

Judiciary Committee

Wednesday, January 25, 2012 2:00 PM 404 HOB

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time:

Wednesday, January 25, 2012 02:00 pm

End Date and Time:

Wednesday, January 25, 2012 04:00 pm

Location: Duration:

404 HOB 2.00 hrs

Consideration of the following bill(s):

CS/HB 31 Protest Activities by Criminal Justice Subcommittee, Rooney

CS/HB 135 Costs of Prosecution, Investigation, and Representation by Justice Appropriations Subcommittee,

HB 215 Video Voyeurism by Young

CS/HB 385 Health Care by Civil Justice Subcommittee, Gaetz, Renuart

CS/HB 483 Uniform Commercial Code by Civil Justice Subcommittee, Passidomo

HB 733 Probate by Kiar

HB 917 Jurisdiction of the Courts by Bileca

HB 1355 Protection of Vulnerable Persons by Dorworth

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

CS/HB 31

Protest Activities

SPONSOR(S): Criminal Justice Subcommittee; Rooney and others

TIED BILLS: None IDEN./SIM. BILLS: SB 632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 3 N, As CS	Smith	Cunningham
2) Judiciary Committee		Smith	Havlicak

SUMMARY ANALYSIS

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. For example, s. 871.01, F.S., makes it unlawful for a person to:

- Willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God.
- Willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a "military funeral honors detail" as defined by 10 U.S.C. s. 1491.

The bill expands current law targeting funeral disturbances by prohibiting a wider scope of conduct in a broader range of instances. Specifically, the bill makes it a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur:

- Within 500 feet of the property line of any location where a funeral, burial, or memorial service is being conducted,
- During or within 1 hour before or 1 hour after the conducting of the funeral, burial, or memorial service.

The bill defines "protest activities" as "any action, including picketing, that is undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."

The distinction between s. 871.01, F.S., and the bill's provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly and that does in fact significantly disturb the assembly. The bill prohibits "any action...that is undertaken with the intent to interrupt or disturb" a funeral, burial, or memorial service under the specified conditions, regardless of whether those actions do in fact cause such a disturbance.

The bill may have a fiscal impact on county jails in that it creates a new first degree misdemeanor offense.

The bill is effective October 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. $STORAGE\ NAME:\ h0031b.JDC.DOCX$

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida law currently contains a number of provisions that make it unlawful to incite riots, breach the peace, and disturb lawful assemblies. A summary of these statutes follows.

Section 877.03, F.S.

Section 877.03, F.S., relates to breach of the peace and disorderly conduct. The statute makes it a second degree misdemeanor¹ for a person to commit acts that:

- Corrupt public morals;
- Outrage the sense of public decency;
- Affect the peace and quiet of persons who may witness them;
- Engage in brawling or fighting; or
- Engage in such conduct as to constitute a breach of peace or disorderly conduct.

Courts have narrowed the construction of this language to prohibit speech that constitutes "fighting words" or words that "inflict injury or tend to incite immediate breach of peace."

Section 870.01, F.S.

Section 870.01, F.S., makes it a first degree misdemeanor⁴ for a person to commit an affray. The statute also makes it a third degree felony⁵ for a person to riot, or incite or encourage a riot. Although the terms "affray" and "riot" are not defined, the courts have upheld the statute against vagueness challenges.⁶

Section 870.02, F.S.

Section 870.02, F.S., relates to unlawful assemblies. The statute makes it a second degree misdemeanor for three or more persons to meet together to commit a breach of the peace, or to do any other unlawful act.

Section 871.01, F.S.

Section 871.01(1), F.S., makes it a second degree misdemeanor to willfully interrupt or disturb any lawful assembly, including schools and assemblies gathered for the worship of God. The Florida Supreme Court upheld this statute against First Amendment and overbreadth challenges.⁸

In 2006, in response to various groups creating public disturbances at high profile military funerals, subsection (2) was added to s. 871.01, F.S.⁹ Section 871.01(2), F.S., makes it a first degree misdemeanor for a person to willfully interrupt or disturb a group of people who are assembled to acknowledge the death of a person with a "military funeral honors detail" as defined by 10 U.S.C. s. 1491. A military honors detail includes the presence of two uniformed members of the armed forces, the playing of Taps, the folding of the United States flag and its presentation to the family.¹⁰

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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.

² Macon v. State, 854 So.2d 834, 837 (Fla. 5th DCA 2003).

³ United States v. Lyons, 403 F.3d 1248, 1254 (11th Cir. 2005).

⁴ 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.

⁵ 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.

⁶ See D.L.B. v. State, 707 So.2d 844, 845 (Fla. 2d DCA 1998) (finding that statute sufficiently defines "affray," given that "readily available dictionaries define "affray" as a public fight or brawl"); State v. Beasley, 317 So.2d 750, 753 (Fla. 1975) (upholding Section 870.01(2), F.S., as constitutional upon the Court's authoritative, limiting construction).

⁷ Breach of the peace is described in s. 877.03, F.S.

⁸ S.H.B. v. State, 355 So.2d 1176 (Fla. 1978).

⁹ Chapter 2006-264, L.O.F. Also see, Florida House of Representatives Staff Analysis, House Bill 7127 (2006).

¹⁰ 10 U.S.C. s. 1491.

Although s. 871.01, F.S., does not define the phrase "interrupt or disturb," the Supreme Court of Florida has described the phrase as follows:

[A] person must have deliberately acted to create a disturbance...the person must have acted with the intention that his behavior impede the successful functioning of the assembly or with reckless disregard of the effect of his behavior; additionally, the acts complained of must be such that a reasonable person would expect them to be disruptive and the acts must, in fact, significantly disturb the assembly.¹¹

Effect of the Bill

The bill creates s. 871.015, F.S, which targets conduct that takes place within a specified time and distance of a funeral, burial, or memorial service. The bill expands current law targeting funeral disturbances by prohibiting a *wider scope of conduct* in a *broader range of instances*.

The bill makes it a first degree misdemeanor to knowingly engage in protest activities or knowingly cause protest activities to occur:

- Within 500 feet of the property line of any location, 12
- During or within 1 hour before or 1 hour after the conducting of a funeral, burial, or memorial service at that place.

Definitions:

- The bill defines "protest activities" as "any action, including picketing, that is undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."
- The bill defines the phrase "funeral, burial, or memorial service" as "any service offered or provided in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains or cremated human remains."

The distinction between s. 871.01, F.S., and the bill's provisions are subtle but significant. Section 871.01, F.S., prohibits a person from acting with the intention to interrupt or disturb an assembly and that does in fact significantly disturb the assembly. The bill prohibits "any action...that is undertaken with the intent to interrupt or disturb" a funeral, burial, or memorial service under the specified conditions, regardless of whether those actions do in fact cause such a disturbance.

B. SECTION DIRECTORY:

Section 1. Creates s. 871.015, F.S., relating to unlawful protests.

Section 2. Provides that the act shall take effect October 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.

¹² Including but not limited to a residence, cemetery, funeral home, or house of worship.

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¹¹ S.H.B. v. State, 355 So.2d 1176, 1178 (Fla. 1977) (finding "[t]hese elements are inherent in the statute as drafted.").

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

Revenues:

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

2. Expenditures:

The bill may have a fiscal impact on county jails in that it creates a new first degree misdemeanor offense.

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

2. Other:

The First Amendment of the U.S. Constitution

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." 13

The First Amendment protects not only verbal speech, but also expressive conduct such as picketing. 14

Snyder v. Phelps

A recent U.S. Supreme Court case addressed the First Amendment's relation to funeral protests. In March 2006, Westboro Baptist Church demonstrated near the funeral of Marine Lance Cpl. Matthew Snyder, who was killed in Iraq. The demonstration included the display of signs reading "Thank God for Dead Soldiers," took place within 200-300 feet of the funeral procession, and concluded before the funeral began. Cpl. Snyder's father subsequently sued Westboro under state tort law, including a claim for intentional infliction of emotional distress. The jury found in favor of Snyder and awarded damages. On appeal, the U.S. Supreme Court found that the First Amendment protected Westboro's speech because, among other reasons, the speech took place in a public forum and the content was a matter of public concern. The Court also noted that even though the speech in this case was protected, even protected speech "may be subject to reasonable *time*, *place*, *or manner* restrictions that are *consistent with the standards announced in this Court's precedents." ¹⁵*

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¹³ Amendment I, United States Constitution (emphasis added).

¹⁴ See Police Dept. of City of Chicago v. Mosley, 408 U.S. 92, 95 (1972).

¹⁵ Snyder v. Phelps, 131 S.Ct. 1207, 1218 (2011) (emphasis added).

It is important to note that the *Snyder* case did not involve the Court reviewing the constitutionality of a state statute regulating picketing.¹⁶ Rather, the Court addressed *whether the First Amendment was a defense to a state tort claim* for intentional infliction of emotional distress, which is a separate issue. Thus, when examining the constitutionality of a statute that regulates protest activities, it is important to examine whether the statute conforms to U.S. Supreme Court precedent.

Court Precedent

Content-Based vs. Content-Neutral Restrictions

It is a fundamental constitutional principle that debate, particularly on issues of public concern, should not be inhibited by the government.¹⁷ Therefore, the most important question regarding the First Amendment issues of the bill is *whether the government is prohibiting speech based on disfavored content.*¹⁸ Such "content-based" regulations are presumptively suspect and are subject to strict scrutiny by the court.¹⁹

On the other hand, the government *may* restrict speech through time, place, and manner regulations that are *justified without reference to the content of the speech*.²⁰ The Eighth Circuit Court of Appeals has found both a city ordinance²¹ and a state statute²² prohibiting protest activities within a certain time and distance of a funeral content-neutral.

Content neutral restrictions are subject to intermediate scrutiny by the court.²³ Under intermediate scrutiny, the court looks at the relationship, or "fit," between the *end* and the *means* of the statute. In other words, the restrictions of the statute must be *narrowly tailored* to achieve a *significant state interest*.²⁴ Additionally, the statute must leave open "ample alternative channels" for the restricted speech.²⁵

- A significant state interest is grounded in the state's traditionally broad police powers.²⁶ Courts have found a state has a significant interest in protecting its citizens from disruption during events associated with a funeral or burial service,²⁷ and in public safety concerns resulting from disruptions of the public order.²⁸ Additionally, citizens have a recognized interest in avoiding unwanted speech, including in confrontational settings.²⁹
- A statute is narrowly tailored to a significant state interest if it does not burden substantially
 more speech than necessary to achieve the state's goal.³⁰ To be narrowly tailored in this
 context, the statute does not have to be the least restrictive means available.³¹
- In the context of a statute regulating picketing in residential areas, the U.S. Supreme Court
 found there were ample alternative channels when: "Protestors have not been barred from the
 residential neighborhoods. They may enter such neighborhoods, alone or in groups, even
 marching.... They may go door-to-door to proselytize their views. They may distribute literature

²⁶ See Hill v. Colorado, 530 U.S. 703, 715 (2000).

¹⁶ *Id.* ("Maryland's law, however, was not in effect at the time of the events at issue here, so we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional.").

¹⁷ Id. at 1215 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964)).

¹⁸ See Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989).

¹⁹ See Turner Broad. Sys., Inc. v. F.C.C., 512 U.S. 622, 658 (1994).

²⁰ See Ward, 491 U.S. at 791 (emphasis added; internal quotations omitted); Snyder, 131 S.Ct. at 1218.

²¹ Phelps-Roper v. City of Manchester, Mo., 658 F.3d 813, 816 (8th Cir. 2011).

²² Phelps-Roper v. Nixon, 545 F.3d 685, 691 (8th Cir. 2008).

²³ See Turner Broad., 512 U.S. at 642.

²⁴ Ward, 491 U.S. at 791.

²⁵ *Id*.

²⁷ Phelps-Roper v. Taft, 523 F.Supp.2d 612, 618 (N.D. Ohio 2007) aff'd in part sub nom. Phelps-Roper v. Strickland, 539 F.3d 356 (6th Cir. 2008).

⁽⁶th Cir. 2008).

²⁸ Christian Knights of Ku Klux Klan Invisible Empire, Inc. v. Dist. of Columbia, 972 F.2d 365, 372 (D.C. Cir. 1992) (citing Mosley, 408 U.S. at 98).

²⁹Hill at 716-17.

³⁰ See Turner Broad., 512 U.S. at 662.

³¹ *Id. See also Hill*, 530 U.S. at 726.

in this manner ... or through the mails. They may contact residents by telephone, short of harassment."³²

The bill limits the definition of "protest activities" as actions "undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service." The Sixth Circuit U.S. Court of Appeals found a statute was narrowly tailored that described protest activities as "any action that is disruptive or undertaken to disrupt or disturb a funeral or burial service." The court noted that the language limited "protest activities" to those *directed* at a particular funeral. Furthermore, the Eighth Circuit U.S. Court of Appeals found that a statute that did *not* contain such language was likely *not* narrowly tailored for injunction purposes.³⁵

The bill establishes a 500 foot fixed buffer zone around funeral locations. Buffer zones are potentially too broad, and therefore not narrowly tailored, if they restrict too much protected speech. Criteria include the reference point that the buffer zone surrounds, and the size of the buffer zone itself. The nature of the bill's buffer zone likely conforms to U.S. Supreme Court precedent. A U.S. District Court in 2007 held an Ohio statute's 300 feet "fixed" buffer zone surrounding funeral locations constitutional, but held the "floating buffer zone" surrounding funeral *processions* unconstitutional because it was not narrowly tailored. That holding conforms to a prior Supreme Court case addressing buffer zones. Additionally, courts have found the *size* of the buffer zone itself to be context-specific. The

Finally, the bill addresses the competing interests of funeral protestors and funeral attendees in a specific location. It is therefore important to carefully define the nature of those interests. The First Amendment protects expressive conduct such as picketing, and affords the highest protection to speech based on matters of public concern, or "political speech." On the other hand, citizens also have a recognized interest not to be forced to hear unwanted speech. Protecting citizens from hearing unwanted speech is referred to as the "captive audience" doctrine. To illustrate the point, there is a difference between someone holding a sign displaying an offensive message, where the burden falls on offended viewers to "avoid further bombardment of their sensibilities simply by averting their eyes," and forcing citizens to "undertake Herculean efforts to escape the cacophony of political protests." The Court has held that in some cases, funeral attendees are not a "captive audience" to protest speech. In other cases, courts have held that forcing a funeral attendee to choose between attending a funeral and hearing the unwanted protest communication effectively makes the attendees a "captive audience." The Court noted in *Snyder v. Phelps* that the captive audience doctrine has been applied "only sparingly."

⁴⁶ Snyder, 131 S.Ct. at 1220.

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³² Frisby v. Schultz, 487 U.S. 474, 484 (1988).

³³ Phelps-Roper v. Strickland, 539 F.3d 356, 368 (6th Cir. 2008).

³⁴ Id. (citing Frisby v. Schultz, 487 U.S. 474 (1988)).

³⁵ Nixon, 545 F.3d 685, 693 (finding statute likely not narrowly tailored "[b]ecause the Missouri statute does not contain any such [narrowing] provisions").

³⁶ Phelps-Roper v. Taft, 523 F.Supp.2d at 620 (N.D. Ohio 2007) ("statute not narrowly tailored, in that it burdens substantially more speech than necessary to serve the State of Ohio's interest protecting its citizens from disruption during the events associated with a funeral or burial service").

³⁷ See Schenck v. Pro-Choice Network Of W. New York, 519 U.S. 357, 377 (1997) (finding that injunction imposing floating buffer zones of 15 feet from people and vehicles entering and leaving clinics were not narrowly tailored).

³⁸ See Madsen, 512 U.S. at 772; Strickland, 539 F.3d at 368.

³⁹ See Snyder, 131 S.Ct. at 1215.

⁴⁰ See Hill, 530 U.S. at 716-17.

⁴¹ Snyder, 131 S.Ct. at 1220.

⁴² Hill at 716 (internal quotations omitted).

⁴³ *Id.* (quoting *Madsen*, 512 U.S. at 772-73).

⁴⁴ Snyder, 131 S.Ct. at 1220 (finding mourner was not a captive audience to protest speech when protestors stayed 1,000 feet away from the funeral location, mourner could only see the tops of the signs when driving to the funeral, and there was no indication that the picketing in any way interfered with the funeral service itself.").

⁴⁵ See Phelps-Roper v. Strickland, 539 F.3d 356, 362 (6th Cir. 2008); McQueary v. Stumbo, 453 F.Supp.2d 975, 992 (E.D. Ky. 2006).

See Phelps-Roper v. Strickland, 539 F.3d 356, 362 (6th Cir. 2008); McQueary v. Stumbo, 453 F.Supp.2d 975, 992 (E.D. Ky. 2006) But compare Phelps-Roper v. Nixon, 545 F.3d 685 (8th Cir. 2008).

Overbreadth Doctrine of the First Amendment

Even if a statute legitimately prohibits some speech, if it also prohibits a substantial amount of protected speech in relation to its legitimate sweep it may be unconstitutionally overbroad.⁴⁷

This overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court-- those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."⁴⁸ The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected expression.⁴⁹ Invalidation for overbreadth is "strong medicine that is not to be casually employed."⁵⁰ The overbreadth must be "real" and "substantial." 51

A July 2010 Michigan case provides a relevant example of overbreadth. In that case, a Michigan couple was part of a vehicle funeral procession in their van. The van had for years openly displayed various messages critical of U.S. policy and President Bush. The couple was arrested and held in jail for 24 hours under Michigan's funeral protest law which made it illegal, in pertinent part, to engage in conduct that will "adversely affect" a funeral or funeral processional. 52 The U.S. District Court found that those parts of the statute were likely unconstitutional under the overbreadth doctrine of the First Amendment 53

Vagueness Doctrine of the Fourteenth Amendment

A statute is unconstitutional under the vaqueness doctrine if an ordinary person of average intelligence would not be put on notice as to what conduct is prohibited by the statute. Additionally, vague statutes invite arbitrary and discriminatory enforcement.⁵⁴ It should be noted that when a statute is challenged as having a chilling effect on constitutionally protected speech due to vagueness, courts have held that a more stringent vagueness test should apply. 55

The bill may be vulnerable to a vagueness challenge if a law enforcement officer would not understand what constitutes prohibited protest activity as it is defined. When considering this issue it should be noted that the Florida Supreme Court has upheld s. 871.01, F.S., against a vagueness challenge as to the meaning of the phrase "interrupt or disturb." That phrase is used in the bill, although it should be noted that the bill would not require an actual disturbance to take place as in the Florida Supreme Court's definition in S.H.B v. State.

The bill may also be vulnerable to a vagueness challenge if an ordinary person of average intelligence would not understand what type of conduct would be deemed conduct "undertaken with the intent to interrupt or disturb a funeral, burial, or memorial service."

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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⁴⁷ United States v. Williams, 553 U.S. 285, 292 (2008).

⁴⁸ Brockett v. Spokane Arcades, Inc., 472 U.S. 491 (1985).

⁴⁹ Sult v. State, 906 So.2d 1013 (Fla. 2005) (citations omitted).

⁵⁰ Williams at 293 (internal quotations omitted).

⁵¹ Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973).

⁵² Mich. Comp. Laws Ann. s. 750.167d.

⁵³ Lowden v. County of Clare, 709 F.Supp.2d 540, 563 (E.D. Mich. 2010) (finding "the interaction of the 500 foot buffer zone and the "adversely affects" language is particularly problematic given the broad scope of expressive activity restricted in such a large space"). ⁵⁴ Sult v. State, 906 So.2d 1013 (Fla. 2005).

⁵⁵ Village. Of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489, 498-99 (1982).

⁵⁶ See S.H.B. v. State, 355 So.2d 1176, 1178 (Fla. 1977).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarifies the meaning of "protest activities," defines the phrase "funerals, burials, and memorial services," and makes the bill applicable to all funerals.

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

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CS/HB 31 2012

A bill to be entitled 1 2 An act relating to protest activities; creating s. 3 871.015, F.S.; providing definitions; prohibiting engaging in protest activities within a specified 4 5 distance of the property line of the location of a 6 funeral, burial, or memorial service; providing 7 criminal penalties; providing an effective date. 8 9 Be It Enacted by the Legislature of the State of Florida: 10 11 Section 1. Section 871.015, Florida Statutes, is created 12 to read: 13 871.015 Unlawful protests.-14 As used in this section, the term: 15 "Funeral, burial, or memorial service" means any service offered or provided in connection with the final 16 17 disposition, memorialization, interment, entombment, or 18 inurnment of human remains or cremated human remains. "Protest activities" means any action, including 19 (b) picketing, that is undertaken with the intent to interrupt or 20 disturb a funeral, burial, or memorial service. 21 22 A person may not knowingly engage in protest 23 activities or knowingly cause protest activities to occur within 24 500 feet of the property line of any residence, cemetery, 25 funeral home, house of worship, or other location during or 26 within 1 hour before or 1 hour after the conducting of a 27 funeral, burial, or memorial service at that place.

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(3) A person who violates this section commits a

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

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29 misdemeanor of the first degree, punishable as provided in s.

30 775.082 or s. 775.083.

31 Section 2. This act shall take effect October 1, 2012.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 135 Costs of Prosecution, Investigation, and Representation

SPONSOR(S): Justice Appropriations Subcommittee; Ray and others

TIED BILLS: None IDEN./SIM. BILLS: CS/SB 210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 2 N	Krol	Cunningham
2) Justice Appropriations Subcommittee	10 Y, 2 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee		Krol TK	Havlicak

SUMMARY ANALYSIS

Currently, convicted persons are liable for costs of prosecution, as well as costs of representation. These costs may be imposed at a rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred.

The bill makes defendants whose charges are dismissed by the court after the successful completion of a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court liable for payment of costs of prosecution and costs of representation.

The bill adds the costs of prosecution and representation to the list of costs a clerk of the court is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk of the court to collect and dispense cost payments in any case, regardless of whether the case takes place before the judge in open court or in any other manner.
- The costs of prosecution and investigation to be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill appears to have a positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

This bill is effective July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0135e,JDC,DOCX

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons¹ are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, the Department of Financial Services, or the Office of Financial Regulation of the Financial Services Commission.²

Costs of prosecution may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases unless the prosecutor proves that costs are higher in the particular case before the court.³ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.⁴

The clerk of the court (clerk) collects and dispenses cost of prosecution payments in every case.5

Costs of Representation

Section 938.29, F.S., provides that convicted persons⁶ are liable for payment of the \$50 public defender application fee under s. 27.52(1)(b), F.S.,⁷ and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.⁸

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred. The costs of representation are deposited into the Indigent Criminal Defense Trust Fund. In

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.¹² The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.¹³

¹ Conviction, for the purposes of costs of prosecution, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Section 937.27(1), F.S.

² Section 938.27(1), F.S.

³ Section 938.27(8), F.S.

⁴ Id.

⁵ Section 938.27(6), F.S.

⁶ Conviction, for the purposes of costs of representation, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Section 937.29(1)(a), F.S.

⁷ Section 27.52(1), F.S., provides that a person seeking the appointment of a public defender under s. 27.51, F.S., based upon an inability to pay, must apply to the clerk of the court for a determination of indigent status.

⁸ Section 938.29(1)(a), F.S.

⁹ This includes proceedings in which the underlying offense was a violation of probation or community control. Section 938.29(1),

F.S. ¹⁰ *Id*.

¹¹ Section 27.562, F.S.

¹² Section 938.29(1)(c), F.S.

¹³ Section 938.29(3), F.S.

Pretrial Intervention Programs

Defendants charged with certain offenses may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention¹⁴ or treatment-based drug court.¹⁵ Defendants who successfully complete these programs have the charges against them dismissed by the court.¹⁶ Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution or representation.

Effect of the Bill

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, and costs of representation when charges are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

The bill requires the clerk to collect and dispense cost of prosecution payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

Cash Bonds

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent¹⁷ to pay the following:

- Court fees,
- · Court costs, and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.¹⁸

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.¹⁹

Effect of the Bill

The bill adds the "costs of prosecution, costs of representation"²⁰ to the list of costs a clerk is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If sufficient funds are not available to pay such costs, the bill requires the clerk to obtain payment from a defendant or require the defendant to enroll in a payment plan. The bill also requires the cash bond form to include a notice that the costs of prosecution and representation are funds that are subject to forfeiture and withholding.

Delinquency Cases

Currently, juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

¹⁴ Sections 948.16 and 948.08(6), F.S., respectively.

¹⁵ Section 948.08(6), F.S. See s. 397.334, F.S.

¹⁶ Sections 948.16(2) and 948.08(6)(c), F.S.

¹⁷ Licensed pursuant to ch. 648, F.S.

¹⁸ Section 903.286(1), F.S.

¹⁹ Section 903.286(2), F.S.

²⁰ As provided by s. 27.52, F.S.

Effect of the Bill

The bill requires that costs of prosecution and investigation²¹ be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2. Amends s. 938.27. F.S., relating to judgment for costs on conviction.

Section 3. Amends s. 938.29, F.S., relating to legal assistance; lien for payment of attorney's fees or costs.

Section 4. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 5. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a positive impact on state attorneys and public defenders for the following reasons:

- The clerk is required to collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys.
- 2) The costs of prosecution will be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact on state attorneys as these costs were not assessed in these specific cases in the past.
- 3) The costs of prosecution and representation are allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact for state attorneys and public defenders as the cost of prosecution and representation will be deducted from any cash bonds posted on behalf of a criminal defendant.
- 4) The costs of prosecution and representation will be assessed against defendants who successfully complete pretrial intervention programs. This will likely result in a positive fiscal impact for state attorneys and public defenders as these costs were not assessed in these specific cases in the past.

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.

²¹ As provided in s. 938.27, F.S.

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2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution and representation.

D. FISCAL COMMENTS:

This bill appears to have a positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

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:

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, and costs of representation when charges are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court. Article I, Section 19 of the Florida Constitution states that a person charged with a crime cannot be compelled to pay costs before a judgment of conviction becomes final. However, this does not prohibit a defendant from entering into an agreement to pay costs of prosecution in return for the dismissal of his or her charges after the successful completion of a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.²²

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill allows the clerk to withhold costs of representation "as provided by s. 27.52, F.S.," from the return of a cash bond. Section 27.52, F.S., only references the \$50 application fee for court-appointed counsel. If the intent was to include all costs of representation, such as attorney's fees, the reference should be changed to s. 938.29, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Justice Appropriation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment deleted the provision in the bill prohibiting the court from converting prosecution and investigation costs into community service in lieu of the financial obligation.

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²² Sections 948.16(1)(a), F.S., and 948.08(6)(a), F.S.

1 A bill to be entitled 2 An act relating to costs of prosecution, 3 investigation, and representation; amending s. 903.286, F.S.; providing for the withholding of unpaid 4 5 costs of prosecution and representation from the 6 return of a cash bond posted on behalf of a criminal 7 defendant; requiring a notice on bond forms of such 8 possible withholding; amending s. 938.27, F.S.; 9 providing liability for the cost of prosecution and 10 investigation for persons whose cases are disposed of under specified provisions; clarifying the types of 11 12 cases that are subject to the collection and 13 dispensing of cost payments by the clerk of the court; 14 amending s. 938.29, F.S.; providing liability for attorney's fees and costs for persons whose cases are 15 disposed of under specified provisions; amending s. 16 17 985.032, F.S.; providing for assessment of costs of 1.8 prosecution against a juvenile who has been 19 adjudicated delinquent or has adjudication of delinquency withheld; providing an effective date. 20 21 22 Be It Enacted by the Legislature of the State of Florida: 23 24 Section 1. Section 903.286, Florida Statutes, is amended 25 to read: 26 903.286 Return of cash bond; requirement to withhold 27 unpaid fines, fees, court costs; cash bond forms.-

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Notwithstanding s. 903.31(2), the clerk of the court

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shall withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent licensed pursuant to chapter 648 sufficient funds to pay any unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties. If sufficient funds are not available to pay all unpaid costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties, the clerk of the court shall immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246.

- (2) All cash bond forms used in conjunction with the requirements of s. 903.09 must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk of the court for the payment of costs of prosecution, costs of representation as provided by s. 27.52, court fees, court costs, and criminal penalties on behalf of the criminal defendant regardless of who posted the funds.
- Section 2. Subsections (1) and (6) of section 938.27, Florida Statutes, are amended to read:
- 938.27 Judgment for costs of prosecution and investigation on conviction.
- (1) In all criminal and violation-of-probation or community-control cases, convicted persons and persons whose cases are disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) are liable for payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the

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Office of Financial Regulation of the Financial Services
Commission, if requested by such agencies. The court shall
include these costs in every judgment rendered against the
convicted person. For purposes of this section, "convicted"
means a determination of guilt, or of violation of probation or
community control, which is a result of a plea, trial, or
violation proceeding, regardless of whether adjudication is
withheld.

(6) The clerk of the court shall collect and dispense cost payments in any case <u>regardless of whether the disposition of</u> the case takes place before the judge in open court or in any other manner provided by law.

Section 3. Paragraph (a) of subsection (1) of section 938.29, Florida Statutes, is amended to read:

938.29 Legal assistance; lien for payment of attorney's fees or costs.—

(1) (a) A defendant who is convicted of a criminal act or a violation of probation or community control or whose case is disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) and who has received the assistance of the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs under s. 27.52, shall be liable for payment of the assessed application fee under s. 27.52 and attorney's fees and costs. Attorney's fees and costs shall be set in all cases at no less than \$50 per case when a misdemeanor or criminal traffic offense is charged and no less than \$100 per

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case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher fees or costs incurred. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. The court shall include these fees and costs in every judgment rendered against the convicted person.

Section 4. Section 985.032, Florida Statutes, is amended to read:

985.032 Legal representation for delinquency cases.-

- $\underline{\ \ \ }$ (1) For cases arising under this chapter, the state attorney shall represent the state.
- (2) A juvenile who has been adjudicated delinquent or has adjudication of delinquency withheld shall be assessed costs of prosecution as provided in s. 938.27.
 - Section 5. This act shall take effect July 1, 2012.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 215 Video Voyeurism

SPONSOR(S): Young and others

TIED BILLS: None IDEN./SIM. BILLS: SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee	14 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Cunningham	Havlicak R

SUMMARY ANALYSIS

Section 810.145, F.S., establishes crimes related to video voyeurism. Currently, first-time violations of "video voyeurism," "video voyeurism dissemination," and "commercial video voyeurism dissemination" are 1st degree misdemeanors. Second or subsequent violations are 3rd degree felonies.

Section 810.145(8)(a), F.S., specifies that video voyeurism is a 3rd degree felony if committed by certain persons and the victim was a child less than 16 years of age or a student. However, a violation of subsection (8)(a) by a person who has previously been convicted of any violation of s. 810.145. F.S., is a 2nd degree felony.

The bill increases the penalties associated with video voyeurism offenses. The penalty for a first-time violation of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" is increased from a 1st degree misdemeanor to a 3rd degree felony. The penalty for a second or subsequent violation is increased from a 3rd degree felony to a 2nd degree felony.

The bill also increases the penalty for violations of subsection (8)(a) of the statute from a 3rd degree felony to a 2nd degree felony. A violation of subsection (8)(a) by persons who have previously been convicted or adjudicated delinquent for any violation of s. 810.145, F.S., remains a 2nd degree felony, but the bill ranks such offense in Level 6 of the Offense Severity Ranking Chart.

The bill amends the definition of the phrase "place and time when a person has a reasonable expectation of privacy," which is used throughout the video voyeurism statute, to specify that such locations include "residential dwellings."

The Criminal Justice Impact Conference met December 14, 2011, and determined this bill will have an insignificant impact on the state prison beds because of the low volume of offenses addressed in this bill. The bill may have a minimal positive jail bed impact on local governments to the extent that those who commit firsttime violations of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" will be subject to a state prison sentence rather than a county jail sentence.

The bill is effective July 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0215d,JDC,DOCX

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Voyeurism and Video Voyeurism

Section 810.14, F.S., establishes the crime of voyeurism. This section provides that the offense of voyeurism is committed when a person, having lewd, lascivious, or indecent intent, secretly observes another person when he or she is in a dwelling, ¹ structure, ² or conveyance ³ that provides a reasonable expectation of privacy. ⁴ The offense is a 1st degree misdemeanor ⁵ but becomes a 3rd degree felony ⁶ if the person violating the section and has two or more prior convictions for the offense. ⁷

In 2004, the Legislature created s. 810.145, F.S., to distinguish video voyeurism from the existing crime of voyeurism.⁸ A person commits the offense of video voyeurism if that person:

- For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the
 purpose of degrading or abusing another person, intentionally uses or installs an imaging device
 to secretly view, broadcast, or record a person, without that person's knowledge and consent,
 who is dressing, undressing, or privately exposing the body, at a place and time when that
 person has a reasonable expectation of privacy;
- For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or
- For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.⁹

For purposes of video voyeurism, the phrase "place and time when a person has a reasonable expectation of privacy" is defined as:

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¹ Section 810.011(2), F.S., defines the term "dwelling" as a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging therein at night, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term includes such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

² Section 810.011(1), F.S., defines the term "structure" as a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term means a building of any kind or such portions or remnants thereof as exist at the original site, regardless of absence of a wall or roof.

³ Section 810.011(3), F.S., defines the term "conveyance" as any motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car; and "to enter a conveyance" includes taking apart any portion of the conveyance. However, during the time of a state of emergency declared by executive order or proclamation of the Governor under ch. 252, F.S., and within the area covered by such executive order or proclamation and for purposes of ss. 810.02 and 810.08, F.S., only, the term "conveyance" means a motor vehicle, ship, vessel, railroad vehicle or car, trailer, aircraft, or sleeping car or such portions thereof as exist.

⁴ Section 810.14(1), F.S.

⁵ 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.

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 Section 810.14(2) and (3), F.S.

⁸ Chapter 2004-39, L.O.F.

⁹ Section 810.145(2), F.S.

A place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth. 10

Section 810.145, F.S., also includes offenses of "video voyeurism dissemination" and "commercial video voyeurism dissemination." Video voyeurism dissemination occurs when a person knows or has reason to believe that an image was created as a result of video voyeurism and intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement. entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.¹¹ Commercial video voyeurism dissemination occurs when a person:

- Knows or has reason to believe that an image was created as a result of video voyeurism and sells the image for consideration to another person; or
- Creates the image using video voveurism and disseminates, distributes, or transfers the image to another person for that person to sell the image to others. 12

A first-time violation of "video voyeurism," "video voyeurism dissemination," or "commercial video voyeurism dissemination" is a 1st degree misdemeanor, punishable by a term of imprisonment not exceeding one year and a fine of not more than \$1,000.13 A second or subsequent violation is a 3rd degree felony, punishable by imprisonment for up to five years and a fine of not more than \$5.000.14

Section 810.145(8)(a), F.S., enhances the penalty for video voyeurism to a 3rd degree felonv for persons:

- Who are 18 years of age or older and who are responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, who commit video voyeurism against that child;
- Who are 18 years of age or older and who are employed at a private school. 15 a school or a voluntary prekindergarten education program, ¹⁷ who commit video voyeurism against a student of the private school, school, or voluntary prekindergarten education program; or
- Who are 24 years of age or older who commit video voyeurism against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child.18

Section 810.145(8)(b), F.S., makes it is a 2nd degree felony if a person violates s. 810.145(8)(a), F.S., and that person has previously been convicted or adjudicated delinquent for any violation of s. 810.145, F.S. Because this offense is not currently ranked in the Criminal Punishment Code "offense severity ranking chart," 19 it defaults to a Level 4 ranking, which equates to 22 sentencing points. 20

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¹⁰ Section 810.145(1)(c), F.S.

¹¹ Section 810.145(3), F.S.

¹² Section 810.145(4), F.S.

¹³ Section 810.145(6), F.S.

¹⁴ Section 810.145(7), F.S.

¹⁵ As defined in s. 1002.01, F.S.

¹⁶ As defined in s. 1003.01, F.S.

¹⁷ As described in s. 1002.53(3)(a), (b), or (c), F.S.

¹⁸ Section 810.145(8)(a), F.S.

¹⁹ The Criminal Punishment Code applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature. If an offense is not listed in the ranking chart, it defaults to a ranking based on the degree of the felony. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense. Sections 921.0022 and 921.0024, F.S. ²⁰ Sections 921.0023, and 921.0024(1)(a), F.S.

The statute provides exceptions for the above-described criminal penalties to ensure that the statute does not criminalize legitimate law enforcement surveillance, security systems if a notice is posted, and video surveillance devices that are clearly and immediately obvious.²¹ There is also an exception for providers of electronic communication services and providers of remote computing services.²²

Effect of the Bill

The bill increases the penalties associated with all of the above-described video voyeurism offenses. In regards to violations of "video voyeurism," "video voyeurism dissemination," and "commercial video voyeurism dissemination":

- The penalty for a first-time violation is increased from a 1st degree misdemeanor to a 3rd degree felony.
- The penalty for a second or subsequent violation of is increased from a 3rd degree felony to a 2nd degree felony, which is punishable by imprisonment for up to fifteen years and a fine of not more than \$10,000.²³

The penalty for first-time violations of subsection (8)(a) of the statute is increased from a 3rd degree felony to a 2nd degree felony. Violations of s. 810.145(8)(b), F.S., remain 2nd degree felonies, but the bill ranks such offense in Level 6 of the Criminal Punishment Code offense severity ranking chart, which equates to 36 sentencing points.²⁴

The bill also amends the definition of the phrase "place and time when a person has a reasonable expectation of privacy" to specify that such locations include "residential dwellings."

B. SECTION DIRECTORY:

Section 1. Amends s. 810.145, F.S., relating to video voyeurism.

Section 2. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 3. 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:

The Criminal Justice Impact Conference met December 14, 2011, and determined this bill will have an insignificant impact on the state prison system because of the low volume of offenses addressed in this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

²¹ Section 810.145(5), F.S.

^{-~} Id.

²³ Sections 775.082 and 775.083, F.S.

²⁴ Section 921.0024(1)(a), F.S.

2. Expenditures:

The bill increases the penalty for first-time violations of s. 810.145(2), (3), and (4), F.S., from a 1st degree misdemeanor to a 3rd degree felony. This may have a positive fiscal impact on local governments to the extent that those who commit first-time violations of s. 810.145(2), (3), and (4), F.S., will be subject to a state prison sentence rather than a county jail sentence.

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 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill is effective July 1, 2012. Generally, bills that create or enhance criminal penalties are effective October 1 in an effort to provide adequate notice to those impacted by the bill (e.g., law enforcement, state attorneys, public defenders, clerks of court, etc.).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

STORAGE NAME: h0215d.JDC.DOCX

HB 215 2012

A bill to be entitled

An act relating to video voyeurism; amending s. 810.145, F.S.; revising the definition of the term "place and time when a person has a reasonable expectation of privacy" to include the interior of a residential dwelling; increasing the classification of specified video voyeurism offenses; amending s. 921.0022, F.S.; ranking a violation of s. 810.145(8)(b), F.S., above its default value for purposes of the offense severity ranking chart of the

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

Section 1. Paragraph (c) of subsection (1) and subsections (6), (7), and (8) of section 810.145, Florida Statutes, are amended to read:

Criminal Punishment Code; providing an effective date.

18 810.145 Video voyeurism.—

- (1) As used in this section, the term:
- (c) "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.
 - (6) Except as provided in subsections (7) and (8), a

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person who violates this section commits a <u>felony misdemeanor</u> of the <u>third first</u> degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

- (7) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the <u>second</u> third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
 - (8)(a) A person who is:

- 1. Eighteen years of age or older who is responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, and who commits an offense under this section against that child;
- 2. Eighteen years of age or older who is employed at a private school as defined in s. 1002.01; a school as defined in s. 1003.01; or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c) and who commits an offense under this section against a student of the private school, school, or voluntary prekindergarten education program; or
- 3. Twenty-four years of age or older who commits an offense under this section against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child

commits a felony of the <u>second</u> third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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57	(b) A perso	on who vio	lates this subsection and who has
58	previously been o	convicted o	of or adjudicated delinquent for any
59	violation of this	section o	commits a felony of the second degree,
60	punishable as pro	vided in	s. 775.082, s. 775.083, or s. 775.084.
61	Section 2.	Paragraph	(f) of subsection (3) of section
62	921.0022, Florida	Statutes	, is amended to read:
63	921.0022 Cr	iminal Pu	nishment Code; offense severity
64	ranking chart		
65	(3) OFFENSE	SEVERITY	RANKING CHART
66	(f) LEVEL 6	,)	
67			
	Florida	Felony	
	Statute	Degree	Description
68		•	
	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent
			conviction.
69			
	499.0051(3)	2nd	Knowing forgery of pedigree
			papers.
70			
	499.0051(4)	2nd	Knowing purchase or receipt of
			prescription drug from
			unauthorized person.
71			
	499.0051(5)	2nd	Knowing sale or transfer of
			prescription drug to
			unauthorized person.
72			
			Page 3 of 10

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

2012

	HB 215			2012
	775.0875(1)	3rd	Taking firearm from law enforcement officer.	
73				
	784.021(1)(a)	3rd	Aggravated assault; deadly	
			weapon without intent to kill.	
74	704 001 (1) (1)	2 .1		
	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.	
75			Committee Lorony.	
	784.041	3rd	Felony battery; domestic	
			battery by strangulation.	
76				
	784.048(3)	3rd	Aggravated stalking; credible	
77			threat.	1
	784.048(5)	3rd	Aggravated stalking of person	
			under 16.	
78				ļ
	784.07(2)(c)	2nd	Aggravated assault on law	
7.0			enforcement officer.	1
79	784.074(1)(b)	2nd	Aggravated assault on sexually	
	,0110,1(1)	2110	violent predators facility	
Name of the Owner, who state of the Owner, which is the Owner, which is the Owner, who state of the Owner, which is the Owner, whi			staff.	
80				
	784.08(2)(b)	2nd	Aggravated assault on a person	
			65 years of age or older.	
81			Page 4 of 10	

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

	HB 215			2012
82	784.081(2)	2nd	Aggravated assault on specified official or employee.	\$
83	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.	
	784.083(2)	2nd	Aggravated assault on code inspector.	
84	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.	
85	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.	
	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.	
87	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.	
88			Page 5 of 10	

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CODING: Words $\underline{\text{stricken}}$ are deletions; words $\underline{\text{underlined}}$ are additions.

	HB 215			2012
89	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.	
90	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.	
91	794.05(1)	2nd	Unlawful sexual activity with specified minor.	
91	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.	
92	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.	
	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.	
94	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.	
			Page 6 of 10	

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

HB 215	2012
ПРСІО	2012

	810.145(8)(b)	<u>2nd</u>	Video voyeurism; certain minor
			victims; 2nd or subsequent
			offense.
96			
	812.014(2)(b)1.	2nd	Property stolen \$20,000 or
_			more, but less than \$100,000,
•			grand theft in 2nd degree.
97			
	812.014(6)	2nd	Theft; property stolen \$3,000
			or more; coordination of
			others.
98			
	812.015(9)(a)	2nd	Retail theft; property stolen
			\$300 or more; second or
			subsequent conviction.
99			
	812.015(9)(b)	2nd	Retail theft; property stolen
			\$3,000 or more; coordination of
			others.
100			
	812.13(2)(c)	2nd	Robbery, no firearm or other
			weapon (strong-arm robbery).
101			
	817.034(4)(a)1.	1st	Communications fraud, value
			greater than \$50,000.
102			
	817.4821(5)	2nd	Possess cloning paraphernalia
			Page 7 of 10

Page 7 of 10

CODING: Words $\underline{\text{stricken}}$ are deletions; words $\underline{\text{underlined}}$ are additions.

	HB 215			2012
			with intent to create cloned	
			cellular telephones.	
103	0.05 .4.00 .44.)	0.1		
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.	
104			disabled adult.	
. 104	825.102(3)(c)	3rd	Neglect of an elderly person or	
	020.202 (0) (0)	· · · ·	disabled adult.	
105				
	825.1025(3)	3rd	Lewd or lascivious molestation	
			of an elderly person or	
			disabled adult.	
106				
	825.103(2)(c)	3rd	Exploiting an elderly person or	
			disabled adult and property is	
107			valued at less than \$20,000.	
10/	827.03(1)	3rd	Abuse of a child.	
108				
	827.03(3)(c)	3rd	Neglect of a child.	
109				
	827.071(2) & (3)	2nd	Use or induce a child in a	
			sexual performance, or promote	
1.0			or direct such performance.	
110	836.05	On d	Threats; extortion.	
111	030.03	2nd	Initeats; extortion.	
1			Page 8 of 10	

Page 8 of 10

	HB 215			2012
	836.10	2nd	Written threats to kill or do bodily injury.	
112				
	843.12	3rd	Aids or assists person to	
			escape.	
113				
	847.011	3rd	Distributing, offering to	ı
			distribute, or possessing with	
			intent to distribute obscene	
114			materials depicting minors.	
1111	847.012	3rd	Knowingly using a minor in the	
			production of materials harmful	-
			to minors.	
115				
	847.0135(2)	3rd	Facilitates sexual conduct of	
			or with a minor or the visual	
			depiction of such conduct.	
116				
	914.23	2nd	Retaliation against a witness,	
			victim, or informant, with	
			bodily injury.	
117	0.4.4 . 0.5 . () . 0	0 1		
	944.35(3)(a)2.	3rd	Committing malicious battery	
			upon or inflicting cruel or inhuman treatment on an inmate	
, and the second			or offender on community	
			or orrender on community	
			D 0 140	

Page 9 of 10

	HB 215			2012
			supervision, resulting in great	
			bodily harm.	
118				
119	944.40	2nd	Escapes.	1
119	944.46	3rd	Harboring, concealing, aiding	
,	J 1 1 1 0	010	escaped prisoners.	
120				
	944.47(1)(a)5.	2nd	Introduction of contraband	
			(firearm, weapon, or explosive)	
			into correctional facility.	
121	951.22(1)	3rd	Intoxicating drug, firearm, or	
	901.22(1)	SEG	weapon introduced into county	
			facility.	100
122				
123	Section 3.	This act	shall take effect July 1, 2012.	

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

CS/HB 385

Sovereign Immunity

SPONSOR(S): Civil Justice Subcommittee; Gaetz; Renuart and others

TIED BILLS: None IDEN./SIM. BILLS: SB 614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Bond	Bond
2) Judiciary Committee		Bond	Havlicak
3) Government Operations Appropriations Subcommittee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

A physician on duty in a hospital emergency room or trauma center is required by federal and state law to evaluate any individual who presents himself or herself as needing medical treatment, and provide emergency medical treatment, regardless of whether the individual pays or has the ability to pay for such services. This bill makes legislative findings declaring that these physicians are agents of the government performing a government duty.

Sovereign immunity is a legal concept that protects governments from being sued without their consent. The protection is often extended to government contractors performing governmental functions. This bill provides that a physician working in a hospital emergency room or trauma center is an agent of the state protected by sovereign immunity. A physician may elect to opt out of sovereign immunity, and may later opt back in. A physician covered by the sovereign immunity protection is required to reimburse the state for claims and costs up to the sovereign immunity limits, and the failure to reimburse the state is grounds for discipline against the medical license.

This bill does not appear to have a fiscal impact on local governments. This bill has an unknown potential negative fiscal impact on state government expenditures.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0385b.JDC.DOCX

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background - In General

In general, a person has a common law cause of action against another for personal injury occasioned by the other's negligence. The term "medical malpractice" refers to personal injury lawsuits related to negligence committed by medical professionals. Negligence actions in general are governed by ch. 768, F.S.; medical malpractice actions are also governed by ch. 766, F.S.

Background - Mandated Emergency Medical Treatment

Under current law, certain health care providers are obligated under state and federal law to provide emergency services.

Section 395.1041(3)(a), F.S., requires every general hospital which has an emergency department to provide emergency services and care for any emergency medical condition when:

- Any person requests emergency services and care; or
- Emergency services and care are requested on behalf of a person by an emergency medical services provider who is rendering care to or transporting the person; or by another hospital when such hospital is seeking a medically necessary transfer.

Section 395.1041(3)(f), F.S., requires emergency services and care to be provided regardless of whether the patient is insured or otherwise able to pay for services.

Section 401.45, F.S(1), F.S. provides that a licensed basic life support service, advanced life support service, or air ambulance service may not deny needed prehospital treatment or transport for an emergency medical condition to any person.

Similarly, federal law requires hospitals to provide a "medical screening evaluation" regardless of an individual's ability to pay.¹

Background - Liability Laws Related to Emergency Medical Treatment

A health care practitioner providing mandated emergency medical treatment is not liable for civil damages related to such services unless the injured patient can show that the practitioner acted with "a reckless disregard for the consequences so as to affect the life or health of another."²

An award of noneconomic damages³ related to medical malpractice caused by a medical practitioner providing emergency services and care is limited to \$150,000 per claimant and \$300,000 per incident.⁴ There is no limit on the corresponding economic damages.

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

⁴ Section 766.118(4), F.S.

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¹ 42 U.S.C. s. 1395dd., which reads at subsection (a):

² Section 768.13(2)(b), F.S.

³ Noneconomic damages are often referred to as "pain and suffering."

Background - Sovereign Immunity

Sovereign Immunity is a "doctrine which precludes bringing suit against the government without its consent." The Florida Constitution recognizes that the concept of sovereign immunity applies to the state⁶, although the state may waive its immunity through an enactment of general law. Sovereign immunity extends to all subdivisions of the state, including counties and school boards.

In 1973, the Legislature enacted s. 768.28, F.S., a partial waiver of sovereign immunity, allowing individuals to sue state government and its subdivisions. According to subsection (1), individuals may sue the government under circumstances where a private person "would be liable to the claimant, in accordance with the general laws of [the] state "

Section 768.28(5), F.S., imposes a \$200,000 limit on the government's liability to a single person, and a \$300,000 total limit on liability for claims arising out of a single incident. These limits have been upheld as constitutional.⁸ The limit applies to the total of economic and noneconomic damages.

An injured party may obtain a judgment in excess of the statutory limits, but cannot enforce payment above the limit. The Legislature may, by general law, provide for payment in excess of the statutory cap by virtue of a claims bill. The courts have explained:

Even if he is able to obtain a judgment against the Department of Transportation in excess of the settlement amount and goes to the legislature to seek a claims bill with the judgment in hand, this does not mean that the liability of the Department has been conclusively established. The legislature will still conduct its own independent hearing to determine whether public funds would be expended, much like a non jury trial. After all this, the legislature, in its discretion, may still decline to grant him any relief.¹⁰

Section 768.28(9)(b)2., F.S., defines the term "officer, employee, or agent" (which are the persons to whom sovereign immunity applies). Several identified groups are included in the definition, including health care providers when providing contract services pursuant to s. 766.1115, F.S. That section provides that certain health care providers who contract with the state are considered agents of the state, and thus entitled to the protection of sovereign immunity.

Florida law provides that a number of persons who perform public services are agents of the state and thus covered by sovereign immunity, including:

- Persons or organizations providing shelter space without compensation during an emergency.¹¹
- A health care entity providing services as part of a school nurse services contract.¹²
- Members of the Florida Health Services Corps who provide medical care to indigent persons in medically underserved areas.¹³
- A person under contract to review materials, make site visits or provide expert testimony regarding complaints or applications received by the Department of Health or the Department of Business and Professional Regulation.¹⁴

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⁵ Blacks Law Dictionary, at 1396 (6th ed. 1990).

⁶ Article X, s. 13, Fla.Const.

⁷ See generally Gerald T. Wetherington and Donald I. Pollock, Tort Suits Against Government Entities in Florida, 44 U.Fla.L.Rev. 1 (1992).

Berek v. Metropolitan Dade County, 422 So.2d 838 (Fla. 1982); Cauley v. City of Jacksonville, 403 So.2d 379 (Fla. 1981).

⁹ See generally D. Stephen Kahn, Legislative Claim Bills: A Practical Guide to a Potent(ial) Remedy, FLA.B.J. 8 (April 1988).

¹⁰ Gerard v. Dept. of Transportation, 472 So.2d 1170 (Fla. 1985).

¹¹ Section 252.51, F.S.

¹² Section 381.0056(10), F.S.

¹³ Section 381.0302(11), F.S.

¹⁴ Sections 455.221(3) and 456.009(3), F.S.

- A business contracted with by the Department of Business and Professional Regulation under the Management Privatization Act.¹⁵
- Physicians retained by the Florida State Boxing Commission. 16
- Health care providers under contract to provide uncompensated care to indigent state residents.¹⁷
- Health care providers or vendors under contract with the Department of Corrections to provide inmate care.¹⁸
- An operator, dispatcher, or other person or entity providing security or maintenance for rail services in the South Florida Rail Corridor, under contract with the Tri-County Commuter Rail Authority or the Department of Transportation.¹⁹
- Professional firms that provide monitoring and inspection services of work required for state roadway, bridge or other transportation facility projects.²⁰
- A provider or vendor under contract with the Department of Juvenile Justice to provide juvenile and family services.
- Health care practitioners under contract with state universities to provide medical services to student athletes.²²
- A not-for-profit college or university that owns or operates an accredited medical school or any
 of its employees or agents that have agreed in an affiliation agreement or other contract to
 provide patient services as agents of a teaching hospital which is owned or operated by the
 state, a county, a municipality, a public health trust, a special taxing district, any other
 governmental entity having health care responsibilities, or a not-for-profit entity that operates
 such facilities as an agent of that governmental entity under a lease or other contract.²³

Effect of Bill - Sovereign Immunity

This bill amends s. 768.28, F.S., to provide that an emergency health care provider compelled to provide medical services in an emergency room is an agent of the state and thus entitled to sovereign immunity protection. The term "emergency health care provider" is defined by the bill to include only physicians who are licensed under ch. 458 or 459, F.S. Those chapters regulate physicians and osteopathic physicians, respectively.

The sovereign immunity law applies to a person who is an "officer, employee or agent" of the state. This bill amends the definition of an officer, employee or agent of the state to include any person who is an emergency health care provider providing emergency health care mandated by ss. 395.1041 or 401.45, F.S.

¹⁵ Section 455.32(4), F.S.

¹⁶ Section 548.046(1), F.S.

¹⁷ Section 768.28(9)(b), F.S.

¹⁸ Section 768.28(10)(a), F.S.

¹⁹ Section 768.28(10)(d), F.S.

²⁰ Section 768.28(10)(e), F.S.

²¹ Section 768.28(11)(a), F.S.

²² Section 768.28(12)(a), F.S.

²³ Section 768.28(10)(f), F.S.

The bill allows a health care provider to opt out of sovereign immunity protection, and allows a provider who has opted out to opt back in. Notice must be given to the Department of Health, and is effective upon receipt by the department.

The bill defines, and thus limits the protections of the bill, to "emergency medical services", which is

[A]II screenings, examinations, and evaluations by a physician, hospital, or other person or entity acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, and the care, treatment, surgery, or other medical services provided to relieve or eliminate the emergency medical condition, including all medical services to eliminate the likelihood that the emergency medical condition will deteriorate or recur without further medical attention within a reasonable period of time.

Effect of Bill - Repayment

The bill also requires a covered emergency health care provider to assume financial duties related to any claim. Initially, an injured person would seek payment from the state. The bill requires the physician to reimburse the state for judgments, settlement costs and all other liabilities incurred by the state. Repayment is limited to the statutory sovereign immunity limits (\$200,000 per person, and a total of \$300,000 for all claims related to a single incident). The failure of a physician to timely repay the state is grounds for emergency suspension of the medical license. The Department of Health must suspend the license if the physician is more than 30 days delinquent. The bill allows the department to negotiate a payment plan with a physician in lieu of full payment.

Effective Date

The bill is effective upon becoming law, and applies to causes of action that accrue on or after that date.

B. SECTION DIRECTORY:

Section 1 provides legislative findings.

Section 2 amends s. 768.28, F.S., regarding sovereign immunity for emergency health care workers.

Section 3 provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

Unknown likely negative fiscal impact on state expenditures. See Fiscal Comments.

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.

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C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may lower the cost to physicians for obtaining medical malpractice insurance coverage, and may lower possible recoveries by persons injured due to medical malpractice.

D. FISCAL COMMENTS:

State government will incur costs to investigate and cover the claims for health care providers providing services in an emergency room or trauma center in Florida. The state agency or division responsible for such claims is the Division of Risk Management in the Department of Financial Services. Although the bill requires responsible physicians to reimburse the state up to a limit, it is possible that state government may incur losses for uncollectible reimbursements.²⁴ The potential uncollectible amount cannot be reliably estimated.²⁵

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:

Article 1, s. 21, Fla. Const., provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." The Florida Supreme Court has in the past found that this provision limits the ability of the Legislature to amend tort law. In the leading case, the Florida Supreme Court first explained the constitutional limitation on the ability of the Legislature to abolish a civil cause of action:

We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State pursuant to Fla. Stat. s. 2.01, F.S.A., the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.²⁶

The courts have shown inconsistent treatment of this provision. Some caps on damages have been found unconstitutional,²⁷ but more recently others have been found constitutional.²⁸ The creation of an alternative recovery system has been found constitutional.²⁹

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²⁴ Situations that may lead to state financial loss include death, bankruptcy or insolvency of a physician. It is also possible that the claim plus claims handling expense could exceed the reimbursement limit.

²⁵ In reviewing similar bills in the past: In 2011 DFS estimated the potential loss as "UNKNOWN" (See analysis of 2011 HB 623 dated 2/22/2011) with little comment. In 2010 DFS estimated the potential loss at \$34.5 million, but that version of the bill required the state to pay all claims handing expenses (See Senate bill analysis of 2010 SB 1474 dated 3/22/2010).

²⁶ Kluger v. White, 281 So.2d 1, 4 (Fla. 1973).

²⁷ A \$450,000 cap on noneconomic damages applicable to all tort cases is unconstitutional. *Smith v. Dept. of Ins.*, 507 So.2d 1080 (Fla. 1987); but see, *Adams by and through Adams v. Children's Mercy Hosp.*, 832 S.W.2d 898, 906 (Mo. 1992)("We doubt the wisdom of a rule of law that limits the legislature's ability to respond statutorily to changing societal concerns or correct previous policy positions upon receipt of better information.")

²⁸ Statutory caps on non-economic damages in medical malpractice actions at s. 766.118, F.S., are constitutional. *Estate of McCall ex rel. McCall v. U.S.*, 642 F.3d 944 (11th Cir. 2011); *M.D. v. U.S.*, 745 F.Supp.2d 1274 (Fla. M.D. 2010).

²⁹ Lasky v. State Farm Ins. Co., 296 So.2d 9 (Fla. 1974)(automobile no-fault insurance law); Mahoney v. Sears, Roebuck & Co., 440 So.2d 1285 (Fla. 1983)(workers compensation law).

B. RULE-MAKING AUTHORITY:

The bill does not provide any new rulemaking authority. The Department of Health will have to amend rules relating to disciplinary actions to account for the changes made by this bill, which changes can be made within existing authority.³⁰

C. DRAFTING ISSUES OR OTHER COMMENTS:

In calendar year 2010, there were 8,119,010 emergency room visits in the state.³¹ Also in 2010, there were 2,520 medical malpractice claims closed by medical malpractice insurance carriers, of which 318 (12.6%) were identified as having occurred in an emergency room setting.³²

A 2007 study by the Senate Committee on Health Regulation regarding the availability of physicians to work in emergency rooms found:

[I]n general, physicians are reluctant to provide emergency on-call coverage due to the negative impact on their lifestyle, the perceived hostile medical malpractice climate, and the inability to obtain adequate compensation for services rendered. All of these reasons are disincentives to assuming liability for treating emergency patients previously unknown to the physician.³³

The bill requires a covered emergency health care provider to reimburse the state for judgments, settlement costs and all other liabilities incurred by the state. It is unclear whether an emergency health care provider will have grounds or a means by which to object to defense strategies, settlements, or unreasonable costs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 7, 2011, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment created a means for a physician to opt out of sovereign immunity, and to opt back in. The amendment also changed the "relating to" clause of the title. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

³³ Senate interim report 2008-138, at page 1.

³⁰ Department of Health, Bill Analysis, Economic Statement and Fiscal Note, dated December 7, 2011.

http://www.floridahealthfinder.gov/researchers/OrderData/order-note.aspx#emergency accessed November 30, 2011.

³² Florida Office of Insurance Regulation, 2011 Annual Report – October 1, 2011, Medical Malpractice Financial Information Closed Claim Database and Rate Filings, at page 44. Note that settlements or judgments against uninsured practitioners would not be reflected here and there is no known means to determine claims experience of uninsured practitioners.

CS/HB 385

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16 17 A bill to be entitled

An act relating to health care; providing legislative findings and intent; amending s. 768.28, F.S.; providing sovereign immunity to emergency health care providers acting pursuant to obligations imposed by specified statutes; providing an exception; providing that emergency health care providers are agents of the state and requiring them to indemnify the state up to the specified liability limits; providing for sanctions against emergency health care providers who fail to comply with indemnification obligations; providing definitions; providing that an emergency medical provider may elect to not be an agent of the state; providing for revocation of such election; providing that elections and revocations are effective upon receipt by the Department of Health; providing applicability; providing an effective date.

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

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Section 1. Legislative findings and intent.-

(1) The Legislature finds and declares it to be of vital importance that emergency services and care be provided by hospitals, physicians, and emergency medical services providers to every person in need of such care. The Legislature finds that providers of emergency services and care are critical elements in responding to disaster and emergency situations that may affect local communities, the state, and the country. The

Page 1 of 7

Legislature recognizes the importance of maintaining a viable system of providing for the emergency medical needs of the state's residents and visitors. The Legislature and the Federal Government have required such providers of emergency medical services and care to provide emergency services and care to all persons who present themselves to hospitals seeking such care.

3.5

- medical treatment may not be denied by emergency medical services providers to persons who have or are likely to have an emergency medical condition. Such governmental requirements have imposed a unilateral obligation for providers of emergency services and care to provide services to all persons seeking emergency care without ensuring payment or other consideration for provision of such care. The Legislature also recognizes that providers of emergency services and care provide a significant amount of uncompensated emergency medical care in furtherance of such governmental interest.
- (3) The Legislature finds that a significant proportion of the residents of this state who are uninsured or are Medicaid or Medicare recipients are unable to access needed health care on an elective basis because health care providers fear the increased risk of medical malpractice liability. The Legislature finds that such patients, in order to obtain medical care, are frequently forced to seek care through providers of emergency medical services and care.
- (4) The Legislature finds that providers of emergency medical services and care in this state have reported significant problems with respect to the affordability of

Page 2 of 7

professional liability insurance, which is more expensive in this state than the national average. The Legislature further finds that a significant number of specialist physicians have resigned from serving on hospital staffs or have otherwise declined to provide on-call coverage to hospital emergency departments due to the increased exposure to medical malpractice liability created by treating such emergency department patients, thereby creating a void that has an adverse effect on emergency patient care.

(5) It is the intent of the Legislature that hospitals, emergency medical services providers, and physicians be able to ensure that patients who may need emergency medical treatment and who present themselves to hospitals for emergency medical services and care have access to such needed services.

Section 2. Subsection (9) of section 768.28, Florida Statutes, is amended to read:

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

(9) (a) No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. However, such

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officer, employee, or agent shall be considered an adverse witness in a tort action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function. The exclusive remedy for injury or damage suffered as a result of an act, event, or omission of an officer, employee, or agent of the state or any of its subdivisions or constitutional officers shall be by action against the governmental entity, or the head of such entity in her or his official capacity, or the constitutional officer of which the officer, employee, or agent is an employee, unless such act or omission was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. The state or its subdivisions shall not be liable in tort for the acts or omissions of an officer, employee, or agent committed while acting outside the course and scope of her or his employment or committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

- (b) As used in this subsection, the term:
- 1. "Employee" includes any volunteer firefighter.
- 2. "Officer, employee, or agent" includes, but is not limited to: $_{7}$
- <u>a.</u> Any health care provider when providing services pursuant to s. 766.1115; any member of the Florida Health Services Corps, as defined in s. 381.0302, who provides uncompensated care to medically indigent persons referred by the Department of Health; any nonprofit independent college or

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university located and chartered in this state which owns or operates an accredited medical school, and its employees or agents, when providing patient services pursuant to paragraph (10)(f); and any public defender or her or his employee or agent, including, among others, an assistant public defender and an investigator.

- b. Any emergency health care provider acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, except for persons or entities that are otherwise covered under this section.
- (c)1. Emergency health care providers are agents of the state and shall indemnify the state for any judgments, settlement costs, or other liabilities incurred, only up to the liability limits in subsection (5).
- 2. Any emergency health care provider who is licensed by the state and who fails to indemnify the state after reasonable notice and written demand to do so is subject to an emergency suspension order of the regulating authority having jurisdiction over the licensee.
- 3. The Department of Health shall issue an emergency order suspending the license of any licensee under its jurisdiction or any licensee of a regulatory board within the Department of Health who fails to comply within 30 days after receipt by the department of a notice from the Division of Risk Management of the Department of Financial Services that the licensee has failed to satisfy her or his obligation to indemnify the state or enter into a repayment agreement with the state for costs under this subsection. The terms of such agreement must provide

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assurance of repayment of the obligation which is satisfactory to the state. For licensees within the Division of Medical Quality Assurance of the Department of Health, failure to comply with this paragraph constitutes grounds for disciplinary action under each respective practice act and under s. 456.072(1)(k).

4. As used in this subsection, the term:

- a. "Emergency health care provider" means a physician licensed under chapter 458 or chapter 459.
- b. "Emergency medical services" means all screenings, examinations, and evaluations by a physician, hospital, or other person or entity acting pursuant to obligations imposed by s. 395.1041 or s. 401.45, and the care, treatment, surgery, or other medical services provided to relieve or eliminate the emergency medical condition, including all medical services to eliminate the likelihood that the emergency medical condition will deteriorate or recur without further medical attention within a reasonable period of time.
- 5. An emergency health care provider may affirmatively elect in writing not to be considered an agent of the state by submitting a form to that effect to the Department of Health. An emergency health care provider who makes such election may revoke the election by submitting a form revoking the election. An election or revocation is effective upon filing with the department. Any emergency health care provider who declines the status conferred by sub-subparagraph b. shall not be considered an agent of the state.
- $\underline{\text{(d)}}$ For purposes of the waiver of sovereign immunity only, a member of the Florida National Guard is not acting

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within the scope of state employment when performing duty under the provisions of Title 10 or Title 32 of the United States Code or other applicable federal law; and neither the state nor any individual may be named in any action under this chapter arising from the performance of such federal duty.

- (e)(d) The employing agency of a law enforcement officer as defined in s. 943.10 is not liable for injury, death, or property damage effected or caused by a person fleeing from a law enforcement officer in a motor vehicle if:
- 1. The pursuit is conducted in a manner that does not involve conduct by the officer which is so reckless or wanting in care as to constitute disregard of human life, human rights, safety, or the property of another;
- 2. At the time the law enforcement officer initiates the pursuit, the officer reasonably believes that the person fleeing has committed a forcible felony as defined in s. 776.08; and
- 3. The pursuit is conducted by the officer pursuant to a written policy governing high-speed pursuit adopted by the employing agency. The policy must contain specific procedures concerning the proper method to initiate and terminate high-speed pursuit. The law enforcement officer must have received instructional training from the employing agency on the written policy governing high-speed pursuit.

Section 3. This act shall take effect upon becoming a law, and shall apply to any cause of action accruing on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 483 Uniform Commercial Code SPONSOR(S): Civil Justice Subcommittee; Passidomo TIED BILLS: None IDEN./SIM. BILLS: SB 1090

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N, As CS	Caridad	Bond
2) Insurance & Banking Subcommittee	14 Y, 0 N	Read	Cooper
3) Judiciary Committee		Caridad \mathcal{D}	Havlicak RV

SUMMARY ANALYSIS

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commission (Commission), a group of scholars and business representatives. The term "uniform" refers to how the separate states of the Union have separately enacted the various parts of the Uniform Commercial Code in laws that are uniform to one another.

Article 9 of the UCC governs secured transactions of personal property. In 1998, Article 9 was substantially revised and adopted by all states. In Florida, it is codified in Ch. 679, F.S. In 2010, the Commission drafted and adopted amendments to Article 9. The 2010 amendments modify Article 9 to address filing issues and other matters that have arisen since the 1998 revision.

The bill adopts the 2010 amendments to Article 9. The most significant revision to Ch. 679, F.S., is changes governing the name of a debtor for purposes of filing a financing statement. The bill also provides the following changes:

- Makes minor revisions to s. 679.3071, F.S., relating to the location of debtors;
- Modifies provisions relating to guidelines for the continued perfection of security interests that were perfected according to the law of another jurisdiction;
- Provides rules for transition to the proposed version of Article 9; and
- Makes numerous stylistic and grammatical changes.

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

The effective date of the bill is July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. $\textbf{STORAGE NAME:} \ h0483d.JDC.DOCX$

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Uniform Commercial Code (UCC) is a set of uniform laws regulating various business transactions and trade. The drafts of the code are developed by the Uniform Law Commissioners (ULC), who are members of the National Conference of Commissioners on Uniform State Laws, a group of scholars and business representatives. "Conference members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical."

Participation in the Conference is not limited to lawyers since "stakeholder" meetings are held, where the opinions of all groups concerned with a particular area can be heard.² Every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands is assessed a specific amount for the maintenance of the ULC based upon state population. Florida's assessment for 2009-2010 is \$96,700.³

Article 9 of the UCC governs secured transactions in personal property. A secured transaction is a "business arrangement by which a buyer or borrower gives collateral to the seller or lender to guarantee payment of an obligation." In 1998, Article 9 was substantially revised and adopted by all states and U.S. territories except Puerto Rico where it is currently being considered. In 2010, the Commission drafted and adopted amendments to Article 9.

The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following passage of the 1998 version of Article 9. The Article 9 amendments have been adopted in Connecticut, Indiana, Minnesota, Nebraska, Nevada, North Dakota, Rhode Island, Texas, and Washington. They are also currently being considered in a number of other states and U.S. territories.⁵

Issues Concerning Filing

Identifying the Debtor

The purpose of the UCC filing system is to give notice to creditors and other interested parties that there is a valid, perfected security interest in property of the debtor. A security interest is a "property interest created by agreement or by operation of law to secure performance of an obligation" (i.e. payment of a debt). An individual or entity files a financial statement to notify third parties — typically prospective buyers and lenders — of a secured party's security interest in goods or real property. Financing statements are indexed under the name of the debtor; therefore, an individual looking for a specific financing statement will search for it under the debtor's name.

http://www.nccusl.org/Narrative.aspx?title=About the ULC (last visited Jan. 23, 2012).

² See 2011 Commission Annual Report, p.3, available at: http://www.uniformlaws.org/Narrative.aspx?title=Publications (follow "2011 Annual Report" hyperlink) (last visited Jan. 23, 2012).

³ 2009 Annual Report of the Florida Commissioners to the National Conference on Uniform State Laws, January 2010, p. 4; the report was prepared by the Office of Legislative Services for submission to the Governor and both houses of the Legislature through their respective presiding officers.

⁴ Black's Law Dictionary (9th ed. 2009).

⁵ http://www.nccusl.org/Act.aspx?title=UCC Article 9 Amendments (2010) (last visited Jan. 21, 2012) (legislation has been introduced and is pending in Washington D.C., Kentucky, Massachusetts, Oklahoma, and Puerto Rico).

⁶ See Matter of Glasco, Inc., 642 F.2d 793, 795 (5th Cir. 1981).

⁷ Black's Law Dictionary (9th ed. 2009).

Section 679.5031(1), F.S., explains what constitutes the debtor's name for purposes of a financing statement where the debtor is a registered organization, a decedent's estate, or a trust or trustee acting regarding property in trust. Under current law, a financing statement sufficiently provides the name of a debtor that is a registered organization if it provides the name as indicated on the public record of the jurisdiction where the debtor organized. If the debtor is a decedent's estate, the financing statement must provide the decedent's name and indicate that the debtor is an estate. If the debtor is a trust or trustee acting regarding property in trust, the financing statement must:

- Provide the name for the trust in its organic record or, if no name is specified, the settlor's name and additional information to distinguish the debtor from other trusts with one or more of the same settlors; and
- Indicate in the debtor's name or otherwise that the debtor is a trust or trustee acting for trust
 property.

In other cases, if the debtor has a name, current law requires the financing statement to provide the debtor's individual or organizational name. If the debtor does not have a name, it must provide the names of the partners, members, associates, or other persons comprising the debtor.

The bill revises standards regarding the name of a debtor to be provided on a financing statement. If the debtor is a registered organization, the financing statement sufficiently provides the name of the debtor where it lists the name of the registered organization provided on the most recent public organic record⁹ filed or issued by the registered organization's jurisdiction of organization. This also applies to a registered organization that holds collateral in trust.

Where the collateral is being administered by a personal representative of a decedent, the financing statement is sufficient if it provides the name of the decedent as the debtor and indicates that the collateral is being administered by a personal representative. The name of the decedent indicated on the order appointing the personal representative of the decedent, which was issued by a court having jurisdiction over the collateral, is sufficient as the name of the decedent.

If the collateral is held in a trust that is not a registered organization, the financing statement must indicate the name specified in the organic record of the trust and that the collateral is held in trust. If the organic record does not specify a name, the financing statement must indicate the name of the settlor or testator, additional information sufficient to distinguish the trust from other trusts that may have the same settlors or testator, and an indication that the collateral is held in a trust.

The bill also provides standards regarding the name of an individual debtor to be provided on a financing statement. If the debtor is an individual, the financing statement must provide the name on

[A] record that is available to the public for inspection and that is:

- 1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;
- 2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or
- 3. A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

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⁸ Current law provides that a registered organization is "an organization organized solely under the law of a single state or the United States and as to which the state or the United States must maintain a public record showing the organization to have been organized." Section 679.1021(1)(qqq), F.S. The bill revises the definition to include a business trust that is formed or organized in a state where the public organic record of a business trust must be filed with such state.

⁹ The bill replaces all references to the "public record" with the "public organic record." It further creates a new definition for the term, as "public record" is not currently defined under the statute. The bill defines "public organic record" as:

the debtor's driver's license if the license has not on its face expired. If the state has issued a non-driver's identification card in lieu of a driver's license, the name provided on the identification card may be used with the same effect as a driver's license name. If the state has issued to an individual more than one driver's license or more than one identification card, the most recent driver's license or identification card applies.

If the debtor does not have a driver's license or identification card, the financing statement must provide either the individual name of the debtor (i.e. whatever the debtor's name is under current law) or the debtor's surname and first personal name.

In other cases, if the debtor does not have a name, the financing statement must include the name of partners, members, associates, or others comprising the debtor. The names must be provided in a manner so that each name provided would be sufficient if the person named was the debtor.

The bill also defines the term "name of the settlor or testator" as follows:

- If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or
- In other cases, the name of the settlor or testator indicated in the trust's organic record.

Claim Concerning Inaccurate or Wrongfully Filed Record

Current law authorizes the debtor to file a correction statement: a claim that a financing statement filed against it was in fact unauthorized. While this filing has no legal effect on the underlying claim, it does put in the public record the debtor's claim that the financing statement was wrongfully filed.

The bill revises current law in two ways. First, the filing is no longer called a "correction statement," but is instead referred to as an "information statement." Second, the bill authorizes the secured party of record to also file an information statement if the secured party believes that an amendment to its financing statement was not authorized. The change addresses concerns of secured parties that an amendment to a different financing statement may be inadvertently filed on the secured party's financing statement because the amendment contains an error when referring to the file number of the financing statement to be amended. It is important to note that the secured party has no duty to file an information statement, even if it is aware of the unauthorized filing.

Perfection of Security Interests

"Perfection of a security interest gives constructive notice to the world of the claim or interest of the one asserting it." Article 9 provides guidelines for the continued perfection of security interests that have been perfected according to the law of another jurisdiction. Generally, a security interest perfected according to another jurisdiction, or state's law is not automatically "unperfected." Current law provides that a security interest perfected by filing continues for four months after the jurisdiction in which the debtor is located changes. However, this temporary period of perfection applies only with respect to collateral owned by the debtor at the time of the change. Even if the security interest attaches to after-acquired collateral, there is currently no perfection with respect to such new collateral unless and until the secured party perfects pursuant to the law of the new jurisdiction.

The bill provides the filer perfection for four months in collateral acquired post-move. A similar change is made with respect to a new debtor that is a successor by merger. The new rule provides for temporary perfection in collateral owned by the successor before the merger or collateral acquired by the successor within four months after the merger.

¹² Section 679.3161, F.S.

¹⁰ Section 679.518, F.S.

¹¹ Bay Co. Sheriff's Office v. Tyndall Fed. Credit Union, 738 So.2d 456, 458 (Fla. 1st DCA 1999).

The bill also provides various minor and stylistic changes to provisions affecting perfection of security interests.

Control of Electronic Chattel Paper

Current law provides that control of electronic chattel paper is the functional equivalent of possession of tangible chattel paper. "Chattel paper" is a record or records that show both a monetary obligation and a security interest in specific goods.¹³ "Electronic chattel paper" is "chattel paper evidenced by a record or records consisting of information stored in an electronic medium."¹⁴ Current law provides that a secured party has control of electronic chattel paper if the record comprising the chattel paper are created, stored and assigned according to six requirements.¹⁵

The bill provides a general test for establishing when a secured party has control of electronic chattel paper. Specifically, a party has control of electronic chattel paper "if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned." The bill also provides a safe harbor test that if satisfied, establishes control under the aforementioned general test. The safe harbor test is consistent with the original six requirements in current law.

Other Changes

The bill also makes the following changes to Article 9:

- Modifies the definitions of the terms "authenticate," "certificate of title," "jurisdiction of organization," and "registered organization;" and creates a definition for "public organic record."
- Makes minor revisions to s. 679.3071, F.S., relating to the location of debtors;
- Makes minor revisions to provisions governing priority of security interests;
- Makes minor revisions to provisions relating to the information that must be included in a financing statement;
- Provides additional rules regarding the enforceability of contractual provisions restricting the assignment of receivables;
- Provides various clarifying and conforming revisions to current law, and provides rules for transition to the proposed version of Article 9.
- Directs the Division of Statutory Revision to replace the phrase "this act" throughout the bill with the assigned chapter number of the act;
- Makes numerous stylistic and grammatical changes.

B. SECTION DIRECTORY:

Section 1 amends s. 679.1021, F.S., relating to definitions.

Section 2 amends s. 679.1051, F.S., relating to control of electronic chattel paper.

Section 3 amends s. 679.3071, F.S., relating to the location of the debtor.

Section 4 amends s. 679.3111, F.S., relating to the perfection of security interests in property subject to certain statutes, regulations, and treaties.

Section 5 amends s. 679.3161, F.S., relating to perfection of security interests following a change in governing law.

Section 6 amends s. 679.3171, F.S., relating to interests that take propriety over or take free of security interest or agricultural lien.

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¹³ Section 679.1021(1)(k), F.S.

¹⁴ Section 679.1021(1)(ee), F.S.

¹⁵ See s. 679.1051, F.S.

Section 7 amends s. 679.326, F.S., relating to priority of security interests created by new debtor.

Section 8 amends s. 679.4061, F.S., relating to discharge of account debtor.

Section 9 amends s. 679.4081, F.S., relating to restrictions on assignment of promissory notes.

Section 10 amends s. 679.5021, F.S., relating to the contents of a financing statement.

Section 11 amends s. 679.5031, F.S., relating to name of debtor and secured party.

Section 12 amends s. 679.5071, F.S., relating to the effect of certain events on effectiveness of financing statement.

Section 13 amends s. 679.515, F.S., relating to the duration and effectiveness of financing statement.

Section 14 amends s. 679.516, F.S., relating to what constitutes filing.

Section 15 amends s 679.518. F.S., relating to claim concerning inaccurate or wrongly filed record.

Section 16 amends s. 679.607 relating to collection and enforcement by secured party.

Section 17 creates ss. 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808. F.S., to provide guidelines for transition.

Section 18 amends s. 680.1031, F.S., relating to definitions.

Section 19 provides a directive to the Division of Statutory Revision.

Section 20 provides an effective date of July 1, 2013.

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:

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

DATE: 1/23/2012

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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:

The effective date of the bill is July 1, 2013. This is consistent with the Commission's proposed amendments to Article 9. According to the Commission, the 2013 effective date is intended to allow states to adopt the amendments uniformly so the Article 9 revisions will become operative simultaneously thereby avoiding confusion with respect to interstate transactions.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On Nov. 16, 2011, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Directs the Division of Statutory Revision to replace the phrase "this act" throughout the bill with the assigned chapter number of the act;
- Corrects numerous minor errors, including reference errors, so that the bill is consistent with the 2010, Article 9 amendments:

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

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1 A bill to be entitled 2 An act relating to the Uniform Commercial Code; 3 revising and providing provisions of the Uniform Commercial Code relating to secured transactions to 4 5 conform to the revised Article 9 of the Uniform 6 Commercial Code as prepared by the National Conference .7 of Commissioners on Uniform State Laws; amending s. 8 679.1021, F.S.; revising and providing definitions; 9 amending s. 679.1051, F.S.; revising provisions 10 relating to control of electronic chattel paper; 11 amending s. 679.3071, F.S.; revising provisions 12 relating to the location of debtors; amending s. 13 679.3111, F.S.; making editorial changes; amending s. 14 679.3161, F.S.; providing rules that apply to certain 15 collateral to which a security interest attaches; 16 providing rules relating to certain financing statements; amending s. 679.3171, F.S.; revising 17 provisions relating to interests that take priority 18 19 over or take free of a security interest or 20 agricultural lien; amending s. 679.326, F.S.; revising priority of security interests created by a new 21 debtor; amending ss. 679.4061 and 679.4081, F.S.; 22 revising application; amending s. 679.5021, F.S.; 23 24 revising when a record of a mortgage satisfying the 25 requirements of chapter 697 is effective as a filing 26 statement; amending s. 679.5031, F.S.; revising when a financing statement sufficiently provides the name of 27 the debtor; amending s. 679.5071, F.S.; revising the 28

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effect of certain events on the effectiveness of a financing statement; amending s. 679.515, F.S.; revising the duration and effectiveness of a financing statement; amending s. 679.516, F.S.; revising instances when filing does not occur with respect to a record that a filing office refuses to accept; amending s. 679.518, F.S.; revising requirements for claims concerning an inaccurate or wrongfully filed record; amending s. 679.607, F.S.; revising recording requirements for the enforcement of mortgages nonjudicially outside this state; creating part VIII of chapter 679, F.S., relating to transition from prior law under the chapter to law under the chapter as amended by this act; creating s. 679.801, F.S.; providing scope of application and limitations; creating s. 679.802, F.S.; providing that security interests perfected under prior law that also satisfy the requirements for perfection under this act remain effective; creating s. 679.803, F.S.; providing that security interests unperfected under prior law but that satisfy the requirements for perfection under this act will become effective July 1, 2013; creating s. 679.804, F.S.; providing when financing statements effective under prior law in a different jurisdiction remain effective; creating s. 679.805, F.S.; requiring the recording of a financing statement in lieu of a continuation statement under certain conditions; providing for the continuation of the effectiveness of

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a financing statement filed before the effective date of this act under certain conditions; creating s. 679.806, F.S.; providing requirements for the amendment of financing statements filed before the effective date of this act; providing requirements for financing statements prior to amendment; creating s. 679.807, F.S.; providing person entitled to file initial financing statement or continuation statement; creating s. 679.808, F.S.; providing priority of conflicting claims to collateral; amending s. 680.1031, F.S.; conforming a cross-reference; providing a directive to the Division of Statutory Revision; providing an effective date.

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

Section 1. Paragraphs (ooo) through (aaaa) of subsection (1) of section 679.1021, Florida Statutes, are redesignated as paragraphs (ppp) through (bbbb), respectively, a new paragraph (ooo) is added to that subsection, and present paragraphs (g), (j), (xx), and (qqq) of subsection (1) of that section are amended to read:

679.1021 Definitions and index of definitions.—

- (1) In this chapter, the term:
- (q) "Authenticate" means:
- 1. To sign; or
- 2. To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, With the present

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intent of the authenticating person to identify the person and adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

- (j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.
- (xx) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the organization is <u>formed or</u> organized.
- (000) "Public organic record" means a record that is available to the public for inspection and that is:
- 1. A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;
- 2. An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the

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record be filed with the state; or

3. A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

(rrr)(qqq) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by and as to which the state or the United States must maintain a public record showing the organization to have been organized. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

Section 2. Section 679.1051, Florida Statutes, is amended to read:

679.1051 Control of electronic chattel paper.-

- (1) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.
- (2) A system satisfies subsection (1), and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

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(a) (1) A single authoritative copy of the record or 141 records exists which is unique, identifiable and, except as 142 otherwise provided in paragraphs (d), (e), and (f) subsections 143 144 (4), (5), and (6), unalterable; 145 (b) (2) The authoritative copy identifies the secured party as the assignee of the record or records; 146 147 (c) $\frac{3}{3}$ The authoritative copy is communicated to and 148 maintained by the secured party or its designated custodian; (d) (4) Copies or amendments revisions that add or change 149 150 an identified assignee of the authoritative copy can be made 151 only with the consent participation of the secured party; 152 (e) (5) Each copy of the authoritative copy and any copy of 153 a copy is readily identifiable as a copy that is not the 154 authoritative copy; and 155 (f) (6) Any amendment revision of the authoritative copy is 156 readily identifiable as an authorized or unauthorized revision. 157 Section 3. Subsection (6) of section 679.3071, Florida 158 Statutes, is amended to read: 159 679.3071 Location of debtor.-160 Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the 161 162 United States and a branch or agency of a bank that is not 163 organized under the law of the United States or a state are

- (a) In the state that the law of the United States designates, if the law designates a state of location;
- (b) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes

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located:

the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

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- (c) In the District of Columbia, if neither paragraph (a) nor paragraph (b) applies.
- Section 4. Paragraph (c) of subsection (1) of section 679.3111, Florida Statutes, is amended to read:
- 679.3111 Perfection of security interests in property subject to certain statutes, regulations, and treaties.—
- (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:
- (c) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on \underline{a} the certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.
- Section 5. Subsections (8) and (9) are added to section 679.3161, Florida Statutes, to read:
- 679.3161 <u>Effect</u> Continued perfection of security interest following change in governing law.—
- (8) The following rules apply to collateral to which a security interest attaches within 4 months after the debtor changes its location to another jurisdiction:
- (a) A financing statement filed before the change of the debtor's location pursuant to the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) is effective to perfect a security interest in the collateral if the financing

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statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

- (b) If a security interest that is perfected by a financing statement that is effective under paragraph (a) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) or the expiration of the 4-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.
- (9) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) and the new debtor is located in another jurisdiction, the following rules apply:
- (a) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within 4 months after the new debtor becomes bound under s. 679.2031(4), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.
- (b) A security interest that is perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the 4-month

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period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in s. 679.3011(1) or s. 679.3051(3) remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 6. Subsections (2) and (4) of section 679.3171, Florida Statutes, are amended to read:

679.3171 Interests that take priority over or take free of security interest or agricultural lien.—

- (2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a <u>certificated</u> security <u>certificate</u> takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.
- (4) A licensee of a general intangible or a buyer, other than a secured party, of <u>collateral</u> accounts, electronic chattel paper, electronic documents, general intangibles, or investment property other than <u>tangible chattel</u> paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

Section 7. Section 679.326, Florida Statutes, is amended to read:

679.326 Priority of security interests created by new debtor.—

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- (1) Subject to subsection (2), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and which is perfected by a filed financing statement that would be ineffective to perfect the security interest but for the application of s. 679.508 or ss. 679.508 and 679.3161(9)(a) is effective solely under s. 679.508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement that is effective solely under s. 679.508.
- (2) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (1) that are effective solely under s. 679.508.

 However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

 Section 8 Subsection (5) of section 679.4061 Florida

Section 8. Subsection (5) of section 679.4061, Florida Statutes, is amended to read:

- 679.4061 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.—
- (5) Subsection (4) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a

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disposition under s. 679.610 or an acceptance of collateral under s. 679.620.

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Section 9. Subsection (2) of section 679.4081, Florida Statutes, is amended to read:

- 679.4081 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.—
- (2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under s. 679.610 or an acceptance of collateral under s. 679.620.

Section 10. Subsection (3) of section 679.5021, Florida Statutes, is amended to read:

- 679.5021 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.—
- (3) A record of a mortgage satisfying the requirements of chapter 697 is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
- (a) The record of a mortgage indicates the goods or accounts that it covers;
- (b) The goods are or are to become fixtures related to the real property described in the record of a mortgage or the collateral is related to the real property described in the

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309 mortgage and is as-extracted collateral or timber to be cut;

- (c) The record of a mortgage satisfies complies with the requirements for a financing statement in this section. although:
- 1. The record of a mortgage need not indicate other than an indication that it is to be filed in the real property records; and
- 2. The record of a mortgage sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom s.

 679.5031(1)(d) or (e) applies; and
- (d) The record of a mortgage is recorded as required by chapter 697.

Section 11. Subsections (1) and (2) of section 679.5031, Florida Statutes, are amended, and subsections (6), (7), and (8) are added to that section, to read:

679.5031 Name of debtor and secured party.-

- (1) A financing statement sufficiently provides the name of the debtor:
- (a) Except as otherwise provided in paragraph (c), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name of the debtor indicated on the public organic record most recently filed with or issued or enacted by of the registered organization's debtor's jurisdiction of organization that purports to state, amend, or restate the

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registered organization's name which shows the debtor to have been organized;

- administered by the personal representative of a decedent debtor is a decedent's estate, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative debtor is an estate;
- (c) If the <u>collateral</u> <u>debtor</u> is <u>held in</u> a trust <u>that is</u> not a registered organization or a trustee acting with respect to property held in trust, only if the financing statement:
 - 1. Provides, as the name of the debtor:
- a. If the organic record of the trust specifies a name, if any, specified for the trust, the in its organic documents or, if no name so is specified; or
- b. If the organic record of the trust does not specify a name for the trust, provides the name of the settlor or testator and additional information sufficient to distinguish a debtor from other trusts having one or more of the same settlors; and
 - 2. In a separate part of the financing statement:
- a. If the name is provided in accordance with subsubparagraph 1.a., indicates, in the debtor's name or otherwise,
 that the collateral debtor is held in a trust or is a trustee
 acting with respect to property held in trust; or
- b. If the name is provided in accordance with subsubparagraph 1.b., provides additional information sufficient to distinguish the trust from other trusts having one or more of

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the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

- individual to whom this state has issued a driver license that has not expired or to whom the agency of this state that issues driver licenses has issued, in lieu of a driver license, a personal identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver license or personal identification card;
- (e) If the debtor is an individual to whom paragraph (d) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(f) (d) In other cases:

- 1. If the debtor has a name, only if it provides the individual or organizational name of the debtor; and
- 2. If the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.
- (2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:
 - (a) A trade name or other name of the debtor; or
- (b) Unless required under subparagraph (1)(f)2. (1)(d)2., names of partners, members, associates, or other persons comprising the debtor.

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(6) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the name of the decedent under paragraph (1)(b).

- (7) If this state has issued to an individual more than one driver license or, if none, more than one identification card, of a kind described in paragraph (1)(d), the driver license or identification card, as applicable, that was issued most recently is the one to which paragraph (1)(d) refers.
- (8) As used in this section, the term "name of the settlor
 or testator" means:
- (a) If the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or
- (b) In other cases, the name of the settlor or testator indicated in the trust's organic record.
- Section 12. Subsection (3) of section 679.5071, Florida Statutes, is amended to read:
- 679.5071 Effect of certain events on effectiveness of financing statement.—
- (3) If the a debtor so changes its name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under s. 679.5031(1) so that the financing statement becomes seriously misleading under the standard set forth in s. 679.5061:
- (a) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before,

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or within 4 months after, the <u>filed financing statement becomes</u> seriously misleading change; and

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- (b) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the <u>filed financing statement becomes seriously misleading change</u>, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within 4 months after that event the change.
- Section 13. Subsection (6) of section 679.515, Florida Statutes, is amended to read:
- 679.515 Duration and effectiveness of financing statement; effect of lapsed financing statement.—
- (6) If a debtor is a transmitting utility and a filed <u>initial</u> financing statement so indicates, the financing statement is effective until a termination statement is filed.
- Section 14. Subsection (2) of section 679.516, Florida Statutes, is amended to read:
 - 679.516 What constitutes filing; effectiveness of filing.-
- (2) Filing does not occur with respect to a record that a filing office refuses to accept because:
- (a) The record is not communicated by a method or medium of communication authorized by the filing office;
- (b) An amount equal to or greater than the applicable processing fee is not tendered;
- (c) The filing office is unable to index the record because:
- 1. In the case of an initial financing statement, the record does not provide an organization's name or, if an

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449 individual, the individual's last name and first name;

- 2. In the case of an amendment or <u>information</u> correction statement, the record:
- a. Does not correctly identify the initial financing statement as required by s. 679.512 or s. 679.518, as applicable; or
- b. Identifies an initial financing statement the effectiveness of which has lapsed under s. 679.515;
- 3. In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's <u>surname</u> last name and first <u>personal</u> name; or
- 4. In the case of a record filed or recorded in the filing office described in s. 679.5011(1)(a), the record does not provide a sufficient description of the real property to which it relates;
- (d) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide an organization's name or, if an individual, the individual's last name and first name and mailing address for the secured party of record;
- (e) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

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477	1.	Provide	a	mailing	address	for	the	debtor;	<u>or</u>
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- 2. Indicate whether the <u>name provided as the name of the</u> debtor is the name of an individual or an organization; or
- 3. If the financing statement indicates that the debtor is an organization, provide:
 - a. A type of organization for the debtor;
 - b. A jurisdiction of organization for the debtor; or
- c. An organizational identification number for the debtor or indicate that the debtor has none;
- (f) In the case of an assignment reflected in an initial financing statement under s. 679.514(1) or an amendment filed under s. 679.514(2), the record does not provide an organization's name or, if an individual, the individual's last name and first name and mailing address for the assignee;
- (g) In the case of a continuation statement, the record is not filed within the 6-month period prescribed by s. 679.515(4);
- (h) In the case of an initial financing statement or an amendment, which amendment requires the inclusion of a collateral statement but the record does not provide any, the record does not provide a statement of collateral; or
- (i) The record does not include the notation required by s. 201.22 indicating that the excise tax required by chapter 201 had been paid or is not required.
- Section 15. Section 679.518, Florida Statutes, is amended to read:
- $\,$ 679.518 Claim concerning inaccurate or wrongfully filed record.—
 - (1) A person may file in the filing office $\underline{\text{an information}}$

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a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

- (2) <u>An information</u> <u>A correction</u> statement <u>under subsection</u>
 (1) must:
- (a) Identify the record to which it relates by the file number assigned to the initial financing statement, the debtor, and the secured party of record to which the record relates;
- (b) Indicate that it is <u>an information</u> a correction statement; and
- (c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.
- (3) A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under s. 679.509(3).
 - (4) An information statement under subsection (3) must:
- (a) Identify the record to which it relates by file number assigned to the initial financing statement to which the record relates;
 - (b) Indicate that it is an information statement; and
- (c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person

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believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(5) (3) The filing of <u>an information</u> a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Section 16. Subsection (2) of section 679.607, Florida Statutes, is amended to read:

679.607 Collection and enforcement by secured party.-

- (2) If necessary to enable a secured party to exercise under paragraph (1)(c) the right of a debtor to enforce a mortgage nonjudicially outside this state, the secured party may record in the office in which a record of the mortgage is recorded:
- (a) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
- (b) The secured party's sworn affidavit in recordable form stating that:
- 1. A default has occurred with respect to the obligation secured by the mortgage; and
- 2. The secured party is entitled to enforce the mortgage nonjudicially outside this state.

Section 17. Part VIII of chapter 679, Florida Statutes, consisting of sections 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, Florida Statutes, is created to read:

679.801 Saving clause.

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561 (1) Except as otherwise provided in this part, this part 562 applies to a transaction or lien within its scope, even if the 563 transaction or lien was entered into or created before July 1, 564 2013. 565 (2) The amendments to this chapter by this act do not 566 affect an action, case, or proceeding commenced before July 1, 567 2013. 568 679.802 Security interest perfected before effective 569 date.-570 (1) A security interest that is a perfected security 571 interest immediately before July 1, 2013, is a perfected 572 security interest under this chapter, as amended by this act, on 573 July 1, 2013, if the applicable requirements for attachment and 574 perfection under this chapter, as amended by this act, are 575 satisfied without further action. 576 (2) Except as otherwise provided in s. 679.804, if a 577 security interest is a perfected security interest immediately 578 before July 1, 2013, but the applicable requirements for 579 perfection under this chapter, as amended by this act, are not satisfied on July 1, 2013, the security interest remains 580 581 perfected thereafter only if the applicable requirements for 582 perfection under this chapter, as amended by this act, are 583 satisfied no later than July 1, 2014. 584 679.803 Security interest unperfected before effective 585 date.-A security interest that is an unperfected security

(1) Without further action, on July 1, 2013, if the Page 21 of 27

interest immediately before July 1, 2013, becomes a perfected

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security interest:

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589 applicable requirements for perfection under this chapter, as 590 amended by this act, are satisfied before or at that time; or 591 When the applicable requirements for perfection are 592 satisfied if the requirements are satisfied after that time. 593 679.804 Effectiveness of action taken before effective 594 date.-595 (1) The filing of a financing statement before July 1, 596 2013, is effective to perfect a security interest to the extent 597 the filing would satisfy the applicable requirements for 598 perfection under this chapter, as amended by this act. 599 The amendments to this chapter by this act do not 600 render ineffective an effective financing statement that was 601 filed before July 1, 2013, and satisfies the applicable 602 requirements for perfection under the law of the jurisdiction 603 governing perfection as provided in this chapter as it existed 604 before July 1, 2013. However, except as otherwise provided in 605 subsections (3) and (4) and s. 679.805, the financing statement 606 ceases to be effective: 607 If the financing statement is filed in this state, at 608 the time the financing statement would have ceased to be 609 effective had this act not taken effect; or 610 If the financing statement is filed in another 611 jurisdiction, at the earlier of: 612 1. The time the financing statement would have ceased to 613 be effective under the law of that jurisdiction; or 614 2. By June 30, 2018. 615 The filing of a continuation statement on or after 616 July 1, 2013, does not continue the effectiveness of the

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financing statement filed before July 1, 2013. However, on the timely filing of a continuation statement on or after July 1, 2013, and in accordance with the law of the jurisdiction governing perfection as provided in this chapter, as amended by this act, the effectiveness of a financing statement filed in the same office in that jurisdiction before July 1, 2013, continues for the period provided by the law of that jurisdiction.

- (4) Subparagraph (2) (b) 2., applies to a financing statement that was filed before July 1, 2013, against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before July 1, 2013, only to the extent that this chapter, as amended by this act, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.
- (5) A financing statement that includes a financing statement filed before July 1, 2013, or a continuation statement filed on or after July 1, 2013, is effective only to the extent that it satisfies the requirements of part V, as amended by this act, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of s. 679.5031(1)(b), as amended by this act. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to

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645	property held in trust indicates that the collateral is held in
646	a trust within the meaning of s. $679.5031(1)(c)$, as amended by
647	this act.
648	679.805 When initial financing statement suffices to
649	continue effectiveness of financing statement
650	(1) The filing of an initial financing statement in the
65·1	office specified in s. 679.5011 continues the effectiveness of a
652	financing statement filed before July 1, 2013, if:
653	(a) The filing of an initial financing statement in that
654	office would be effective to perfect a security interest under
655	this chapter, as amended by this act;
656	(b) The financing statement filed before July 1, 2013, was
657	filed in an office in another state; and
658	(c) The initial financing statement satisfies subsection
659	<u>(3).</u>
660	(2) The filing of an initial financing statement under
661	subsection (1) continues the effectiveness of the financing
662	statement filed before July 1, 2013, if:
663	(a) The initial financing statement is filed before July
664	1, 2013, for the period provided in s. 679.515, as it existed
665	before its amendment by this act, with respect to an initial
666	financing statement; and
667	(b) The initial financing statement is filed on or after
668	July 1, 2013, for the period provided in s. 679.515, as amended
669	by this act, with respect to an initial financing statement.
670	(3) To be effective for purposes of subsection (1), an
671	initial financing statement must:

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Satisfy the requirements of part IV, as amended by

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673 this act, for an initial financing statement;

- (b) Identify the financing statement filed before July 1, 2013, by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and
- (c) Indicate that the financing statement filed before July 1, 2013, remains effective.
- 679.806 Amendment of financing statement filed before July

 1, 2013.—
- (1) On or after July 1, 2013, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a financing statement only filed before July 1, 2013, in accordance with the law of the jurisdiction governing perfection as provided in this chapter, as amended by this act. However, the effectiveness of a financing statement filed before July 1, 2013, also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.
- (2) Except as otherwise provided in subsection (3), if the law of this state governs perfection of a security interest, the information in a financing statement filed before July 1, 2013, may be amended after July 1, 2013, only if:
- (a) The financing statement filed before July 1, 2013, and an amendment are filed in the office specified in s. 679.5011;
- (b) An amendment is filed in the office specified in s. 679.5011 concurrently with, or after the filing in that office

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of, an initial financing statement that satisfies s. 679.805(3);
or

- (c) An initial financing statement that provides the information as amended and satisfies s. 679.805(3) is filed in the office specified in s. 679.5011.
- (3) If the law of this state governs perfection of a security interest, the effectiveness of a financing statement filed before July 1, 2013, may be continued only under s. 679.804(3) and (5) or s. 679.805.
- (4) Whether or not the law of this state governs
 perfection of a security interest, the effectiveness of a
 financing statement filed in this state before July 1, 2013, may
 be terminated on or after July 1, 2013, by filing a termination
 statement in the office in which the financing statement filed
 before July 1, 2013, is filed, unless an initial financing
 statement that satisfies s. 679.805(3) has been filed in the
 office specified by the law of the jurisdiction governing
 perfection as provided in this chapter, as amended by this act,
 as the office in which to file a financing statement.
- 679.807 Person entitled to file initial financing statement or continuation statement.—A person may file an initial financing statement or a continuation statement under this part if:
 - (1) The secured party of record authorizes the filing; and
 - (2) The filing is necessary under this part:
- 726 (a) To continue the effectiveness of a financing statement
 727 filed before July 1, 2013; or
 - (b) To perfect or continue the perfection of a security

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729 interest.

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679.808 Priority.—This part and the amendments to this chapter made by this act determine the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this chapter as it existed before July 1, 2013, determines priority.

Section 18. Paragraph (m) of subsection (3) of section 680.1031, Florida Statutes, is amended to read:

680.1031 Definitions and index of definitions.-

- (3) The following definitions in other chapters of this code apply to this chapter:
- (m) "Pursuant to a commitment," s. $\underline{679.1021(1) \text{ (ppp)}}$ $\underline{679.1021(1) \text{ (ooo)}}$.

Section 19. The Division of Statutory Revision is directed to replace the phrase "this act" wherever it occurs in sections 679.801, 679.802, 679.803, 679.804, 679.805, 679.806, 679.807, and 679.808, Florida Statutes, with the assigned chapter number of this act.

Section 20. This act shall take effect July 1, 2013.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 733

Probate

SPONSOR(S): Kiar

TIED BILLS: None IDEN./SIM. BILLS: SB 988

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	15 Y, 0 N	Caridad	Bond
2) Judiciary Committee		Caridad 👈	/ Havlicak

SUMMARY ANALYSIS

The Florida Constitution provides a homestead exemption for certain property owned by "natural persons." The exemption protects the property owner and the property owner's family from creditors and financial misfortune. It also restricts the property owner's ability to devise homestead property to anyone other than the surviving spouse or dependent children.

The bill:

- Revises the definition for "protected homestead" to provide that real property owned in tenancy by the entireties or in joint tenancy with right of survivorship is not protected homestead;
- Clarifies language in ss. 2 and 14 of chapter 2011-183, Laws of Florida, relating to a surviving spouse's elective share:
- Clarifies the time period in which an attorney-in-fact or guardian must file a petition for authority to make an election to take a tenancy in common interest in a homestead; and
- Bars inheritance through intestate succession of a natural or adoptive parent from or through a child for whom their parental rights have previously been terminated.

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

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0733b.JDC.DOCX

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Probate is the process for marshalling the assets of a deceased person, paying debts, and distributing property to heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. There are two significant exceptions to these general rules. Exempt property and homestead property transfer to certain surviving dependents before such property is subject to being sold to pay creditors; in addition, the elective share provisions may provide a different inheritance for a surviving spouse than the spouse would otherwise receive by operation of the will and of probate law.

Protected Homestead

Homestead is a house, outbuildings and adjoining land owned and occupied by a person or a family as a residence.¹ Article X, s. 4(a)(1) of the Florida Constitution provides a homestead exemption for certain property owned by "natural persons." The exemption protects the property owner and the property owner's family from creditors and financial misfortune. It also restricts the property owner's ability to devise homestead property to anyone other than the surviving spouse or dependent children. However, the constitution provides that this constraint does not apply to property held in tenancy by the entireties² or if the property owner is unmarried and has no minor children.

Section 731.201(33), F.S., defines "protected homestead" as:

[T]he property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not protected homestead.

Case law provides that homestead owned by the decedent and another individual in joint tenancy with rights of survivorship is not subject to the restrictions on devise.³

The term "protected homestead" is found in the following statutory sections:

- Section 409.9101 Recovery of payments made on behalf of Medicaid-eligible persons (Medicaid Estate Recovery Act);
- Section 731.201 General definitions (The Florida Probate Code);
- Section 732.2045 Exclusions and overlapping application:
- Section 732.402 Exempt property;
- Section 732.403 Family allowance;
- Section 733.607 Possession of estate;
- Section 733.608 General power of personal representative;
- Section 733.617 Compensation of personal representative;
- Section 733.6171 Compensation of attorney for the personal representative; and
- Section 733.817 Apportionment of estate taxes.

See Ostyn v. Olympic, 455 So.2d 1137 (Fla. 2d DCA 1984); see also Marger v. De Rosa, 57 So.3d 866 (Fla. 2d DCA 2011).

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¹ Black's Law Dictionary (9th ed. 2009).

² A tenancy by the entireties is a form of real estate ownership that may only be held by a legally married couple. Upon the death of one spouse, full ownership of the property immediately vests in the other spouse by operation of law. Tenancy by the entireties is presumed if the deed simply identifies the owners as "husband and wife." *See* Black's Law Dictionary (9th ed. 2009).

The following statutes specifically reference Article X, section 4 for situations where the owner has died, but the term "homestead" is not qualified by the word "protected."

- Section 732.227 Homestead Defined (Florida Uniform Disposition of Community Property Rights at Death Act);
- Section 732.401 Descent of Homestead:
- Section 732.401 Devise of Homestead; and
- Section 739.203 Disclaimer of rights of property held as tenancy by the entirety.

The Florida Supreme Court has recognized that various types of real estate ownership may qualify for homestead protection and in 1941 stated:

The Constitution limits the homestead land area that may be exempted, but it does not define or limit the estates in land to which homestead exemption may apply; therefore, in the absence of controlling provisions or principals of law to the contrary, the exemptions allowed by section 1, article 10 [now Article X, Section 4], may attach to any estate in land owned by the head of a family residing in this state, whether it is a freehold or less estate, if the land does not exceed the designated area and it is in fact the family home place. When the estate or interest of the owner in the homestead land terminates, the homestead exemption of such owner therein necessarily ceases.⁴

An owner's interest in tenancy by the entireties or joint tenancy with rights of survivorship may qualify for the protection against creditor's claims during the lifetime of the owners, and may also be subject to restrictions on the alienation of homestead during the owners' lifetime.

This bill clarifies that homestead property owned by the decedent in either a joint tenancy with rights of survivorship or tenancy by the entireties is not protected homestead as the decedent's interest in the homestead property terminates at death. The bill will not change the current law but is rather designed to eliminate any confusion caused by the omission of the reference to homestead property in a joint tenancy with rights of survivorship in the exemptions from definition of "protected homestead."

Descent of Homestead

Current law at s. 732.401(1) and (2), F.S., addresses descent (transfer of property to descendants) of homestead property where no devise is allowed. The statute provides:

- (1) [] [T]he homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.
- (2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

The right of election pursuant to s. 732.401(2), F.S., may be exercised by 1) the surviving spouse or 2) with court approval, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime. The statute provides several requirements and guidelines for the right of election:

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⁴ Coleman v. Williams, 200 So. 207 (Fla. 1941).

- The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime;
- A petition by an attorney or guardian of the property for approval to make the election tolls the time for making the election until 6 months after the decedent's death or 30 days after the rendition of an order authorizing the election, whichever occurs last;
- Once made, the election is irrevocable;
- The election must be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The statute contains language to include in the notice.

The bill eliminates the provision tolling the time for making the election where a petition by an attorney or guardian of the property for approval to make the election is filed. Instead, the petition for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. In addition, if the petition is timely filed, the time for making the election must be extended for at least 30 days after the rendition of the order allowing the election.

Termination of Parental Rights

A court may terminate parental rights where a party files a petition for termination of parental rights; certain requirements, such as providing notice to relevant parties, are met; and the court's order specifies one of the grounds for termination listed in s. 39.806, F.S. Currently, there is no provision prohibiting a parent whose parental rights have been terminated from later inheriting through intestate succession. The bill creates s. 732.1081, F.S., barring inheritance through intestate succession of a natural or adoptive parent from or through a child for whom their parental rights have previously been terminated.

Other Changes

In 2011, the Florida Legislature amended Florida Statutes s. 732.201, F.S., to increase the intestate share of the surviving spouse in certain circumstances. Section 14, ch. 2011-183, provides that "[e]xcept as otherwise expressly provided in this act, this act shall take effect upon becoming a law and shall apply to all proceedings pending before such date and all cases commenced on or after the effective date." Section 2, ch. 2011-183 provides for an effective date of October 1, 2011 for the changes to s. 732.201, F.S. However, the language of s. 2 does not address the application of the amended statutes to estates pending or filed on or after October 1, 2011 for decedent's dying before October 1, 2011.

The bill clarifies language in ss. 2 and 14 of chapter 2011-183, Laws of Florida, relating to a surviving spouse's elective share. Specifically, the bill provides that s. 2 of the act applies only to the estates of decedents dying on or after October 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 731.201, F.S., relating to definitions.

Section 2 amends s. 732.102, F.S., relating to spouse's share of intestate estate.

Section 3 amends s. 732.401, F.S., relating to descent of homestead.

Section 4 creates s. 732.1081, F.S., relating to termination of parental rights.

Section 5 provides that the act shall take effect upon becoming law.

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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:

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:

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:

Under some circumstances, retroactive application of civil legislation may violate the state constitution by impairing a vested right, creating a new obligation, or imposing a new penalty.⁵ Courts apply a two-pronged test to determine whether retroactive application of a statute violates the constitution. "First, the Court must ascertain whether the Legislature intended for the statute to apply retroactively. Second, if such an intent is clearly expressed, the Court must determine whether retroactive application would violate any constitutional principles."⁶

The bill provides that amendments to s. 732.102, F.S., apply only to the estates of descendents dying on or after October 1, 2011. It appears that this provision preserves an existing right and therefore does not implicate the constitution.

B. RULE-MAKING AUTHORITY:

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

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⁵ See State Farm Mut. Auto. Ins. Co. v. Laforet, 658 So.2d 55, 61 (Fla.1995)

⁶ Menendez v. Progressive Exp. Ins. Co., Inc., 35 So.3d 873, 877 (Fla. 2010)

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled

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An act relating to probate; amending s. 731.201, F.S.; excluding real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship from the definition of the term "protected homestead"; clarifying the application of amendments to s. 732.102. F.S., made by chapter 2011-

amendments to s. 732.102, F.S., made by chapter 20118 183, Laws of Florida, relating to a spouse's share of
9 an intestate estate; amending s. 732.401, F.S.;
10 revising the period of time during which an attorney

spouse may petition for approval to elect to take a one-half interest in the decedent's homestead;

in fact or quardian of the property of a surviving

specifying the minimum duration of an extension of time; creating s. 732.1081, F.S.; barring inheritance rights of a natural or adoptive parent whose parental

rights have been previously terminated pursuant to law; providing for application of the act; providing

19 effective dates.

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

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Section 1. Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of section 731.201, Florida Statutes, is amended to read:

26 amended to read 27 731.201 G

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to

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specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

- (33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship as tenants by the entirety is not protected homestead.
- Section 2. Notwithstanding section 2 or section 14 of chapter 2011-183, Laws of Florida, the amendments to section 732.102, Florida Statutes, made by section 2 of that act apply only to the estates of decedents dying on or after October 1, 2011.
- Section 3. Effective July 1, 2012, and applicable only to estates of persons dying on or after July 1, 2012, section 732.401, Florida Statutes, is amended to read:
 - 732.401 Descent of homestead.-
- (1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.
- (2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half

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interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

- (a) The right of election may be exercised:
- 1. By the surviving spouse; or

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- 2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.
- (b) The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime. The time for making the election may not be extended except as provided in paragraph (c).
- (c) A petition by an attorney in fact or <u>by a guardian</u> of the property <u>of the surviving spouse</u> for approval to make the election <u>must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election shall be extended for at least 30 days after the rendition of the order allowing the election tolls the time for making the election until 6 months after the decedent's death or 30 days after the rendition of an order authorizing the election, whichever occurs last.</u>
 - (d) Once made, the election is irrevocable.
 - (e) The election shall be made by filing a notice of

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election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE

TO TAKE A ONE-HALF INTEREST OF

DECEDENT'S INTEREST IN

HOMESTEAD PROPERTY

STATE OF.....

96 COUNTY OF.....

- 1. The decedent,, died on

 On the date of the decedent's death, The decedent was married to, who survived the decedent.
- 2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, which that real property being in County, Florida, and described as: ... (description of homestead property)....
- 3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.
- 4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property, and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

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113	
114	•••••
115	(Affiant)
116	
117	Sworn to (or affirmed) and subscribed before me this day of
118	(month),(year), by(affiant)
11.9	
120	(Signature of Notary Public-State of Florida)
121	
122	(Print, Type, or Stamp Commissioned Name of Notary Public)
123	
124	Personally Known OR Produced Identification
125	(Type of Identification Produced)
126	(3) Unless and until an election is made under subsection
127	(2), expenses relating to the ownership of the homestead shall
128	be allocated between the surviving spouse, as life tenant, and
129	the decedent's descendants, as remaindermen, in accordance with
130	chapter 738. If an election is made, expenses relating to the
131	ownership of the homestead shall be allocated between the
132	surviving spouse and the descendants as tenants in common in
133	proportion to their respective shares, effective as of the date
134	the election is filed for recording.
135	(4) If the surviving spouse's life estate created in
136	subsection (1) is disclaimed pursuant to chapter 739, the
137	interests of the decedent's descendants may not be divested.
138	(5) This section does not apply to property that the
139	decedent owned in tenancy by the entireties or \underline{in} joint tenancy
140	with rights of survivorship.

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Section 4. Effective July 1, 2012, and applicable only to 141 142 estates of persons dying on or after July 1, 2012, section 732.1081, Florida Statutes, is created to read: 143 144 732.1081 Termination of parental rights.-For the purpose 145 of intestate succession by a natural or adoptive parent, a 146 natural or adoptive parent is barred from inheriting from or 147 through a child if the natural or adoptive parent's parental 148 rights were terminated pursuant to chapter 39 prior to the death 149 of the child, and the natural or adoptive parent shall be

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

treated as if the parent predeceased the child.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 917

Jurisdiction of the Courts

SPONSOR(S): Bileca

TIED BILLS: None IDEN./SIM. BILLS: SB 486

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

SUMMARY ANALYSIS

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment and a state's long-arm statute.

Florida's choice-of-law statute provides that a contract will be enforced by the courts of this state where Florida law has been designated as the governing law in the agreement and the transaction is valued at no less than \$250,000. The forum-selection statute grants courts jurisdiction to hear cases relating to any contracts that have been made pursuant to Florida's choice-of-law statute.

The bill revises Florida's long-arm, choice-of-law, and forum-selection statutes, as well as provisions of the Enforcement of Foreign Judgment Act and the International Commercial Arbitration Act to:

- Provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with choice-of-law statute.
- Delete language that prevents the enforcement of a choice-of-law provision in a contract where each party is a nonresident.
- Delete language from the Enforcement of Foreign Judgment Act, regarding the definition of "foreign judgment," to clarify that the statute applies to a court order from a U.S. territory (i.e. Puerto Rico), not merely to a court order from one of the 50 states.
- Correct cross references in the International Commercial Arbitration Act to conform with the UNCITRAL Model Law on Commercial Arbitration.

The bill may have an indeterminate fiscal impact on state courts. This bill does not appear to have a fiscal impact on local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0917b.JDC.DOCX

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Personal Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment.¹ The test for determining whether a court is able to assert personal jurisdiction over a nonresident is whether the nonresident has "minimum contacts" in the forum so that the commencement of a proceeding against said individual will not "offend traditional notions of fair play and substantial justice." The principal inquiry is whether the nonresident's conduct and connection with the forum state would lead him or her to believe that they could "reasonably anticipate being haled into court."

Florida Long-Arm Statute

The second limitation on a court's ability to assert personal jurisdiction is derived from a state's long-arm statute. Such statutes can be drafted broadly⁴ to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow for a court to assume personal jurisdiction in a particular case. Florida's statute falls in the latter category.

In Venetian Salami Co. v. J.S. Parthenais, the Florida Supreme Court described the relationship between Florida's long-arm statute and the due process requirements of the Fourteenth Amendment as follows:

By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned. It has not specifically addressed whether the federal constitutional requirement of minimum contacts has been met. As a practical matter, it could not do so because each case will depend upon the facts.⁵

Therefore, two inquiries must be satisfied in determining a court's ability to assert personal jurisdiction over a nonresident: 1) whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and 2) if so, whether the necessary minimum contacts exist to satisfy due process requirements.⁶

Important Court Rulings

In *Jetbroadband WV, LC v. Mastec North America, Inc.*, the court held that by promulgating ss. 685.101 and 685.102, F.S., the legislature created a separate jurisdictional basis for asserting personal jurisdiction over a nonresident that was outside the ambit of the long-arm statute. In that case, the court declared that the nonresident defendant was subject to the jurisdiction of Florida's courts by virtue

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¹ U.S. Const. amend. XIV, s. 2 ("No state shall . . . deprive any person of life, liberty, or property without due process of law . . .); see *International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945).

² International Shoe, 326 U.S. at 316.

³ Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (quoting World-Wide Volkswagen Co. v. Woodson, 444 U.S. 286, 297 (1980)).

⁴ An example of a broad long-arm statute can be found in Cal. Civil Code s. 410.10 (2011), which states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."

⁵ Venetian Salami Co. v. J.S. Parthenais, 554 So.2d 499, 500 (Fla. 1989).

 $^{^6}$ Jetbroadband WV, LLC v. Mastec North America, Inc., 13 So.3d 159, 161 (Fla. 3rd DCA 2009). 7 Id.

of the forum-selection clause that designated Florida as the appropriate venue to commence an action or proceeding regarding a dispute arising from the parties' agreement.⁸

The court distinguished its ruling from an earlier Florida Supreme Court case, *McRae v. J.D./M.D., Inc.*, that was decided 12 years earlier. There, the court refused to enforce a forum-selection clause and denied jurisdiction on the grounds that there was no jurisdictional basis for doing so under the 1987 version of the long-arm statute.⁹ At the time of the decision, Florida's choice-of-law and forum selection statutes had not been enacted.¹⁰ In *Jetbroadband*, the court explained that, due to passage of the choice-of-law and forum selection statutes, Florida courts were now equipped with the jurisdictional authority to hear cases involving forum-selection clauses that designate Florida as the venue of choice for a proceeding.¹¹

Florida Choice-of-Law Statute

The choice-of-law statute provides that a court may enforce a contract where Florida law is designated as the governing law in the agreement and the transaction is valued at no less than \$250,000.¹² The statute further provides that such contracts will be enforced if: "1) the contract bears a substantial or reasonable relation to Florida, or 2) at least one of the parties is either a resident or citizen of Florida (if a person), or is incorporated or organized under the laws of Florida or maintains a place of business in Florida (if a business)."

As presently drafted, the choice-of-law statute is unclear regarding whether a substantial relationship is required between the agreement, parties, and Florida. For instance, s. 685.101(1), F.S., provides that:

[A]ny contract, agreement or undertaking . . . may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement or undertaking . . . whether or not [it] bears any relation to this state.

In contrast, s. 685.101(2), F.S, provides that:

[T]his section does not apply to any contract, agreement, or undertaking regarding any transaction which does not bear a substantial or reasonable relation to the state in which every party is either or a combination of [a nonresident of this state or incorporated or organized under the laws of another state.]

In sum, s. 685.101(1), F.S., appears to require no substantial connection between the subject matter of the agreement and Florida; however, in s. 685.101(2), F.S., the statute explicitly requires a connection between the parties and Florida.

Florida Forum-Selection Statute

The forum-selection statute, s. 685.102, F.S., grants courts jurisdiction to hear cases relating to a contract made pursuant to Florida's choice-of-law statute, or s. 685.101, F.S.

Regarding enforceability, the United States Supreme Court has held that such clauses should be upheld, unless it can be shown that its enforcement would be unreasonable or unjust, or that the clause was invalid as a result of fraud or overreaching.¹⁴ The Court has also held that the minimum contacts

¹⁴ M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972).

⁸ *Id.* at 162-63.

⁹ McRae v. J.D./M.D., Inc. 511 So.2d 540, 542 (Fla. 1987).

¹⁰ Sections 685.101 and 685.102, F.S (the statutes were passed in 1989, two years after the court's decision in McRae).

¹¹ Id.

¹² *Id*.

¹³ Jetbroadband, 13 So. 3d at 162 (quoting Edward M. Mullins & Douglas J. Giuliano, Contractual Waiver of Personal Jurisdiction Under F.S. § 685.102: The Long-Arm Statute's Little-Known Cousin, 80-May Fla. B.J. 36, 37 (2006)).

standard is met if a forum-selection clause exists that is "freely negotiated and is not unreasonable and unjust." ¹⁵

Effect of Bill

The bill provides that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with the choice-of-law statute, s. 685.102, F.S. 16 As a result, a court may excercise personal jurisdiction in a case involving nonresidents if they enter into a contract where the parties agree to designate Florida law as governing the contract; thus, contractually agreeing to personal jurisdiction in this state.

The bill amends s. 685.101, F.S., to remove the limiting language requiring "a substantial or reasonable relation to Florida or [that] at least one of the parties be a resident of Florida or incorporated under its laws." As a result, the deletion of the limitation appears to expand the jurisdiction of the courts of this state accordingly.

Other Changes

Florida Enforcement of Foreign Judgments Act

Article IV, clause 1 of the United States Constitution provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. . ." Accordingly, under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., provide that a foreign judgment from a sister jurisdiction may be enforced in Florida upon being recorded in the office of the clerk of the circuit court of any county. ¹⁹ Current law limits this to only apply to a judgment or order from "any other state."

The definition does not contain any reference to territories or possessions of the United States entitled to full faith and credit under federal law (i.e. Puerto Rico).²⁰

In *Rodriguez v. Nasrallah*,²¹ a state court held that "[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister states." As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida.

The bill amends s. 55.502, F.S., to more succinctly define a foreign judgment as any "judgment, decree, or order of a court which is entitled to full faith and credit." By removing from the definition of "foreign judgment" reference to orders from the 50 states, it allows for the judgments, orders, and decrees from U.S. territories, such as Puerto Rico, to be recognized under the statute.

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed statutes relating to international commercial arbitration and, in its place, adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law).

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¹⁵ Burger King, 471 U.S. at 473 n. 14.

¹⁶ Several other jurisdictions have similar language in their respective long-arm statutes. MICH. COMP. LAWS s. 600.705 (2011); MONT. CODE ANN. s. 25-20-4(b)(1)(E) (2011); S.D. CODIFIED LAWS s. 15-7-2(5) (2011); TENN CODE ANN. s. 20-2-214 (2011) ("Entering into a contract for services to be rendered or for materials to be furnished in [this state] by such person.").

¹⁷ Jetbroadband, 13 So.3d at 162.

¹⁸ U.S. Const. art. IV, cl.1.

¹⁹ Section 55.503, F.S. (2011).

²⁰ See 28 U.S.C. s. 1738 (2006) ("... The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form . . .").

²¹ See 659 So.2d 437, 439 (Fla. 1st DCA 1995).

Chapter 684, F.S., in accordance with the UNCITRAL Model Law applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. Currently, two of the statutes contain clerical errors relating to cross-references. The bill amends ss. 684.0019 and 684.0026, F.S., to correct cross-references to conform the Florida International Commercial Arbitration Act to the UNCITRAL Model Law.

B. SECTION DIRECTORY:

Section 1 amends s. 48.193, F.S., relating to the jurisdiction of the courts.

Section 2 amends s. 55.502, F.S., relating to the definition of the term "foreign judgment."

Section 3 amends s. 684.0019, F.S., relating to conditions for granting interim measures.

Section 4 amends s. 684.0026, F.S., relating to recognition and enforcement.

Section 5 amends s. 685.101, F.S., relating to choice-of-law.

Section 6 amends s. 685.102, F.S., relating to jurisdiction.

Section 7 provides that the bill shall take effect on 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:

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:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate impact on courts' case load. According to the Office of the State Courts Administrator's 2012 Judicial Impact Statement, the bill may increase the number of contract actions filed in circuit court; however, it is unable to quantify to what extent.²²

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²² Office of the State Court Administrator, 2012 Judicial Impact Statement for HB 917 (Dec. 30, 2011) (on file with the House Civil Justice Subcommittee).

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:

With respect to choice-of-law conflicts, the United States Supreme Court held that "for a State's substantive law to be selected in a constitutionally permissible manner, the State must have significant contact or a significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair." Accordingly, the removal of the requirement of "significant contacts" or "reasonable relationship" from a state's choice-of-law statute could potentially trigger a due process challenge under the Fourteenth Amendment. However, in *Hague*, there was no contract provision whereby the parties agreed to be governed by a specific state's law. Instead, the question before the Court was which state law applied in the absence of an agreement that designated any state's law as governing. In addition, ss. 685.101 and 685.102, F.S., would continue to preserve existing language that limits the application of the statutes "to the extent permitted under the United States Constitution."

The United States Supreme Court has explained that, in the commercial context, the minimum contacts standard is met if there is a forum-selection clause that it is "freely negotiated and is not unreasonable and unjust."

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

None.

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DATE: 1/20/2012

²³ Allstate Ins. Co. v. Hague, 449 U.S. 302, 312-13 (1981).

²⁴ Sections 685.101 and 685.102, F.S.

²⁵ Burger King, 471 U.S. at 473, n. 14; See also, Elandia International, Inc. v. Koy, et al., 690 F. Supp. 2d 1317, 1340 (S.D. Fla. 2010).

A bill to be entitled

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An act relating to the jurisdiction of the courts; amending s. 48.193, F.S.; including as an additional basis for subjecting a person to the jurisdiction of the courts of this state provisions which state that a person submits to the jurisdiction of the courts of this state by entering into a contract that designates the law of this state as the law governing the contract and that contains a provision by which such person agrees to submit to the jurisdiction of the courts of this state; amending s. 55.502, F.S.; revising the definition of the term "foreign judgment" for purposes of the Florida Enforcement of Foreign Judgments Act; amending s. 684.0019, F.S.; clarifying that an arbitral tribunal receiving a request for an interim measure to preserve evidence in a dispute governed by the Florida International Commercial Arbitration Act need consider only to the extent appropriate the potential harm that may occur if the measure is not awarded or the possibility that the requesting party will succeed on the merits of the claim; amending s. 684.0026, F.S.; correcting a crossreference in the Florida International Commercial Arbitration Act; amending s. 685.101, F.S.; deleting a restriction on the jurisdiction of the courts of this state to transactions bearing a substantial relation to this state; revising application dates of provisions relating to the jurisdiction of the courts;

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amending s. 685.102, F.S.; revising application dates of provisions relating to the jurisdiction of the courts; providing an effective date.

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

Section 1. Subsection (1) of section 48.193, Florida Statutes, is amended to read:

48.193 Acts subjecting person to jurisdiction of courts of state.—

- (1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:
- (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
 - (b) Committing a tortious act within this state.
- (c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- (d) Contracting to insure any person, property, or risk located within this state at the time of contracting.
- (e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for

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support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

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- (f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
- 1. The defendant was engaged in solicitation or service activities within this state; or
- 2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.
- (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.
- (h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.
- (i) Entering into a contract that complies with s. 685.102.
- Section 2. Subsection (1) of section 55.502, Florida Statutes, is amended to read:
 - 55.502 Construction of act.-
- (1) As used in ss. 55.501-55.509, the term "foreign judgment" means any judgment, decree, or order of a court which

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of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.

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Section 3. Section 684.0019, Florida Statutes, is amended to read:

684.0019 Conditions for granting interim measures.-

- (1) The party requesting an interim measure under s. 684.0018 must satisfy the arbitral tribunal that:
- (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) A reasonable possibility exists that the requesting party will succeed on the merits of the claim. The determination on this possibility does not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (2) With regard to a request for an interim measure under $\underline{s. 684.0018(4)}$ $\underline{s. 684.0018}$, the requirements in subsection (1) apply only to the extent the arbitral tribunal considers appropriate.
- Section 4. Section 684.0026, Florida Statutes, is amended to read:
 - 684.0026 Recognition and enforcement.-
- (1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was

Page 4 of 7

113 issued, subject to s. 684.0027 s. 684.0019(1).

- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of the termination, suspension, or modification of the interim measure.
- (3) The court where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or if such a decision is necessary to protect the rights of third parties.

Section 5. Section 685.101, Florida Statutes, is amended to read:

685.101 Choice of law.-

- (1) The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction involving in the aggregate at least not less than \$250,000, the equivalent thereof in any foreign currency, or services or tangible or intangible property, or both, of equivalent value, including a transaction otherwise covered by s. 671.105(1), may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement, or undertaking, the effect thereof and their rights and duties thereunder, in whole or in part, whether or not such contract, agreement, or undertaking bears any relation to this state.
- (2) This section does not apply to any contract, agreement, or undertaking:

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L41	(a) Regarding any transaction which does not bear a			
L42	substantial or reasonable relation to this state in which every			
L43	party is either or a combination of:			
L44	1. A resident and citizen of the United States, but not of			
L45	this state; or			
L46	2. Incorporated or organized under the laws of another			
L47	state and does not maintain a place of business in this state;			
L48	(a) (b) For labor or employment;			
L49	(b) (c) Relating to any transaction for personal, family,			
L50	or household purposes, unless such contract, agreement, or			
L51	undertaking concerns a trust at least one trustee of which			
L52	resides or transacts business as a trustee in this state, in			
L53	which case this section applies;			
L54	$\underline{\text{(c)}}_{\text{(d)}}$ To the extent provided to the contrary in s.			
L55	671.105(2); or			
156	(d) (e) To the extent such contract, agreement, or			
L57	undertaking is otherwise covered or affected by s. 655.55.			
L58	(3) This section does not limit or deny the enforcement of			
L59	any provision respecting choice of law in any other contract,			
160	agreement, or undertaking.			
161	(4) This section applies to:			
162	(a) contracts entered into on or after July 1, 2012 June			
L 63	27, 1989; and			
L64	(b) Contracts entered into prior to June 27, 1989, if an			
165	action or proceeding relating to such contract is commenced on			
L66	or after June 27, 1989.			
L 67	Section 6. Section 685.102, Florida Statutes, is amended			
L 68	to read:			

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685.102 Jurisdiction.-

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- (1) Notwithstanding any law that limits the right of a person to maintain an action or proceeding, any person may, to the extent permitted under the United States Constitution, maintain in this state an action or proceeding against any person or other entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of the law of this state, in whole or in part, has been made consistent with pursuant to s. 685.101 and which contains a provision by which such person or other entity residing or located outside this state agrees to submit to the jurisdiction of the courts of this state.
- (2) This section does not affect the jurisdiction of the courts of this state over any action or proceeding arising out of or relating to any other contract, agreement, or undertaking.
 - (3) This section applies to:
- (a) contracts entered into on or after <u>July 1, 2012</u> June 27, 1989; and
- (b) Contracts entered into prior to June 27, 1989, if an action or proceeding relating to such contract is commenced on or after June 27, 1989.
 - Section 7. This act shall take effect July 1, 2012.

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #:

HB 1355

Protection of Vulnerable Persons

SPONSOR(S): Dorworth

TIED BILLS: None IDEN./SIM. BILLS: SB 1816

REFERENCE	ACTION	ANALYST /	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee		Smith	Havlicak P
2) Health & Human Services Committee			1-10
3) Education Committee			

SUMMARY ANALYSIS

The bill expands the instances where a person is required to report child abuse by mandating a person to report known child abuse by any person, not just child abuse by a caregiver.

The bill provides specific penalties for Florida educational institutions whose personnel fail to report certain child abuse taking place at the institution as defined.

The bill expands the scope of victims who are eligible to receive monetary relocation assistance to include a victim of sexual violence who reasonably fears for her or his safety.

The bill increases criminal penalties by reclassifying certain violations involving sexual conduct with minors.

The bill will have an indeterminate fiscal impact on state and local governments.

The bill takes effect October 1, 2012.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h1355.JDC,DOCX

DATE: 1/18/2012

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A study conducted in 2008 indicated that an estimated 4% to 16% of children are physically abused each year in high-income nations including the United States. Additionally, as many as 15% of children are neglected, and up to 10% of girls and 5% of boys suffer severe sexual abuse. Although it is difficult to measure, researchers believe that as few as 1 in 10 of those instances of abuse are actually confirmed by social-service agencies. Recent national events have centered on issues with adults failing to report known instances of ongoing child abuse.

Reporting Child Abuse

Current Situation

Section 39.201, F.S., requires a person to report certain known or suspected instances of child abuse. Specifically, the law mandates that a person report knowledge or suspicion of child abuse if the person knows, or has reasonable cause to suspect:

- A child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare²; or
- That a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

Section 39.201(2), F.S., prescribes the method of reporting child abuse. Instances of child abuse as described by s. 39.201(1), F.S., must be made "immediately to the department's³ central abuse hotline." If a person is required by s. 39.201, F.S., to report known or suspected child abuse and fails to do so, s. 39.205(1), F.S., makes it a first degree misdemeanor⁴ if the person knowingly or willfully failed to report, or knowingly or willfully prevented another person from reporting such abuse.

Effect of the Bill

Reporting Abuse by Any Person

The bill expands the instances where a person is required to report child abuse by mandating the reporting of known child abuse⁵ by *any person*, not just child abuse by a caregiver. The bill removes the definition for "other person responsible for the child's welfare" to conform.

Educational Institutions

The bill creates subsections 39.205(3) and (4), F.S.,⁶ which provide penalties for Florida educational institutions whose personnel fail to report certain child abuse taking place at the institution. The bill subjects the institution to a \$1 million fine for each failure to report, and the loss of all state funding for 2 years.⁷

Specifically, these penalties apply to:

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¹ See Tiffany Sharples, Most Child Abuse Goes Unreported, Time Health, (Dec. 2, 2008), available at http://www.time.com (search "unreported child abuse" (last visited Jan. 19, 2012)).

² "Other person responsible for a child's welfare" includes many enumerated parties, including employees of a school or day care center. The definition exempts law enforcement officers and employees of municipal or county detention facilities acting in an official capacity, except as otherwise provided in the subsection. Section 39.01(47), F.S.

³ "Department" means the Department of Children and Family Services.

⁴ 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.

⁵ As defined by s. 39.201, F.S.

⁶ Sections 39.205(3) and 39.205(4), F.S., already exist, but the bill renumbers those sections.

⁷ "All state funding" includes the Florida Resident Access Grant Program.

- (1) Any Florida College System institution, state university, or nonpublic college, university, or school⁸ whose administrators, faculty, or staff knowingly and willfully fail to report, or knowingly and willfully prevent another from reporting known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school.
- (2) Any Florida College System institution, state university, or nonpublic college, university, or school⁹ whose law enforcement agency fails to transmit to prosecutorial authorities any report of known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school.

Relocation Assistance for Victims

Current Situation

Section 960.198, F.S., authorizes the Department of Legal Affairs ("DLA") to award monetary payment to a victim of domestic violence in order to provide relocation assistance, under certain conditions. Specifically, the law authorizes DLA to award a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment:

- a) A one-time payment not exceeding \$1,500 on any one claim; and
- b) A lifetime maximum of \$3,000.

Certain preconditions must be met before the department may grant an award:

- a) There must be proof that a domestic violence offense was committed;
- b) The domestic violence offense must be reported to the proper authorities;
- c) The victim's need for assistance must be certified by a domestic violence center in Florida; and
- d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.

Effect of the Bill

The bill expands the scope of victims who are eligible to receive monetary relocation assistance from DLA to include a victim of sexual violence who reasonably fears for her or his safety. In accordance with this expansion, the bill revises the preconditions to receiving an award. The victim of sexual violence's need for assistance could be certified by a rape crisis center, rather than only a domestic violence center.

Reclassification of Prostitution Crimes Involving Minors

Current Situation

Florida law presently prohibits conduct involving prostitution under chapter 796, F.S.

Causing a Minor to Become Involved With Prostitution. Sections 796.03 and 796.035, F.S., prohibit a person from causing a minor to become involved in prostitution and other sexual activity. Specifically, under s. 796.03, F.S., it is a second degree felony for a person to procure for prostitution, or cause to be prostituted, any person who is under the age of 18.

Under s. 796.035, F.S., it is a first degree felony¹¹ for any parent, legal guardian, or other person having custody or control of a minor, to sell or otherwise transfer custody or control of such minor, or offer to sell or otherwise transfer custody of the minor with knowledge that the minor

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⁸ As defined in ss. 1000.21 or 1005.02, F.S.

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.

will engage in prostitution, perform naked for compensation, or otherwise participate in the trade of sex trafficking as a consequence of the sale or transfer.

- Forcing, Compelling, or Coercing Prostitution. Under s. 796.04, F.S, it is a third degree felony¹² for a person to force, compel, or coerce another to become a prostitute.
- <u>Sex Trafficking</u>. Under s. 796.045, F.S, it is a second degree felony¹³ for a person to recruit, entice, harbor, transport, provide, or obtain by any means a person, knowing that force, fraud, or coercion will be used to cause that person to engage in prostitution. It is a first degree felony¹⁴ if the offense is committed against a person under the age of 14 or if the offense results in death.
- <u>Deriving Support from the Proceeds of Prostitution</u>. Under s. 796.05, F.S., it is a third degree felony for a person who knows or has reasonable belief that another is engaged in prostitution to live or derive support or maintenance from what is believed to be the earnings or proceeds of such person's prostitution.
- Renting Space to be Used for Lewdness, Assignation, or Prostitution. Under s. 796.06, F.S., it
 is a second degree misdemeanor for the first violation, and a first degree misdemeanor for a
 subsequent violation, for a person to let or rent any place, structure, or part thereof, trailer or
 other conveyance with knowledge that it will be used for the purpose of lewdness, assignation,
 or prostitution.

Definitions

- o "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement.¹⁵
- "Lewdness" means any indecent or obscene act. 16
- "Prostitution" means the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses.¹⁷
- "Sexual activity" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; anal or vaginal penetration of another by any other object; or the handling or fondling of the sexual organ of another for the purpose of masturbation; however, the term does not include acts done for bona fide medical purposes.¹⁸

Effect of the Bill

The bill creates s. 796.036, F.S., which provides for reclassification of certain violations involving minors. ¹⁹ Specifically, the bill provides for reclassification of violations "in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited [by chapter 796], but the minor is not the person charged with the violation." The bill provides for such reclassification as follows:

- A second degree misdemeanor becomes a first degree misdemeanor;
- A first degree misdemeanor becomes a third degree felony;
- A third degree felony becomes a second degree felony;
- A second degree felony becomes a first degree felony;

¹² 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. ¹³ 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.

¹⁴ 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.

¹⁵ Section 796.07, F.S.

¹⁶ *Id*.

¹⁷ *Id*.

¹⁸ *Id*.

¹⁹ The new section created by the bill specifically states it does not apply to violations of ss. 796.03 and 796.035, F.S., presumably because those sections already apply to prohibited conduct involving minors.

• A first degree felony becomes a life felony.

B. SECTION DIRECTORY:

Section 1. Amends s. 39.01, F.S., relating to defintions.

Section 2. Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Section 3. Amends s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.

Section 4. Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 5. Creates s. 796.036, F.S., relating to reclassification of violations involving minors.

Section 6. Amends s. 960.198, F.S., relating to relocation assistance for victims of domestic violence.

Section 7. Provides that the act shall take effect October 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:

Relocation Assistance

The bill authorizes the Department of Legal Affairs (under the Office of the Attorney General) to award a monetary sum of \$1,500 to a victim of sexual violence once certain preconditions are met. Because the bill expands the scope of victims who are eligible for such an award, it will have a fiscal impact on the Department insofar as it will require additional funds to provide such additional awards. The amount of the impact will depend on the number of sexual violence victims who seek and are granted relocation assistance. According to the Department of Legal Affairs:

- The 2010 Crime in Florida Annual Report indicated that there were 9,885 Forcible Sex
 Offenses. It is unknown how many of these forcible sex victims may have qualified as a
 domestic violence victim, as well. It is unknown how many would have requested relocation
 assistance as a sexual violence victim.
- Revenues for the Crimes Compensation Trust Fund are derived from the collection of state and federal criminal assessments. The funds are used to run the Crimes Compensation Program. Crime victims serviced by this program include victims of assault, battery, homicide, sexual offenses, domestic violence, driving while intoxicated, hit and run, stalking, robbery, terrorism, kidnapping, arson, and all other violent crimes. Eligible expenses currently paid by the victims compensation program include medical/dental, mental health treatment, crime scene clean-up, funeral/burial, wage loss, loss of support, disability, forensic sexual assault examinations, property loss (for elderly and disabled adults only), and relocations expenses for victims of domestic violence. Since Fiscal Year 2005-06, the claims workload has increased by 19.3 percent and the dollars paid has increased by 40 percent. However, the Crimes Compensation Trust Fund has had declining revenue collections in that time.

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• In Fiscal Year 2010-11, the Crimes Compensation Trust Fund collected \$21,493,324 in revenues a 14 percent decrease from the previous fiscal year. Any additional payments to victims could reduce payments to all other victims.

Educational Institutions

The bill provide penalties for Florida educational institutions whose personnel or law enforcement agencies fail to report certain child abuse taking place at the institution. The bill subjects the institution to a \$1 million fine for each failure to report, and the loss of all state funding for 2 years.

Prison Beds

The bill increases penalties for certain prostitution related criminal offenses. A request has been made to the Criminal Justice Impact Conference to provide an estimate of any fiscal impact on state prison beds.

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 increases penalties for certain prostitution related criminal offenses. It is unknown what impact this will have on local jail beds.

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 provisions of the bill that do not address criminal laws do 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.

The provisions of the bill addressing criminal provisions appear 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

STORAGE NAME: h1355.JDC.DOCX

DATE: 1/18/2012

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A bill to be entitled

An act relating to protection of vulnerable persons; amending s. 39.01, F.S.; deleting the definition of the term "other person responsible for a child's welfare"; conforming provisions; amending s. 39.201, F.S.; revising language concerning child abuse reporting; amending s. 39.205, F.S.; requiring specified educational institutions and their law enforcement agencies to report known or suspected child abuse, abandonment, or neglect in certain circumstances; providing financial penalties for violations; amending s. 39.302, F.S.; correcting a cross-reference; creating s. 796.036, F.S.; providing for upward reclassification of certain prostitution offenses involving minors; amending s. 960.198, F.S.; providing for relocation assistance for certain victims of sexual violence; providing an effective date.

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

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Section 1. Subsections (48) through (76) of section 39.01, Florida Statutes, are renumbered as subsections (47) through (75), respectively, and present subsections (10) and (47) of that section are amended to read:

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39.01 Definitions.—When used in this chapter, unless the context otherwise requires:

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(10) "Caregiver" means the parent, legal custodian,

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permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (47).

includes the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities; or employees of the Department of Corrections.

Section 2. Paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of section 39.201, Florida Statutes, are amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by any person a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative

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immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

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- (2)(a) Each report of known or suspected child abuse, abandonment, or neglect by any person a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter.
- Section 3. Subsections (3) through (6) of section 39.205, Florida Statutes, are renumbered as subsections (5) through (8), respectively, and new subsections (3) and (4) are added to that section to read:
- 39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.—
- (3) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02 whose administrators,

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faculty, or staff knowingly and willfully fail to report known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school, or who knowingly and willfully prevent another person from doing so, shall be subject to fines of \$1 million for each such failure and the loss of all state funding, including the funds under the Florida Resident Access Grant Program, for a period of 2 years.

- (4) Any Florida College System institution, state university, or nonpublic college, university, or school, as defined in s. 1000.21 or s. 1005.02 whose law enforcement agency fails to transmit to prosecutorial authorities any report of known or suspected child abuse, abandonment, or neglect committed on the property of the institution, university, college, or school, or during an event or function sponsored by the institution, university, college, or school, shall be subject to fines of \$1 million for each such failure and the loss of all state funding, including the funds under the Florida Resident Access Grant Program, for a period of 2 years.
- Section 4. Subsection (1) of section 39.302, Florida Statutes, is amended to read:
- 39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—
- (1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity

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113 or person covered by s. 39.01(33) or (47), acting in an official 114 capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective 115 116 investigation within the timeframe established under s. 117 39.201(5) and orally notify the appropriate state attorney, law 118 enforcement agency, and licensing agency, which shall 119 immediately conduct a joint investigation, unless independent 120 investigations are more feasible. When conducting investigations 121 onsite or having face-to-face interviews with the child, 122 investigation visits shall be unannounced unless it is 123 determined by the department or its agent that unannounced 124 visits threaten the safety of the child. If a facility is exempt 125 from licensing, the department shall inform the owner or 126 operator of the facility of the report. Each agency conducting a 127 joint investigation is entitled to full access to the 128 information gathered by the department in the course of the 129 investigation. A protective investigation must include an onsite 130 visit of the child's place of residence. The department shall 131 make a full written report to the state attorney within 3 132 working days after making the oral report. A criminal 133 investigation shall be coordinated, whenever possible, with the 134 child protective investigation of the department. Any interested 135 person who has information regarding the offenses described in 136 this subsection may forward a statement to the state attorney as 137 to whether prosecution is warranted and appropriate. Within 15 138 days after the completion of the investigation, the state 139 attorney shall report the findings to the department and shall 140 include in the report a determination of whether or not

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prosecution is justified and appropriate in view of the circumstances of the specific case.

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Section 5. Section 796.036, Florida Statutes, is created to read:

796.036 Violations involving minors; reclassification.

- (1) The felony or misdemeanor degree of any violation of this chapter, other than s. 796.03 or s. 796.035, in which a minor engages in prostitution, lewdness, assignation, sexual conduct, or other conduct as defined in or prohibited by this chapter, but the minor is not the person charged with the violation, is reclassified as provided in this section.
 - (2) Offenses shall be reclassified as follows:
- (a) A misdemeanor of the second degree is reclassified to a misdemeanor of the first degree.
- (b) A misdemeanor of the first degree is reclassified to a felony of the third degree.
- (c) A felony of the third degree is reclassified to a felony of the second degree.
- (d) A felony of the second degree is reclassified to a felony of the first degree.
- (e) A felony of the first degree is reclassified to a life felony.
- Section 6. Section 960.198, Florida Statutes, is amended to read:
- 960.198 Relocation assistance for victims of domestic violence or sexual violence.—
- 167 (1) Notwithstanding the criteria set forth in s. 960.13
 168 for crime victim compensation awards, the department may award a

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one-time payment of up to \$1,500 on any one claim and a lifetime maximum of \$3,000 to a victim of domestic violence who needs immediate assistance to escape from a domestic violence environment or to a victim of sexual violence who reasonably fears for her or his safety.

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- (2) In order for an award to be granted to a victim for relocation assistance:
- (a) There must be proof that a domestic violence or sexual violence offense was committed;
- (b) The domestic violence or sexual violence offense must be reported to the proper authorities;
- (c) The victim's need for assistance must be certified by a certified domestic violence center or a certified rape crisis center in this state; and
- (d) The center certification must assert that the victim is cooperating with law enforcement officials, if applicable, and must include documentation that the victim has developed a safety plan.
 - Section 7. This act shall take effect October 1, 2012.

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