative of an arbitration
561 organization to testify or produce records in violation of
562 subsection (4), and the court decides that the arbitrator,
563 arbitration organization, or representative of an arbitration
564 organization is immune from civil liability or that the
565 arbitrator or representative of the organization is not
566 competent to testify, the court shall award to the arbitrator,
567 organization, or representative reasonable attorney fees and
568 other reasonable expenses of litigation.
569 Section 16. Section 682.06, Florida Statutes, is amended
570 to read:
571 682.06 Hearing.—
572 (1) An arbitrator may conduct an arbitration in such
573 manner as the arbitrator considers appropriate for a fair and
574 expeditious disposition of the proceeding. The arbitrator's
575 authority includes the power to hold conferences with the
576 parties to the arbitration proceeding before the hearing and,
577 among other matters, determine the admissibility, relevance,
578 materiality, and weight of any evidence ~~Unless otherwise~~
579 ~~provided by the agreement or provision for arbitration:~~
580 ~~(1)(a) The arbitrators shall appoint a time and place for~~

581 ~~the hearing and cause notification to the parties to be served~~
582 ~~personally or by registered or certified mail not less than 5~~
583 ~~days before the hearing. Appearance at the hearing waives a~~
584 ~~party's right to such notice. The arbitrators may adjourn their~~
585 ~~hearing from time to time upon their own motion and shall do so~~
586 ~~upon the request of any party to the arbitration for good cause~~
587 ~~shown, provided that no adjournment or postponement of their~~
588 ~~hearing shall extend beyond the date fixed in the agreement or~~
589 ~~provision for making the award unless the parties consent to a~~
590 ~~later date. An umpire authorized to hear and decide the cause~~
591 ~~upon failure of the arbitrators to agree upon an award shall, in~~
592 ~~the course of his or her jurisdiction, have like powers and be~~
593 ~~subject to like limitations thereon~~.
594 ~~(b) The arbitrators, or umpire in the course of his or her~~
595 ~~jurisdiction, may hear and decide the controversy upon the~~
596 ~~evidence produced notwithstanding the failure or refusal of a~~
597 ~~party duly notified of the time and place of the hearing to~~
598 ~~appear. The court on application may direct the arbitrators, or~~
599 ~~the umpire in the course of his or her jurisdiction, to proceed~~
600 ~~promptly with the hearing and making of the award.~~
601 (2) <u>An arbitrator may decide a request for summary</u>
602 <u>disposition of a claim or particular issue:</u>
603 <u>(a) If all interested parties agree; or</u>
604 <u>(b) Upon request of one party to the arbitration</u>
605 <u>proceeding, if that party gives notice to all other parties to</u>
606 <u>the proceeding and the other parties have a reasonable</u>
607 <u>opportunity to respond</u> ~~The parties are entitled to be heard, to~~
608 ~~present evidence material to the controversy and to cross-~~

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609 ~~examine witnesses appearing at the hearing~~.
610 (3) If an arbitrator orders a hearing, the arbitrator
611 shall set a time and place and give notice of the hearing not
612 less than 5 days before the hearing begins. Unless a party to
613 the arbitration proceeding makes an objection to lack or
614 insufficiency of notice not later than the beginning of the
615 hearing, the party's appearance at the hearing waives the
616 objection. Upon request of a party to the arbitration proceeding
617 and for good cause shown, or upon the arbitrator's own
618 initiative, the arbitrator may adjourn the hearing from time to
619 time as necessary but may not postpone the hearing to a time
620 later than that fixed by the agreement to arbitrate for making
621 the award unless the parties to the arbitration proceeding
622 consent to a later date. The arbitrator may hear and decide the
623 controversy upon the evidence produced although a party who was
624 duly notified of the arbitration proceeding did not appear. The
625 court, on request, may direct the arbitrator to conduct the
626 hearing promptly and render a timely decision ~~The hearing shall~~
627 ~~be conducted by all of the arbitrators but a majority may~~
628 ~~determine any question and render a final award. An umpire~~
629 ~~authorized to hear and decide the cause upon the failure of the~~
630 ~~arbitrators to agree upon an award shall sit with the~~
631 ~~arbitrators throughout their hearing but shall not be counted as~~
632 ~~a part of their quorum or in the making of their award. If,~~
633 ~~during the course of the hearing, an arbitrator for any reason~~
634 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~
635 ~~appointed to act as neutrals may continue with the hearing and~~
636 ~~determination of the controversy~~.

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637 (4) At a hearing under subsection (3), a party to the
638 arbitration proceeding has a right to be heard, to present
639 evidence material to the controversy, and to cross-examine
640 witnesses appearing at the hearing.
641 (5) If an arbitrator ceases or is unable to act during the
642 arbitration proceeding, a replacement arbitrator must be
643 appointed in accordance with s. 682.04 to continue the
644 proceeding and to resolve the controversy.
645 Section 17. Section 682.07, Florida Statutes, is amended
646 to read:
647 682.07 Representation by attorney.—A party to an
648 arbitration proceeding may ~~has the right to~~ be represented by an
649 attorney ~~at any arbitration proceeding or hearing under this~~
650 ~~law~~. ~~A waiver thereof prior to the proceeding or hearing is~~
651 ~~ineffective~~.
652 Section 18. Section 682.08, Florida Statutes, is amended
653 to read:
654 682.08 Witnesses, subpoenas, depositions.—
655 (1) An arbitrator may issue a subpoena for the attendance
656 of a witness and for the production of records and other
657 evidence at any hearing and may administer oaths. A subpoena
658 must be served in the manner for service of subpoenas in a civil
659 action and, upon motion to the court by a party to the
660 arbitration proceeding or the arbitrator, enforced in the manner
661 for enforcement of subpoenas in a civil action ~~Arbitrators, or~~
662 ~~an umpire authorized to hear and decide the cause upon failure~~
663 ~~of the arbitrators to agree upon an award, in the course of her~~
664 ~~or his jurisdiction, may issue subpoenas for the attendance of~~

665 ~~witnesses and for the production of books, records, documents~~
666 ~~and other evidence, and shall have the power to administer~~
667 ~~oaths. Subpoenas so issued shall be served, and upon application~~
668 ~~to the court by a party to the arbitration or the arbitrators,~~
669 ~~or the umpire, enforced in the manner provided by law for the~~
670 ~~service and enforcement of subpoenas in a civil action~~.
671 (2) In order to make the proceedings fair, expeditious,
672 and cost effective, upon request of a party to, or a witness in,
673 an arbitration proceeding, an arbitrator may permit a deposition
674 of any witness to be taken for use as evidence at the hearing,
675 including a witness who cannot be subpoenaed for or is unable to
676 attend a hearing. The arbitrator shall determine the conditions
677 under which the deposition is taken ~~On application of a party to~~
678 ~~the arbitration and for use as evidence, the arbitrators, or the~~
679 ~~umpire in the course of her or his jurisdiction, may permit a~~
680 ~~deposition to be taken, in the manner and upon the terms~~
681 ~~designated by them or her or him of a witness who cannot be~~
682 ~~subpoenaed or is unable to attend the hearing~~.
683 (3) An arbitrator may permit such discovery as the
684 arbitrator decides is appropriate in the circumstances, taking
685 into account the needs of the parties to the arbitration
686 proceeding and other affected persons and the desirability of
687 making the proceeding fair, expeditious, and cost effective ~~All~~
688 ~~provisions of law compelling a person under subpoena to testify~~
689 ~~are applicable~~.
690 (4) If an arbitrator permits discovery under subsection
691 (3), the arbitrator may order a party to the arbitration
692 proceeding to comply with the arbitrator's discovery-related

693 orders, issue subpoenas for the attendance of a witness and for
694 the production of records and other evidence at a discovery
695 proceeding, and take action against a noncomplying party to the
696 extent a court could if the controversy were the subject of a
697 civil action in this state.
698 (5) An arbitrator may issue a protective order to prevent
699 the disclosure of privileged information, confidential
700 information, trade secrets, and other information protected from
701 disclosure to the extent a court could if the controversy were
702 the subject of a civil action in this state.
703 (6) All laws compelling a person under subpoena to testify
704 and all fees for attending a judicial proceeding, a deposition,
705 or a discovery proceeding as a witness apply to an arbitration
706 proceeding as if the controversy were the subject of a civil
707 action in this state.
708 (7) The court may enforce a subpoena or discovery-related
709 order for the attendance of a witness within this state and for
710 the production of records and other evidence issued by an
711 arbitrator in connection with an arbitration proceeding in
712 another state upon conditions determined by the court so as to
713 make the arbitration proceeding fair, expeditious, and cost
714 effective. A subpoena or discovery-related order issued by an
715 arbitrator in another state must be served in the manner
716 provided by law for service of subpoenas in a civil action in
717 this state and, upon motion to the court by a party to the
718 arbitration proceeding or the arbitrator, enforced in the manner
719 provided by law for enforcement of subpoenas in a civil action
720 in this state.

721 (8)~~(4)~~ Fees for attendance as a witness shall be the same
722 as for a witness in the circuit court.
723 Section 19. Section 682.081, Florida Statutes, is created
724 to read:
725 682.081 Judicial enforcement of preaward ruling by
726 arbitrator.—If an arbitrator makes a preaward ruling in favor of
727 a party to the arbitration proceeding, the party may request
728 that the arbitrator incorporate the ruling into an award under
729 s. 682.12. A prevailing party may make a motion to the court for
730 an expedited order to confirm the award under s. 682.12, in
731 which case the court shall summarily decide the motion. The
732 court shall issue an order to confirm the award unless the court
733 vacates, modifies, or corrects the award under s. 682.13 or s.
734 682.14.
735 Section 20. Section 682.09, Florida Statutes, is amended
736 to read:
737 682.09 Award.—
738 (1) An arbitrator shall make a record of an award. The
739 record must be signed or otherwise authenticated by any
740 arbitrator who concurs with the award. The arbitrator or the
741 arbitration organization shall give notice of the award,
742 including a copy of the award, to each party to the arbitration
743 proceeding ~~The award shall be in writing and shall be signed by~~
744 ~~the arbitrators joining in the award or by the umpire in the~~
745 ~~course of his or her jurisdiction. They or he or she shall~~
746 ~~deliver a copy to each party to the arbitration either~~
747 ~~personally or by registered or certified mail, or as provided in~~
748 ~~the agreement or provision~~.

749 (2) An award must be made within the time specified by the
750 agreement to arbitrate or, if not specified therein, within the
751 time ordered by the court. The court may extend, or the parties
752 to the arbitration proceeding may agree in a record to extend,
753 the time. The court or the parties may do so within or after the
754 time specified or ordered. A party waives any objection that an
755 award was not timely made unless the party gives notice of the
756 objection to the arbitrator before receiving notice of the award
757 ~~An award shall be made within the time fixed therefor by the~~
758 ~~agreement or provision for arbitration or, if not so fixed,~~
759 ~~within such time as the court may order on application of a~~
760 ~~party to the arbitration. The parties may, by written agreement,~~
761 ~~extend the time either before or after the expiration thereof.~~
762 ~~Any objection that an award was not made within the time~~
763 ~~required is waived unless the objecting party notifies the~~
764 ~~arbitrators or umpire in writing of his or her objection prior~~
765 ~~to the delivery of the award to him or her~~.
766 Section 21. Section 682.10, Florida Statutes, is amended
767 to read:
768 682.10 Change of award by arbitrators ~~or umpire~~.—
769 (1) On motion to an arbitrator by a party to an
770 arbitration proceeding, the arbitrator may modify or correct an
771 award:
772 (a) Upon a ground stated in s. 682.14(1)(a) or (c);
773 (b) Because the arbitrator has not made a final and
774 definite award upon a claim submitted by the parties to the
775 arbitration proceeding; or
776 (c) To clarify the award.

777 (2) A motion under subsection (1) must be made and notice
778 given to all parties within 20 days after the movant receives
779 notice of the award.
780 (3) A party to the arbitration proceeding must give notice
781 of any objection to the motion within 10 days after receipt of
782 the notice.
783 (4) If a motion to the court is pending under s. 682.12,
784 s. 682.13, or s. 682.14, the court may submit the claim to the
785 arbitrator to consider whether to modify or correct the award:
786 (a) Upon a ground stated in s. 682.14(1)(a) or (c);
787 (b) Because the arbitrator has not made a final and
788 definite award upon a claim submitted by the parties to the
789 arbitration proceeding; or
790 (c) To clarify the award.
791 (5) An award modified or corrected pursuant to this
792 section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14
793 ~~On application of a party to the arbitration, or if an~~
794 ~~application to the court is pending under s. 682.12, s. 682.13~~
795 ~~or s. 682.14, on submission to the arbitrators, or to the umpire~~
796 ~~in the case of an umpire's award, by the court under such~~
797 ~~conditions as the court may order, the arbitrators or umpire may~~
798 ~~modify or correct the award upon the grounds stated in s.~~
799 ~~682.14(1)(a) and (c) or for the purpose of clarifying the award.~~
800 ~~The application shall be made within 20 days after delivery of~~
801 ~~the award to the applicant. Written notice thereof shall be~~
802 ~~given forthwith to the other party to the arbitration, stating~~
803 ~~that he or she must serve his or her objections thereto, if any,~~
804 ~~within 10 days from the notice. The award so modified or~~

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805 ~~corrected is subject to the provisions of ss. 682.12-682.14~~.
806 Section 22. Section 682.11, Florida Statutes, is amended
807 to read:
808 682.11 Remedies; fees and expenses of arbitration
809 proceeding.—
810 (1) An arbitrator may award punitive damages or other
811 exemplary relief if such an award is authorized by law in a
812 civil action involving the same claim and the evidence produced
813 at the hearing justifies the award under the legal standards
814 otherwise applicable to the claim.
815 (2) An arbitrator may award reasonable attorney fees and
816 other reasonable expenses of arbitration if such an award is
817 authorized by law in a civil action involving the same claim or
818 by the agreement of the parties to the arbitration proceeding.
819 (3) As to all remedies other than those authorized by
820 subsections (1) and (2), an arbitrator may order such remedies
821 as the arbitrator considers just and appropriate under the
822 circumstances of the arbitration proceeding. The fact that such
823 a remedy could not or would not be granted by the court is not a
824 ground for refusing to confirm an award under s. 682.12 or for
825 vacating an award under s. 682.13.
826 (4) An arbitrator's expenses and fees, together with other
827 expenses, must be paid as provided in the award.
828 (5) If an arbitrator awards punitive damages or other
829 exemplary relief under subsection (1), the arbitrator shall
830 specify in the award the basis in fact justifying and the basis
831 in law authorizing the award and state separately the amount of
832 the punitive damages or other exemplary relief ~~Unless otherwise~~

833 ~~provided in the agreement or provision for arbitration, the~~
834 ~~arbitrators' and umpire's expenses and fees, together with other~~
835 ~~expenses, not including counsel fees, incurred in the conduct of~~
836 ~~the arbitration, shall be paid as provided in the award~~.
837 Section 23. Section 682.12, Florida Statutes, is amended
838 to read:
839 682.12 Confirmation of an award.—After a party to an
840 arbitration proceeding receives notice of an award, the party
841 may make a motion to the court for an order confirming the award
842 at which time the court shall issue a confirming order unless
843 the award is modified or corrected pursuant to s. 682.10 or s.
844 682.14 or is vacated pursuant to s. 682.13 ~~Upon application of a~~
845 ~~party to the arbitration, the court shall confirm an award,~~
846 ~~unless within the time limits hereinafter imposed grounds are~~
847 ~~urged for vacating or modifying or correcting the award, in~~
848 ~~which case the court shall proceed as provided in ss. 682.13 and~~
849 ~~682.14~~.
850 Section 24. Section 682.13, Florida Statutes, is amended
851 to read:
852 682.13 Vacating an award.—
853 (1) Upon motion ~~application~~ of a party to an arbitration
854 proceeding, the court shall vacate an arbitration award if ~~when~~:
855 (a) The award was procured by corruption, fraud, or other
856 undue means;~~.~~
857 (b) There was:
858 1. Evident partiality by an arbitrator appointed as a
859 neutral arbitrator;
860 2. Corruption by an arbitrator; or

861 3. Misconduct by an arbitrator prejudicing the rights of a
862 party to the arbitration proceeding; ~~or corruption in any of the~~
863 ~~arbitrators or umpire or misconduct prejudicing the rights of~~
864 ~~any party.~~
865 (c) An arbitrator refused to postpone the hearing upon
866 showing of sufficient cause for postponement, refused to
867 consider evidence material to the controversy, or otherwise
868 conducted the hearing contrary to s. 682.06, so as to prejudice
869 substantially the rights of a party to the arbitration
870 proceeding; ~~The arbitrators or the umpire in the course of her~~
871 ~~or his jurisdiction exceeded their powers.~~
872 (d) An arbitrator exceeded the arbitrator's powers; ~~The~~
873 ~~arbitrators or the umpire in the course of her or his~~
874 ~~jurisdiction refused to postpone the hearing upon sufficient~~
875 ~~cause being shown therefor or refused to hear evidence material~~
876 ~~to the controversy or otherwise so conducted the hearing,~~
877 ~~contrary to the provisions of s. 682.06, as to prejudice~~
878 ~~substantially the rights of a party.~~
879 (e) There was no agreement to arbitrate, unless the person
880 participated in the arbitration proceeding without raising the
881 objection under s. 682.06(3) not later than the beginning of the
882 arbitration hearing; or ~~There was no agreement or provision for~~
883 ~~arbitration subject to this law, unless the matter was~~
884 ~~determined in proceedings under s. 682.03 and unless the party~~
885 ~~participated in the arbitration hearing without raising the~~
886 ~~objection.~~
887 (f) The arbitration was conducted without proper notice of
888 the initiation of an arbitration as required in s. 682.032 so as

889 to prejudice substantially the rights of a party to the
890 arbitration proceeding
891
892 But the fact that the relief was such that it could not or would
893 not be granted by a court of law or equity is not ground for
894 vacating or refusing to confirm the award.
895 (2) A motion under this section must be filed within 90
896 days after the movant receives notice of the award pursuant to
897 s. 682.09 or within 90 days after the movant receives notice of
898 a modified or corrected award pursuant to s. 682.10, unless the
899 movant alleges that the award was procured by corruption, fraud,
900 or other undue means, in which case the motion must be made
901 within 90 days after the ground is known or by the exercise of
902 reasonable care would have been known by the movant An
903 application under this section shall be made within 90 days
904 after delivery of a copy of the award to the applicant, except
905 that, if predicated upon corruption, fraud or other undue means,
906 it shall be made within 90 days after such grounds are known or
907 should have been known.
908 (3) If the court vacates an award on a ground other than
909 that set forth in paragraph (1)(e), it may order a rehearing. If
910 the award is vacated on a ground stated in paragraph (1)(a) or
911 paragraph (1)(b), the rehearing must be before a new arbitrator.
912 If the award is vacated on a ground stated in paragraph (1)(c),
913 paragraph (1)(d), or paragraph (1)(f), the rehearing may be
914 before the arbitrator who made the award or the arbitrator's
915 successor. The arbitrator must render the decision in the
916 rehearing within the same time as that provided in s. 682.09(2)

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917 for an award ~~In vacating the award on grounds other than those~~
918 ~~stated in paragraph (1)(c), the court may order a rehearing~~
919 ~~before new arbitrators chosen as provided in the agreement or~~
920 ~~provision for arbitration or by the court in accordance with s.~~
921 ~~682.04, or, if the award is vacated on grounds set forth in~~
922 ~~paragraphs (1)(c) and (d), the court may order a rehearing~~
923 ~~before the arbitrators or umpire who made the award or their~~
924 ~~successors appointed in accordance with s. 682.04. The time~~
925 ~~within which the agreement or provision for arbitration requires~~
926 ~~the award to be made is applicable to the rehearing and~~
927 ~~commences from the date of the order therefor~~.
928 (4) If a motion ~~the application~~ to vacate is denied and no
929 motion to modify or correct the award is pending, the court
930 shall confirm the award.
931 Section 25. Section 682.14, Florida Statutes, is amended
932 to read:
933 682.14 Modification or correction of award.—
934 (1) Upon motion made within 90 days after the movant
935 receives notice of the award pursuant to s. 682.09 or within 90
936 days after the movant receives notice of a modified or corrected
937 award pursuant to s. 682.10, the court shall modify or correct
938 the award if ~~Upon application made within 90 days after delivery~~
939 ~~of a copy of the award to the applicant, the court shall modify~~
940 ~~or correct the award when~~:
941 (a) There is an evident miscalculation of figures or an
942 evident mistake in the description of any person, thing, or
943 property referred to in the award.
944 (b) The arbitrators ~~or umpire~~ have awarded upon a matter

945 not submitted in the arbitration ~~to them or him or her~~ and the
946 award may be corrected without affecting the merits of the
947 decision upon the issues submitted.
948 (c) The award is imperfect as a matter of form, not
949 affecting the merits of the controversy.
950 (2) If the application is granted, the court shall modify
951 and correct the award ~~so as to effect its intent~~ and ~~shall~~
952 confirm the award as so modified and corrected. Otherwise,
953 unless a motion to vacate the award under s. 682.13 is pending,
954 the court shall confirm the award as made.
955 (3) An application to modify or correct an award may be
956 joined in the alternative with an application to vacate the
957 award under s. 682.13.
958 Section 26. Section 682.15, Florida Statutes, is amended
959 to read:
960 682.15 Judgment or decree on award.—
961 (1) Upon granting an order confirming, vacating without
962 directing a rehearing, modifying, or correcting an award, the
963 court shall enter a judgment in conformity therewith. The
964 judgment may be recorded, docketed, and enforced as any other
965 judgment in a civil action.
966 (2) A court may allow reasonable costs of the motion and
967 subsequent judicial proceedings.
968 (3) On motion of a prevailing party to a contested
969 judicial proceeding under s. 682.12, s. 682.13, or s. 682.14,
970 the court may add reasonable attorney fees and other reasonable
971 expenses of litigation incurred in a judicial proceeding after
972 the award is made to a judgment confirming, vacating without

973 <u>directing a rehearing, modifying, or correcting an award</u> ~~Upon~~
974 ~~the granting of an order confirming, modifying or correcting an~~
975 ~~award, judgment or decree shall be entered in conformity~~
976 ~~therewith and be enforced as any other judgment or decree. Costs~~
977 ~~of the application and of the proceedings subsequent thereto,~~
978 ~~and disbursements may be awarded by the court~~.
979 Section 27. <u>Section 682.16, Florida Statutes, is repealed.</u>
980 Section 28. <u>Section 682.17, Florida Statutes, is repealed.</u>
981 Section 29. <u>Section 682.18, Florida Statutes, is repealed.</u>
982 Section 30. Section 682.181, Florida Statutes, is created
983 to read:
984 <u>682.181 Jurisdiction.—</u>
985 <u>(1) A court of this state having jurisdiction over the</u>
986 <u>controversy and the parties may enforce an agreement to</u>
987 <u>arbitrate.</u>
988 <u>(2) An agreement to arbitrate providing for arbitration in</u>
989 <u>this state confers exclusive jurisdiction on the court to enter</u>
990 <u>judgment on an award under the Revised Florida Arbitration Code.</u>
991 Section 31. Section 682.19, Florida Statutes, is amended
992 to read:
993 682.19 Venue.—<u>A petition pursuant to s. 682.015 must be</u>
994 <u>filed in the court of the county in which the agreement to</u>
995 <u>arbitrate specifies the arbitration hearing is to be held or, if</u>
996 <u>the hearing has been held, in the court of the county in which</u>
997 <u>it was held. Otherwise, the petition may be made in the court of</u>
998 <u>any county in which an adverse party resides or has a place of</u>
999 <u>business or, if no adverse party has a residence or place of</u>
1000 <u>business in this state, in the court of any county in this</u>

1001 state. All subsequent petitions must be made in the court
1002 hearing the initial petition unless the court otherwise directs
1003 ~~Any application under this law may be made to the court of the~~
1004 ~~county in which the other party to the agreement or provision~~
1005 ~~for arbitration resides or has a place of business, or, if she~~
1006 ~~or he has no residence or place of business in this state, then~~
1007 ~~to the court of any county. All applications under this law~~
1008 ~~subsequent to an initial application shall be made to the court~~
1009 ~~hearing the initial application unless it shall order otherwise~~.
1010 Section 32. Section 682.20, Florida Statutes, is amended
1011 to read:
1012 682.20 Appeals.—
1013 (1) An appeal may be taken from:
1014 (a) An order denying an application to compel arbitration
1015 made under s. 682.03.
1016 (b) An order granting a motion ~~an application~~ to stay
1017 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).
1018 (c) An order confirming ~~or denying confirmation of~~ an
1019 award.
1020 (d) An order denying confirmation of an award unless the
1021 court has entered an order under s. 682.10(4) or s. 682.13. All
1022 other orders denying confirmation of an award are final orders.
1023 (e)~~(d)~~ An order modifying or correcting an award.
1024 (f)~~(e)~~ An order vacating an award without directing a
1025 rehearing.
1026 (g)~~(f)~~ A judgment or decree entered pursuant to this
1027 chapter ~~the provisions of this law~~.
1028 (2) The appeal shall be taken in the manner and to the

1029 same extent as from orders or judgments in a civil action.
1030 Section 33. Section 682.21, Florida Statutes, is repealed.
1031 Section 34. Section 682.22, Florida Statutes, is repealed.
1032 Section 35. Section 682.23, Florida Statutes, is created
1033 to read:
1034 682.23 Relationship to Electronic Signatures in Global and
1035 National Commerce Act.—The provisions of this chapter governing
1036 the legal effect, validity, and enforceability of electronic
1037 records or electronic signatures and of contracts performed with
1038 the use of such records or signatures conform to the
1039 requirements of s. 102 of the Electronic Signatures in Global
1040 and National Commerce Act, 15 U.S.C. s. 7002.
1041 Section 36. Section 682.24, Florida Statutes, is created
1042 to read:
1043 682.24 Effective date; applicability.—
1044 (1) The Revised Florida Arbitration Code takes effect on
1045 July 1, 2012.
1046 (2) The Revised Florida Arbitration Code does not affect
1047 an action or proceeding commenced or right accrued before the
1048 Revised Florida Arbitration Code takes effect. Subject to s.
1049 682.013, an arbitration agreement made before July 1, 2012, is
1050 governed by the former Florida Arbitration Code.
1051 Section 37. Section 682.25, Florida Statutes, is created
1052 to read:
1053 682.25 Disputes excluded.—The Revised Florida Arbitration
1054 Code does not apply to any dispute involving child custody,
1055 visitation, or child support.

1056 Section 38. Section 44.104, Florida Statutes, is amended
1057 to read:
1058 44.104 Voluntary ~~binding arbitration and voluntary~~ trial
1059 resolution.—
1060 (1) Two or more opposing parties who are involved in a
1061 civil dispute may agree in writing to submit the controversy to
1062 ~~voluntary binding arbitration, or~~ voluntary trial resolution, in
1063 lieu of judicial litigation of the issues involved, prior to or
1064 after a lawsuit has been filed~~, provided no constitutional issue~~
1065 ~~is involved~~.
1066 (2) If the parties have entered into an such an agreement
1067 and the agreement ~~which provides in voluntary binding~~
1068 ~~arbitration for a method for appointing of one or more~~
1069 ~~arbitrators, or which~~ provides ~~in voluntary trial resolution~~ a
1070 method for appointing the ~~a member of The Florida Bar in good~~
1071 ~~standing for more than 5 years to act as~~ trial resolution judge,
1072 that method shall be followed ~~the court shall proceed with the~~
1073 ~~appointment as prescribed. However, in voluntary binding~~
1074 ~~arbitration at least one of the arbitrators, who shall serve as~~
1075 ~~the chief arbitrator, shall meet the qualifications and training~~
1076 ~~requirements adopted pursuant to s. 44.106~~. In the absence of an
1077 agreement on a method for appointing the trial resolution judge,
1078 or if the agreement method fails or for any reason cannot be
1079 followed, and the parties fail to agree on the person to serve
1080 as the trial resolution judge, the court, on application of a
1081 party, shall appoint ~~one or more qualified arbitrators, or~~ the
1082 trial resolution judge, as the case requires. A trial resolution
1083 judge must be a member of The Florida Bar in good standing for 5

1084 years or more who has agreed to serve.
1085 (3) The ~~arbitrators or~~ trial resolution judge shall be
1086 compensated by the parties according to their agreement with the
1087 trial resolution judge.
1088 (4) Within 10 days after the submission of the request for
1089 ~~binding arbitration, or~~ voluntary trial resolution, the court
1090 shall provide for the appointment of the ~~arbitrator or~~
1091 ~~arbitrators, or~~ trial resolution judge, as the case requires.
1092 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
1093 notify the parties of the time and place for the hearing.
1094 (5) Application for ~~voluntary binding arbitration or~~
1095 voluntary trial resolution shall be filed and fees paid to the
1096 clerk of court as if for complaints initiating civil actions.
1097 The clerk of the court shall handle and account for these
1098 matters in all respects as if they were civil actions, except
1099 that the clerk of court shall keep separate ~~the records of the~~
1100 ~~applications for voluntary binding arbitration and~~ the records
1101 of the applications for voluntary trial resolution from all
1102 other civil actions.
1103 (6) Filing of the application for ~~binding arbitration or~~
1104 voluntary trial resolution tolls ~~will toll~~ the running of the
1105 applicable statutes of limitation.
1106 (7) The ~~chief arbitrator or~~ trial resolution judge may
1107 administer oaths or affirmations and conduct the proceedings as
1108 the rules of court shall provide. At the request of any party,
1109 the ~~chief arbitrator or~~ trial resolution judge shall issue
1110 subpoenas for the attendance of witnesses and for the production
1111 of books, records, documents, and other evidence and may apply

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1112 to the court for orders compelling attendance and production.
1113 Subpoenas shall be served and shall be enforceable in the manner
1114 provided by law. The trial resolution judge may order temporary
1115 relief in the same manner, and to the same extent, as in civil
1116 actions generally. Any party may enforce such an order by filing
1117 a petition in the court. Orders entered by the court are
1118 reviewable by the appellate court in the same manner, and to the
1119 same extent, as orders in civil actions generally.
1120 (8) ~~A voluntary binding arbitration hearing shall be~~
1121 ~~conducted by all of the arbitrators, but a majority may~~
1122 ~~determine any question and render a final decision.~~ A trial
1123 resolution judge shall conduct a voluntary trial resolution
1124 hearing. The trial resolution judge may determine any question
1125 and render a final decision.
1126 (9) The Florida Evidence Code and Florida Rules of Civil
1127 Procedure ~~shall~~ apply to all proceedings under this section,
1128 except that voluntary trial resolution is not governed by
1129 procedural rules regulating general and special magistrates, and
1130 rulings of the trial resolution judge are not reviewable by
1131 filing exceptions with the court.
1132 ~~(10) An appeal of a voluntary binding arbitration decision~~
1133 ~~shall be taken to the circuit court and shall be limited to~~
1134 ~~review on the record and not de novo, of:~~
1135 ~~(a) Any alleged failure of the arbitrators to comply with~~
1136 ~~the applicable rules of procedure or evidence.~~
1137 ~~(b) Any alleged partiality or misconduct by an arbitrator~~
1138 ~~prejudicing the rights of any party.~~
1139 ~~(c) Whether the decision reaches a result contrary to the~~

1140 ~~Constitution of the United States or of the State of Florida.~~
1141 (10)~~(11)~~ Any party may enforce a final decision rendered
1142 in a voluntary trial by filing a petition for final judgment in
1143 the circuit court in the circuit in which the voluntary trial
1144 took place. Upon entry of final judgment by the circuit court,
1145 any party may appeal to the appropriate appellate court. The
1146 judgment is reviewable by the appellate court in the same
1147 manner, and to the same extent, as a judgment in a civil action
1148 ~~Factual findings determined in the voluntary trial are not~~
1149 ~~subject to appeal~~.
1150 ~~(12) The harmless error doctrine shall apply in all~~
1151 ~~appeals. No further review shall be permitted unless a~~
1152 ~~constitutional issue is raised.~~
1153 (11)~~(13)~~ If no appeal is taken within the time provided by
1154 rules promulgated by the Supreme Court, ~~then~~ the decision shall
1155 be referred to the presiding judge in the case, or if one has
1156 not been assigned, then to the chief judge of the circuit for
1157 assignment to a circuit judge, who shall enter such orders and
1158 judgments as are required to carry out the terms of the
1159 decision. Equitable remedies are~~, which orders shall be~~
1160 enforceable by the contempt powers of the court to the same
1161 extent as in civil actions generally. When a judgment provides
1162 for execution, ~~and for which judgments~~ execution shall issue on
1163 request of a party.
1164 (12)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~
1165 ~~involving child custody, visitation, or child support, or~~ to any
1166 dispute that ~~which~~ involves the rights of a third party not a
1167 party to the ~~arbitration or~~ voluntary trial resolution when the

1168 third party would be an indispensable party if the dispute were
1169 resolved in court or when the third party notifies ~~the chief~~
1170 ~~arbitrator or~~ the trial resolution judge that the third party
1171 would be a proper party if the dispute were resolved in court,
1172 that the third party intends to intervene in the action in
1173 court, and that the third party does not agree to proceed under
1174 this section.
1175 (13) A trial resolution judge does not have jurisdiction
1176 to declare unconstitutional a statute, ordinance, or provision
1177 of a constitution. If any such claim is made in the voluntary
1178 trial resolution proceeding, that claim shall be severed and
1179 adjudicated by a judge of the court.
1180 (14)(a) The parties may agree to a trial by a privately
1181 selected jury. The court's jury pool may not be used for this
1182 purpose. In all other cases, the trial resolution judge shall
1183 conduct a bench trial.
1184 (b) The trial resolution judge may wear a judicial robe
1185 and use the title "Trial Resolution Judge" when acting in that
1186 capacity.
1187 Section 39. Subsection (1) of section 44.107, Florida
1188 Statutes, is amended to read:
1189 44.107 Immunity for arbitrators, voluntary trial
1190 resolution judges, mediators, and mediator trainees.—
1191 (1) Arbitrators serving under s. 44.103, voluntary trial
1192 resolution judges serving under ~~or~~ s. 44.104, mediators serving
1193 under s. 44.102, and trainees fulfilling the mentorship
1194 requirements for certification by the Supreme Court as a
1195 mediator ~~shall~~ have judicial immunity in the same manner and to

1196 the same extent as a judge and are entitled to the same immunity
1197 and remedies provided in s. 682.051.
1198 Section 40. Section 440.1926, Florida Statutes, is amended
1199 to read:
1200 440.1926 Alternate dispute resolution; claim arbitration.—
1201 Notwithstanding any other provision of this chapter, the
1202 employer, carrier, and employee may mutually agree to seek
1203 consent from a judge of compensation claims to enter into
1204 binding claim arbitration in lieu of any other remedy provided
1205 for in this chapter to resolve all issues in dispute regarding
1206 an injury. Arbitrations agreed to pursuant to this section shall
1207 be governed by chapter 682, the Revised Florida Arbitration
1208 Code, except that, notwithstanding any provision in chapter 682,
1209 the term "court" shall mean a judge of compensation claims. An
1210 arbitration award in accordance with this section is ~~shall be~~
1211 enforceable in the same manner and with the same powers as any
1212 final compensation order.
1213 Section 41. Paragraph (a) of subsection (1) of section
1214 489.1402, Florida Statutes, is amended to read:
1215 489.1402 Homeowners' Construction Recovery Fund;
1216 definitions.—
1217 (1) The following definitions apply to ss. 489.140-
1218 489.144:
1219 (a) "Arbitration" means alternative dispute resolution
1220 entered into between a claimant and a contractor either pursuant
1221 to a construction contract that contains a mandatory arbitration
1222 clause or through any binding arbitration under the Revised
1223 Florida Arbitration Code.

1224 Section 42. Subsection (2) of section 731.401, Florida
1225 Statutes, is amended to read:
1226 731.401 Arbitration of disputes.—
1227 (2) Unless otherwise specified in the will or trust, a
1228 will or trust provision requiring arbitration shall be presumed
1229 to require voluntary trial resolution ~~binding arbitration~~ under
1230 s. 44.104.
1231 Section 43. The Division of Statutory Revision is directed
1232 to redesignate the title of chapter 44, Florida Statutes, as
1233 "Alternative Dispute Resolution."
1234 Section 44. The Division of Statutory Revision is directed
1235 to replace the phrase "the effective date of this act" wherever
1236 it occurs in this act with the date this act becomes a law.
1237 Section 45. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Judiciary Committee

Representative Harrison offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 682.01, Florida Statutes, is amended to read:

682.01 Short title ~~Florida Arbitration Code~~.—This chapter ~~Sections 682.01-682.22~~ may be cited as the "Revised Florida Arbitration Code."

Section 2. Section 682.011, Florida Statutes, is created to read:

682.011 Definitions.—As used in this chapter, the term:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

18 (2) "Arbitrator" means an individual appointed to render
19 an award, alone or with others, in a controversy that is subject
20 to an agreement to arbitrate.
21 (3) "Court" means a court of competent jurisdiction in
22 this state.
23 (4) "Knowledge" means actual knowledge.
24 (5) "Person" means an individual, corporation, business
25 trust, estate, trust, partnership, limited liability company,
26 association, joint venture, or government; governmental
27 subdivision, agency, or instrumentality; public corporation; or
28 any other legal or commercial entity.
29 (6) "Record" means information that is inscribed on a
30 tangible medium or that is stored in an electronic or other
31 medium and is retrievable in perceivable form.
32 Section 3. Section 682.012, Florida Statutes, is created
33 to read:
34 682.012 Notice.—
35 (1) Except as otherwise provided in this chapter, a person
36 gives notice to another person by taking action that is
37 reasonably necessary to inform the other person in ordinary
38 course, whether or not the other person acquires knowledge of
39 the notice.
40 (2) A person has notice if the person has knowledge of the
41 notice or has received notice.
42 (3) A person receives notice when it comes to the person's
43 attention or the notice is delivered at the person's place of
44 residence or place of business, or at another location held out
45 by the person as a place of delivery of such communications.

46 Section 4. Section 682.013, Florida Statutes, is created
47 to read:
48 682.013 Applicability of revised code.—
49 (1) The Revised Florida Arbitration Code governs an
50 agreement to arbitrate made on or after July 1, 2012.
51 (2) The Revised Florida Arbitration Code governs an
52 agreement to arbitrate made before July 1, 2012, if all the
53 parties to the agreement or to the arbitration proceeding so
54 agree in a record. Otherwise, such agreements shall be governed
55 by the applicable law existing at the time the parties entered
56 into the agreement.
57 (3) The Revised Florida Arbitration Code does not affect
58 an action or proceeding commenced or right accrued before July
59 1, 2012.
60 (4) Beginning July 1, 2015, an agreement to arbitrate
61 shall be subject to the then applicable law governing agreements
62 to arbitrate.
63 Section 5. Section 682.014, Florida Statutes, is created
64 to read:
65 682.014 Effect of agreement to arbitrate; nonwaivable
66 provisions.—
67 (1) Except as otherwise provided in subsections (2) and
68 (3), a party to an agreement to arbitrate or to an arbitration
69 proceeding may waive, or the parties may vary the effect of, the
70 requirements of this chapter to the extent permitted by law.
71 (2) Before a controversy arises that is subject to an
72 agreement to arbitrate, a party to the agreement may not:

73 (a) Waive or agree to vary the effect of the requirements
74 of:
75 1. Commencing a petition for judicial relief under s.
76 682.015(1);
77 2. Making agreements to arbitrate valid, enforceable, and
78 irrevocable under s. 682.02(1);
79 3. Permitting provisional remedies under s. 682.031;
80 4. Conferring authority on arbitrators to issue subpoenas
81 and permit depositions under s. 682.08(1) or (2);
82 5. Conferring jurisdiction under s. 682.181; or
83 6. Stating the bases for appeal under s. 682.20;
84 (b) Agree to unreasonably restrict the right under s.
85 682.032 to notice of the initiation of an arbitration
86 proceeding;
87 (c) Agree to unreasonably restrict the right under s.
88 682.041 to disclosure of any facts by a neutral arbitrator; or
89 (d) Waive the right under s. 682.07 of a party to an
90 agreement to arbitrate to be represented by an attorney at any
91 proceeding or hearing under this chapter, but an employer and a
92 labor organization may waive the right to representation by an
93 attorney in a labor arbitration.
94 (3) A party to an agreement to arbitrate or arbitration
95 proceeding may not waive, or the parties may not vary the effect
96 of, the requirements in this section or:
97 (a) The applicability of this chapter, the Revised Florida
98 Arbitration Code under s. 682.013(1) or (4);
99 (b) The availability of proceedings to compel or stay
100 arbitration under s. 682.03;

101 (c) The immunity conferred on arbitrators and arbitration
102 organizations under s. 682.051;
103 (d) A party's right to seek judicial enforcement of an
104 arbitration preaward ruling under s. 682.081;
105 (e) The authority conferred on an arbitrator to change an
106 award under s. 682.10(4) or (5);
107 (f) The remedies provided under s. 682.12;
108 (g) The grounds for vacating an arbitration award under s.
109 682.13;
110 (h) The grounds for modifying an arbitration award under
111 s. 682.14;
112 (i) The validity and enforceability of a judgment or
113 decree based on an award under s. 682.15(1) or (2);
114 (j) The validity of the Electronic Signatures in Global
115 and National Commerce Act under s. 682.23; or
116 (k) The excluded disputes involving child custody,
117 visitation, or child support under s. 682.25.
118 Section 6. Section 682.015, Florida Statutes, is created
119 to read:
120 682.015 Petition for judicial relief.—
121 (1) Except as otherwise provided in s. 682.20, a petition
122 for judicial relief under this chapter must be made to the court
123 and heard in the manner provided by law or rule of court for
124 making and hearing motions.
125 (2) Unless a civil action involving the agreement to
126 arbitrate is pending, notice of an initial petition to the court
127 under this chapter must be served in the manner provided by law
128 for the service of a summons in a civil action. Otherwise,

129 notice of the motion must be given in the manner provided by law
130 or rule of court for serving motions in pending cases.
131 Section 7. Section 682.02, Florida Statutes, is amended to
132 read:
133 682.02 Arbitration agreements made valid, irrevocable, and
134 enforceable; scope.—
135 (1) An agreement contained in a record to submit to
136 arbitration any existing or subsequent controversy arising
137 between the parties to the agreement is valid, enforceable, and
138 irrevocable except upon a ground that exists at law or in equity
139 for the revocation of a contract.
140 (2) The court shall decide whether an agreement to
141 arbitrate exists or a controversy is subject to an agreement to
142 arbitrate.
143 (3) An arbitrator shall decide whether a condition
144 precedent to arbitrability has been fulfilled and whether a
145 contract containing a valid agreement to arbitrate is
146 enforceable.
147 (4) If a party to a judicial proceeding challenges the
148 existence of, or claims that a controversy is not subject to, an
149 agreement to arbitrate, the arbitration proceeding may continue
150 pending final resolution of the issue by the court, unless the
151 court otherwise orders.
152 (5) ~~Two or more parties may agree in writing to submit to~~
153 ~~arbitration any controversy existing between them at the time of~~
154 ~~the agreement, or they may include in a written contract a~~
155 ~~provision for the settlement by arbitration of any controversy~~
156 ~~thereafter arising between them relating to such contract or the~~

157 ~~failure or refusal to perform the whole or any part thereof.~~
158 This section also applies to written interlocal agreements under
159 ss. 163.01 and 373.713 in which two or more parties agree to
160 submit to arbitration any controversy between them concerning
161 water use permit motions ~~applications~~ and other matters,
162 regardless of whether or not the water management district with
163 jurisdiction over the subject motion ~~application~~ is a party to
164 the interlocal agreement or a participant in the arbitration.
165 ~~Such agreement or provision shall be valid, enforceable, and~~
166 ~~irrevocable without regard to the justiciable character of the~~
167 ~~controversy; provided that this act shall not apply to any such~~
168 ~~agreement or provision to arbitrate in which it is stipulated~~
169 ~~that this law shall not apply or to any arbitration or award~~
170 ~~thereunder.~~
171 Section 8. Section 682.03, Florida Statutes, is amended to
172 read:
173 682.03 Proceedings to compel and to stay arbitration.—
174 (1) On motion of a person showing an agreement to
175 arbitrate and alleging another person's refusal to arbitrate
176 pursuant to the agreement:
177 (a) If the refusing party does not appear or does not
178 oppose the motion, the court shall order the parties to
179 arbitrate.
180 (b) If the refusing party opposes the motion, the court
181 shall proceed summarily to decide the issue and order the
182 parties to arbitrate unless it finds that there is no
183 enforceable agreement to arbitrate. ~~A party to an agreement or~~
184 ~~provision for arbitration subject to this law claiming the~~

185 ~~neglect or refusal of another party thereto to comply therewith~~
186 ~~may make application to the court for an order directing the~~
187 ~~parties to proceed with arbitration in accordance with the terms~~
188 ~~thereof. If the court is satisfied that no substantial issue~~
189 ~~exists as to the making of the agreement or provision, it shall~~
190 ~~grant the application. If the court shall find that a~~
191 ~~substantial issue is raised as to the making of the agreement or~~
192 ~~provision, it shall summarily hear and determine the issue and,~~
193 ~~according to its determination, shall grant or deny the~~
194 ~~application.~~
195 (2) On motion of a person alleging that an arbitration
196 proceeding has been initiated or threatened but that there is no
197 agreement to arbitrate, the court shall proceed summarily to
198 decide the issue. If the court finds that there is an
199 enforceable agreement to arbitrate, it shall order the parties
200 to arbitrate. ~~If an issue referable to arbitration under an~~
201 ~~agreement or provision for arbitration subject to this law~~
202 ~~becomes involved in an action or proceeding pending in a court~~
203 ~~having jurisdiction to hear an application under subsection (1),~~
204 ~~such application shall be made in said court. Otherwise and~~
205 ~~subject to s. 682.19, such application may be made in any court~~
206 ~~of competent jurisdiction.~~
207 (3) If the court finds that there is no enforceable
208 agreement to arbitrate, it may not order the parties to
209 arbitrate pursuant to subsection (1) or subsection (2). ~~Any~~
210 ~~action or proceeding involving an issue subject to arbitration~~
211 ~~under this law shall be stayed if an order for arbitration or an~~
212 ~~application therefor has been made under this section or, if the~~

213 ~~issue is severable, the stay may be with respect thereto only.~~
214 ~~When the application is made in such action or proceeding, the~~
215 ~~order for arbitration shall include such stay.~~
216 (4) The court may not refuse to order arbitration because
217 the claim subject to arbitration lacks merit or grounds for the
218 claim have not been established. ~~On application the court may~~
219 ~~stay an arbitration proceeding commenced or about to be~~
220 ~~commenced, if it shall find that no agreement or provision for~~
221 ~~arbitration subject to this law exists between the party making~~
222 ~~the application and the party causing the arbitration to be had.~~
223 ~~The court shall summarily hear and determine the issue of the~~
224 ~~making of the agreement or provision and, according to its~~
225 ~~determination, shall grant or deny the application.~~
226 (5) If a proceeding involving a claim referable to
227 arbitration under an alleged agreement to arbitrate is pending
228 in court, a motion under this section must be made in that
229 court. Otherwise, a motion under this section may be made in any
230 court as provided in s. 682.19. ~~An order for arbitration shall~~
231 ~~not be refused on the ground that the claim in issue lacks merit~~
232 ~~or bona fides or because any fault or grounds for the claim~~
233 ~~sought to be arbitrated have not been shown.~~
234 (6) If a party makes a motion to the court to order
235 arbitration, the court on just terms shall stay any judicial
236 proceeding that involves a claim alleged to be subject to the
237 arbitration until the court renders a final decision under this
238 section.
239 (7) If the court orders arbitration, the court on just
240 terms shall stay any judicial proceeding that involves a claim

241 subject to the arbitration. If a claim subject to the
242 arbitration is severable, the court may limit the stay to that
243 claim.
244 Section 9. Section 682.031, Florida Statutes, is created
245 to read:
246 682.031 Provisional remedies.—
247 (1) Before an arbitrator is appointed and is authorized
248 and able to act, the court, upon motion of a party to an
249 arbitration proceeding and for good cause shown, may enter an
250 order for provisional remedies to protect the effectiveness of
251 the arbitration proceeding to the same extent and under the same
252 conditions as if the controversy were the subject of a civil
253 action.
254 (2) After an arbitrator is appointed and is authorized and
255 able to act:
256 (a) The arbitrator may issue such orders for provisional
257 remedies, including interim awards, as the arbitrator finds
258 necessary to protect the effectiveness of the arbitration
259 proceeding and to promote the fair and expeditious resolution of
260 the controversy, to the same extent and under the same
261 conditions as if the controversy were the subject of a civil
262 action.
263 (b) A party to an arbitration proceeding may move the
264 court for a provisional remedy only if the matter is urgent and
265 the arbitrator is not able to act timely or the arbitrator
266 cannot provide an adequate remedy.
267 (3) A party does not waive a right of arbitration by
268 making a motion under this section.

269 (4) If an arbitrator awards a provisional remedy for
270 injunctive or equitable relief, the arbitrator shall state in
271 the award the factual findings and legal basis for the award.
272 (5) A party may seek to confirm or vacate a provisional
273 remedy award for injunctive or equitable relief under s.
274 682.081.
275 Section 10. Section 682.032, Florida Statutes, is created
276 to read:
277 682.032 Initiation of arbitration.—
278 (1) A person initiates an arbitration proceeding by giving
279 notice in a record to the other parties to the agreement to
280 arbitrate in the agreed manner between the parties or, in the
281 absence of agreement, by certified or registered mail, return
282 receipt requested and obtained, or by service as authorized for
283 the commencement of a civil action. The notice must describe the
284 nature of the controversy and the remedy sought.
285 (2) Unless a person objects for lack or insufficiency of
286 notice under s. 682.06(3) not later than the beginning of the
287 arbitration hearing, the person by appearing at the hearing
288 waives any objection to lack of or insufficiency of notice.
289 Section 11. Section 682.033, Florida Statutes, is created
290 to read:
291 682.033 Consolidation of separate arbitration
292 proceedings.—
293 (1) Except as otherwise provided in subsection (3), upon
294 motion of a party to an agreement to arbitrate or to an
295 arbitration proceeding, the court may order consolidation of

296 separate arbitration proceedings as to all or some of the claims
297 if:
298 (a) There are separate agreements to arbitrate or separate
299 arbitration proceedings between the same persons or one of them
300 is a party to a separate agreement to arbitrate or a separate
301 arbitration proceeding with a third person;
302 (b) The claims subject to the agreements to arbitrate
303 arise in substantial part from the same transaction or series of
304 related transactions;
305 (c) The existence of a common issue of law or fact creates
306 the possibility of conflicting decisions in the separate
307 arbitration proceedings; and
308 (d) Prejudice resulting from a failure to consolidate is
309 not outweighed by the risk of undue delay or prejudice to the
310 rights of or hardship to parties opposing consolidation.
311 (2) The court may order consolidation of separate
312 arbitration proceedings as to some claims and allow other claims
313 to be resolved in separate arbitration proceedings.
314 (3) The court may not order consolidation of the claims of
315 a party to an agreement to arbitrate if the agreement prohibits
316 consolidation.
317 Section 12. Section 682.04, Florida Statutes, is amended
318 to read:
319 682.04 Appointment of arbitrators by court.—
320 (1) If the parties to an agreement to arbitrate agree on
321 ~~or provision for arbitration subject to this law provides~~ a
322 method for appointing ~~the appointment of~~ arbitrators ~~or an~~

323 ~~umpire~~, this method must ~~shall~~ be followed, unless the method
324 fails.
325 (2) The court, on application of a party to an arbitration
326 agreement, shall appoint one or more arbitrators, if:
327 (a) The parties have not agreed on a method;
328 (b) The agreed method fails;
329 (c) One or more of the parties failed to respond to the
330 demand for arbitration; or
331 (d) An arbitrator fails to act and a successor has not
332 been appointed.
333 (3) ~~In the absence thereof, or if the agreed method fails~~
334 ~~or for any reason cannot be followed, or if an arbitrator or~~
335 ~~umpire who has been appointed fails to act and his or her~~
336 ~~successor has not been duly appointed, the court, on application~~
337 ~~of a party to such agreement or provision shall appoint one or~~
338 ~~more arbitrators or an umpire.~~ An arbitrator ~~or umpire~~ so
339 appointed has all the ~~shall have like~~ powers of an arbitrator
340 designated ~~as if named or provided for~~ in the agreement to
341 arbitrate appointed pursuant to the agreed method ~~or provision~~.
342 (4) An individual who has a known, direct, and material
343 interest in the outcome of the arbitration proceeding or a
344 known, existing, and substantial relationship with a party may
345 not serve as an arbitrator required by an agreement to be
346 neutral.
347 Section 13. Section 682.041, Florida Statutes, is created
348 to read:
349 682.041 Disclosure by arbitrator.—

350 (1) Before accepting appointment, an individual who is
351 requested to serve as an arbitrator, after making a reasonable
352 inquiry, shall disclose to all parties to the agreement to
353 arbitrate and arbitration proceeding and to any other
354 arbitrators any known facts that a reasonable person would
355 consider likely to affect the person's impartiality as an
356 arbitrator in the arbitration proceeding, including:
357 (a) A financial or personal interest in the outcome of the
358 arbitration proceeding.
359 (b) An existing or past relationship with any of the
360 parties to the agreement to arbitrate or the arbitration
361 proceeding, their counsel or representative, a witness, or
362 another arbitrator.
363 (2) An arbitrator has a continuing obligation to disclose
364 to all parties to the agreement to arbitrate and arbitration
365 proceeding and to any other arbitrators any facts that the
366 arbitrator learns after accepting appointment that a reasonable
367 person would consider likely to affect the impartiality of the
368 arbitrator.
369 (3) If an arbitrator discloses a fact required by
370 subsection (1) or subsection (2) to be disclosed and a party
371 timely objects to the appointment or continued service of the
372 arbitrator based upon the fact disclosed, the objection may be a
373 ground under s. 682.13(1)(b) for vacating an award made by the
374 arbitrator.
375 (4) If the arbitrator did not disclose a fact as required
376 by subsection (1) or subsection (2), upon timely objection by a
377 party, the court may vacate an award under s. 682.13(1)(b).

378 (5) An arbitrator appointed as a neutral arbitrator who
379 does not disclose a known, direct, and material interest in the
380 outcome of the arbitration proceeding or a known, existing, and
381 substantial relationship with a party is presumed to act with
382 evident partiality under s. 682.13(1)(b).
383 (6) If the parties to an arbitration proceeding agree to
384 the procedures of an arbitration organization or any other
385 procedures for challenges to arbitrators before an award is
386 made, substantial compliance with those procedures is a
387 condition precedent to a motion to vacate an award on that
388 ground under s. 682.13(1)(b).
389 Section 14. Section 682.05, Florida Statutes, is amended
390 to read:
391 682.05 Majority action by arbitrators.—If there is more
392 than one arbitrator, the powers of an arbitrator must be
393 exercised by a majority of the arbitrators, but all of the
394 arbitrators shall conduct the hearing under s. 682.06(3). ~~The~~
395 ~~powers of the arbitrators may be exercised by a majority of~~
396 ~~their number unless otherwise provided in the agreement or~~
397 ~~provision for arbitration.~~
398 Section 15. Section 682.051, Florida Statutes, is created
399 to read:
400 682.051 Immunity of arbitrator; competency to testify;
401 attorney fees and costs.—
402 (1) An arbitrator or an arbitration organization acting in
403 that capacity is immune from civil liability to the same extent
404 as a judge of a court of this state acting in a judicial
405 capacity.

406 (2) The immunity afforded under this section supplements
407 any immunity under other law.
408 (3) The failure of an arbitrator to make a disclosure
409 required by s. 682.041 does not cause any loss of immunity under
410 this section.
411 (4) In a judicial, administrative, or similar proceeding,
412 an arbitrator or representative of an arbitration organization
413 is not competent to testify, and may not be required to produce
414 records as to any statement, conduct, decision, or ruling
415 occurring during the arbitration proceeding, to the same extent
416 as a judge of a court of this state acting in a judicial
417 capacity. This subsection does not apply:
418 (a) To the extent necessary to determine the claim of an
419 arbitrator, arbitration organization, or representative of the
420 arbitration organization against a party to the arbitration
421 proceeding; or
422 (b) To a hearing on a motion to vacate an award under s.
423 682.13(1)(a) or (b) if the movant establishes prima facie that a
424 ground for vacating the award exists.
425 (5) If a person commences a civil action against an
426 arbitrator, arbitration organization, or representative of an
427 arbitration organization arising from the services of the
428 arbitrator, organization, or representative or if a person seeks
429 to compel an arbitrator or a representative of an arbitration
430 organization to testify or produce records in violation of
431 subsection (4), and the court decides that the arbitrator,
432 arbitration organization, or representative of an arbitration
433 organization is immune from civil liability or that the

434 arbitrator or representative of the organization is not
435 competent to testify, the court shall award to the arbitrator,
436 organization, or representative reasonable attorney fees and
437 other reasonable expenses of litigation.
438 Section 16. Section 682.06, Florida Statutes, is amended
439 to read:
440 682.06 Hearing.—
441 (1) An arbitrator may conduct an arbitration in such
442 manner as the arbitrator considers appropriate for a fair and
443 expeditious disposition of the proceeding. The arbitrator's
444 authority includes the power to hold conferences with the
445 parties to the arbitration proceeding before the hearing and,
446 among other matters, determine the admissibility, relevance,
447 materiality, and weight of any evidence. ~~Unless otherwise~~
448 ~~provided by the agreement or provision for arbitration:~~
449 ~~(1)(a) The arbitrators shall appoint a time and place for~~
450 ~~the hearing and cause notification to the parties to be served~~
451 ~~personally or by registered or certified mail not less than 5~~
452 ~~days before the hearing. Appearance at the hearing waives a~~
453 ~~party's right to such notice. The arbitrators may adjourn their~~
454 ~~hearing from time to time upon their own motion and shall do so~~
455 ~~upon the request of any party to the arbitration for good cause~~
456 ~~shown, provided that no adjournment or postponement of their~~
457 ~~hearing shall extend beyond the date fixed in the agreement or~~
458 ~~provision for making the award unless the parties consent to a~~
459 ~~later date. An umpire authorized to hear and decide the cause~~
460 ~~upon failure of the arbitrators to agree upon an award shall, in~~

461 ~~the course of his or her jurisdiction, have like powers and be~~
462 ~~subject to like limitations thereon.~~
463 ~~(b) The arbitrators, or umpire in the course of his or her~~
464 ~~jurisdiction, may hear and decide the controversy upon the~~
465 ~~evidence produced notwithstanding the failure or refusal of a~~
466 ~~party duly notified of the time and place of the hearing to~~
467 ~~appear. The court on application may direct the arbitrators, or~~
468 ~~the umpire in the course of his or her jurisdiction, to proceed~~
469 ~~promptly with the hearing and making of the award.~~
470 (2) An arbitrator may decide a request for summary
471 disposition of a claim or particular issue:
472 (a) If all interested parties agree; or
473 (b) Upon request of one party to the arbitration
474 proceeding, if that party gives notice to all other parties to
475 the proceeding and the other parties have a reasonable
476 opportunity to respond. ~~The parties are entitled to be heard, to~~
477 ~~present evidence material to the controversy and to cross-~~
478 ~~examine witnesses appearing at the hearing.~~
479 (3) If an arbitrator orders a hearing, the arbitrator
480 shall set a time and place and give notice of the hearing not
481 less than 5 days before the hearing begins. Unless a party to
482 the arbitration proceeding makes an objection to lack or
483 insufficiency of notice not later than the beginning of the
484 hearing, the party's appearance at the hearing waives the
485 objection. Upon request of a party to the arbitration proceeding
486 and for good cause shown, or upon the arbitrator's own
487 initiative, the arbitrator may adjourn the hearing from time to
488 time as necessary but may not postpone the hearing to a time

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489 later than that fixed by the agreement to arbitrate for making
490 the award unless the parties to the arbitration proceeding
491 consent to a later date. The arbitrator may hear and decide the
492 controversy upon the evidence produced although a party who was
493 duly notified of the arbitration proceeding did not appear. The
494 court, on request, may direct the arbitrator to conduct the
495 hearing promptly and render a timely decision. ~~The hearing shall~~
496 ~~be conducted by all of the arbitrators but a majority may~~
497 ~~determine any question and render a final award. An umpire~~
498 ~~authorized to hear and decide the cause upon the failure of the~~
499 ~~arbitrators to agree upon an award shall sit with the~~
500 ~~arbitrators throughout their hearing but shall not be counted as~~
501 ~~a part of their quorum or in the making of their award. If,~~
502 ~~during the course of the hearing, an arbitrator for any reason~~
503 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~
504 ~~appointed to act as neutrals may continue with the hearing and~~
505 ~~determination of the controversy.~~
506 (4) At a hearing under subsection (3), a party to the
507 arbitration proceeding has a right to be heard, to present
508 evidence material to the controversy, and to cross-examine
509 witnesses appearing at the hearing.
510 (5) If an arbitrator ceases or is unable to act during the
511 arbitration proceeding, a replacement arbitrator must be
512 appointed in accordance with s. 682.04 to continue the
513 proceeding and to resolve the controversy.
514 Section 17. Section 682.07, Florida Statutes, is amended
515 to read:

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516 682.07 Representation by attorney.—A party to an
517 arbitration proceeding may ~~has the right to~~ be represented by an
518 attorney ~~at any arbitration proceeding or hearing under this~~
519 ~~law~~. ~~A waiver thereof prior to the proceeding or hearing is~~
520 ~~ineffective.~~
521 Section 18. Section 682.08, Florida Statutes, is amended
522 to read:
523 682.08 Witnesses, subpoenas, depositions.—
524 (1) An arbitrator may issue a subpoena for the attendance
525 of a witness and for the production of records and other
526 evidence at any hearing and may administer oaths. A subpoena
527 must be served in the manner for service of subpoenas in a civil
528 action and, upon motion to the court by a party to the
529 arbitration proceeding or the arbitrator, enforced in the manner
530 for enforcement of subpoenas in a civil action. ~~Arbitrators, or~~
531 ~~an umpire authorized to hear and decide the cause upon failure~~
532 ~~of the arbitrators to agree upon an award, in the course of her~~
533 ~~or his jurisdiction, may issue subpoenas for the attendance of~~
534 ~~witnesses and for the production of books, records, documents~~
535 ~~and other evidence, and shall have the power to administer~~
536 ~~oaths. Subpoenas so issued shall be served, and upon application~~
537 ~~to the court by a party to the arbitration or the arbitrators,~~
538 ~~or the umpire, enforced in the manner provided by law for the~~
539 ~~service and enforcement of subpoenas in a civil action.~~
540 (2) In order to make the proceedings fair, expeditious,
541 and cost effective, upon request of a party to, or a witness in,
542 an arbitration proceeding, an arbitrator may permit a deposition
543 of any witness to be taken for use as evidence at the hearing,

544 including a witness who cannot be subpoenaed for or is unable to
545 attend a hearing. The arbitrator shall determine the conditions
546 under which the deposition is taken. ~~On application of a party~~
547 ~~to the arbitration and for use as evidence, the arbitrators, or~~
548 ~~the umpire in the course of her or his jurisdiction, may permit~~
549 ~~a deposition to be taken, in the manner and upon the terms~~
550 ~~designated by them or her or him of a witness who cannot be~~
551 ~~subpoenaed or is unable to attend the hearing.~~
552 (3) An arbitrator may permit such discovery as the
553 arbitrator decides is appropriate in the circumstances, taking
554 into account the needs of the parties to the arbitration
555 proceeding and other affected persons and the desirability of
556 making the proceeding fair, expeditious, and cost effective. ~~All~~
557 ~~provisions of law compelling a person under subpoena to testify~~
558 ~~are applicable.~~
559 (4) If an arbitrator permits discovery under subsection
560 (3), the arbitrator may order a party to the arbitration
561 proceeding to comply with the arbitrator's discovery-related
562 orders, issue subpoenas for the attendance of a witness and for
563 the production of records and other evidence at a discovery
564 proceeding, and take action against a noncomplying party to the
565 extent a court could if the controversy were the subject of a
566 civil action in this state.
567 (5) An arbitrator may issue a protective order to prevent
568 the disclosure of privileged information, confidential
569 information, trade secrets, and other information protected from
570 disclosure to the extent a court could if the controversy were
571 the subject of a civil action in this state.

572 (6) All laws compelling a person under subpoena to testify
573 and all fees for attending a judicial proceeding, a deposition,
574 or a discovery proceeding as a witness apply to an arbitration
575 proceeding as if the controversy were the subject of a civil
576 action in this state.
577 (7) The court may enforce a subpoena or discovery-related
578 order for the attendance of a witness within this state and for
579 the production of records and other evidence issued by an
580 arbitrator in connection with an arbitration proceeding in
581 another state upon conditions determined by the court so as to
582 make the arbitration proceeding fair, expeditious, and cost
583 effective. A subpoena or discovery-related order issued by an
584 arbitrator in another state must be served in the manner
585 provided by law for service of subpoenas in a civil action in
586 this state and, upon motion to the court by a party to the
587 arbitration proceeding or the arbitrator, enforced in the manner
588 provided by law for enforcement of subpoenas in a civil action
589 in this state.
590 (8)~~(4)~~ Fees for attendance as a witness shall be the same
591 as for a witness in the circuit court.
592 Section 19. Section 682.081, Florida Statutes, is created
593 to read:
594 682.081 Judicial enforcement of preaward ruling by
595 arbitrator.—
596 (1)If an arbitrator makes a preaward ruling in favor of a party
597 to the arbitration proceeding, the party may request that the
598 arbitrator incorporate the ruling into an award under s. 682.12.
599 A prevailing party may make a motion to the court for an

600 expedited order to confirm the award under s. 682.12, in which
601 case the court shall summarily decide the motion. The court
602 shall issue an order to confirm the award unless the court
603 vacates, modifies, or corrects the award under s. 682.13 or s.
604 682.14 , except as provided below.
605 (2) A party to a provisional remedy award for injunctive or
606 equitable relief may make a motion to the court seeking to
607 confirm or vacate the provisional remedy award.
608 (a) The court shall confirm a provisional remedy award for
609 injunctive or equitable relief if the award satisfies the legal
610 standards for awarding a party injunctive or equitable relief.
611 (b) The court shall vacate a provisional remedy award for
612 injunctive or equitable relief which fails to satisfy the legal
613 standards for awarding a party injunctive or equitable relief.
614 Section 20. Section 682.09, Florida Statutes, is amended
615 to read:
616 682.09 Award.—
617 (1) An arbitrator shall make a record of an award. The
618 record must be signed or otherwise authenticated by any
619 arbitrator who concurs with the award. The arbitrator or the
620 arbitration organization shall give notice of the award,
621 including a copy of the award, to each party to the arbitration
622 proceeding. ~~The award shall be in writing and shall be signed by~~
623 ~~the arbitrators joining in the award or by the umpire in the~~
624 ~~course of his or her jurisdiction. They or he or she shall~~
625 ~~deliver a copy to each party to the arbitration either~~
626 ~~personally or by registered or certified mail, or as provided in~~
627 ~~the agreement or provision.~~

628 (2) An award must be made within the time specified by the
629 agreement to arbitrate or, if not specified therein, within the
630 time ordered by the court. The court may extend, or the parties
631 to the arbitration proceeding may agree in a record to extend,
632 the time. The court or the parties may do so within or after the
633 time specified or ordered. A party waives any objection that an
634 award was not timely made unless the party gives notice of the
635 objection to the arbitrator before receiving notice of the
636 award. ~~An award shall be made within the time fixed therefor by~~
637 ~~the agreement or provision for arbitration or, if not so fixed,~~
638 ~~within such time as the court may order on application of a~~
639 ~~party to the arbitration. The parties may, by written agreement,~~
640 ~~extend the time either before or after the expiration thereof.~~
641 ~~Any objection that an award was not made within the time~~
642 ~~required is waived unless the objecting party notifies the~~
643 ~~arbitrators or umpire in writing of his or her objection prior~~
644 ~~to the delivery of the award to him or her.~~
645 Section 21. Section 682.10, Florida Statutes, is amended
646 to read:
647 682.10 Change of award by arbitrators ~~or umpire~~.—
648 (1) On motion to an arbitrator by a party to an
649 arbitration proceeding, the arbitrator may modify or correct an
650 award:
651 (a) Upon a ground stated in s. 682.14(1)(a) or (c);
652 (b) Because the arbitrator has not made a final and
653 definite award upon a claim submitted by the parties to the
654 arbitration proceeding; or
655 (c) To clarify the award.

656 (2) A motion under subsection (1) must be made and notice
657 given to all parties within 20 days after the movant receives
658 notice of the award.
659 (3) A party to the arbitration proceeding must give notice
660 of any objection to the motion within 10 days after receipt of
661 the notice.
662 (4) If a motion to the court is pending under s. 682.12,
663 s. 682.13, or s. 682.14, the court may submit the claim to the
664 arbitrator to consider whether to modify or correct the award:
665 (a) Upon a ground stated in s. 682.14(1)(a) or (c);
666 (b) Because the arbitrator has not made a final and
667 definite award upon a claim submitted by the parties to the
668 arbitration proceeding; or
669 (c) To clarify the award.
670 (5) An award modified or corrected pursuant to this
671 section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14.
672 ~~On application of a party to the arbitration, or if an~~
673 ~~application to the court is pending under s. 682.12, s. 682.13~~
674 ~~or s. 682.14, on submission to the arbitrators, or to the umpire~~
675 ~~in the case of an umpire's award, by the court under such~~
676 ~~conditions as the court may order, the arbitrators or umpire may~~
677 ~~modify or correct the award upon the grounds stated in s.~~
678 ~~682.14(1)(a) and (c) or for the purpose of clarifying the award.~~
679 ~~The application shall be made within 20 days after delivery of~~
680 ~~the award to the applicant. Written notice thereof shall be~~
681 ~~given forthwith to the other party to the arbitration, stating~~
682 ~~that he or she must serve his or her objections thereto, if any,~~

683 ~~within 10 days from the notice. The award so modified or~~
684 ~~corrected is subject to the provisions of ss. 682.12-682.14.~~
685 Section 22. Section 682.11, Florida Statutes, is amended
686 to read:
687 682.11 Remedies; fees and expenses of arbitration
688 proceeding.—
689 (1) An arbitrator may award punitive damages or other
690 exemplary relief if such an award is authorized by law in a
691 civil action involving the same claim and the evidence produced
692 at the hearing justifies the award under the legal standards
693 otherwise applicable to the claim.
694 (2) An arbitrator may award reasonable attorney fees and
695 other reasonable expenses of arbitration if such an award is
696 authorized by law in a civil action involving the same claim or
697 by the agreement of the parties to the arbitration proceeding.
698 (3) As to all remedies other than those authorized by
699 subsections (1) and (2), an arbitrator may order such remedies
700 as the arbitrator considers just and appropriate under the
701 circumstances of the arbitration proceeding. The fact that such
702 a remedy could not or would not be granted by the court is not a
703 ground for refusing to confirm an award under s. 682.12 or for
704 vacating an award under s. 682.13.
705 (4) An arbitrator's expenses and fees, together with other
706 expenses, must be paid as provided in the award.
707 (5) If an arbitrator awards punitive damages or other
708 exemplary relief under subsection (1), the arbitrator shall
709 specify in the award the basis in fact justifying and the basis
710 in law authorizing the award and state separately the amount of

711 the punitive damages or other exemplary relief. ~~Unless otherwise~~
712 ~~provided in the agreement or provision for arbitration, the~~
713 ~~arbitrators' and umpire's expenses and fees, together with other~~
714 ~~expenses, not including counsel fees, incurred in the conduct of~~
715 ~~the arbitration, shall be paid as provided in the award.~~
716 Section 23. Section 682.12, Florida Statutes, is amended
717 to read:
718 682.12 Confirmation of an award.—After a party to an
719 arbitration proceeding receives notice of an award, the party
720 may make a motion to the court for an order confirming the award
721 at which time the court shall issue a confirming order unless
722 the award is modified or corrected pursuant to s. 682.10 or s.
723 682.14 or is vacated pursuant to s. 682.13. ~~Upon application of~~
724 ~~a party to the arbitration, the court shall confirm an award,~~
725 ~~unless within the time limits hereinafter imposed grounds are~~
726 ~~urged for vacating or modifying or correcting the award, in~~
727 ~~which case the court shall proceed as provided in ss. 682.13 and~~
728 ~~682.14.~~
729 Section 24. Section 682.13, Florida Statutes, is amended
730 to read:
731 682.13 Vacating an award.—
732 (1) Upon motion ~~application~~ of a party to an arbitration
733 proceeding, the court shall vacate an arbitration award if ~~when~~:
734 (a) The award was procured by corruption, fraud, or other
735 undue means; ~~.~~
736 (b) There was:
737 1. Evident partiality by an arbitrator appointed as a
738 neutral arbitrator;

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739 2. Corruption by an arbitrator; or
740 3. Misconduct by an arbitrator prejudicing the rights of a
741 party to the arbitration proceeding; ~~or corruption in any of the~~
742 ~~arbitrators or umpire or misconduct prejudicing the rights of~~
743 ~~any party.~~
744 (c) An arbitrator refused to postpone the hearing upon
745 showing of sufficient cause for postponement, refused to hear
746 evidence material to the controversy, or otherwise conducted the
747 hearing contrary to s. 682.06, so as to prejudice substantially
748 the rights of a party to the arbitration proceeding; ~~The~~
749 ~~arbitrators or the umpire in the course of her or his~~
750 ~~jurisdiction exceeded their powers.~~
751 (d) An arbitrator exceeded the arbitrator's powers; ~~The~~
752 ~~arbitrators or the umpire in the course of her or his~~
753 ~~jurisdiction refused to postpone the hearing upon sufficient~~
754 ~~cause being shown therefor or refused to hear evidence material~~
755 ~~to the controversy or otherwise so conducted the hearing,~~
756 ~~contrary to the provisions of s. 682.06, as to prejudice~~
757 ~~substantially the rights of a party.~~
758 (e) There was no agreement to arbitrate, unless the person
759 participated in the arbitration proceeding without raising the
760 objection under s. 682.06(3) not later than the beginning of the
761 arbitration hearing; or ~~There was no agreement or provision for~~
762 ~~arbitration subject to this law, unless the matter was~~
763 ~~determined in proceedings under s. 682.03 and unless the party~~
764 ~~participated in the arbitration hearing without raising the~~
765 ~~objection.~~

766 (f) The arbitration was conducted without proper notice of
767 the initiation of an arbitration as required in s. 682.032 so as
768 to prejudice substantially the rights of a party to the
769 arbitration proceeding.
770 ~~But the fact that the relief was such that it could not or would~~
771 ~~not be granted by a court of law or equity is not ground for~~
772 ~~vacating or refusing to confirm the award.~~
773 (2) A motion under this section must be filed within 90
774 days after the movant receives notice of the award pursuant to
775 s. 682.09 or within 90 days after the movant receives notice of
776 a modified or corrected award pursuant to s. 682.10, unless the
777 movant alleges that the award was procured by corruption, fraud,
778 or other undue means, in which case the motion must be made
779 within 90 days after the ground is known or by the exercise of
780 reasonable care would have been known by the movant. ~~An~~
781 ~~application under this section shall be made within 90 days~~
782 ~~after delivery of a copy of the award to the applicant, except~~
783 ~~that, if predicated upon corruption, fraud or other undue means,~~
784 ~~it shall be made within 90 days after such grounds are known or~~
785 ~~should have been known.~~
786 (3) If the court vacates an award on a ground other than
787 that set forth in paragraph (1)(e), it may order a rehearing. If
788 the award is vacated on a ground stated in paragraph (1)(a) or
789 paragraph (1)(b), the rehearing must be before a new arbitrator.
790 If the award is vacated on a ground stated in paragraph (1)(c),
791 paragraph (1)(d), or paragraph (1)(f), the rehearing may be
792 before the arbitrator who made the award or the arbitrator's
793 successor. The arbitrator must render the decision in the

794 rehearing within the same time as that provided in s. 682.09(2)
795 for an award. ~~In vacating the award on grounds other than those~~
796 ~~stated in paragraph (1)(e), the court may order a rehearing~~
797 ~~before new arbitrators chosen as provided in the agreement or~~
798 ~~provision for arbitration or by the court in accordance with s.~~
799 ~~682.04, or, if the award is vacated on grounds set forth in~~
800 ~~paragraphs (1)(c) and (d), the court may order a rehearing~~
801 ~~before the arbitrators or umpire who made the award or their~~
802 ~~successors appointed in accordance with s. 682.04. The time~~
803 ~~within which the agreement or provision for arbitration requires~~
804 ~~the award to be made is applicable to the rehearing and~~
805 ~~commences from the date of the order therefor.~~
806 (4) If a motion ~~the application~~ to vacate is denied and no
807 motion to modify or correct the award is pending, the court
808 shall confirm the award.
809 Section 25. Section 682.14, Florida Statutes, is amended
810 to read:
811 682.14 Modification or correction of award.—
812 (1) Upon motion made within 90 days after the movant
813 receives notice of the award pursuant to s. 682.09 or within 90
814 days after the movant receives notice of a modified or corrected
815 award pursuant to s. 682.10, the court shall modify or correct
816 the award if ~~Upon application made within 90 days after delivery~~
817 ~~of a copy of the award to the applicant, the court shall modify~~
818 ~~or correct the award when~~:
819 (a) There is an evident miscalculation of figures or an
820 evident mistake in the description of any person, thing, or
821 property referred to in the award.

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822 (b) The arbitrators ~~or umpire~~ have awarded upon a matter
823 not submitted in the arbitration ~~to them or him or her~~ and the
824 award may be corrected without affecting the merits of the
825 decision upon the issues submitted.
826 (c) The award is imperfect as a matter of form, not
827 affecting the merits of the controversy.
828 (2) If the application is granted, the court shall modify
829 and correct the award ~~so as to effect its intent~~ and ~~shall~~
830 confirm the award as so modified and corrected. Otherwise,
831 unless a motion to vacate the award under s. 682.13 is pending,
832 the court shall confirm the award as made.
833 (3) An application to modify or correct an award may be
834 joined in the alternative with an application to vacate the
835 award under s. 682.13.
836 Section 26. Section 682.15, Florida Statutes, is amended
837 to read:
838 682.15 Judgment or decree on award.—
839 (1) Upon granting an order confirming, vacating without
840 directing a rehearing, modifying, or correcting an award, the
841 court shall enter a judgment in conformity therewith. The
842 judgment may be recorded, docketed, and enforced as any other
843 judgment in a civil action.
844 (2) A court may allow reasonable costs of the motion and
845 subsequent judicial proceedings.
846 (3) On motion of a prevailing party to a contested
847 judicial proceeding under s. 682.12, s. 682.13, or s. 682.14,
848 the court may add reasonable attorney fees and other reasonable
849 expenses of litigation incurred in a judicial proceeding after

850 the award is made to a judgment confirming, vacating without
851 directing a rehearing, modifying, or correcting an award. ~~Upon~~
852 ~~the granting of an order confirming, modifying or correcting an~~
853 ~~award, judgment or decree shall be entered in conformity~~
854 ~~therewith and be enforced as any other judgment or decree. Costs~~
855 ~~of the application and of the proceedings subsequent thereto,~~
856 ~~and disbursements may be awarded by the court.~~
857 Section 27. Section 682.16, Florida Statutes, is repealed.
858 Section 28. Section 682.17, Florida Statutes, is repealed.
859 Section 29. Section 682.18, Florida Statutes, is repealed.
860 Section 30. Section 682.181, Florida Statutes, is created
861 to read:
862 682.181 Jurisdiction.—
863 (1) A court of this state having jurisdiction over the
864 controversy and the parties may enforce an agreement to
865 arbitrate.
866 (2) An agreement to arbitrate providing for arbitration in
867 this state confers exclusive jurisdiction on the court to enter
868 judgment on an award under this chapter.
869 Section 31. Section 682.19, Florida Statutes, is amended
870 to read:
871 682.19 Venue.—A petition pursuant to s. 682.015 must be
872 filed in the court of the county in which the agreement to
873 arbitrate specifies the arbitration hearing is to be held or, if
874 the hearing has been held, in the court of the county in which
875 it was held. Otherwise, the petition may be made in the court of
876 any county in which an adverse party resides or has a place of
877 business or, if no adverse party has a residence or place of

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878 business in this state, in the court of any county in this
879 state. All subsequent petitions must be made in the court
880 hearing the initial petition unless the court otherwise directs.
881 ~~Any application under this law may be made to the court of the~~
882 ~~county in which the other party to the agreement or provision~~
883 ~~for arbitration resides or has a place of business, or, if she~~
884 ~~or he has no residence or place of business in this state, then~~
885 ~~to the court of any county. All applications under this law~~
886 ~~subsequent to an initial application shall be made to the court~~
887 ~~hearing the initial application unless it shall order otherwise.~~
888 Section 32. Section 682.20, Florida Statutes, is amended
889 to read:
890 682.20 Appeals.—
891 (1) An appeal may be taken from:
892 (a) An order denying an application to compel arbitration
893 made under s. 682.03.
894 (b) An order granting a motion ~~an application~~ to stay
895 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).
896 (c) An order confirming ~~or denying confirmation of~~ an
897 award.
898 (d) An order denying confirmation of an award unless the
899 court has entered an order under s. 682.10(4) or s. 682.13. All
900 other orders denying confirmation of an award are final orders.
901 (e)~~(d)~~ An order modifying or correcting an award.
902 (f)~~(e)~~ An order vacating an award without directing a
903 rehearing.
904 (g)~~(f)~~ A judgment or decree entered pursuant to this
905 chapter ~~the provisions of this law~~.

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906 (2) The appeal shall be taken in the manner and to the
907 same extent as from orders or judgments in a civil action.
908 Section 33. Section 682.21, Florida Statutes, is repealed.
909 Section 34. Section 682.22, Florida Statutes, is repealed.
910 Section 35. Section 682.23, Florida Statutes, is created
911 to read:
912 682.23 Relationship to Electronic Signatures in Global and
913 National Commerce Act.—The provisions of this chapter governing
914 the legal effect, validity, and enforceability of electronic
915 records or electronic signatures and of contracts performed with
916 the use of such records or signatures conform to the
917 requirements of s. 102 of the Electronic Signatures in Global
918 and National Commerce Act, 15 U.S.C. s. 7002.
919 Section 36. Section 682.25, Florida Statutes, is created
920 to read:
921 682.25 Disputes excluded.—This chapter does not apply to
922 any dispute involving child custody, visitation, or child
923 support.
924 Section 37. Section 44.104, Florida Statutes, is amended
925 to read:
926 44.104 Voluntary ~~binding arbitration and voluntary~~ trial
927 resolution.—
928 (1) Two or more opposing parties who are involved in a
929 civil dispute may agree in writing to submit the controversy to
930 ~~voluntary binding arbitration, or~~ voluntary trial resolution, in
931 lieu of judicial litigation of the issues involved, prior to or
932 after a lawsuit has been filed~~, provided no constitutional issue~~
933 ~~is involved~~.

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934 (2) If the parties have entered into such an agreement and
935 the agreement ~~which provides in voluntary binding arbitration~~
936 ~~for a method for appointing of one or more arbitrators, or which~~
937 provides ~~in voluntary trial resolution~~ a method for appointing
938 the ~~a member of The Florida Bar in good standing for more than 5~~
939 ~~years to act as~~ trial resolution judge, that method shall be
940 followed ~~the court shall proceed with the appointment as~~
941 ~~prescribed~~. ~~However, in voluntary binding arbitration at least~~
942 ~~one of the arbitrators, who shall serve as the chief arbitrator,~~
943 ~~shall meet the qualifications and training requirements adopted~~
944 ~~pursuant to s. 44.106.~~ In the absence of an agreement on a
945 method for appointing the trial resolution judge, or if the
946 agreement method fails or for any reason cannot be followed, and
947 the parties fail to agree on the person to serve as the trial
948 resolution judge, the court, on application of a party, shall
949 appoint ~~one or more qualified arbitrators, or~~ the trial
950 resolution judge, as the case requires.
951 (3) A trial resolution judge must have agreed to serve and
952 must be a member of The Florida Bar in good standing for 5 years
953 or more.
954 (4)~~(3)~~ The ~~arbitrators or~~ trial resolution judge shall be
955 compensated by the parties according to their agreement with the
956 trial resolution judge.
957 (5)~~(4)~~ Within 10 days after the submission of the request
958 for ~~binding arbitration, or~~ voluntary trial resolution, the
959 court shall provide for the appointment of the ~~arbitrator or~~
960 ~~arbitrators, or~~ trial resolution judge, as the case requires.

961 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
962 notify the parties of the time and place for the hearing.
963 (6)~~(5)~~ Application for ~~voluntary binding arbitration or~~
964 voluntary trial resolution shall be filed and fees paid to the
965 clerk of court as if for complaints initiating civil actions.
966 The clerk of the court shall handle and account for these
967 matters in all respects as if they were civil actions, except
968 that the clerk of court shall keep separate ~~the records of the~~
969 ~~applications for voluntary binding arbitration and~~ the records
970 of the applications for voluntary trial resolution from all
971 other civil actions.
972 (7)~~(6)~~ Filing of the application for ~~binding arbitration~~
973 ~~or~~ voluntary trial resolution tolls ~~will toll~~ the running of the
974 applicable statutes of limitation.
975 (8)~~(7)~~ The ~~chief arbitrator or~~ trial resolution judge may
976 administer oaths or affirmations and conduct the proceedings as
977 the rules of court shall provide. At the request of any party,
978 the ~~chief arbitrator or~~ trial resolution judge shall issue
979 subpoenas for the attendance of witnesses and for the production
980 of books, records, documents, and other evidence and may apply
981 to the court for orders compelling attendance and production.
982 Subpoenas shall be served and shall be enforceable in the manner
983 provided by law. The trial resolution judge may order temporary
984 relief in the same manner, and to the same extent, as in civil
985 actions generally. Any party may enforce such an order by filing
986 a petition in the court. Orders entered by the court are
987 reviewable by the appellate court in the same manner, and to the
988 same extent, as orders in civil actions generally.

989 (9)~~(8)~~ ~~A voluntary binding arbitration hearing shall be~~
990 ~~conducted by all of the arbitrators, but a majority may~~
991 ~~determine any question and render a final decision.~~ A trial
992 resolution judge shall conduct a voluntary trial resolution
993 hearing. The trial resolution judge may determine any question
994 and render a final decision.

995 (10)~~(9)~~ The Florida Evidence Code and Florida Rules of
996 Civil Procedure ~~shall~~ apply to all proceedings under this
997 section, except that voluntary trial resolution is not governed
998 by procedural rules regulating general and special magistrates,
999 and rulings of the trial resolution judge are not reviewable by
1000 filing exceptions with the court.

1001 ~~(10) An appeal of a voluntary binding arbitration decision~~
1002 ~~shall be taken to the circuit court and shall be limited to~~
1003 ~~review on the record and not de novo, of:~~

1004 ~~(a) Any alleged failure of the arbitrators to comply with~~
1005 ~~the applicable rules of procedure or evidence.~~

1006 ~~(b) Any alleged partiality or misconduct by an arbitrator~~
1007 ~~prejudicing the rights of any party.~~

1008 ~~(c) Whether the decision reaches a result contrary to the~~
1009 ~~Constitution of the United States or of the State of Florida.~~

1010 (11) Any party may enforce a final decision rendered in a
1011 voluntary trial by filing a petition for final judgment in the
1012 circuit court in the circuit in which the voluntary trial took
1013 place. Upon entry of final judgment by the circuit court, any
1014 party may appeal to the appropriate appellate court. The
1015 judgment is reviewable by the appellate court in the same
1016 manner, and to the same extent, as a judgment in a civil action.

1017 ~~Factual findings determined in the voluntary trial are not~~
1018 ~~subject to appeal.~~
1019 ~~(12) The harmless error doctrine shall apply in all~~
1020 ~~appeals. No further review shall be permitted unless a~~
1021 ~~constitutional issue is raised.~~
1022 (12)~~(13)~~ If no appeal is taken within the time provided by
1023 rules promulgated by the Supreme Court, ~~then~~ the decision shall
1024 be referred to the presiding judge in the case, or if one has
1025 not been assigned, then to the chief judge of the circuit for
1026 assignment to a circuit judge, who shall enter such orders and
1027 judgments as are required to carry out the terms of the
1028 decision. Equitable remedies are~~, which orders shall be~~
1029 enforceable by the contempt powers of the court to the same
1030 extent as in civil actions generally. When a judgment provides
1031 for execution, ~~and for which judgments~~ execution shall issue on
1032 request of a party.
1033 (13)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~
1034 ~~involving child custody, visitation, or child support, or~~ to any
1035 dispute that ~~which~~ involves the rights of a third party not a
1036 party to the ~~arbitration or~~ voluntary trial resolution when the
1037 third party would be an indispensable party if the dispute were
1038 resolved in court or when the third party notifies ~~the chief~~
1039 ~~arbitrator or~~ the trial resolution judge that the third party
1040 would be a proper party if the dispute were resolved in court,
1041 that the third party intends to intervene in the action in
1042 court, and that the third party does not agree to proceed under
1043 this section.

1044 (14) A trial resolution judge does not have jurisdiction
1045 to declare unconstitutional a statute, ordinance, or provision
1046 of a constitution. If any such claim is made in the voluntary
1047 trial resolution proceeding, that claim shall be severed and
1048 adjudicated by a judge of the court.
1049 (15) The parties may agree to a trial by a privately
1050 selected jury. The court's jury pool may not be used for this
1051 purpose. In all other cases, the trial resolution judge shall
1052 conduct a bench trial.
1053 Section 38. Subsection (1) of section 44.107, Florida
1054 Statutes, is amended to read:
1055 44.107 Immunity for arbitrators, voluntary trial
1056 resolution judges, mediators, and mediator trainees.—
1057 (1) Arbitrators serving under s. 44.103, voluntary trial
1058 resolution judges serving under ~~or~~ s. 44.104, mediators serving
1059 under s. 44.102, and trainees fulfilling the mentorship
1060 requirements for certification by the Supreme Court as a
1061 mediator ~~shall~~ have judicial immunity in the same manner and to
1062 the same extent as a judge.
1063 Section 39. Section 440.1926, Florida Statutes, is amended
1064 to read:
1065 440.1926 Alternate dispute resolution; claim arbitration.—
1066 Notwithstanding any other provision of this chapter, the
1067 employer, carrier, and employee may mutually agree to seek
1068 consent from a judge of compensation claims to enter into
1069 binding claim arbitration in lieu of any other remedy provided
1070 for in this chapter to resolve all issues in dispute regarding
1071 an injury. Arbitrations agreed to pursuant to this section shall

1072 be governed by chapter 682, the Revised Florida Arbitration
1073 Code, except that, notwithstanding any provision in chapter 682,
1074 the term "court" shall mean a judge of compensation claims. An
1075 arbitration award in accordance with this section is ~~shall be~~
1076 enforceable in the same manner and with the same powers as any
1077 final compensation order.
1078 Section 40. Paragraph (a) of subsection (1) of section
1079 489.1402, Florida Statutes, is amended to read:
1080 489.1402 Homeowners' Construction Recovery Fund;
1081 definitions.—
1082 (1) The following definitions apply to ss. 489.140-
1083 489.144:
1084 (a) "Arbitration" means alternative dispute resolution
1085 entered into between a claimant and a contractor either pursuant
1086 to a construction contract that contains a mandatory arbitration
1087 clause or through any binding arbitration under chapter 682, the
1088 Revised Florida Arbitration Code.
1089 Section 41. Subsection (2) of section 731.401, Florida
1090 Statutes, is amended to read:
1091 731.401 Arbitration of disputes.—
1092 (2) Unless otherwise specified in the will or trust, a
1093 will or trust provision requiring arbitration shall be presumed
1094 to require binding arbitration under chapter 682, the Revised
1095 Florida Arbitration Code ~~s. 44.104~~.
1096 Section 42. The Division of Statutory Revision is directed
1097 to redesignate the title of chapter 44, Florida Statutes, as
1098 "Alternative Dispute Resolution."
1099 Section 43. This act shall take effect July 1, 2012.

1100
1101
1102
1103 ---
1104 **T I T L E A M E N D M E N T**
1105 Remove the entire title and insert:
1106 An act relating to dispute resolution; amending s.
1107 682.01, F.S.; revising the short title of the "Florida
1108 Arbitration Code" to the "Revised Florida Arbitration
1109 Code"; creating s. 682.011, F.S.; providing
1110 definitions; creating s. 682.012, F.S.; specifying how
1111 a person gives notice to another person and how a
1112 person receives notice; creating s. 682.013, F.S.;
1113 specifying the applicability of the revised code;
1114 creating s. 682.014, F.S.; providing that an agreement
1115 may waive or vary the effect of statutory arbitration
1116 provisions; providing exceptions; creating s. 682.015,
1117 F.S.; providing for petitions for judicial relief;
1118 providing for service of notice of an initial petition
1119 for such relief; amending s. 682.02, F.S.; revising
1120 provisions relating to the making of arbitration
1121 agreements; requiring a court to decide whether an
1122 agreement to arbitrate exists or a controversy is
1123 subject to an agreement to arbitrate; providing for
1124 determination of specified issues by an arbitrator;
1125 providing for continuation of an arbitration
1126 proceeding pending resolution of certain issues by a
1127 court; revising provisions relating to applicability

1128 of provisions to certain interlocal agreements;
1129 amending s. 682.03, F.S.; revising provisions relating
1130 to proceedings to compel and to stay arbitration;
1131 creating s. 682.031, F.S.; providing for a court to
1132 order provisional remedies before an arbitrator is
1133 appointed and is authorized and able to act; providing
1134 for orders for provisional remedies by an arbitrator;
1135 providing that a party does not waive a right of
1136 arbitration by seeking provisional remedies in court;
1137 creating s. 682.032, F.S.; providing for initiation of
1138 arbitration; providing that a person waives any
1139 objection to lack of or insufficiency of notice by
1140 appearing at the arbitration hearing; providing an
1141 exception; creating s. 682.033, F.S.; providing for
1142 consolidation of separate arbitration proceedings as
1143 to all or some of the claims in certain circumstances;
1144 prohibiting consolidation if the agreement prohibits
1145 consolidation; amending s. 682.04, F.S.; revising
1146 provisions relating to appointment of an arbitrator;
1147 prohibiting an individual who has an interest in the
1148 outcome of an arbitration from serving as a neutral
1149 arbitrator; creating s. 682.041, F.S.; requiring
1150 certain disclosures of interests and relationships by
1151 a person before accepting appointment as an
1152 arbitrator; providing a continuing obligation to make
1153 such disclosures; providing for objections to an
1154 arbitrator based on information disclosed; providing
1155 for vacation of an award if an arbitrator failed to

1156 disclose a fact as required; providing that an
1157 arbitrator appointed as a neutral arbitrator who does
1158 not disclose certain interests or relationships is
1159 presumed to act with partiality for specified
1160 purposes; requiring parties to substantially comply
1161 with agreed-to procedures of an arbitration
1162 organization or any other procedures for challenges to
1163 arbitrators before an award is made in order to seek
1164 vacation of an award on specified grounds; amending s.
1165 682.05, F.S.; requiring that if there is more than one
1166 arbitrator, the powers of an arbitrator must be
1167 exercised by a majority of the arbitrators; requiring
1168 all arbitrators to conduct the arbitration hearing;
1169 creating s. 682.051, F.S.; providing immunity from
1170 civil liability for an arbitrator or an arbitration
1171 organization acting in that capacity; providing that
1172 this immunity is supplemental to any immunity under
1173 other law; providing that failure to make a required
1174 disclosure does not remove immunity; providing that an
1175 arbitrator or representative of an arbitration
1176 organization is not competent to testify and may not
1177 be required to produce records concerning the
1178 arbitration; providing exceptions; providing for
1179 awarding an arbitrator, arbitration organization, or
1180 representative of an arbitration organization with
1181 reasonable attorney fees and expenses of litigation
1182 under certain circumstances; amending s. 682.06, F.S.;
1183 revising provisions relating to the conduct of

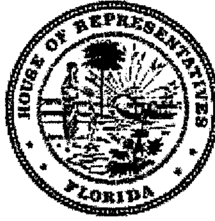
1184 arbitration hearings; providing for summary
1185 disposition, notice of hearings, adjournment, and
1186 rights of a party to the arbitration proceeding;
1187 requiring appointment of a replacement arbitrator in
1188 certain circumstances; amending s. 682.07, F.S.;
1189 providing that a party to an arbitration proceeding
1190 may be represented by an attorney; amending s. 682.08,
1191 F.S.; revising provisions relating to the issuance,
1192 service, and enforcement of subpoenas; revising
1193 provisions relating to depositions; authorizing an
1194 arbitrator to permit discovery in certain
1195 circumstances; authorizing an arbitrator to order
1196 compliance with discovery; authorizing protective
1197 orders by an arbitrator; providing for applicability
1198 of laws compelling a person under subpoena to testify
1199 and all fees for attending a judicial proceeding, a
1200 deposition, or a discovery proceeding as a witness;
1201 providing for court enforcement of a subpoena or
1202 discovery-related order; providing for witness fees;
1203 creating s. 682.081, F.S.; providing for judicial
1204 enforcement of a preaward ruling by an arbitrator in
1205 certain circumstances; amending s. 682.09, F.S.;
1206 revising provisions relating to the record needed for
1207 an award; revising provisions relating to the time
1208 within which an award must be made; amending s.
1209 682.10, F.S.; revising provisions relating to
1210 requirements for a motion to modify or correct an
1211 award; amending s. 682.11, F.S.; revising provisions

1212 relating to fees and expenses of arbitration;
1213 authorizing punitive damages and other exemplary
1214 relief and remedies; amending s. 682.12, F.S.;
1215 revising provisions relating to confirmation of an
1216 award; amending s. 682.13, F.S.; revising provisions
1217 relating to grounds for vacating an award; revising
1218 provisions relating to a motion for vacating an award;
1219 providing for a rehearing in certain circumstances;
1220 amending s. 682.14, F.S.; revising provisions relating
1221 to the time for moving to modify or correct an award;
1222 deleting references to the term "umpire"; revising a
1223 provision concerning confirmation of awards; amending
1224 s. 682.15, F.S.; revising provisions relating to a
1225 court order confirming, vacating without directing a
1226 rehearing, modifying, or correcting an award;
1227 providing for award of costs and attorney fees in
1228 certain circumstances; repealing s. 682.16, F.S.,
1229 relating to judgment roll and docketing of certain
1230 orders; repealing s. 682.17, F.S., relating to
1231 application to court; repealing s. 682.18, F.S.,
1232 relating to the definition of the term "court" and
1233 jurisdiction; creating s. 682.181, F.S.; providing for
1234 jurisdiction relating to the revised code; amending s.
1235 682.19, F.S.; revising provisions relating to venue
1236 for actions relating to the code; amending s. 682.20,
1237 F.S.; providing that an appeal may be taken from an
1238 order denying confirmation of an award unless the
1239 court has entered an order under specified provisions;

1240 providing that all other orders denying confirmation
1241 of an award are final orders; repealing s. 682.21,
1242 F.S., relating to the previous code not applying
1243 retroactively; repealing s. 682.22, F.S., relating to
1244 conflict of laws; creating s. 682.23, F.S.; specifying
1245 the relationship of the code to the Electronic
1246 Signatures in Global and National Commerce Act;
1247 providing for applicability; creating s. 682.25, F.S.;
1248 providing that the revised code does not apply to any
1249 dispute involving child custody, visitation, or child
1250 support; amending s. 44.104, F.S.; deleting references
1251 to binding arbitration from provisions providing for
1252 voluntary trial resolution; providing for temporary
1253 relief; revising provisions relating to procedures in
1254 voluntary trial resolution; providing that a judgment
1255 is reviewable in the same manner as a judgment in a
1256 civil action; deleting provisions relating to
1257 applicability of the harmless error doctrine;
1258 providing limitations on the jurisdiction of a trial
1259 resolution judge; providing for the use of juries;
1260 providing for the title of a trial resolution judge
1261 and the use of judicial robes; amending s. 44.107,
1262 F.S.; providing immunity for voluntary trial
1263 resolution judges serving under specified provisions;
1264 amending ss. 440.1926, 489.1402, and 731.401, F.S.;
1265 conforming cross-references; providing a directive to
1266 the Division of Statutory Revision to redesignate the

1267 title of ch. 44, F.S., as "Alternative Dispute
1268 Resolution"; providing an effective date.
1269

PCS for HB 965



STORAGE NAME: h0965.CVJS
DATE: 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 965 – Representative Diaz and others
Relief/Aaron Edwards, Mitzi Roden, and Mark Edwards/Lee Memorial Health System/Lee County

THIS IS AN EXCESS JUDGMENT CLAIM FOR $30,793,027.13 BASED ON A JURY VERDICT FOR CLAIMANTS AND AGAINST LEE MEMORIAL HEALTH SYSTEM TO COMPENSATE CLAIMANTS FOR AARON EDWARD'S CEREBRAL PALSY, WHICH WAS CAUSED AT BIRTH BY THE NEGLIGENT ADMINISTRATION OF PITOCIN TO HIS MOTHER TO INDUCE LABOR.

FINDING OF FACT:

On the morning of September 5, 1997, Mitzi Roden was scheduled to deliver her first child at HealthPark Medical Center, a hospital owned and operated by Lee Memorial Health System ("Lee Memorial"). Mitzi was accompanied by her husband, Mark Edwards. Mitzi had enjoyed a healthy pregnancy, free of complications.

Mitzi's labor and delivery were to be managed by her nurse-midwife, Patricia Hunsucker (an employee of Lee Memorial Health System), who would be assisted by the obstetric nurses whose work shifts covered the time that Mitzi was at the hospital. From 9:00 a.m. until 12:30 p.m., Mitzi made little progress in her labor. At 12:30 p.m., Ms. Hunsucker ordered

that Pitocin be given to Mitzi, by IV drip, to stimulate Mitzi's labor.

The use of Pitocin to assist labor is a very common practice, but its effect on the mother and child must be closely monitored. In a normal childbirth, the mother's contractions cause some stress to the baby because the contractions compress the placenta, reducing blood flow to the baby. Because blood flow is the baby's source of oxygen, contractions require the baby to, in effect, hold his or her breath until the contraction stops. The contractions in a normal labor do not reduce oxygen to the baby to such a degree that the baby's life is endangered. However, the overuse of Pitocin can cause contractions that come too fast, too strong, and last too long, which can cause the baby to become severely stressed and even asphyxiated.

The initial amount of Pitocin given to Mitzi was 3 milliunits and was to be increased periodically until Mitzi's labor had progressed to the point that she was having good contractions every 2 or 3 minutes. Although Mitzi's contractions soon reached the point of being 2 or 3 minutes apart, the nurses evidently believed that her contractions were not strong enough.

For the next several hours, the dosage of Pitocin was increased by the obstetric nurses. At 6:00 p.m., Mitzi's contractions were closer than two minutes, but the Pitocin was increased again at 6:20 p.m. The dosage was up to 13 milliunits. Mitzi's obstetrician, who was never present during these events, testified later that the Pitocin should not have been further increased. Nevertheless, a new obstetric nurse, Elizabeth Kelly-Jencks, started her shift at 7:00 p.m. and increased the Pitocin to 14 milliunits at 7:15 p.m.

The more persuasive evidence shows that Ms. Hunsucker and Ms. Kelly-Jencks, both employees of Lee Memorial Health System, were not giving appropriate attention to the fetal monitoring machine and the frequency and duration of the contractions. The monitors indicated that Mitzi's contractions were becoming too frequent, too intense, and were lasting too long, and that they were causing the baby's heart rate to decelerate after the contractions. In the vast majority of cases when Pitocin is used, babies are delivered after less than 8 milliunits of Pitocin. Claimants' expert medical witnesses testified persuasively that there were multiple indications that increasing the Pitocin to 14 milliunits was neither sensible nor safe. Mitzi's uterus was being over-stimulated.

At 8:30 p.m., Mitzi experienced a contraction lasting longer than 90 seconds, showing clearly that the Pitocin level was too high. Even though reasonable obstetric practice and the standing policy of the hospital regarding the use of Pitocin required that

the Pitocin drip be reduced or stopped at that point, the Pitocin dosage was increased again, to 15 milliunits. At 9:00 p.m., Ms. Hunsucker looked in on Mitzi, but was unaware of the Pitocin dosage she was receiving and failed to recognize that Mitzi was having excessive contractions. Certainly, by this point, it should have been recognized that Mitzi's labor was not going well. There had been almost no progress toward a safe vaginal delivery. Ms. Hunsucker should have contacted Dr. Devall to consult about the situation, but she did not.

At 9:30 p.m., the Pitocin was increased to 16 milliunits. Ten minutes later, alone in the room, Mitzi and Mark noticed that the fetal heart monitor showed their baby's heart rate had dropped to 40 beats per minutes. The normal fetal heart rate is 120 to 160 beats per minute. A low fetal heart rate for over ten minutes is referred to as "bradycardia." When no one responded to the emergency call button, Mark ran out of the room to get help. The obstetric staff realized the gravity of the situation, but incredibly, the Pitocin drip was not turned off while the nurses spent about 10 minutes trying to resuscitate the baby by turning Mitzi in the bed and by other means. Finally the Pitocin was turned off and an immediate cesarean section was ordered.

Aaron was delivered by cesarean 25 minutes later, but oxygen starvation to his brain left him with permanent damage to the parts of the brain that control muscle movement. The result is that Aaron has cerebral palsy. Aaron exhibits primarily dystonia, a lack of control of the direction and force of muscle movement, and some spasticity, which is involuntary contractions of the muscles.

A major issue at trial was whether Mitzi objected to receiving Pitocin, but her wishes were ignored. The evidence on this point was ambiguous. Mitzi says that she told Ms. Hunsucker that she did not want Pitocin, but did not mention it to the other obstetric nurses who were periodically increasing the dosage. Mitizi says that Ms. Hunsucker called Dr. DeVall and then told Mitzi that Dr. DeVall approved the use of Pitocin. Ms. Hunsucker testified at trial that she did not remember Mitzi objecting to the Pitocin and that she does not think she would have administered the Pitocin if Mitzi had objected to it. I am not persuaded that Mitzi clearly communicated a strong objection about the Pitocin. That claim cannot be reconciled with the evidence that the Pitocin drip was started and was then administered for hours, but Mitzi made no mention of her objection to the obstetric nurses, and her husband apparently took no steps on her behalf to have the Pitocin stopped.

Aaron's brain damage did not affect his higher cognitive functioning. He is now an extremely bright and creative 13-year old. Unfortunately, he is trapped inside a body that he can barely control. He cannot feed, bathe, or dress himself. He

cannot walk and uses a wheelchair. He cannot speak so as to be understood by anyone other than his mother. He uses a computer touch screen device to communicate. Still, it takes him a long time to compose simple sentences.

Aaron's limbs, especially his legs, are becoming rigid. He said at the claim bill hearing that he felt like Pinochio, a wooden boy who wants to be a real boy. His mother uses various physical therapies and Aaron also takes medication to reduce the contraction of the muscles. The principal needs that Aaron currently has are regular speech and physical therapies and a better wheelchair. The wheelchair he has now is uncomfortable and difficult to operate. There are also more advanced communication devices becoming available that could help Aaron to communicate more quickly.

Mitzi Roden and Mark Edwards are now divorced. Aaron lives with his mother in Canyon City, Colorado. Aaron is home-schooled by his mother and, because she cannot afford to hire someone to care for him during the day, she brings him to the dog grooming shop where she works. Mitzi earns $14,000 annually as a dog groomer. She receives monthly Social Security disability payments of $674.

Lee Memorial is a special district that operates four acute care hospitals, a rehabilitation hospital, and some other health care facilities in Lee County. It does not have taxing authority. It is a not-for-profit entity. Lee Memorial is a "Safety Net Provider," meaning that it is a member of a group of hospital operators in Florida that provide access to medical services by Medicaid-eligible, Medicare-eligible, and uninsured patients far beyond the average for other hospitals in Florida. In 2010, Lee Memorial had about $170 million of losses attributable to these patients. However, with income from commercially-insured patients and from its investments, Lee Memorial had about $65 million in overall net income.

PROCEDURAL HISTORY: In 1999, a negligence lawsuit was filed in the circuit court for Lee County by Mitzi Roden and Mark Edwards, on behalf of themselves and as the guardians of Aaron Edwards, against Lee Memorial. Following a six-week trial in 2007, the jury found that Lee Memorial was negligent and that its negligence was the sole cause of Aaron's injuries. The jury awarded damages of $28,477,966.48 to the guardianship of Aaron. They also awarded $1.34 million to Mitzi Roden and $1 million to Mark Edwards, for their damages as parents. The court entered a cost judgment of $174,969.65. The sum of these figures is $30,992,936.13.

Lee Memorial paid the $200,000 sovereign immunity limit. All of this payment was applied to legal fees. Aaron and his parents received nothing.

CONCLUSION OF LAW:

The claim bill hearing was a de novo proceeding for the purpose of determining, based on the evidence presented to the Special Master, whether Lee Memorial is liable in negligence for the injuries suffered by Aaron Edwards and his parents, and, if so, whether the amount of the claim is reasonable.

Ms. Hunsucker and Ms. Kelly-Jencks failed to recognize and respond appropriately to the risks to the baby that were indicated by the monitoring devices. Their actions failed to meet the standard of care applicable to the administration of Pitocin and the management of Mitzi's labor. Their negligence was the proximate cause of the injuries suffered by Aaron, and the related damages suffered by his parents. Because these individuals were acting within the course and scope of their employment when their negligent acts occurred, Lee Memorial is liable for their negligence.

I agree with Lee Memorial that the manner in which the "lack of consent" issue was raised for the first time at trial was wrong and the trial judge would have been justified in not allowing the issue to be presented to the jury. Nevertheless, I do not believe that the jury's verdict of liability was based solely on lack of consent. The preponderance of the evidence presented at trial and at the claim bill hearing establishes that Ms. Hunsucker and Ms. Kelly-Jencks were negligent in their management of the Pitocin and their care for Mitzi during her labor.

After conducting the hearing in this matter, and upon review of the records made available by the parties and their submissions, I find the determination of economic damages and costs by the jury to be reasonable and supported by competent and substantial evidence.

The determination of damages for pain and suffering is more difficult. The record clearly demonstrates that Aaron Edwards and his parents have had life as they knew it completely changed. No amount of money can quantify what they have lost and the pain they must endure. The record does not reveal how the jury came to its determination. Their award for pain and suffering is almost twice that of the economic damages.

Generally speaking, there is no set rule for measuring damages for past, present, and future pain and suffering. The law declares that there is no standard for measuring pain and suffering damages other than "the enlightened conscience of impartial jurors . . . ."[1]

While the Legislature may determine that the amount awarded for pain and suffering in this matter should be adjusted, I cannot

[1] *Braddock v. Seaboard A. L. R. Co.*, 80 So.2d 662, 667 (Fla. 1955) (citing *Toll v. Waters*, 138 So. 393 (Fla. 1939)).

find any legal reason based on the record to depart from the jury's award.

Lee Memorial testified that it does not carry insurance, that it has never paid a claim bill, and that it has not set aside any funds for the payment of this claim.

ATTORNEY'S/ LOBBYING FEES:

Claimants' attorneys have agreed to limit attorney's fees and lobbyist's fees to 25 percent of the claim paid. However, they request that the fee for the attorneys who handled the appeal of the trial court judgment (5 percent of the claim bill award) not be included in the 25 percent. In other words, they request that 30 percent of the claim bill award go to attorneys fees and costs. I believe paying a separate and additional fee in this manner would create a precedent for many similar requests. Therefore, I recommend that all attorneys fees be limited to 25 percent of the award.

LEGISLATIVE HISTORY:

House Bill 1073 by Representative Nunez and Senate Bill 322 by Senator Flores were filed during the 2011 Legislative Session. House Bill 1073 was never heard by the Civil Justice Subcommittee. Senate Bill 322 passed the Senate Rules Committee but died on the Senate Calendar.

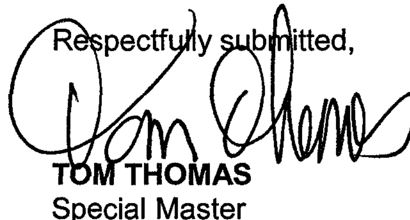
SPECIAL ISSUES:

The trial court ordered that the damage award and cost judgment would accrue interest at the rate of 11 percent per year. I do not believe that interest on an excess judgment can be required because the only amount owed and due is the sovereign immunity limit. Any amount paid by the Legislature on claim bills is a matter of legislative grace. It is not "owed" to the claimants.

RECOMMENDATIONS:

Based on the record before me, I find that the Claimants have met their burden to demonstrate by a greater weight of the evidence that the injuries and damages sustained by Aaron Edwards, and the related damages suffered by his parents, were caused by the negligent act of Lee Memorial, through its employees, Ms. Hunsucker and Ms. Kelly-Jencks. I further find that the amount requested for this claim, the amount awarded by the jury, is justifiable. Therefore, I recommend that this claim bill be reported FAVORABLY.

Respectfully submitted,



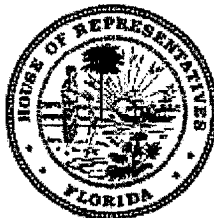
TOM THOMAS
Special Master

cc: Representative Diaz, House Sponsor
Senator Flores, Senate Sponsor
Judge Bram D. E. Canter, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Aaron Edwards, a minor, by
3 Lee Memorial Health System of Lee County; providing
4 for an appropriation to compensate Aaron Edwards for
5 damages sustained as a result of medical negligence by
6 employees of Lee Memorial Health System of Lee County;
7 providing a limitation on the payment of fees and
8 costs; providing an effective date.
9
10 WHEREAS, Aaron Edwards was born on September 5, 1997, at
11 Lee Memorial Hospital, and
12 WHEREAS, Aaron Edwards suffered permanent injuries to his
13 brain as a consequence of an acute hypoxic ischemic episode at
14 birth, and
15 WHEREAS, after a 6-week trial, a jury in Lee County
16 returned a verdict in favor of Aaron Edwards, finding Lee
17 Memorial Health System 100 percent responsible for Aaron
18 Edwards' injuries and awarded a total of $28,477,966.48 to the
19 Guardianship of Aaron Edwards, and
20 WHEREAS, the court also awarded $174,969.65 in taxable
21 costs, and
22 WHEREAS, Lee Memorial Health System tendered $200,000
23 toward payment of this claim, in accordance with the statutory
24 limits of liability set forth in s. 768.28, Florida Statutes,
25 NOW, THEREFORE,
26
27 Be It Enacted by the Legislature of the State of Florida:
28

29 Section 1. The facts stated in the preamble to this act
30 are found and declared to be true.
31 Section 2. Lee Memorial Health System, formerly known as
32 the Hospital Board of Directors of Lee County, is authorized and
33 directed to appropriate from funds not otherwise appropriated
34 and to draw a warrant as compensation for the injuries suffered
35 by Aaron Edwards in the sum of $1,000,000 by July 1 of each year
36 beginning in 2012 through 2021, inclusive for a total of
37 $10,000,000, payable to the Guardianship of Aaron Edwards to be
38 placed in a special needs trust created for the exclusive use
39 and benefit of Aaron Edwards, a minor.
40 Section 3. The amount paid by Lee Memorial Health System
41 pursuant to s. 768.28, Florida Statutes, and the amount awarded
42 under this act are intended to provide the sole compensation for
43 all present and future claims arising out of the factual
44 situation described in this act which resulted in the injuries
45 suffered by Aaron Edwards. The total amount paid for attorney's
46 fees, lobbying fees, costs, and other similar expenses relating
47 to this claim may not exceed $100,000.
48 Section 4. This act shall take effect upon becoming a law.

CS/HB 967



STORAGE NAME: h0967.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 967; Relief/Kristi Mellen/North Broward Hospital District
Sponsor: Representative Diaz
Companion Bill: SB 70 by Senator Storms
Special Master: Tom Thomas

Basic Information:

Claimants:	Kristi Mellen, as personal representative of the Estate of Michael Munson
Respondent:	North Broward Hospital District
Amount Requested:	$2,800,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The North Broward Hospital District has agreed to support this claim bill.
Collateral Sources:	$10,000 was paid by a doctor for his release from the civil suit.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	This is the first year this claim has been filed.

Procedural Summary: A tort claim was filed on behalf of Kristi Mellen, as personal representative of the Estate of Michael Munson, Case No. 09-036106 (02) in the Circuit Court of the Seventeenth Judicial Circuit of Florida. Prior to trial, the parties agreed to settle this matter. The settlement is in the amount of $3 million. The North Broward Hospital District has paid the statutory limit of $200,000 to the Claimant pursuant to s. 768.28, F.S.

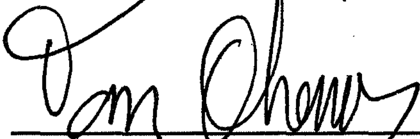
Facts of Case: On September 21, 2008, Michael Munson, a 49-year-old accountant and attorney, began to experience signs and symptoms of a heart attack including burning in his chest, indigestion, and radiating pain into his arms, along with severe shortness of breath. His wife, Kristi Mellen, drove her husband immediately to Coral Springs Medical Center, which is a hospital owned

and operated by the North Broward Hospital District, and dropped him off at the entrance to the emergency center. Mr. Munson was evaluated by Lynn Parpard, the triage nurse, who was informed of the burning in his chest, indigestion, and radiating pain into his arms, along with severe shortness of breath. Ms. Parpard took an initial set of vital signs and misdiagnosed Mr. Munson as suffering from an anxiety attack and sent him into the waiting room.

An administrative assistant who, upon hearing his symptoms, asked Ms. Parpard to address the patient's complaints, given the Chest Pain Protocol that existed. Ms. Parpard once again did not recognize Mr. Munson's complaints as a heart attack and asked him to return to the waiting room for a second time. Shortly thereafter, Mr. Munson suffered a massive heart attack in the waiting room and was taken back into the treatment area. All of these facts and circumstances were recorded by one of the hospital's security cameras.

Medical personnel were unable to resuscitate Mr. Munson, and he died on September 21, 2008, at 12:10 p.m., leaving behind Kristi, his wife of 20 years, and their two minor children, who, at the time, were ages 14 and 17. The hospital's investigation into this matter determined that Ms. Parpard's triage of the patient was inadequate and inappropriate, and, as a result, Ms. Parpard was terminated from her employment with Coral Springs Medical Center.

Recommendation: I respectfully recommend House Bill 967 be reported **FAVORABLY**.



Tom Thomas, Special Master — Date: February 15, 2012

cc: Representative Diaz, House Sponsor
Senator Storms, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

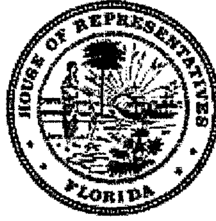
1 A bill to be entitled
2 An act for the relief of Kristi Mellen as personal
3 representative of the Estate of Michael Munson,
4 deceased, by the North Broward Hospital District;
5 providing for an appropriation to compensate the
6 estate and the statutory survivors, Kristi Mellen,
7 surviving spouse, and Michael Conner Munson and
8 Corinne Keller Munson, surviving minor son and
9 surviving minor daughter, for the wrongful death of
10 Michael Munson as a result of the negligence of the
11 North Broward Hospital District; providing a
12 limitation on the payment of fees and costs; providing
13 an effective date.
14
15 WHEREAS, on September 21, 2008, while spending the morning
16 with his family, Michael Munson, a 49-year-old accountant and
17 attorney, began to experience signs and symptoms of a heart
18 attack including burning in his chest, indigestion, and
19 radiating pain into his arms, along with severe shortness of
20 breath, and
21 WHEREAS, Kristi Mellen, his wife, drove her husband
22 immediately to Coral Springs Medical Center, which is a hospital
23 owned and operated by the North Broward Hospital District, and
24 dropped him off at the entrance to the emergency center, and
25 WHEREAS, Mr. Munson was evaluated by Lynn Parpard, the
26 triage nurse, who was informed of the burning in his chest,
27 indigestion, and radiating pain into his arms, along with severe
28 shortness of breath, and

29 WHEREAS, Ms. Parpard took an initial set of vital signs and
30 misdiagnosed Mr. Munson as suffering from an anxiety attack and
31 sent him into the waiting room, and
32 WHEREAS, Ms. Parpard violated the appropriate standards of
33 care and breached the hospital's policies and procedures
34 including its Chest Pain Protocol, and
35 WHEREAS, Mr. Munson was then processed by an administrative
36 assistant who, upon hearing his symptoms, asked Ms. Parpard to
37 address the patient's complaints, given the Chest Pain Protocol
38 that existed, and
39 WHEREAS, Ms. Parpard once again dismissed Mr. Munson's
40 complaints and asked him to return to the waiting room for a
41 second time, and
42 WHEREAS, shortly thereafter, Mr. Munson suffered a massive
43 heart attack as he collapsed in the waiting room and was taken
44 back into the treatment area, and
45 WHEREAS, all of the facts and circumstances described in
46 this preamble were recorded by one of the hospital's security
47 cameras, and
48 WHEREAS, medical personnel were unable to resuscitate Mr.
49 Munson, and he died on September 21, 2008, at 12:10 p.m.,
50 leaving behind Kristi, his wife of 20 years, and their two minor
51 children, who, at the time, were ages 14 and 17, and
52 WHEREAS, the hospital's investigation into this
53 circumstance determined that Ms. Parpard's triage of the patient
54 was inadequate and inappropriate, and, as a result, Ms. Parpard
55 was terminated from her employment with Coral Springs Medical
56 Center, and

57 WHEREAS, a tort claim was filed on behalf of Kristi Mellen,
58 as personal representative of the Estate of Michael Munson, Case
59 No. 09-036106 (02) in the Circuit Court of the Seventeenth
60 Judicial Circuit of Florida, and
61 WHEREAS, Kristi Mellen, as personal representative of the
62 Estate of Michael Munson, and the North Broward Hospital
63 District did agree to amicably settle this matter, and
64 WHEREAS, a specific condition of the settlement was that
65 the North Broward Hospital District would permit the entry of a
66 consent judgment in the amount of $3 million, and
67 WHEREAS, the North Broward Hospital District has paid the
68 statutory limit of $200,000 to the Estate of Michael Munson,
69 pursuant to s. 768.28, Florida Statutes, and
70 WHEREAS, the North Broward Hospital District has agreed to
71 fully cooperate and promote the passage of this claim bill in
72 the amount of $2.8 million, NOW, THEREFORE,
73
74 Be It Enacted by the Legislature of the State of Florida:
75
76 Section 1. The facts stated in the preamble to this act
77 are found and declared to be true.
78 Section 2. The North Broward Hospital District is
79 authorized and directed to appropriate from funds of the
80 district not otherwise appropriated, including insurance, and to
81 draw a warrant payable to Kristi Mellen, as personal
82 representative of the Estate of Michael Munson, in the sum of
83 $2.8 million as compensation for the death of Michael Munson.
84 Section 3. The amount paid by the North Broward Hospital

85 District pursuant to s. 768.28, Florida Statutes, and the amount
86 awarded under this act are intended to provide the sole
87 compensation for all present and future claims arising out of
88 the factual situation described in this act which resulted in
89 the death of Michael Munson. The total amount paid for
90 attorney's fees, lobbying fees, costs, and other similar
91 expenses relating to this claim may not exceed 15 percent of the
92 first $1,000,000 awarded under this act, 10 percent of the
93 second $1,000,000 awarded under this act, and 5 percent of the
94 remainder awarded under this act, for a total of $290,000.
95 Section 4. This act shall take effect upon becoming a law.

PCS for HB 969



STORAGE NAME: h0969.CVJS
DATE: 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 969 - Representative Grant
Relief/Melvin and Alma Colindres/City of Miami

THIS IS A CONTESTED LOCAL CLAIM FOR $2,550,000 AGAINST THE CITY OF MIAMI BASED ON A FINAL JUDGMENT FOR MELVIN AND ALMA COLINDRES AND THE ESTATE OF THEIR SON, KEVIN COLINDRES, TO COMPENSATE CLAIMANTS FOR THE DEATH OF KEVIN COLINDRES, WHICH OCCURRED WHILE IN POLICE CUSTODY.

FINDING OF FACT:

Kevin Colindres, an intellectually disabled and severely autistic 18-year-old, died on January 5, 2007, as the result of injuries he incurred while in custody of City of Miami police officers on December 12, 2006. Kevin was 5'9 and weighed approximately 210 pounds. Kevin would occasionally throw temper tantrums and the family sometimes required the assistance of law enforcement to control his behavior.

On the evening of December 12, 2006, Mrs. Alma Colindres, Kevin's mother, asked Kevin to get dressed and said she would take him to school, which he hated, unless he cooperated with her. In response, Kevin became violent and struck Alma in the face, put his hands around her neck, and threw a chair at her. These actions prompted Nerania Colindres, Kevin's sister, to call 911 at approximately 6:45 p.m.

Officer Kimberly Pile was the first law enforcement officer to respond to the call. Upon Officer Pile's arrival at the Colindres residence, Kevin had calmed down and was no longer engaged in violent behavior. Officer Pile told Kevin that she was there to help and Kevin sat down on the couch next to his mother.

Officer Pile remained on the scene and several backup officers arrived at the home a short time later. Although Kevin initially remained calm, he again became agitated when Nerania mentioned that he should be taken to the hospital to treat his ear, which was infected. At that point, Kevin stood up and began to run in the direction of his bedroom. As he did so, Kevin tripped and fell to the floor, which resulted in a laceration to his head. Officer Pile radioed for medical assistance at 7:15 p.m. Due to a miscommunication between the police department and fire rescue dispatchers, "cut to the head" was misinterpreted as "cut to the hand," which resulted in the call being assigned an "Alpha response," the slowest response level with the least priority.

While Kevin was still on the floor, the backup officers immediately handcuffed Kevin's wrists behind his back and removed him to the front yard. Kevin struggled against the officers' efforts, which resulted in the officers placing Kevin face-down on the ground. The officers then proceeded to attach a hobble restraint device to Kevin's ankles.

With his wrists handcuffed behind his back and his ankles hobbled, Kevin remained face-down in a prone position while being held in place by three officers, contrary to procedures of the Miami Police Department providing that handcuffed and hobbled subjects should be moved to a sitting position as quickly as possible to avoid the risk of asphyxiation. Positional asphyxiation and the procedures regarding the proper use of a hobble device are subjects that the Miami Police Department includes as part of officer training. However, testimony of the three officers revealed they were unaware of the relevant procedures regarding the hobble device and the positioning of subjects in custody.

The officers continued to hold Kevin in a prone position with at least one of the officers applying pressure to Kevin's back making it even more difficult for him to breathe. After being improperly held in the prone position for 10 to 12 minutes, Kevin stopped breathing. The officers did not notice, again violating department procedures by neglecting to adequately monitor Kevin. Kevin's mother advised the officers that she did not believe Kevin was breathing. In response, one of the officers placed an ammonia tube in Kevin's nose, with no effect.

Notwithstanding the obvious fact that Kevin was no longer moving and in distress. The officers kept Kevin in the prone position until the arrival of the paramedics at 7:30 p.m. By that

time, Kevin had been face-down for a total of 15 minutes, and had not been breathing for approximately three to five minutes.

One of the responding paramedics instructed the officers to remove Kevin from the prone position and examined Kevin and discovered that his pupils were fixed, his facial complexion was blue, and he was not breathing. Although Kevin initially exhibited a pulse of 30 beats per minute, he went "flatline" moments later. CPR was then administered and Kevin was transported to the hospital. The prolonged period of respiratory arrest resulted in anoxic encephalopathy (brain death), and Kevin subsequently passed away at Coral Gables Hospital on January 5, 2007.

The Miami-Dade County Medical Examiner concluded that the use of the prone restraint position contributed to Kevin's cardiorespiratory arrest, which in turn caused Kevin's brain death. The Medical Examiner found that the "prone restraint position, and any position that restricts abdominal excursion, will interfere with breathing." The report identified Kevin's agitated emotional state as an additional factor contributing to his death.

Notwithstanding the plain language of the Medical Examiner's report, the Respondent argues that Kevin's cardiorespiratory arrest resulted not from positional asphyxia (i.e., suffocation caused by the prone position), but rather from "excited delirium." However, the undersigned is not persuaded by the opinions of Respondent's expert witnesses, Drs. Dimaio and Mash, and instead credits, as did the arbitrator, the conclusions of Dr. Werner Spitz, the Claimant's expert. Dr. Spitz opined that Kevin's brain death was the result of cardiac arrest initiated by compression of the chest, which in turn was caused by the use of the prone position and the application of force to Kevin's back.

Litigation History: Alma and Melvin Colindres, as the personal representatives of Kevin's estate, filed a wrongful death action against the City of Miami in May of 2007. Following extensive discovery, non-binding arbitration was held on March 25, 2010. The arbitrator found that if "the City of Miami Police Officers had been more attentive to Kevin Colindres after they restrained him, there is a strong likelihood that he would be alive today." The arbitrator concluded that the City of Miami was negligent in its treatment of Kevin. Acknowledging that it was difficult to assess the appropriate amount of damages to compensate parents for the pain and suffering associated with the loss of a child, the arbitrator determined that a judgment of $2.75 million was warranted. The City of Miami was not bound by the abitration, and could have proceeded with a de novo jury trial. Instead, the City of Miami decided to limit further litigation costs by agreeing to the entry of a final judgment for $2.75 million, with the intention of opposing a claim bill. The

Respondent has paid $200,000 towards the final judgment, leaving a balance of $2,550,000 sought through this claim bill.

CONCLUSION OF LAW:

The City clearly owed a duty of care to Kevin Colindres while he was in their custody. The City of Miami police officers breached this duty of care, as it should have been obvious to any reasonable person that restraining Kevin for 15 minutes while he was face-down, handcuffed, and hobbled, was dangerously and needlessly interfering with his ability to breathe. The officers further breached their duty of care when they failed to adequately monitor Kevin's breathing.

The greater weight of the evidence supports the conclusion that Kevin would be alive today had the officers not committed these breaches of duty. Accordingly, the Claimants have demonstrated that the negligence of the officers was the proximate cause of Kevin's death. Damages in the amount of $2,550,000 are reasonable and appropriate.

Source of Funds: Should this claim bill be approved, the first $225,000 would be paid by Respondent from its Self Insurance Trust Fund. The remaining $2,325,000 would be provided by Respondent's excess insurance coverage through State National Insurance Company.

Prior Legislative History: HB 1315 by Representative Diaz and SB 54 by Senator Storms were filed during the 2011 Legislative Session. HB 1315 was passed by the Civil Justice Subcommittee and died on the House Calendar. SB 54 passed the Senate Rules Committee, passed the full Senate, but died on the House Calendar.

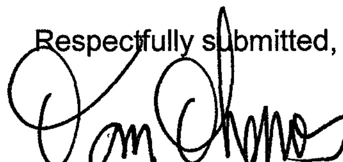
ATTORNEY'S/ LOBBYING FEES:

The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS:

For the reasons set forth above, the undersigned recommends that House Bill 969 be reported FAVORABLY.

Respectfully submitted,



TOM THOMAS
Special Master

cc: Representative Grant, House Sponsor
Senator Storms, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Melvin and Alma Colindres by
3 the City of Miami; providing for an appropriation to
4 compensate them for the wrongful death of their son,
5 Kevin Colindres, sustained as a result of the
6 negligence of police officers of the City of Miami;
7 providing a limitation on the payment of fees and
8 costs; providing an effective date.
9
10 WHEREAS, on December 12, 2006, Nerania Colindres called the
11 City of Miami police department seeking help with her severely
12 autistic and intellectually disabled 18-year-old brother, Kevin
13 Colindres, who was hurting his mother, Alma Colindres, and
14 WHEREAS, the police officers who arrived at the Colindres'
15 home were supposed to have been trained on appropriate
16 monitoring of an in-custody suspect's vital signs and the
17 administration of cardiopulmonary resuscitation (CPR), and
18 WHEREAS, at the time of the first police officer's arrival
19 to the Colindres' home, Kevin Colindres was no longer engaged in
20 violent behavior and sat down on the couch in the living room,
21 and
22 WHEREAS, Officer Pile remained on the scene and several
23 backup officers arrived at the home a short time later, and
24 while Kevin Colindres initially remained calm, he again became
25 agitated when his sister mentioned that he should be taken to
26 the hospital to treat his ear, which was infected, and he stood
27 up and began to run in the direction of his bedroom when he

28 tripped and fell to the floor, which resulted in a laceration to
29 his head , and
30 WHEREAS, while Kevin Colindres was still on the floor, the
31 backup officers immediately handcuffed Kevin's wrists behind his
32 back and removed him to the front yard, and
33 WHEREAS, Kevin Colindres struggled against the officers'
34 efforts, which resulted in the officers placing Kevin face-down
35 on the ground and applying a hobble restraint to his ankles, and
36 WHEREAS, in violation of their training and the City of
37 Miami's policies and procedures, the police officers left Kevin
38 Colindres prone on the ground and applied weight to his back,
39 even after he stopped struggling, and
40 WHEREAS, in violation of their training and the City of
41 Miami's policies and procedures, and notwithstanding the obvious
42 fact that Kevin Colindres was no longer moving and in distress,
43 the officers kept him in the prone position until the arrival of
44 the paramedics, and
45 WHEREAS, in violation of their training and the City of
46 Miami's policies and procedures, the police officers failed to
47 appropriately check Kevin Colindres' vital signs, and
48 WHEREAS, in violation of their training and the City of
49 Miami's policies and procedures, upon realizing that Kevin
50 Colindres had stopped breathing, the police officers failed to
51 administer CPR, and
52 WHEREAS, Kevin Colindres asphyxiated, causing him to suffer
53 anoxic encephalopathy, and
54 WHEREAS, on January 5, 2007, Kevin Colindres died as a
55 result of his injuries, and

56 WHEREAS, the police officers of the City of Miami were
57 negligent in their actions, which directly resulted in the death
58 of Kevin Colindres, and
59 WHEREAS, a tort claim was filed on behalf of Melvin and
60 Alma Colindres, as personal representatives of the Estate of
61 Kevin Colindres, Case Number 07-13294 CA 01, in the Circuit
62 Court for the Eleventh Judicial Circuit, and
63 WHEREAS, the City of Miami filed a Motion for Arbitration
64 that was granted by the court, and
65 WHEREAS, an arbitration was held and the arbitrator awarded
66 the Estate of Kevin Colindres $2,750,000, and
67 WHEREAS, the City of Miami chose not to seek a de novo
68 trial, and
69 WHEREAS, the court granted final judgment in favor of the
70 Estate of Kevin Colindres in the amount of $2,750,000, plus
71 interest at the rate of 6 percent per annum, and
72 WHEREAS, the City of Miami has agreed to pay $200,000 to
73 Melvin and Alma Colindres, as personal representatives of Estate
74 of Kevin Colindres, pursuant to its statutory limits of
75 liability, and
76 WHEREAS, the City of Miami has a private insurance policy
77 to pay all claims in excess of $500,000, NOW, THEREFORE,
78
79 Be It Enacted by the Legislature of the State of Florida:
80
81 Section 1. The facts stated in the preamble to this act
82 are found and declared to be true.
83 Section 2. The City of Miami is authorized and directed to

84 appropriate $2,550,000 from funds of the city not otherwise
85 appropriated, as well as insurance, and to draw a warrant in the
86 sum of $2,550,000, plus interest at the rate of 6 percent per
87 annum, payable to Melvin and Alma Colindres, as personal
88 representatives of the Estate of Kevin Colindres, as
89 compensation for the wrongful death of Kevin Colindres due to
90 negligence by police officers of the City of Miami.
91 Section 3. The amount paid by the City of Miami pursuant
92 to s. 768.28, Florida Statutes, and the amount awarded under
93 this act are intended to provide the sole compensation for all
94 present and future claims arising out of the factual situation
95 described in this act which resulted in the death of Kevin
96 Colindres. The total amount paid for attorney's fees, lobbying
97 fees, costs, and other similar expenses relating to this claim
98 may not exceed 15 percent of the first $1,000,000 awarded under
99 this act, 10 percent of the second $1,000,000 awarded under this
100 act, and 5 percent of the remainder awarded under this act, for
101 a total of $277,500.
102 Section 4. This act shall take effect upon becoming a law.

CS/HB 1023

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1023 Suspension of Driver Licenses and Motor Vehicle Registrations
SPONSOR(S): Civil Justice Subcommittee; Costello
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N, As CS	Cary	Bond
2) Transportation & Highway Safety Subcommittee	14 Y, 0 N	Kiner	Kruse
3) Judiciary Committee		Cary JMC	Havlicak RH

SUMMARY ANALYSIS

The Florida Department of Highway Safety and Motor Vehicles ("DHSMV") may, upon notification from the Florida Department of Revenue's ("DOR") Child Support Enforcement Program, suspend an obligor's driver's license and motor vehicle registration for failure to pay child support. Upon a timely application by an obligor facing suspension, a court can order the issuance of a business purposes only ("BPO") driver's license in lieu of full suspension. To qualify for the BPO, the obligor must agree to a payment plan.

The bill provides that:

- the court must find that the obligor has the ability to make the required payments pursuant to a payment plan before approving a BPO license;
- the court cannot suspend the obligor's driver's license for failure to make payments pursuant to the payment plan without a finding that the obligor has the ability to make the payments; and
- the court may order reinstatement of a suspended driver's license with a BPO license if the obligor agrees to an acceptable payment plan; and
- DHSMV is required to reinstate the obligor's driver's license (unrestricted) upon electronic notification from DOR, in lieu of an affidavit, that the obligor has paid the delinquency in full, entered into a written agreement for repayment, or the circuit court has ordered relief.

This bill may have an insignificant nonrecurring fiscal impact on DHSMV. This bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

DOR's Child Support Enforcement Program electronically notifies DHSMV when an obligor is not current with his or her child support obligations. In these instances, the driver's license and motor vehicle registration of a delinquent obligor may be suspended.[1] Once an obligor is 15 days or more delinquent, notice is furnished warning of potential suspension. To avoid suspension, the obligor has 20 days from mailing of the notice to pay any delinquency fees. Additionally, the obligor must do one of the following:

- pay the delinquency in full;
- come to an agreement for repayment;[2] or
- file a petition with the circuit court contesting the suspension.

If the obligor timely files a petition with the circuit court, the court has the discretion to direct issuance of a BPO license. A BPO license is limited to any driving that is necessary to maintain one's livelihood – including driving to and from work, necessary on-the-job driving, educational purposes, church, and medical purposes.[3] However, a circuit court cannot direct issuance of a BPO unless the obligor agrees to maintain current payments and agrees to a schedule for payment of the arrearage acceptable to the court. If the obligor fails to comply with the schedule of payments previously approved by the court, the court must order suspension of the driver's license. Once a suspension is in place, the license and registration may be reinstated if the obligor pays the delinquency in full (affidavit required), comes to a written agreement for repayment (affidavit required), or the circuit court orders relief (affidavit required).

Effect of Proposed Changes

This bill provides that:

- the court must find that the obligor has the ability to make the required payments pursuant to a payment plan before approving a BPO license;
- the court cannot suspend the obligor's driver's license for failure to make payments pursuant to the payment plan without a finding that the obligor has the ability to make the payments;
- the court may order reinstatement of a suspended driver's license with a BPO license if the obligor agrees to an acceptable payment plan; and
- DHSMV is required to reinstate the obligor's driver's license (unrestricted) upon electronic notification from DOR, in lieu of an affidavit, that the obligor has paid the delinquency in full, entered into a written agreement for repayment, or the circuit court has ordered relief.

The bill has an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1: amends s. 61.13016, F.S., regarding suspension of driver's license for failure to pay child support.

Section 2: amends s. 322.058, F.S., regarding suspension of driving privilege for failure to pay child support.

Section 3: provides an effective date.

---

[1] Section 61.13016(1), F.S.

[2] The agreement for repayment is made with the obligee in non-Title IV-D cases, or with the Title IV-D agency in Title IV-D cases.

[3] Section 322.271(1)(c)1., F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Highway Safety and Motor Vehicles estimates nonrecurring reprogramming costs of $8,000 to implement this bill. The cost can be incorporated into normal workload.[4]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to 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:

None.

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[4] Department of Highway Safety and Motor Vehicles bill analysis dated December 30, 2011.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 18, 2012, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides a new provision in s. 61.13016, F.S., clarifying that an obligor who has already been suspended may apply to the circuit court for a payment plan that would allow a business use license. The amendment also provides for electronic notification in lieu of an affidavit. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
2 An act relating to suspension of driver licenses and
3 motor vehicle registrations; amending s. 61.13016,
4 F.S.; revising provisions providing for an obligor who
5 is delinquent in support payments to petition the
6 circuit court to direct the Department of Highway
7 Safety and Motor Vehicles to issue to the obligor a
8 driver license restricted to business purposes only;
9 requiring that the court, before approving a schedule
10 for an obligor's delinquent support payments, find
11 that the obligor has the present ability to pay the
12 child support arrearage and support obligation;
13 requiring that the court direct the Department of
14 Highway Safety and Motor Vehicles to suspend the
15 obligor's driver license if the obligor fails to
16 comply with the schedule of payments and if the
17 obligor has the ability to pay; specifying that an
18 obligor whose license and registration has been
19 suspended may petition the court for a driver license
20 restricted to business purposes under specified
21 provisions that require the obligor to agree to a
22 schedule of payment on arrearages and to maintain
23 current obligations; amending s. 322.058, F.S.;
24 requiring that the Department of Highway Safety and
25 Motor Vehicles reinstate the driving privilege and
26 allow registration of a motor vehicle of a person who
27 has a delinquent support obligation or who has failed
28 to comply with a subpoena, order to appear, order to

29 show cause, or similar order, if the Title IV-D agency
30 in IV-D cases, or the depository or the clerk of the
31 court in non-IV-D cases, provides electronic
32 notification to the department stating that the court
33 has directed that the person be issued a license for
34 driving privileges restricted to business purposes
35 only; providing an effective date.
36
37 Be It Enacted by the Legislature of the State of Florida:
38
39 Section 1. Section 61.13016, Florida Statutes, is amended
40 to read:
41 61.13016 Suspension of driver ~~driver's~~ licenses and motor
42 vehicle registrations.—
43 (1) The driver ~~driver's~~ license and motor vehicle
44 registration of a support obligor who is delinquent in payment
45 or who has failed to comply with subpoenas or a similar order to
46 appear or show cause relating to paternity or support
47 proceedings may be suspended. When an obligor is 15 days
48 delinquent making a payment in support or failure to comply with
49 a subpoena, order to appear, order to show cause, or similar
50 order in IV-D cases, the Title IV-D agency may provide notice to
51 the obligor of the delinquency or failure to comply with a
52 subpoena, order to appear, order to show cause, or similar order
53 and the intent to suspend by regular United States mail that is
54 posted to the obligor's last address of record with the
55 Department of Highway Safety and Motor Vehicles. When an obligor
56 is 15 days delinquent in making a payment in support in non-IV-D

57 cases, and upon the request of the obligee, the depository or
58 the clerk of the court must provide notice to the obligor of the
59 delinquency and the intent to suspend by regular United States
60 mail that is posted to the obligor's last address of record with
61 the Department of Highway Safety and Motor Vehicles. ~~In either~~
62 ~~case,~~ The notice must state:
63 (a) The terms of the order creating the support
64 obligation;
65 (b) The period of the delinquency and the total amount of
66 the delinquency as of the date of the notice or describe the
67 subpoena, order to appear, order to show cause, or other similar
68 order that ~~which~~ has not been complied with;
69 (c) That notification will be given to the Department of
70 Highway Safety and Motor Vehicles to suspend the obligor's
71 driver ~~driver's~~ license and motor vehicle registration unless,
72 within 20 days after the date the notice is mailed, the obligor:
73 1.a. Pays the delinquency in full and any other costs and
74 fees accrued between the date of the notice and the date the
75 delinquency is paid;
76 b. Enters into a written agreement for payment with the
77 obligee in non-IV-D cases or with the Title IV-D agency in IV-D
78 cases; or in IV-D cases, complies with a subpoena or order to
79 appear, order to show cause, or a similar order; or
80 c. Files a petition with the circuit court to contest the
81 delinquency action; and
82 2. Pays any applicable delinquency fees.
83
84 If the obligor in non-IV-D cases enters into a written agreement

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

85 for payment before the expiration of the 20-day period, the
86 obligor must provide a copy of the signed written agreement to
87 the depository or the clerk of the court.
88 (2)(a) If the obligor files a ~~Upon~~ petition ~~filed by the~~
89 ~~obligor~~ in the circuit court within 20 days after the mailing
90 date of the notice, the court may~~, in its discretion,~~ direct the
91 department to issue a license for driving privileges restricted
92 to business purposes only, as defined by s. 322.271, if the
93 person is otherwise qualified for such a license. As a condition
94 for the court to exercise its discretion under this subsection,
95 the obligor must agree to a schedule of payment on any child
96 support arrearages and to maintain current child support
97 obligations. Before approving the schedule of payment, the court
98 must find that the obligor has the present ability to pay the
99 schedule of payment for the child support arrearage and the
100 current child support obligation.
101 (b) If the obligor fails to comply with the schedule of
102 payment and if the obligor has the present ability to do so, the
103 court shall direct the Department of Highway Safety and Motor
104 Vehicles to suspend the obligor's driver ~~driver's~~ license.
105 (c)~~(b)~~ The obligor must serve a copy of the petition on
106 the Title IV-D agency in IV-D cases or on the depository or the
107 clerk of the court in non-IV-D cases. When an obligor timely
108 files a petition to set aside a suspension, the court must hear
109 the matter within 15 days after the petition is filed. The court
110 must enter an order resolving the matter within 10 days after
111 the hearing, and a copy of the order must be served on the
112 parties. The timely filing of a petition under this subsection

113 stays the intent to suspend until the entry of a court order
114 resolving the matter.
115 (3) If the obligor does not, within 20 days after the
116 mailing date on the notice, pay the delinquency, enter into a
117 payment agreement, comply with the subpoena, order to appear,
118 order to show cause, or other similar order, or file a motion to
119 contest, the Title IV-D agency in IV-D cases, or the depository
120 or clerk of the court in non-IV-D cases, shall file the notice
121 with the Department of Highway Safety and Motor Vehicles and
122 request the suspension of the obligor's driver ~~driver's~~ license
123 and motor vehicle registration in accordance with s. 322.058.
124 (4) The obligor may, within 20 days after the mailing date
125 on the notice of delinquency or noncompliance and intent to
126 suspend, file in the circuit court a petition to contest the
127 notice of delinquency or noncompliance and intent to suspend on
128 the ground of mistake of fact regarding the existence of a
129 delinquency or the identity of the obligor. The obligor must
130 serve a copy of the petition on the Title IV-D agency in IV-D
131 cases or depository or clerk of the court in non-IV-D cases.
132 When an obligor timely files a petition to contest, the court
133 must hear the matter within 15 days after the petition is filed.
134 The court must enter an order resolving the matter within 10
135 days after the hearing, and a copy of the order must be served
136 on the parties. The timely filing of a petition to contest stays
137 the notice of delinquency and intent to suspend until the entry
138 of a court order resolving the matter.
139 (5) The procedures prescribed in this section and s.
140 322.058 may be used to enforce compliance with an order to

141 appear for genetic testing.
142 (6) A person whose driver license and registration has
143 been suspended under this section may petition for relief under
144 subsection (2). A petition under this subsection does not act as
145 a stay of any suspension.
146 Section 2. Section 322.058, Florida Statutes, is amended
147 to read:
148 322.058 Suspension of driving privilege ~~privileges~~ due to
149 support delinquency; reinstatement.—
150 (1) When the department receives notice from the Title IV-
151 D agency or depository or the clerk of the court that a ~~any~~
152 person licensed to operate a motor vehicle in the State of
153 Florida under the provisions of this chapter has a delinquent
154 support obligation or has failed to comply with a subpoena,
155 order to appear, order to show cause, or similar order, the
156 department shall suspend the driver ~~driver's~~ license of the
157 person named in the notice and the registration of all motor
158 vehicles owned by that person.
159 (2)(a) The department must reinstate the full driving
160 privilege and allow registration of a motor vehicle when the
161 Title IV-D agency in IV-D cases or the depository or the clerk
162 of the court in non-IV-D cases provides to the department an
163 electronic notification ~~affidavit~~ stating that:
164 1.~~(a)~~ The person has paid the delinquency;
165 2.~~(b)~~ The person has reached a written agreement for
166 payment with the Title IV-D agency or the obligee in non-IV-D
167 cases;
168 3.~~(c)~~ A court has entered an order granting relief to the

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

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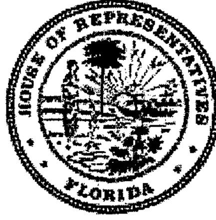
169 obligor ordering the reinstatement of the license and motor
170 vehicle registration; or
171 4.~~(d)~~ The person has complied with the subpoena, order to
172 appear, order to show cause, or similar order.
173 (b) The department must reinstate the driving privilege
174 restricted to business purposes only and allow registration of a
175 motor vehicle when the Title IV-D agency in IV-D cases or the
176 depository or the clerk of the court in non-IV-D cases provides
177 to the department electronic notification stating that a court
178 has entered an order granting relief to the obligor ordering the
179 reinstatement of the driver license restricted to business
180 purposes only and motor vehicle registration pursuant to s.
181 61.13016(2) or (6).
182 (3) The department is ~~shall~~ not ~~be held~~ liable for a ~~any~~
183 license or vehicle registration suspension resulting from the
184 discharge of its duties under this section.
185 (4) This section applies only to the annual renewal in the
186 owner's birth month of a motor vehicle registration and does not
187 apply to the transfer of a registration of a motor vehicle sold
188 by a motor vehicle dealer licensed under chapter 320, except for
189 the transfer of registrations which is inclusive of the annual
190 renewals. This section does not affect the issuance of the title
191 to a motor vehicle, notwithstanding s. 319.23(7)(b).
192 Section 3. This act shall take effect July 1, 2012.

CS/HB 1029



STORAGE NAME: h1029.CVJS
DATE: 2/15/2012

February 15, 2012

SPECIAL MASTER'S FINAL REPORT

The Honorable Dean Cannon
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 1029 - Representative Rouson
Relief/Thomas and Karen Brandi/City of Haines City

THIS IS A CONTESTED CLAIM FOR $825,094 BASED ON A JURY VERDICT AGAINST THE CITY OF HAINES CITY, IN WHICH THE JURY DETERMINED THAT THE CITY OF HAINES CITY WAS 60 PERCENT RESPONSIBLE FOR THE INJURIES TO THOMAS AND KAREN BRANDI DUE TO THE NEGLIGENT OPERATION OF A PATROL VEHICLE BY ONE OF ITS OFFICERS.

FINDING OF FACT:

Thomas Brandi was involved in a two-vehicle accident that occurred on March 26, 2005, on U.S. Highway 27 in Haines City, Florida. Mr. Brandi was traveling alone westbound on Southern Dunes Boulevard. After stopping for his red light, his light turned green, and he proceeded into the intersection. Upon entering the intersection, his vehicle was hit broadside on the driver's side by a Haines City police car operated by Officer Pamela Graham, an employee of the city of Haines City (the City). Officer Graham was travelling north on U.S. Highway 27 when she entered the intersection through a red light, in emergency mode with lights and siren on, and struck the driver's side door of Mr. Brandi's vehicle at a speed between 30 - 40 miles per hour. Mr. Brandi was going between 15 – 30 miles per hour.

Mr. Brandi was taken by helicopter to Lakeland Regional Hospital. As a result of the crash, Mr. Brandi sustained life-threatening injuries, including an aortic arch tear with contained hematoma and suggestion of active bleeding, a fractured rib, a right fibula fracture, a fractured sternum, a left acetabulum fracture, multiple right inferior pubic ramus fractures, and brain injury. Surgery was performed to repair the aortic tear. Mr. Brandi was at Lakeland Regional Hospital for ten days. He was then transferred to Florida Hospital in Orlando for rehabilitation, which included cognitive therapy. Mr. Brandi remained at Florida Hospital for ten days before being discharged for outpatient treatment.

Mr. Brandi's medical expenses as of August 1, 2011, are $167,330, and as a result of those expenses, Aetna Health, Inc., has a lien on any recovery in from this claim bill in the amount of $78,109. While his orthopedic injuries have substantially healed and do not present any significant difficulty to Mr. Brandi, he faces a lifetime of difficulties resulting from his brain injuries.

Officer Graham testified at trial that while she was at the station booking someone, she received an officer in distress call and rushed to her vehicle to respond, and entered the intersection in emergency mode while responding to that call. However, a review of the recordings of the radio calls at that time by the Police Department could not substantiate that any such call was made or that Officer Graham had authorization to respond to any call.

The Haines City Police Department concluded in its own investigation that the claim of Officer Graham could not be substantiated. The internal investigation found Officer Graham to have violated s. 316.072(5)(b), F.S., regarding standard operating procedures for the operation of emergency vehicles, by not operating her vehicle with due regard for the safety of all persons using the roadway. Officer Graham appealed the findings of the Crash Review Board to the Police Chief, but the Chief concurred with the Review Board and Officer Graham was suspended for three days without pay and was ordered to take an advanced driving course in emergency operations. Officer Graham appealed that decision unsuccessfully, as well.

The Haines City Police Department Vehicle Policy provides that:

> an "agency vehicle engaged in emergency operations may... Proceed past a red or stop signal, but only after slowing or stopping as may be necessary for safe operation. Agency vehicles will not enter controlled intersections against the directional flow of traffic at a speed greater than 15 MPH and will be sure that cross-

traffic flow has yielded in each lane before attempting to cross that lane."

Section 316.126, F.S., requires the driver of every vehicle to yield the right-of-way to an emergency vehicle while en route to an existing emergency when such emergency vehicle is giving audible signals by siren or visible signals by the use of displayed lights. However, the statute specifically states that its provisions do not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

Litigation History: The Claimants filed a complaint for damages in Polk County circuit court against the City. The complaint alleged that Officer Graham's operation of her police vehicle on March 26, 2005, was negligent, and that such negligence was the direct and proximate cause of injuries sustained by Mr. Brandi and consortium damages to Ms. Brandi.

The matter proceeded to a jury trial. On November 17, 2009, the jury entered a verdict assessing the City 60 percent liability for the injuries sustained by Mr. Brandi in the accident, and assessing Mr. Brandi 40 percent liability for the accident. Future medical expenses and lost earning ability in the future totaled $903,000, and the verdict included an award for past medical expenses and lost wages in the amount of $279,330. Mr. Brandi was awarded $450,000 in damages for past and future pain and suffering and Karen Brandi, his wife, was awarded $175,000 in damages for past and future loss of consortium. After reduction for comparative negligence, the net award to Thomas and Karen Brandi was $1,084,396. In addition, a stipulated cost judgment in the amount of $94,049 was entered by the trial court against the City.

The City did not make a motion for new trial or for remittitur, and no appeal was taken. The City paid $200,000 to Thomas and Karen Brandi in satisfaction of sovereign immunity limits pursuant to s. 768.28, F.S.

<u>CONCLUSION OF LAW</u>:

Standing: The City made arguments in this matter that the Claimant's have not exhausted their judicial remedies and do not have an excess judgment from the trial court. The City cites House Rule 5.6(c) requiring the exhaustion of judicial remedies and s. 768.28(5), F.S., which provides that the "portion of the judgment that exceeds these amounts may be reported to the Legislature, but may be paid in part or in whole only by further act of the Legislature."

The City's argument is based on a hyper-technical-reading of the final judgment entered by the trial judge. While the final judgment is for only $200,000, that is the limit allowed to be paid by the City due to the immunity provisions of s. 768.28,

F.S. The judgment goes on to say that the "judgment is entered without prejudice to the Plaintiff's right to pursue payment of the full verdict through passage of a claims bill." It is my opinion that the Claimants clearly have an excess judgment for which they may pursue a claim bill before the Legislature.

On the Merits: The greater weight of the evidence indicates that Mr. Brandi had the right-of-way and Officer Graham ran through a red light in emergency mode. This is my finding and is implied as the finding of the jury since Mr. Brandi was attributed less fault for the accident than that of Officer Graham. Had Officer Graham had a yellow light, the jury would not have attributed any fault to her. It was also part of the Florida Highway Patrol report that reads: "[w]itnesess stated that the police vehicle proceeded through the intersection on a red light with blue lights and siren." While finding that Mr. Brandi failed to yield to an emergency vehicle, the report also found that Officer Graham did not operate her emergency vehicle with due regard for the safety of all persons using the highway (meaning she did not have the right-of-way).

Ms. Graham clearly violated the Police Department's own policy on entering intersections in emergency mode, which prohibits entering the intersection "against the directional flow of traffic at a speed greater than 15 MPH and [ensuring] that cross-traffic flow has yielded in each lane before attempting to cross that lane." She also violated the provisions of s. 316.072(5)(b), F.S., regarding standard operating procedures for the operation of emergency vehicles, by not operating her vehicle with due regard for the safety of all persons using the roadway.

Officer Graham failed to operate her vehicle in a reasonably safe manner and conducted herself in direct violation of procedures of the Haines City Police Department. Although she claimed that she was responding to a distress call, there is no evidence to support this statement and the internal investigation conducted by the Haines City Police Department concluded that she was neither called nor dispatched to the location where she was headed.

While contested by the City, the greater weight of the evidence supports a finding that Mr. Brandi was wearing his seatbelt at the time of the accident and that he was not under the influence of drugs or alcohol at the time of the crash.

The jury found Mr. Brandi 40% at fault. This appears to be more liability than is justified by the facts, but I will defer to the jury's judgment on this issue. Since Officer Graham was not even on an authorized emergency call, this accident never should have occurred. As to damages, I find that the jury's award is reasonable and will not be disturbed.

Collateral Sources: Mr. Brandi received a payment of $100,000 from his uninsured motorist insurance coverage.

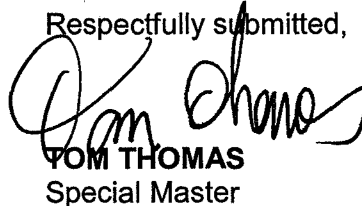
Source of Funds: The City has an automobile insurance policy that will pay up to $2,000,000 of a covered claim bill, such as this claim. This policy is with the Preferred Governmental Insurance Trust.

Prior Legislative History: HB 1339 by Representative Rouson and SB 280 by Senator Norman were filed during the 2011 Legislative Session. HB 1339 was never considered in the House and died in the Civil Justice Subcommittee. SB 280 was never considered in the Senate.

ATTORNEY'S/ LOBBYING FEES: The Claimants' attorneys have agreed to limit their fees to 25 percent of any amount awarded by the Legislature in compliance with section 768.28(8), Florida Statutes. Lobbyist's fees and costs are included with the attorney's fees.

RECOMMENDATIONS: For the reasons set forth above, the undersigned recommends that House Bill 1029 be reported FAVORABLY.

Respectfully submitted,



TOM THOMAS
Special Master

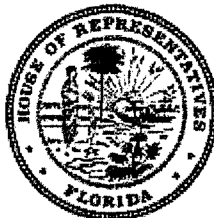
cc: Representative Rouson, House Sponsor
Senator Norman, Senate Sponsor
Judge Claude B. Arrington, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Thomas and Karen Brandi by
3 the city of Haines City; providing for an
4 appropriation to compensate them for injuries
5 sustained as a result of the negligence of the city of
6 Haines City; providing a limitation on the payment of
7 fees and costs; providing an effective date.
8
9 WHEREAS, Thomas Brandi was involved in a two-vehicle
10 accident that occurred on March 26, 2005, on U.S. Highway 27 in
11 Haines City, Florida, and
12 WHEREAS, Thomas Brandi was traveling alone on a green arrow
13 when his vehicle was broadsided on the driver's side by a Haines
14 City police car operated by Officer Pamela Graham, and
15 WHEREAS, Officer Graham entered the intersection despite a
16 red light and struck the driver's side door of Mr. Brandi's
17 vehicle at a speed in excess of 30 miles per hour, and
18 WHEREAS, Officer Graham failed to operate her vehicle in a
19 reasonably safe manner and conducted herself in direct violation
20 of procedures of the Haines City Police Department, and
21 WHEREAS, although she claimed that she was responding to a
22 distress call, there was no evidence to support this statement
23 and the internal investigation conducted by the Haines City
24 Police Department concluded that she was neither called nor
25 dispatched to the location where she was headed, and
26 WHEREAS, the internal investigation conducted by the Haines
27 City Police Department found her to be at fault in the accident,
28 and

29 WHEREAS, as a result of the crash, Thomas Brandi sustained
30 life-threatening injuries, including an aortic arch tear with
31 contained hematoma and suggestion of active bleeding, a
32 fractured rib, a right fibula fracture, a fractured sternum, a
33 left acetabulum fracture, multiple right inferior pubic ramus
34 fractures, and severe traumatic brain injury resulting in
35 cognitive disorder, complex personality change, depressive
36 disorder, pain disorder, post-traumatic stress disorder, and
37 panic disorder, and
38 WHEREAS, Thomas Brandi's medical expenses at the time of
39 trial exceeded $156,000, and
40 WHEREAS, after a trial, a jury entered a verdict assessing
41 the city of Haines City 60 percent liability for the injuries
42 sustained by Mr. Brandi in the accident, and assessing Thomas
43 Brandi 40 percent liability for the accident, and
44 WHEREAS, future medical expenses and lost earning ability
45 in the future totaled $903,000, and the verdict included an
46 award for past medical expenses and lost wages in the amount of
47 $279,330, and
48 WHEREAS, Thomas Brandi was awarded $450,000 in damages for
49 past and future pain and suffering and Karen Brandi was awarded
50 $175,000 in damages for past and future loss of consortium, and
51 WHEREAS, after reduction for comparative negligence, the
52 net award to Thomas and Karen Brandi was $1,084,396, and
53 WHEREAS, a stipulated cost judgment in the amount of
54 $94,049 was entered by the trial court against the city of
55 Haines City, and

56 WHEREAS, Thomas Brandi's medical expenses as of August 1,
57 2011, are $167,330, and as a result of those expenses Aetna
58 Health, Inc., has a lien on any recovery in this matter in the
59 amount of $78,109, and
60 WHEREAS, the city of Haines City paid $200,000 to Thomas
61 and Karen Brandi in satisfaction of sovereign immunity limits,
62 and
63 WHEREAS, Thomas Brandi received a payment of $100,000 from
64 his uninsured motorist insurance coverage, NOW, THEREFORE,
65
66 Be It Enacted by the Legislature of the State of Florida:
67
68 Section 1. The facts stated in the preamble to this act
69 are found and declared to be true.
70 Section 2. The city of Haines City is authorized and
71 directed to appropriate from funds of the city not otherwise
72 appropriated and to draw a warrant in the amount of $825,094,
73 payable to Thomas and Karen Brandi, as compensation for injuries
74 and damages sustained.
75 Section 3. The amount paid pursuant to s. 768.28, Florida
76 Statutes, and the amount awarded under this act are intended to
77 provide the sole compensation for all present and future claims
78 arising out of the factual situation described in this act which
79 resulted in injuries to Thomas and Karen Brandi. The total
80 amount paid for attorney's fees, lobbying fees, costs, and other
81 similar expenses relating to this claim may not exceed 15
82 percent of the total amount awarded under this act.
83 Section 4. This act shall take effect upon becoming a law.

CS/HB 1039



STORAGE NAME: h1039.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1039; Relief/James Feurtado/Miami-Dade County
Sponsor: Representative Steube
Companion Bill: SB 42 by Senator Flores
Special Master: Tom Thomas

Basic Information:

Claimants:	James D. Feurtado, III
Respondent:	Miami-Dade County
Amount Requested:	$1,150,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County agrees that settlement in this matter is appropriate and has agreed to remain neutral and not take any action adverse to the pursuit of a claim bill by Mr. Feurtado.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1013 by Representative Ingram and Senate Bill 324 by Senator Flores were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

Procedural Summary: Mr. Feurtado filed a lawsuit against Miami-Dade County for negligence in the 11th Judicial Circuit Court, in and for Miami-Dade County. Prior to trial, the parties reached a settlement agreement by mediation for $1,250,000, of which $100,000 has been paid by the County pursuant to the statutory cap on liability imposed by s. 768.28, F.S., and the remainder is conditioned upon the passage of a claim bill.

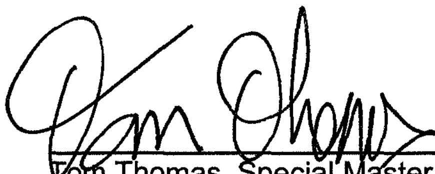
Facts of Case: On February 12, 2009, James D. Feurtado, III, while jogging, was hit by a bus owned by Miami-Dade County at approximately 7:00 p.m. at the intersection of Pisano Avenue and University Drive in Coral Gables. The operator of the bus failed to stop at the stop sign before making a right-hand turn and collided into Mr. Feurtado, age 37 at the time. The bus operator was found guilty of violating s. 316.123(2)(a), F.S., for failing to obey the stop sign and was disciplined by Miami-Dade County for violations of safety policies and procedures. Mr. Feurtado, a pharmaceutical sales representative, was in excellent health at the time of the accident.

Mr. Feurtado was transported to the Jackson Memorial Hospital Ryder Trauma Center, where he was found to have sustained serious injuries to the skull and brain and a right maxillary sinus fracture. He underwent a craniotomy and placement of a drain. He later required further surgery to insert a shunt in order to reduce the brain swelling to a point where a cranioplasty was performed. Although the Claimant's physicians were able to replace a portion of the Claimant's skull approximately eight months after the accident (the skull was kept frozen), a visible defect is still present. Mr. Feurtado has permanent brain damage, unilateral deafness, vertigo, headaches, psychiatric sequelae, a shunt, scarring, and skull defect, and has sustained serious and permanent neurologic and orthopedic injuries.

While Mr. Feurtado has been able to return to work, he has great difficulty performing his duties and cannot do so as efficiently as he did prior to his brain injury. His ability to remember pertinent information has been impaired, and he often loses his train of thought when speaking with customers. His deafness in one ear makes it nearly impossible for him to successfully interact in social situations with physicians and other customers, which is an essential component of pharmaceutical sales.

The present value of Mr. Feurtado's economic damages from this incident is calculated to be $1,823,468, which consists of his future and past lost earning capacity of $508,083, anticipated future medical expenses of $1,176,840, and past medical expenses of $138,545. If the bill is passed, Miami-Dade Transit operating funds will be used to satisfy the claim.

Recommendation: I respectfully recommend that House Bill 1039 be reported **FAVORABLY**.



Tom Thomas, Special Master   Date: February 15, 2012

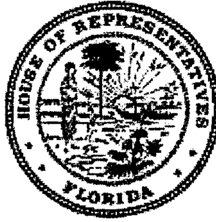
cc: Representative Steube, House Sponsor
Senator Flores, Senate Sponsor
Judge Edward T. Bauer, Senate Special Master

1 A bill to be entitled
2 An act for the relief of James D. Feurtado, III, by
3 Miami-Dade County; providing for an appropriation to
4 compensate him for injuries he sustained as a result
5 of the negligence of an employee of Miami-Dade County;
6 providing a limitation on the payment of fees and
7 costs; providing an effective date.
8
9 WHEREAS, on February 12, 2009, James D. Feurtado, III, age
10 37 at the time of the accident, sustained serious and permanent
11 neurologic and orthopedic injuries in a bus accident at
12 approximately 7 p.m. at the intersection of Pisano Avenue and
13 University Drive in Coral Gables, and
14 WHEREAS, the Miami-Dade County bus operator failed to stop
15 at the stop sign at this intersection before making a right-hand
16 turn and collided into James D. Feurtado, III, a pedestrian,
17 thereby causing him severe orthopedic and neurological injuries,
18 and
19 WHEREAS, the bus operator was found guilty of violating s.
20 316.123(2)(a), Florida Statutes, for failing to obey the stop
21 sign and was disciplined by Miami-Dade County for various
22 violations of safety policies and procedures, and
23 WHEREAS, Mr. Feurtado was transported to the Ryder Trauma
24 Center, where he was found to have sustained a large extra-axial
25 hematoma in the left hemisphere of the brain with mass effect
26 and mid-line shift, a large left hemispheric subarachnoid
27 hemorrhage, as well as left temporal, parietal, and bi-frontal
28 hemorrhagic contusions. He also sustained a right maxillary

29 sinus fracture involving the anterior and lateral wall extending
30 into the floor and lateral wall of the orbit, and fracture to
31 the right zygomatic arch and temporal bone, and
32 WHEREAS, Mr. Feurtado underwent a left frontoparietal
33 craniotomy with evacuation of the subdural hematoma and
34 placement of a drain. He developed post-traumatic communicating
35 hydrocephalus, ultimately requiring further surgery to place a
36 ventriculoperitoneal shunt in order to reduce the brain swelling
37 to a point where a cranioplasty was performed, and
38 WHEREAS, Mr. Feurtado has profound sensorineural hearing
39 loss to the right and has been evaluated for a BAHA implant
40 procedure in the future, and
41 WHEREAS, Mr. Feurtado underwent extensive
42 neuropsychological and psychological evaluation, and
43 WHEREAS, Mr. Feurtado has permanent brain damage,
44 unilateral deafness, vertigo, headaches, psychiatric sequelae, a
45 shunt, scarring, and skull defect, and
46 WHEREAS, Mr. Feurtado underwent assessment by a vocational
47 rehabilitation and life-care planner, and
48 WHEREAS, the total present value of Mr. Feurtado's economic
49 damages from this incident is calculated to be $1,823,468, which
50 consists of his future and past lost earning capacity of
51 $508,083, anticipated future medical expenses of $1,176,840, and
52 past medical expenses of $138,545, and
53 WHEREAS, Miami-Dade County and Mr. Feurtado reached a
54 settlement agreement by mediation in the amount of $1.25
55 million, of which $100,000 has been paid to Mr. Feurtado
56 pursuant to the limits of liability set forth in s. 768.28,

57 Florida Statutes, and the remainder is conditioned upon the
58 passage of a claim bill, which is unopposed, in the amount of
59 $1.15 million, NOW, THEREFORE,
60
61 Be It Enacted by the Legislature of the State of Florida:
62
63 Section 1. The facts stated in the preamble to this act
64 are found and declared to be true.
65 Section 2. Miami-Dade County is authorized and directed to
66 appropriate from funds of the county not otherwise appropriated
67 and to draw a warrant in the sum of $1.15 million, payable to
68 James D. Feurtado, III, as compensation for injuries and damages
69 sustained.
70 Section 3. The amount paid by Miami-Dade County pursuant
71 to s. 768.28, Florida Statutes, and the amount awarded under
72 this act are intended to provide the sole compensation for all
73 present and future claims arising out of the factual situation
74 described in this act which resulted in injuries to James D.
75 Feurtado, III. The total amount paid for attorney's fees,
76 lobbying fees, costs, and similar expenses relating to this
77 claim may not exceed 15 percent of the first $1,000,000 awarded
78 under this act and 10 percent of the remainder awarded under
79 this act, for a total of $165,000.
80 Section 4. This act shall take effect upon becoming a law.

CS/HB 1485



STORAGE NAME: h1485.CVJS
DATE: 2/15/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: HB 1485; Relief/Monica Cantillo Acosta and Luis Alberto Cantillo Acosta/Miami-Dade County
Sponsor: Representative Steube
Companion Bill: SB 50 by Senator Bogdanoff
Special Master: Tom Thomas

Basic Information:

Claimants:	Monica Cantillo Acosta and Luis Alberto Cantillo Acosta
Respondent:	Miami-Dade County
Amount Requested:	$940,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	Miami-Dade County supports the claim bill in the amount of $940,000.
Collateral Sources:	None reported.
Attorney's/Lobbying Fees:	The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	House Bill 1075 by Representative Steube and Senate Bill 60 by Senator Bogdanoff were filed during the 2011 Legislative Session. Neither bill was ever heard in any committee.

Procedural Summary: A civil suit was filed in the Eleventh Judicial Circuit in and for Miami-Dade County. After trial, the jury returned a verdict in favor of the plaintiffs on November 5, 2007, finding Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be $3 million each. The defendant appealed the jury verdict, however, the parties entered into a settlement agreement while the appeal was pending. The settlement calls for $200,000 to be paid immediately in accordance with the statutory limits of liability in s. 768.28, Florida Statutes, and support for a claim bill in the amount of $940,000.

Facts of Case: On November 12, 2004, at approximately 4:16 p.m. in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the driver, and was trying to find a seat on the crowded bus. While Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver accelerated in order to avoid a collision with another vehicle. The driver then then hit the brakes, causing Ms. Acosta to fall and strike her head on an interior portion of the bus. Because of the force upon which Ms. Acosta struck her head within the bus interior, she suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations. Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day.

Ms. Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who were raised exclusively by their mother. At the time of the accident, Monica was 21 years old and Luis was 16 years old.

Recommendation: The bill should be amended to reflect the settlement amount of $940,000. I respectfully recommend House Bill 1485 be reported **FAVORABLY**, as amended.

Tom Thomas, Special Master   Date: February 9, 1012

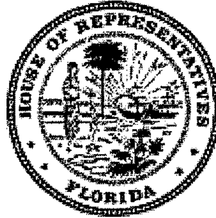
cc: Representative Steube, House Sponsor
Senator Bogdanoff, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Monica Cantillo Acosta and
3 Luis Alberto Cantillo Acosta, surviving children of
4 Nhora Acosta, by Miami-Dade County; providing for an
5 appropriation to compensate them for the wrongful
6 death of their mother, Nhora Acosta, due to injuries
7 sustained as a result of the negligence of a Miami-
8 Dade County bus driver; providing a limitation on the
9 payment of fees and costs; providing an effective
10 date.
11
12 WHEREAS, on November 12, 2004, at approximately 4:16 p.m.
13 in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus
14 #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the
15 driver, and was trying to find a seat on the crowded bus, and
16 WHEREAS, while Nhora Acosta walked toward the rear of the
17 bus in search of a seat, the bus driver accelerated in order to
18 avoid a collision with another vehicle and then braked suddenly,
19 which caused Nhora Acosta to fall and strike her head on an
20 interior portion of the bus, and
21 WHEREAS, because of the force with which Nhora Acosta
22 struck her head within the bus interior, she suffered a severe
23 closed head injury and massive brain damage, including a right
24 subdural hemorrhage, a left dural hemorrhage, diffused cerebral
25 edema, and basilar herniations, and
26 WHEREAS, Nhora Acosta was rushed to the trauma
27 resuscitation bay at Jackson Memorial Hospital in a comatose
28 state, was placed on a ventilator, underwent various procedures

29 to no avail, and was pronounced dead at 2:05 p.m. the next day,
30 and
31 WHEREAS, Nhora Acosta was a 54-year-old single mother of
32 two children, Monica Cantillo Acosta and Luis Alberto Cantillo
33 Acosta, who were raised exclusively by their mother, and because
34 of her death, her children were left orphaned, and
35 WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo
36 Acosta loved their mother and only parent dearly, and they have
37 suffered enormous, intense mental pain and suffering due to
38 their mother's untimely death, and have further lost the
39 support, love, guidance, and consortium of their only parent,
40 Nhora Acosta, as a result of the negligence of the Miami-Dade
41 bus driver, and
42 WHEREAS, on November 5, 2007, a Miami-Dade County jury
43 rendered a verdict and found the Miami-Dade County bus driver
44 100 percent negligent and responsible for the wrongful death of
45 Nhora Acosta, and determined the damages of Monica Cantillo
46 Acosta and Luis Alberto Cantillo Acosta to be $3 million each,
47 and
48 WHEREAS, the parties have subsequently settled this matter
49 for $1,140,000, and Miami-Dade County has paid the claimants
50 $200,000 under the statutory limits of liability set forth in s.
51 768.28, Florida Statutes, NOW, THEREFORE,
52
53 Be It Enacted by the Legislature of the State of Florida:
54
55 Section 1. <u>The facts stated in the preamble to this act</u>
56 <u>are found and declared to be true.</u>

57 Section 2. Miami-Dade County is authorized and directed to
58 appropriate from funds of the county not otherwise appropriated
59 and to draw a warrant in the sum of $470,000, payable to Monica
60 Cantillo Acosta, and a warrant in the sum of $470,000, payable
61 to Luis Alberto Cantillo Acosta, as compensation for the
62 wrongful death of their mother, Nhora Acosta.
63 Section 3. The amounts awarded under this act are intended
64 to provide the sole compensation for all present and future
65 claims arising out of the factual situation described in this
66 act which resulted in the death of Nhora Acosta. The total
67 amount paid for attorney's fees, lobbying fees, costs, and other
68 similar expenses relating to this claim may not exceed 15
69 percent of the total amount awarded under this act.
70 Section 4. This act shall take effect upon becoming a law.

PCB JDC 12-04



STORAGE NAME: pcb04.docx
DATE: 2/23/2012

Florida House of Representatives
Summary Claim Bill Report

Bill #: PCB JDC 12-04; Relief of Irving Hoffman and Marjorie Weiss by the City of Tallahassee
Sponsor: Judiciary Committee
Companion Bill: SB 44
Special Master: Tom Thomas

Basic Information:

Claimants:	Irving Hoffman and Marjorie Weiss
Respondent:	City of Tallahassee
Amount Requested:	$2,400,000
Type of Claim:	Local equitable claim; result of a settlement agreement.
Respondent's Position:	The North Broward Hospital District has agreed to support this claim bill.
Collateral Sources:	Ms. Weiss received $100,000 from a life insurance policy she had on her daughter.
Attorney's/Lobbying Fees:	The Claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.
Prior Legislative History:	In 2009, SB 66 by Senator Lawson and HB 1535 by Representative Gibbons were filed, but never considered. In 2010, SB 24 by Senator Lawson was filed, but never considered. In 2011, SB 68 by Senator Fasano was filed, but never considered.

Procedural Summary: A tort claim was filed on behalf of the Claimants in the Circuit Court of the Second Judicial Circuit of Florida. After jury selection, but prior to trial, the parties settled this matter on January 6, 2012. The settlement was in the amount of $2,600,000, and the City of Tallahassee has already paid a total of $200,000 pursuant to the statutory limit of s. 768.28, F.S.

Facts of Case: Rachel Hoffman was a 23 years old, recent graduate of Florida State University, and living in Tallahassee, Florida, when she agreed to become a confidential informant for the

Tallahassee Police Department (the Department). At the time, she was a participant in a drug court intervention program for possession of marijuana when, on April 17, 2008, the Department conducted a search of her apartment and found approximately 5 ounces of marijuana and six nonprescribed pills. Facing serious felony charges, she agreed to becoming an informant. Irving Hoffman and Marjorie Weiss are Rachel Hoffman's parents.

The supervising case manager for the Department and Ms. Hoffman developed a plan whereby she would purchase 1,500 MDMA pills, also known as Ecstasy, 2 to 3 ounces of cocaine, and a weapon from Andrea Green and Deneilo Bradshaw, with whom she had no previous contact or dealings. Ms. Hoffman had never purchased cocaine, did not have a history of dealing in cocaine or MDMA, had no experience with a firearm, had never been involved as a confidential informant, and had never been involved in a controlled buy-bust operation. The Department did not conduct a dry run of the area of the operation before it occurred, so Ms. Hoffman was unfamiliar with the geographical area that had been designated for this controlled buy-bust operation. Ms. Hoffman was assured by the Department that she would be watched and listened to at all times, and that when the buy was made, the police would immediately respond and arrest the targets and rescue her from danger.

The original plan was that a controlled buy would take place at a designated location at a private home in a large subdivision off North Meridian Road, but after the briefing and just prior to leaving the police station, the location was changed by the targets, Greene and Bradshaw, to Forest Meadows Park, on North Meridian Road. Upon arriving near the Forest Meadows Park, Ms. Hoffman mistakenly turned into the baseball fields, not the tennis court parking area where the arrest teams were positioned. She was redirected to the tennis court parking area when the Department lost visual sight of her and the listening device in her car ceased to function. It was at this time the targets again changed the meeting location from the park to a nearby plant nursery parking lot north of the park on Meridian Road and outside the city limits.

Ms. Hoffman had no way of knowing that none of the officers were watching or listening to her. The targets kept Ms. Hoffman on her cellular phone, directing her to another location, Gardner Road, which was north of the plant nursery and outside the city limits. By the time law enforcement personnel arrived at the Gardner Road location, Ms. Hoffman and the targets were no longer there, but officers did find two live .25 caliber rounds, one spent .25 caliber round, and tire marks. Hours later, Ms. Hoffman's cellular phone was found in a ditch miles away from the Gardner Road location. Two days later, Rachel Hoffman's body was found near Perry, Florida, approximately 50 miles away, shot multiple times.

An Internal Affairs investigation by the Department determined that numerous violations of its policies and procedures had occurred in the planning, supervision, and execution of the operation which led to the murder of Rachel Hoffman. Police Chief, Dennis Jones, stated that the investigator responsible for managing the operation should have terminated Rachel Hoffman's confidential informant service well before she participated in the operation.

On August 1, 2008, a Leon County Grand Jury returned indictments against Green and Bradshaw for the murder of Rachel Hoffman. In addition to the indictments, the Grand Jury issued an ancillary report (called a Presentment) and concluded that:

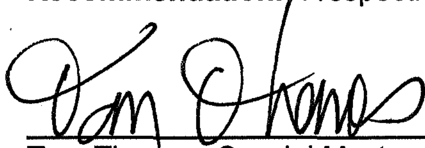
> During the course of our review of the facts, it became apparent to us that negligent conduct on the part of the Tallahassee Police Department and D.E.A. attributed to Ms. Hoffman's death... We believe the command staff was negligent in its review of the OPS plan and supervision of this Transaction... Letting a young, immature woman get into a car by herself with $13,000.00, to go off and meet two convicted felons that they knew were bringing at least one firearm with them, was an unconscionable decision that cost Ms. Hoffman her life... [T]hrough poor planning

> and supervision, and a series of mistakes throughout the Transaction, T.P.D. handed Ms. Hoffman to Bradshaw and Green to rob and kill her as they saw fit... [S]he should never have been used as a Confidential Informant. But if they were going to use her, they certainly had a responsibility to protect her as they assured her they would... In violation of the T.P.D. Policy on Buy-Bust operations, the T.P.D. allowed the suspects to set the location of the Buy-Bust. This operation violated practically every provision of the policy.

Andrea Green and Daneilo Bradshaw are both serving life sentences for the murder of Rachel Hoffman.

The City provided testimony that it has set aside the funds for this claim and payment will not negatively affect their operating budget.

Recommendation: I respectfully recommend this claim be reported **FAVORABLY**.



Tom Thomas, Special Master Date: February 23, 2012

cc: Representative Snyder, Committee Chair
Senator Fasano, Senate Sponsor
Judge John G. Van Laningham, Senate Special Master

1 A bill to be entitled
2 An act for the relief of Irving Hoffman and Marjorie
3 Weiss, parents of Rachel Hoffman, deceased,
4 individually and as co-personal representatives of the
5 Estate of Rachel Hoffman, by the City of Tallahassee;
6 providing an appropriation to compensate them for the
7 wrongful death of their daughter, Rachel Hoffman, who
8 was murdered while serving as a confidential informant
9 for the Tallahassee Police Department; providing an
10 effective date.
11
12 WHEREAS, Rachel Hoffman served as a confidential informant
13 for the Tallahassee Police Department in May 2008, and,
14 WHEREAS, Rachel Hoffman was murdered by Andrea Green and
15 Daneilo Bradshaw during a drug sting operation, and,
16 WHEREAS, Andrea Green and Daneilo Bradshaw are both serving
17 life sentences for the murder of Rachel Hoffman, and,
18 WHEREAS, the City of Tallahassee recognizes that it must
19 always be accountable for its conduct, acknowledges that
20 mistakes were made and policies were violated in this case, and
21 the life of Rachel Hoffman was tragically lost, and,
22 WHEREAS, the City of Tallahassee expresses its deepest
23 sorrow for the loss of Rachel Hoffman, and,
24 WHEREAS, the City of Tallahassee offers its most sincere
25 condolences to the parents of Rachel Hoffman, Margie Weiss and
26 Irv Hoffman, and
27 WHEREAS, the City of Tallahassee has agreed to pay Irv
28 Hoffman and Margie Weiss a total of $2,600,000, and,

29 WHEREAS, the City of Tallahassee has already paid a total
30 of $200,000 to Irv Hoffman and Margie Weiss, NOW, THEREFORE,
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. The facts stated in the preamble to this act
35 are found and declared to be true.
36 Section 2. The City of Tallahassee is authorized and
37 directed to appropriate from funds of the city not otherwise
38 encumbered and to draw a warrant in the sum of $2,400,000,
39 payable to Irving Hoffman and Marjorie Weiss, as compensation
40 for injuries and damages sustained due to the murder of their
41 daughter, Rachel Hoffman.
42 Section 3. The amount awarded under this act is intended
43 to provide the sole compensation for all present and future
44 claims arising out of the factual situation described in this
45 act which resulted in the death of Rachel Hoffman.
46 Section 4. This act shall take effect upon becoming a law.