



Justice Appropriations Subcommittee

Meeting Packet

**March 28, 2013
8:00 a.m. – 10:00 a.m.
Morris Hall**



The Florida House of Representatives

APPROPRIATION COMMITTEE

Justice Appropriations Subcommittee

Will Weatherford
Speaker

Charles McBurney
Chair

MEETING AGENDA

Morris Hall

March 28, 2013

- I. Meeting Called To Order
- II. Opening Remarks by Chair
- III. Chair's Budget Proposal for FY 2013-14
- IV. Consideration of the following proposed committee bill:
PCB JUAS 13-02 - Relating to Clerks of Court
- V. Consideration of the following bill(s):
CS/CS/HB 583 - Estates by Insurance & Banking Subcommittee, Civil Justice Subcommittee and Rep. Spano
CS/HB 693 - Dispute Resolution by Civil Justice Subcommittee, and Rep. Moraitis
CS/HB 851 - Animal Cruelty by Criminal Justice Subcommittee and Rep. Moskowitz
HB 875 - Licensed Security Officers by Rep. Workman
CS/HB 935 - Florida False Claims Act by Civil Justice Subcommittee & Rep. Young
HB 1147 - Office of the Attorney General by Rep. Fitzenhagen
CS/HB 1173 - Florida Communications Fraud Act by Criminal Justice Subcommittee and Rep. Spano
HB 1221 - Murder of a Child 17 Years of Age or Younger by Rep. Artiles
HB 7015 - Expert Testimony by Civil Justice Subcommittee and Rep. Metz
CS/HB 7005 - Massage Establishments by Health Quality Subcommittee, Criminal Justice Subcommittee and Rep. Kerner
HB 7031 - Sex Offenses by Criminal Justice Subcommittee and Rep. Harrell
- VI. Closing Remarks
- VII. Meeting Adjourned

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB JUAS 13-02 Relating to the Clerks of Court
SPONSOR(S): Justice Appropriations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>JD</i>

SUMMARY ANALYSIS

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Clerks of Court Operations Corporation (Corporation), the Legislature passed SB 2108 (Chapter 2009-06, Laws of Florida) during the 2009 legislative session. This bill substantially amended the statutory budget process and procedures for these entities, most notably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act (GAA).

The bill makes conforming changes to the proposed House of Representatives Fiscal Year 2013-14 General Appropriations Act by making substantial changes to the clerks of court and the Corporation funding and operations. The bill primarily removes the clerks of court and the Corporation from the state budget while restoring some budgetary functions and procedures in place in the statutes prior to the enactment of chapter 2009-06, Laws of Florida. The bill expands the role of the Legislative Budget Commission (LBC) by creating oversight and accountability in the clerks' budget process.

Under current law, the Clerks of Court Trust Fund (COCTF) is assessed an eight percent general revenue service charge each fiscal year, however, the trust fund has not been able to pay the service charge in full since coming into the legislative budget process. This bill will cause a loss to the General Revenue Fund due to the non-assessment of the eight percent general revenue service charge. This equates to a \$33.8 million loss according to the February 2013 General Revenue Estimating Conference. The bill also redirects certain filing fees from the General Revenue Fund to the COCTF.

Since the inception of the clerks being in the GAA, \$145.4 million of state funds have been appropriated to the clerks of court and the House proposed 2013-14 GAA appropriates \$16.6 million in nonrecurring general revenue to fund the clerk's current year deficit and GR service charge. Also, there is currently \$25 million of recurring general revenue in the clerks' budget.

The net fiscal impact of this bill is estimated to be approximately \$445 million in reduced trust fund appropriations and a recurring net \$89.3 million negative impact to general as reflected in the proposed House of Representatives Fiscal Year 2013-14 General Appropriations Act.

This bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Revision 7 to Article V Overview

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution also describes the primary participants in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. To that end, “[t]hese elected independent officials interact as part of a complex interdependent system.”¹

In 1998, voters approved an additional revision to Article V, referenced as Revision 7, which allocates more costs to the state.² Subsequent to this revision, Article V, section 14 of the Florida Constitution now specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal are fully funded by the state, and the trial courts, the circuit and county courts, are jointly funded by the state and counties. Article V, section 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Article V, section 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for . . . the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for . . . the offices of the clerks of the circuit and county courts performing court-related functions.

Clerks’ Court-Related Functions

Pursuant to authority granted in Article V, section 14(b) of the Florida Constitution, the list of court-related functions clerks may perform is limited to those functions expressly authorized by statute or court rule and must include the following:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Processing the assignment, reopening, and reassignment of cases;
- Processing of appeals;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing of bond forfeiture payments;
- Payment of jurors and witnesses;

¹ Office of Program Policy Analysis and Government Accountability, *Many Article V Trial Courts Funding Issues Still Need to Be Resolved*, Report No. 01-54, 1 (Nov. 2001).

² *Id.* at 2.

- Payment of expenses for meals or lodging provided to jurors;
- Data collection and reporting;
- Processing of jurors;
- Determinations of indigent status; and
- Reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions.³

The list of functions clerks may not fund from state appropriations include:

- Those functions not listed above;
- Functions assigned by administrative orders which are not required for the clerk to perform the functions listed above;
- Enhanced levels of service which are not required for the clerk to perform the functions listed above; and
- Functions identified as local requirements in law or local optional programs.⁴

Post- Article V: 2004-2008

This section describes the law relating to the clerks of court after legislation was passed to implement the changes to Article V and prior to the 2009 legislation.

Budget Procedure for the Court-Related Functions of the Clerk of the Court

On or before August 15 of each fiscal year, each county clerk prepared a proposed budget which was submitted to the Florida Clerks of Court Corporation. The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.⁵ Upon review and certification of the individual clerk of court budgets by the Clerks of Court Operations Corporation, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the Corporation. If the Corporation verified that the proposed budget was limited and a revenue deficit projected, a clerk was to increase all fees, service charges, and any other court-related clerk fees and charges to the maximum amounts specified by law to resolve the deficit. If the clerk raised fees, services charges, and any other court-related clerk fees to the maximum amounts but still had a deficit, the Corporation would notify the Department of Revenue that the clerk was authorized to retain revenues in an amount necessary to fully fund the projected deficit. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the Department of Revenue would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the Department of Revenue Clerks of the Court Trust Fund.⁶

Prior to the passage of SB 2108 in the 2009 Legislative Session, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the Department of Revenue for deposit in the Department of Revenue Clerks of the Court

³ Section 28.35(3)(a), F.S.

⁴ Section 28.35(3)(b), F.S.

⁵ Section 28.36(3), F.S. (2008).

⁶ Section 28.36(4), F.S. (2008).

Trust Fund.⁷ The Department of Revenue would then transfer those funds in the Clerks of the Court Trust Fund not needed to resolve clerk deficits to the General Revenue Fund.

Florida Clerks of Court Operations Corporation

The Corporation had responsibility for the certification of the clerks' budget. Specific tasks included:

- Calculating the maximum authorized annual budget;
- Identifying those proposed budgets exceeding the maximum annual budget for the standard list of court-related functions;
- Identifying those proposed budgets containing funding for items not included on the standard list of court-related functions; and
- Identifying those clerks projected to have court-related revenue insufficient to fund their anticipated court-related expenditures.⁸

The Corporation, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Department of Revenue, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the Department of Revenue; the performance measures and standards approved by the Corporation for each clerk; and the results of each clerk meeting performance standards.

Legislative Budget Commission

The Legislative Budget Commission (LBC)⁹ had authority to approve increases to the maximum annual budgets approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the Legislature.¹⁰

Chapter 2009-204, Laws of Florida

In an effort to gain greater oversight and accountability for the operations and funding of the clerks of court and the Corporation, the Legislature passed SB 2108 during the 2009 legislative session. This bill substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the Corporation into the state budget and appropriating their funds in the annual General Appropriations Act. While employees of the individual clerk offices remained local government employees, staff with the Corporation became state full-time equivalents.

Chapter 2009-204, Laws of Florida, provides that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the Department of Revenue for deposit in to the Clerks of Court Trust Fund within the Justice Administrative Commission (JAC).¹¹ The clerk is, however, allowed to deposit 10 percent of all

⁷ Section 28.37(2), F.S. (2008).

⁸ See s. 28.35(1)(f), F.S. (2008).

⁹ The Legislative Budget Commission is comprised of seven members appointed by the Senate President, and seven members appointed by the Speaker of the House. The Commission, among other things, approves budget amendments during the interim between sessions. See *generally* Section 11.90, F.S.

¹⁰ See s. 28.36(6), F.S. (2008).

¹¹ Section 28.37(2), F.S.

court-related fines in his or her Public Records Modernization Trust Fund to be used in addition to state appropriations for operational needs.¹²

Florida Clerks of Court Operations Corporation

The Corporation is now considered a political subdivision of the state and is exempt from corporate income tax.¹³ The Corporation is administratively housed within the Justice Administrative Commission and its employees are considered state employees. The Corporation is not subject to control, supervision, or direction by the JAC in the performance of its duties, but the employees of the Corporation are governed by the classification plan and salary and benefits plan of the JAC. All clerks of the circuit court are members of the Corporation and hold their position and authority in an ex officio capacity.¹⁴ The Corporation's functions include:

- Developing and certifying a uniform system of performance measures and applicable performance standards and the service unit cost;
- Identifying deficiencies and corrective action plans when clerks fail to meet performance standards;
- Notifying the Legislature and the Supreme Court of any clerk not meeting performance standards and provide a copy of any correction action plan;
- Recommending to the Legislature changes in the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of court in the performance of their court-related functions;
- Developing the performance measures and performance standards in consultation with Legislature and the Supreme Court; and
- Reviewing proposed budgets submitted by the clerks of the court.¹⁵

The Corporation prepares a legislative budget request for the resources necessary to perform its duties and submits the request pursuant to chapter 216, funded as a budget entity in the General Appropriations Act.¹⁶

Budget procedure

Subsequent to the statutory changes made in 2009, by October 1 of each fiscal year, each county clerk prepares a budget request for the last quarter of the county fiscal year (July 1 – September 30) and the first three quarters of the next county fiscal year (October 1 – June 30) and submits it to the Corporation and provides a copy of the budget request to the Supreme Court.¹⁷

Each clerk is required to submit in his or her budget request the number of personnel and the proposed budget for each of the following core services:¹⁸

1. Circuit criminal;
2. County criminal;
3. Juvenile delinquency;
4. Criminal traffic;
5. Circuit civil;
6. County civil;
7. Civil traffic;

¹² *Id.*

¹³ Section 28.35(1)(c), F.S.

¹⁴ Section 28.35(1)(a), F.S.

¹⁵ Section 28.35(2), F.S.

¹⁶ Section 28.35(4), F.S.

¹⁷ Section 28.36(1), F.S.

¹⁸ The core services listed in statute were changed during the 2010 session. (ch. 2010-162, s. 14) Prior to this change, the following core services were listed: case processing; financial processing; jury management; information and reporting.

8. Probate;
9. Family; and
10. Juvenile dependency.

The budget request must identify the service units to be provided within each core service and must propose a unit cost for each service unit.¹⁹

The Corporation is required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs are higher than a clerk's peers, the clerk must justify the increased costs. Justification may include collective bargaining agreements, county civil service agreements, and the number and distribution of court houses. If the Corporation finds that the increased costs are not justified, the Corporation reduces the unit cost to the average of its peers.²⁰ The Corporation recommends to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. The Chief Financial Officer (CFO) is required to review unit costs proposed by the Corporation and makes recommendations to the Legislature and if necessary, may conduct an audit of a clerk or the Corporation.²¹ The Legislature may reject or modify the proposed unit costs, and appropriates the total amount of the clerk budgets in the General Appropriations Act.²² The CFO has not made any recommendations concerning the review of the proposed unit costs since this provision was put into law.

In the 2010 session, legislation was passed which adjusted the way that the clerk's budget was released. Beginning in the 2010-2011 fiscal year, the corporation was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund are insufficient to provide a release in a quarter in a single release, the corporation may release partial amounts for that quarter so long as the total of those partial amounts does not exceed that quarter's release. If funds in the Clerks of Court Trust Fund are insufficient for the first quarter release, the corporation may make a request to the Governor for a trust fund loan pursuant to chapter 215. The amount of the first three releases shall be based on one quarter of the estimated budget for each clerk as identified in the General Appropriations Act²³.

The corporation is required to estimate the fourth quarter's number of units to be performed by each clerk. The amount of the fourth-quarter release is to be adjusted downward if the clerk has performed fewer service units in the first three quarters of the year compared to three quarters of the estimated number of service units in the General Appropriations Act.

Effect of proposed changes

Generally, this bill reverses many of the changes made in SB 2108 during the 2009 legislative session relating to the budgets of the clerks of court, but expands the role of the LBC by creating oversight and accountability in the clerks' budget process. Specifically, the bill:

- Transfers the Clerks of the Court Trust Fund to the Department of Revenue, and transfers fund balances.
- Redirects Circuit Other, Circuit Foreclosure, and County Civil filing fees from General Revenue to the COCTF.
- Redirects the current \$5.00 split of the filing fee collected for trial and appellate proceedings, \$1 to the Department of Financial Services for performing clerk audits and the \$4 to the Corporation for operations funding.

¹⁹ Section 28.36(4) and (5), F.S.

²⁰ Section 28.36(6), F.S.

²¹ Section 28.36(8), F.S.

²² Section 28.36(9), F.S.

²³ Section 28.36(10), F.S.

- Removes the provisions describing the Corporation as a “state agency” or “agency”.
- Removes the provisions that administratively housed the Corporation within the Justice Administrative Commission and their staff as state employees.
- Provides that each month the clerk shall submit a portion of filing fees collected in the prior month that is in excess of one-twelfth of the clerk’s total budget to DOR for deposit into the department’s Clerks of the Court Trust Fund.
- Changes references for deposits from the Justice Administrative Commission to the Department of Revenue.
- Provides for the deposit of excess revenue over the amount needed to meet the authorized budget amounts to be transferred from the Department of Revenue to the General Revenue Fund each January, unless the official estimate for funds accruing to the COCTF made by the Revenue Estimating Conference for the current fiscal year or the next fiscal year included in the estimate is less than the cumulative amount of authorized budgets from the COCTF for the current fiscal year.
- Requires the clerks of court to submit annual budget requests to the Corporation.
- Requires the Corporation to submit their annual budget requests and each of the clerks’ annual budget requests to the Legislative Budget Commission.
- Authorizes the LBC to review, approve, disapprove or amend and approve both the Corporations’ and the clerks of court budgets by October 1 of each year.
- Defines workload measures and workload performance standards.
- Requires the Corporation to contract with DFS for audits of court-related budgets of individual clerks.
- Requires the Corporation to base its revenue estimates on the official Revenue Estimating Conference estimate.
- Outlines the budget procedures for calculating the clerks’ budget, and the mechanism for counties with projected revenue deficits to request for additional funds from the COCTF.
- Removes the provisions requiring the clerks to submit a budget based on core services and unit costs.
- Removes the provisions requiring the Corporation to develop performance measures and standards in consultation with the Supreme Court.
- Requires the clerks of court and the Corporation to adhere to the procurement provisions of chapter 287, F.S.
- Provides an authorized budget amount for the clerks and the Corporation for the period beginning July 1, 2013 and ending September 30, 2013.
- Provides an authorized budget amount for the clerks and the Corporation for the county fiscal year beginning October 1, 2013 and ending September 30, 2014.

B. SECTION DIRECTORY:

Section 1. Transfers balances from the Clerks of the Court Trust Fund in the Justice Administrative Commission to the Department of Revenue.

Section 2. Amends s. 11.90, F.S., relating to the Legislative Budget Commission.

Section 3. Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 4. Repeals s. 28.2455, F.S.

Section 5. Amends s. 28.246, F.S., relating to the payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments and distribution of funds.

Section 6. Amends s. 28.35, F.S., relating to the Florida Clerks of Court Operations Corporation.

Section 7. Amends s. 28.36, F.S., relating to budget procedures for the court-related functions of the clerks of the court.

Section 8. Creates s. 28.365, F.S., relating to procurement requirements.

Section 9. Amends s. 28.37, F.S., relating to fines, fees, service charges and costs remitted to the state.

Section 10. Amends s. 34.041, F.S., relating to filing fees.

Section 11. Amends s. 43.16, F.S., relating to the Justice Administrative Commission.

Section 12. Amends s. 110.205, F.S., relating to career service and exemptions.

Section 13. Amends s. 142.01, F.S., relating to fine and forfeiture funds; disposition of revenue and clerk of the circuit court.

Section 14. Amends s. 213,131, F.S., relating to the Clerks of the Court Trust Fund.

Section 15. Amends s. 215.22, F.S., relating to certain income and certain trust funds exempt.

Section 16. Amends s. 216.011, F.S., relating to definitions.

Section 17. Provides for an authorized budget for the Clerks of the Court and the Florida Clerks of Court Operations Corporation.

Section 18. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See "fiscal comments" section.

2. Expenditures:
See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
See "fiscal comments" section.

2. Expenditures:
See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will have a recurring net \$89.3 million negative impact to general revenue. However, the state will no longer bear the responsibility of addressing routine operating deficits of the Clerk of Court Trust

Fund. Since the inception of the clerks being in the 2009-10 GAA, \$145.4 million of state funds have been appropriated to the clerks of court and the House proposed 2013-14 GAA appropriates \$16.6 million in nonrecurring general revenue to fund the clerk's current year deficit and GR service charge.

The 2010 Legislature transferred \$18.6 million from the State Courts Revenue Trust Fund to the Clerks of Court Trust Fund to pay a portion of the eight percent general revenue service charge for Fiscal Year 2009-10. The 2011 Legislature appropriated \$44.2 million in nonrecurring general revenue to pay the GR service charge and to cover the COCTF deficit for FY 2010-11. The 2012 Legislature appropriated \$57.6 million in nonrecurring general revenue in the 2012-13 GAA to cover the COCTF deficit and to pay the GR service charge. The 2012 Legislature also appropriated \$25 million in recurring general revenue to offset a projected COCTF deficit, however, the clerks of court are still projecting a current year deficit.

The bill removes the funding for the clerks of court and Clerks of Court Operations Corporation from the General Appropriations Act and redirects all revenue from the Clerks of Court Trust Fund in the Justice Administrative Commission to the Department of Revenue. Removing these entities from the budget reduces state trust fund expenditures by \$445 million. The bill exempts the COCTF from being assessed the 8% GR service charge payable to the General Revenue Fund based on the revenue collected in the trust fund. The February 2013 Article V Revenue Estimating Conference projected the trust fund will generate approximately \$423.1 million in revenue for Fiscal Year 2012-2013 and \$422.3 for Fiscal Year 2013-14. The loss of the general revenue service charge is estimated to be \$33.8 million.

The bill redirects \$80 of Circuit Other, Circuit Foreclosure, and County Civil filing fees from General Revenue to the COCTF and this is estimated to generate \$80.5 million in revenue. Based on the redirect of filing fees, it is projected that the clerks will be adequately funded to carry out their duties as required by law.

The bill outlines the process for calculating the clerks' budget, collecting revenue and submitting these funds to the Department of Revenue after expenditures have been satisfied. The remaining funds are then transferred from the Clerks of Court Trust Fund to the General Revenue Fund.

Fiscal Year	GR Service Charge Assessed	GR Service Charge paid by clerks	Clerks Operating Deficit	Amount of deficit paid with state funds and funding source revenue	
2009-10	\$26.8	\$8.2		\$18.6	State Courts Revenue TF
2010-11	\$35.9		\$8.3	\$44.2	Non-recurring General Revenue
2011-12	\$32.9		\$25.6	\$57.6	Non-recurring General Revenue
2012-13	\$33.8		\$20.5	\$25.0	Recurring General Revenue
Proposed 2013-14 GAA				\$16.6	Non-recurring General Revenue
				\$162.0	Total paid by State Funds

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to clerks of court; transferring the
 3 Clerks of the Court Trust Fund from the Justice
 4 Administrative Commission to the Department of
 5 Revenue; amending s. 11.90, F.S.; providing additional
 6 duties of the Legislative Budget Commission relating
 7 to clerks of court; amending s. 28.241, F.S.; revising
 8 distribution of filing fees; revising references to
 9 trust funds; repealing s. 28.2455, F.S., relating to
 10 transfer of trust funds in excess of amount needed for
 11 clerk budgets; amending s. 28.246, F.S.; conforming
 12 provisions to changes made by the act; amending s.
 13 28.35, F.S.; deleting provisions providing for the
 14 housing of the Florida Clerks of Court Operations
 15 Corporation; revising duties of the corporation;
 16 defining terms; providing requirements for annual
 17 submission of a proposed budget and related
 18 information; revising provisions concerning functions
 19 that may and may not be funded from specified sources;
 20 revising distribution of the corporation's audit
 21 report; amending s. 28.36, F.S.; specifying that only
 22 certain functions may be funded from fees, service
 23 charges, costs, and fines retained by the clerks of
 24 the court; revising provisions relating to preparation
 25 of budget requests by clerks; providing for reporting
 26 and certification of revenue deficits; providing
 27 procedures for retention of additional revenues by
 28 clerks in the event of a deficit; providing for the

29 release of funds from a specified trust fund to
 30 relieve such a deficit in certain circumstances;
 31 providing for increases in previously authorized
 32 budgets in certain circumstances; deleting provisions
 33 relating to review of budgets and related information;
 34 creating s. 28.365, F.S.; providing that clerks of
 35 court and the Florida Clerks of Court Operations
 36 Corporation are subject to specified procurement
 37 requirements for expenditures made pursuant to
 38 specified provisions; amending s. 28.37, F.S.;
 39 providing that a portion of all fines, fees, service
 40 charges, and costs collected by the clerks of the
 41 court that exceeds a specified portion of the clerk's
 42 annual budget be remitted to a specified trust fund;
 43 providing for remission of certain excess collections
 44 to the department for deposit into the General Revenue
 45 Fund on specified dates; providing for deposit of such
 46 funds in a specified trust fund in certain
 47 circumstances; providing for collection of certain
 48 funds due by the department; amending s. 34.041, F.S.;
 49 conforming provisions to changes made by the act;
 50 revising distribution of certain fees; amending ss.
 51 43.16 and 110.205, F.S.; conforming provisions to
 52 changes made by the act; amending s. 142.01, F.S.;
 53 deleting provisions specifying that certain moneys are
 54 considered state funds; amending s. 213.131, F.S.;
 55 conforming provisions to changes made by the act;
 56 amending s. 215.22, F.S.; exempting certain moneys

57 deposited in the Clerks of the Court Trust Fund from a
 58 specified deduction; amending s. 216.011, F.S.;
 59 conforming provisions to changes made by the act;
 60 specifying the authorized budget for the clerks of the
 61 circuit court and the corporation for specified
 62 periods; requiring the corporation to determine budget
 63 amounts for the individual clerks for those periods;
 64 providing effective dates.

65

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

67

68 Section 1. The Clerks of the Court Trust Fund within the
 69 Justice Administrative Commission, FLAIR number 21-2-588, is
 70 transferred together with all balances in the fund to the
 71 Department of Revenue.

72 Section 2. Subsection (6) of section 11.90, Florida
 73 Statutes, is amended to read:

74 11.90 Legislative Budget Commission.—

75 (6) The commission shall have the power and duty to:

76 (a) Review and approve or disapprove budget amendments
 77 recommended by the Governor or the Chief Justice of the Supreme
 78 Court as provided in chapter 216.

79 (b) Develop the long-range financial outlook described in
 80 s. 19, Art. III of the State Constitution.

81 (c) Review and approve, disapprove, or amend and approve
 82 the budget of the Florida Clerks of Court Operations
 83 Corporation.

84 (d) Review and approve, disapprove, or amend and approve

85 the total combined budgets of the clerks of the court or the
 86 budget of any individual clerk of the court for court-related
 87 functions.

88 (e) ~~In addition to the powers and duties specified in this~~
 89 ~~subsection, the commission shall~~ Exercise all other powers and
 90 perform any other duties prescribed by the Legislature.

91 Section 3. Paragraph (a) of subsection (1) of section
 92 28.241, Florida Statutes, is amended to read:

93 28.241 Filing fees for trial and appellate proceedings.-

94 (1) Filing fees are due at the time a party files a
 95 pleading to initiate a proceeding or files a pleading for
 96 relief. Reopen fees are due at the time a party files a pleading
 97 to reopen a proceeding if at least 90 days have elapsed since
 98 the filing of a final order or final judgment with the clerk. If
 99 a fee is not paid upon the filing of the pleading as required
 100 under this section, the clerk shall pursue collection of the fee
 101 pursuant to s. 28.246.

102 (a)1.a. Except as provided in sub-subparagraph b. and
 103 subparagraph 2., the party instituting any civil action, suit,
 104 or proceeding in the circuit court shall pay to the clerk of
 105 that court a filing fee of up to \$395 in all cases in which
 106 there are not more than five defendants and an additional filing
 107 fee of up to \$2.50 for each defendant in excess of five. Of the
 108 first \$200 ~~\$280~~ in filing fees, ~~\$80 must be remitted by the~~
 109 ~~clerk to the Department of Revenue for deposit into the General~~
 110 ~~Revenue Fund,~~ \$195 must be remitted to the Department of Revenue
 111 for deposit into the State Courts Revenue Trust Fund, \$4 ~~\$3.50~~
 112 must be remitted to the Department of Revenue for deposit into

113 | the Administrative Clerks of the Court Trust Fund within the
 114 | Department of Financial Services Justice Administrative
 115 | ~~Commission~~ and used to fund the contract with the Florida Clerks
 116 | of Court Operations Corporation created in s. 28.35, and \$1
 117 | ~~\$1.50~~ must be remitted to the Department of Revenue for deposit
 118 | into the Administrative Trust Fund within the Department of
 119 | Financial Services to fund audits of individual clerks' court-
 120 | related expenditures ~~elerk budget reviews~~ conducted by the
 121 | Department of Financial Services. By the 10th of each month, the
 122 | clerk shall submit that portion of the filing fees collected in
 123 | the previous month that is in excess of one-twelfth of the
 124 | clerk's total budget ~~One third of any filing fees collected by~~
 125 | ~~the clerk of the circuit court in excess of \$100 must be~~
 126 | ~~remitted to the Department of Revenue for deposit into the~~
 127 | ~~Clerks of the Court Trust Fund within the Justice Administrative~~
 128 | ~~Commission.~~

129 | b. The party instituting any civil action, suit, or
 130 | proceeding in the circuit court under chapter 39, chapter 61,
 131 | chapter 741, chapter 742, chapter 747, chapter 752, or chapter
 132 | 753 shall pay to the clerk of that court a filing fee of up to
 133 | \$295 in all cases in which there are not more than five
 134 | defendants and an additional filing fee of up to \$2.50 for each
 135 | defendant in excess of five. Of the first \$100 ~~\$180~~ in filing
 136 | fees, ~~\$80 must be remitted by the clerk to the Department of~~
 137 | ~~Revenue for deposit into the General Revenue Fund, \$95 must be~~
 138 | remitted to the Department of Revenue for deposit into the State
 139 | Courts Revenue Trust Fund, \$4 ~~\$3.50~~ must be remitted to the
 140 | Department of Revenue for deposit into the Administrative Clerks

141 ~~of the Court~~ Trust Fund within the Department of Financial
 142 Services Justice Administrative Commission and used to fund the
 143 contract with the Florida Clerks of Court Operations Corporation
 144 created in s. 28.35, and \$1 ~~\$1.50~~ must be remitted to the
 145 Department of Revenue for deposit into the Administrative Trust
 146 Fund within the Department of Financial Services to fund audits
 147 of individual clerks' court-related expenditures ~~clerk budget~~
 148 ~~reviews~~ conducted by the Department of Financial Services.

149 c. An additional filing fee of \$4 shall be paid to the
 150 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 151 for deposit into the Court Education Trust Fund and shall remit
 152 50 cents to the Department of Revenue for deposit into the
 153 Administrative Clerks of the Court Trust Fund within the
 154 Department of Financial Services Justice Administrative
 155 Commission to fund clerk education provided by the Florida
 156 Clerks of Court Operations Corporation. An additional filing fee
 157 of up to \$18 shall be paid by the party seeking each severance
 158 that is granted. The clerk may impose an additional filing fee
 159 of up to \$85 for all proceedings of garnishment, attachment,
 160 replevin, and distress. Postal charges incurred by the clerk of
 161 the circuit court in making service by certified or registered
 162 mail on defendants or other parties shall be paid by the party
 163 at whose instance service is made. Additional fees, charges, or
 164 costs may not be added to the filing fees imposed under this
 165 section, except as authorized in this section or by general law.

166 2.a. Notwithstanding the fees prescribed in subparagraph
 167 1., a party instituting a civil action in circuit court relating
 168 to real property or mortgage foreclosure shall pay a graduated

169 filing fee based on the value of the claim.

170 b. A party shall estimate in writing the amount in
 171 controversy of the claim upon filing the action. For purposes of
 172 this subparagraph, the value of a mortgage foreclosure action is
 173 based upon the principal due on the note secured by the
 174 mortgage, plus interest owed on the note and any moneys advanced
 175 by the lender for property taxes, insurance, and other advances
 176 secured by the mortgage, at the time of filing the foreclosure.
 177 The value shall also include the value of any tax certificates
 178 related to the property. In stating the value of a mortgage
 179 foreclosure claim, a party shall declare in writing the total
 180 value of the claim, as well as the individual elements of the
 181 value as prescribed in this sub-subparagraph.

182 c. In its order providing for the final disposition of the
 183 matter, the court shall identify the actual value of the claim.
 184 The clerk shall adjust the filing fee if there is a difference
 185 between the estimated amount in controversy and the actual value
 186 of the claim and collect any additional filing fee owed or
 187 provide a refund of excess filing fee paid.

188 d. The party shall pay a filing fee of:

189 (I) Three hundred and ninety-five dollars in all cases in
 190 which the value of the claim is \$50,000 or less and in which
 191 there are not more than five defendants. The party shall pay an
 192 additional filing fee of up to \$2.50 for each defendant in
 193 excess of five. Of the first \$200 ~~\$280~~ in filing fees, \$195 ~~\$275~~
 194 must be remitted by the clerk to the Department of Revenue for
 195 deposit into the General Revenue Fund, \$4 ~~\$3.50~~ must be remitted
 196 to the Department of Revenue for deposit into the Administrative

197 ~~Clerks of the Court~~ Trust Fund within the Department of
 198 Financial Services Justice Administrative Commission and used to
 199 fund the contract with the Florida Clerks of Court Operations
 200 Corporation created in s. 28.35, and \$1 ~~\$1.50~~ must be remitted
 201 to the Department of Revenue for deposit into the Administrative
 202 Trust Fund within the Department of Financial Services to fund
 203 audits of individual clerks' court-related expenditures ~~clerk~~
 204 ~~budget reviews~~ conducted by the Department of Financial
 205 Services;

206 (II) Nine hundred dollars in all cases in which the value
 207 of the claim is more than \$50,000 but less than \$250,000 and in
 208 which there are not more than five defendants. The party shall
 209 pay an additional filing fee of up to \$2.50 for each defendant
 210 in excess of five. Of the first \$705 ~~\$785~~ in filing fees, \$700
 211 ~~\$780~~ must be remitted by the clerk to the Department of Revenue
 212 for deposit into the General Revenue Fund, \$4 ~~\$3.50~~ must be
 213 remitted to the Department of Revenue for deposit into the
 214 Administrative Clerks of the Court Trust Fund within the
 215 Department of Financial Services Justice Administrative
 216 Commission and used to fund the contract with the Florida Clerks
 217 of Court Operations Corporation created ~~described~~ in s. 28.35,
 218 and \$1 ~~\$1.50~~ must be remitted to the Department of Revenue for
 219 deposit into the Administrative Trust Fund within the Department
 220 of Financial Services to fund audits of individual clerks'
 221 court-related expenditures ~~clerk budget reviews~~ conducted by the
 222 Department of Financial Services; or

223 (III) One thousand nine hundred dollars in all cases in
 224 which the value of the claim is \$250,000 or more and in which

225 there are not more than five defendants. The party shall pay an
 226 additional filing fee of up to \$2.50 for each defendant in
 227 excess of five. Of the first \$1,705 ~~\$1,785~~ in filing fees, \$930
 228 ~~\$1,010~~ must be remitted by the clerk to the Department of
 229 Revenue for deposit into the General Revenue Fund, \$770 must be
 230 remitted to the Department of Revenue for deposit into the State
 231 Courts Revenue Trust Fund, \$4 ~~\$3.50~~ must be remitted to the
 232 Department of Revenue for deposit into the Administrative Clerks
 233 ~~of the Court~~ Trust Fund within the Department of Financial
 234 Services Justice Administrative Commission to fund the contract
 235 with the Florida Clerks of Court Operations Corporation created
 236 in s. 28.35, and \$1 ~~\$1.50~~ must be remitted to the Department of
 237 Revenue for deposit into the Administrative Trust Fund within
 238 the Department of Financial Services to fund audits of
 239 individual clerks' court-related expenditures ~~clerk budget~~
 240 ~~reviews~~ conducted by the Department of Financial Services.

241 e. An additional filing fee of \$4 shall be paid to the
 242 clerk. The clerk shall remit \$3.50 to the Department of Revenue
 243 for deposit into the Court Education Trust Fund and shall remit
 244 50 cents to the Department of Revenue for deposit into the
 245 Administrative Clerks of the Court Trust Fund within the
 246 Department of Financial Services Justice Administrative
 247 Commission to fund clerk education provided by the Florida
 248 Clerks of Court Operations Corporation. An additional filing fee
 249 of up to \$18 shall be paid by the party seeking each severance
 250 that is granted. The clerk may impose an additional filing fee
 251 of up to \$85 for all proceedings of garnishment, attachment,
 252 replevin, and distress. Postal charges incurred by the clerk of

253 the circuit court in making service by certified or registered
 254 mail on defendants or other parties shall be paid by the party
 255 at whose instance service is made. Additional fees, charges, or
 256 costs may not be added to the filing fees imposed under this
 257 section, except as authorized in this section or by general law.

258 Section 4. Effective upon this act becoming a law, section
 259 28.2455, Florida Statutes, is repealed.

260 Section 5. Paragraph (b) of subsection (5) of section
 261 28.246, Florida Statutes, is amended to read:

262 28.246 Payment of court-related fines or other monetary
 263 penalties, fees, charges, and costs; partial payments;
 264 distribution of funds.—

265 (5) When receiving partial payment of fees, service
 266 charges, court costs, and fines, clerks shall distribute funds
 267 according to the following order of priority:

268 (b) That portion of fees, service charges, court costs,
 269 and fines required to be retained by the clerk of the court or
 270 deposited into the Clerks of the Court Trust Fund within the
 271 Department of Revenue ~~Justice Administrative Commission~~.

272

273 To offset processing costs, clerks may impose either a per-month
 274 service charge pursuant to s. 28.24(26)(b) or a one-time
 275 administrative processing service charge at the inception of the
 276 payment plan pursuant to s. 28.24(26)(c).

277 Section 6. Section 28.35, Florida Statutes, is amended to
 278 read:

279 28.35 Florida Clerks of Court Operations Corporation.—

280 (1) (a) The Florida Clerks of Court Operations Corporation

281 is created as a public corporation organized to perform the
 282 functions specified in this section and s. 28.36 ~~and shall be~~
 283 ~~administratively housed within the Justice Administrative~~
 284 ~~Commission. The corporation shall be a budget entity within the~~
 285 ~~Justice Administrative Commission, and its employees shall be~~
 286 ~~considered state employees. The corporation is not subject to~~
 287 ~~control, supervision, or direction by the Justice Administrative~~
 288 ~~Commission in the performance of its duties, but the employees~~
 289 ~~of the corporation shall be governed by the classification plan~~
 290 ~~and salary and benefits plan of the Justice Administrative~~
 291 ~~Commission. The classification plan must have a separate chapter~~
 292 ~~for the corporation.~~ All clerks of the circuit court shall be
 293 members of the corporation and hold their position and authority
 294 in an ex officio capacity. The functions assigned to the
 295 corporation shall be performed by an executive council pursuant
 296 to the plan of operation approved by the members.

297 (b) The executive council shall be composed of eight
 298 clerks of the court elected by the clerks of the courts for a
 299 term of 2 years, with two clerks from counties with a population
 300 of fewer than 100,000, two clerks from counties with a
 301 population of at least 100,000 but fewer than 500,000, two
 302 clerks from counties with a population of at least 500,000 but
 303 fewer than 1 million, and two clerks from counties with a
 304 population of more than 1 million. The executive council shall
 305 also include, as ex officio members, a designee of the President
 306 of the Senate and a designee of the Speaker of the House of
 307 Representatives. The Chief Justice of the Supreme Court shall
 308 designate one additional member to represent the state courts

309 system.

310 (c) The corporation shall be considered a political
 311 subdivision of the state and shall be exempt from the corporate
 312 income tax. The corporation is not subject to ~~the provisions of~~
 313 chapter 120.

314 (d) The functions assigned to the corporation under this
 315 section and ss. 28.36 and 28.37 are considered to be for a valid
 316 public purpose.

317 (2) The duties of the corporation shall include the
 318 following:

319 (a) Adopting a plan of operation.

320 (b) Conducting the election of an executive council
 321 ~~directors~~ as required in paragraph (1) (b) ~~(1) (a)~~.

322 (c) Recommending to the Legislature changes in the amounts
 323 of the various court-related fines, fees, service charges, and
 324 ~~court~~ costs established by law to ensure reasonable and adequate
 325 funding of the clerks of the court in the performance of their
 326 court-related functions.

327 (d) Developing and certifying a uniform system of workload
 328 ~~performance~~ measures and applicable workload performance
 329 standards for the functions specified in paragraph (3) (a) and
 330 ~~the service unit costs required in s. 28.36 and measures for~~
 331 clerk workload performance in meeting the workload performance
 332 standards. These workload measures and workload performance
 333 standards shall be designed to facilitate an objective
 334 determination of the performance of each clerk in accordance
 335 with minimum standards for fiscal management, operational
 336 efficiency, and effective collection of fines, fees, service

337 charges, and court costs. The corporation shall develop the
 338 workload performance measures and workload performance standards
 339 in consultation with the Legislature ~~and the Supreme Court. The~~
 340 ~~Legislature may modify the clerk performance measures and~~
 341 ~~performance standards in legislation implementing the General~~
 342 ~~Appropriations Act or other law.~~ When the corporation finds a
 343 clerk has not met the workload performance standards, the
 344 corporation shall identify the nature of each deficiency and any
 345 corrective action recommended and taken by the affected clerk of
 346 the court. The corporation shall notify the Legislature ~~and the~~
 347 ~~Supreme Court~~ of any clerk not meeting workload performance
 348 standards and provide a copy of any corrective action plans. As
 349 used in this subsection, the term:

350 1. "Workload measures" means the measurement of the
 351 activities and frequency of the work required for the clerk to
 352 adequately perform the court-related duties of the office as
 353 defined by the Florida Clerks of Court Operations Corporation.

354 2. "Workload performance standards" means the standards
 355 developed to measure the timeliness and effectiveness of the
 356 activities that are accomplished by the clerk in the performance
 357 of the court-related duties of the office as defined by the
 358 Florida Clerks of Court Operations Corporation.

359 (e) Entering into a contract with the Department of
 360 Financial Services for the department to audit the court-related
 361 expenditures of individual clerks.

362 (f)-(e) Reviewing, certifying, and recommending proposed
 363 budgets submitted by clerks of the court pursuant to s. 28.36.
 364 As part of this process, the corporation shall:

365 1. Calculate the minimum amount of revenue necessary for
 366 each clerk of the court to efficiently perform the list of
 367 court-related functions specified in paragraph (3) (a). The
 368 corporation shall apply the workload measures appropriate for
 369 determining the individual level of review required to fund the
 370 clerk's budget.

371 2. Prepare a cost comparison of similarly situated clerks
 372 of the court, based on county population and numbers of filings,
 373 using the standard list of court-related functions specified in
 374 paragraph (3) (a).

375 3. Conduct an annual base budget review and an annual
 376 budget exercise examining the total budget of each clerk of the
 377 court. The review shall examine revenues from all sources,
 378 expenses of court-related functions, and expenses of noncourt-
 379 related functions as necessary to determine that court-related
 380 revenues are not being used for noncourt-related purposes. The
 381 review and exercise shall identify potential targeted budget
 382 reductions in the percentage amount provided in Schedule VIII-B
 383 of the state's previous year's legislative budget instructions,
 384 as referenced in s. 216.023(3), or an equivalent schedule or
 385 instruction as may be adopted by the Legislature.

386 4. Identify those proposed budgets containing funding for
 387 items not included on the standard list of court-related
 388 functions specified in paragraph (3) (a).

389 5. Identify those clerks projected to have court-related
 390 revenues insufficient to fund their anticipated court-related
 391 expenditures

392 6. Use revenue estimates based on the official estimate

393 for funds accruing to the Clerks of the Court Trust Fund made by
 394 the Revenue Estimating Conference.

395 (g) ~~(f)~~ Developing and conducting clerk education programs.

396 ~~(g) Publishing a uniform schedule of actual fees, service~~
 397 ~~charges, and costs charged by a clerk of the court pursuant to~~
 398 ~~general law.~~

399 (h) Beginning August 1, 2014, and each August 1
 400 thereafter, submitting to the Legislative Budget Commission, as
 401 provided in s. 11.90, its proposed budget and the information
 402 described in paragraph (f), as well as the authorized budgets
 403 for each clerk of the court and the corporation. Before October
 404 1 of each year beginning in 2014, the Legislative Budget
 405 Commission shall consider the submitted budgets and shall
 406 approve, disapprove, or amend and approve the corporation's
 407 budget and shall approve, disapprove, or amend and approve the
 408 total of the clerks' combined budgets or any individual clerk's
 409 budget. If the Legislative Budget Commission fails to approve or
 410 amend and approve the corporation's budget or the clerks'
 411 combined budgets before October 1, the clerk shall continue to
 412 perform the court-related functions based upon the clerk's
 413 authorized budget for the previous county fiscal year.

414 (3) (a) The list of court-related functions that clerks may
 415 fund from filing fees, service charges, costs, and fines is
 416 ~~perform~~ are limited to those functions expressly authorized by
 417 law or court rule. Those functions include the following: case
 418 maintenance; records management; court preparation and
 419 attendance; processing the assignment, reopening, and
 420 reassignment of cases; processing of appeals; collection and

421 distribution of fines, fees, service charges, and court costs;
 422 processing of bond forfeiture payments; payment of jurors and
 423 witnesses; payment of expenses for meals or lodging provided to
 424 jurors; data collection and reporting; processing of jurors;
 425 determinations of indigent status; and paying reasonable
 426 administrative support costs to enable the clerk of the court to
 427 carry out these court-related functions.

428 (b) The list of court-related functions that clerks may
 429 not fund from filing fees, service charges, costs, and fines
 430 includes ~~state appropriations include:~~

- 431 1. Those functions not specified within paragraph (a).
- 432 2. Functions assigned by administrative orders which are
 433 not required for the clerk to perform the functions in paragraph
 434 (a).
- 435 3. Enhanced levels of service which are not required for
 436 the clerk to perform the functions in paragraph (a).
- 437 4. Functions identified as local requirements in law or
 438 local optional programs.

439 (4) The corporation shall ~~prepare a legislative budget~~
 440 ~~request for the resources necessary to perform its duties,~~
 441 ~~submit the request pursuant to chapter 216, and be funded~~
 442 pursuant a contract with the Chief Financial Officer. Funds
 443 shall be provided to the Chief Financial Officer for such
 444 purpose as appropriated by general law. Such funds shall be
 445 available to the corporation for the performance of the duties
 446 and responsibilities set forth in this section ~~as a budget~~
 447 ~~entity in the General Appropriations Act.~~ The corporation may
 448 hire staff and pay other expenses from such funds ~~state~~

449 ~~appropriations~~ as necessary to perform the official duties and
 450 responsibilities of the corporation as described in this section
 451 ~~by law.~~

452 (5) Certified public accountants conducting audits of
 453 counties pursuant to s. 218.39 shall report, as part of the
 454 audit, whether ~~or not~~ the clerks of the courts have complied
 455 with the requirements of this section and s. 28.36. In addition,
 456 each clerk of court shall forward a copy of the ~~portion of the~~
 457 ~~financial audit relating to the court related duties of the~~
 458 ~~clerk of court~~ to the Florida Clerks of Court Operations
 459 Corporation ~~Supreme Court~~. The Auditor General shall develop a
 460 compliance supplement for the audit of compliance with the
 461 budgets and applicable workload performance standards certified
 462 by the corporation.

463 Section 7. Section 28.36, Florida Statutes, is amended to
 464 read:

465 28.36 Budget procedure.—There is established a budget
 466 procedure ~~for preparing budget requests for funding~~ for the
 467 court-related functions of the clerks of the court.

468 (1) Only those functions listed in s. 28.35(3)(a) may be
 469 funded from fees, service charges, costs, and fines retained by
 470 the clerks of the court ~~Each clerk of court shall prepare a~~
 471 ~~budget request for the last quarter of the county fiscal year~~
 472 ~~and the first three quarters of the next county fiscal year. The~~
 473 ~~proposed budget shall be prepared, summarized, and submitted by~~
 474 ~~the clerk in each county to the Florida Clerks of Court~~
 475 ~~Operations Corporation in the manner and form prescribed by the~~
 476 ~~corporation to meet the requirements of law. Each clerk shall~~

477 ~~forward a copy of his or her budget request to the Supreme~~
 478 ~~Court. The budget requests must be provided to the corporation~~
 479 ~~by October 1 of each year.~~

480 ~~(2) Each clerk shall include in his or her budget request~~
 481 ~~a projection of the amount of court related fees, service~~
 482 ~~charges, and any other court related clerk fees which will be~~
 483 ~~collected during the proposed budget period. If the corporation~~
 484 ~~determines that the proposed budget is limited to the standard~~
 485 ~~list of court related functions in s. 28.35(3)(a) and the~~
 486 ~~projected court related revenues are less than the proposed~~
 487 ~~budget, the clerk shall increase all fees, service charges, and~~
 488 ~~any other court related clerk fees and charges to the maximum~~
 489 ~~amounts specified by law or the amount necessary to resolve the~~
 490 ~~deficit, whichever is less.~~

491 (2)(3) Each proposed budget shall further conform to the
 492 following requirements ~~clerk shall include in his or her budget~~
 493 ~~request the number of personnel and the proposed budget for each~~
 494 ~~of the following core services:~~

495 (a) On or before June 1 of each year beginning in 2014,
 496 the proposed budget shall be prepared, summarized, and submitted
 497 by the clerk in each county to the Florida Clerks of Court
 498 Operations Corporation in the manner and form prescribed by the
 499 corporation. The proposed budget must provide detailed
 500 information on the anticipated revenues available and
 501 expenditures necessary for the performance of the court-related
 502 functions listed in s. 28.35(3)(a) of the clerk's office for the
 503 county fiscal year beginning October 1.

504 (b) The proposed budget must be balanced such that the

505 total of the estimated revenues available equals or exceeds the
 506 total of the anticipated expenditures. Such revenues include
 507 revenue projected to be received from fees, services charges,
 508 costs, and fines for court-related functions during the fiscal
 509 period covered by the budget. The anticipated expenditures must
 510 be itemized as required by the corporation.

- 511 ~~(a) Circuit criminal.~~
- 512 ~~(b) County criminal.~~
- 513 ~~(c) Juvenile delinquency.~~
- 514 ~~(d) Criminal traffic.~~
- 515 ~~(e) Circuit civil.~~
- 516 ~~(f) County civil.~~
- 517 ~~(g) Civil traffic.~~
- 518 ~~(h) Probate.~~
- 519 ~~(i) Family.~~
- 520 ~~(j) Juvenile dependency.~~

521
 522 ~~Central administrative costs shall be allocated among the core~~
 523 ~~services categories.~~

524 (3) If a clerk of the court estimates that available funds
 525 plus projected revenues from fines, fees, service charges, and
 526 costs for court-related services are insufficient to meet the
 527 anticipated expenditures for the standard list of court-related
 528 functions in s. 28.35(3) (a) performed by his or her office, the
 529 clerk must report the revenue deficit to the corporation in the
 530 manner and form prescribed by the corporation. The corporation
 531 shall verify that the proposed budget is limited to the standard
 532 list of court-related functions in s. 28.35(3) (a). If the

533 corporation verifies that a revenue deficit is projected, the
 534 corporation shall certify a revenue deficit and notify the
 535 Department of Revenue that the clerk is authorized to retain
 536 revenues, in an amount necessary to fully fund the projected
 537 revenue deficit, which he or she would otherwise be required to
 538 remit to the Department of Revenue for deposit into the
 539 department's Clerks of the Court Trust Fund pursuant to s.
 540 28.37. If a revenue deficit is projected for that clerk after
 541 retaining all of the projected collections from the court-
 542 related fines, fees, service charges, and costs, the corporation
 543 shall certify the amount of the revenue deficit to the Executive
 544 Office of the Governor and request release authority for funds
 545 from the department's Clerks of the Court Trust Fund.
 546 Notwithstanding s. 216.192 relating to the release of funds, the
 547 Executive Office of the Governor may approve the release of
 548 funds in accordance with the notice, review, and objection
 549 procedures set forth in s. 216.177 and shall provide notice to
 550 the Chief Financial Officer. The Department of Revenue shall
 551 request monthly distributions from the Chief Financial Officer
 552 in equal amounts to each clerk certified to have a revenue
 553 deficit, in accordance with the releases approved by the
 554 Governor.

555 (4) The Legislative Budget Commission may approve
 556 increases to the previously authorized budgets approved for
 557 individual clerks of the court pursuant to section 28.35 for
 558 court-related functions, if:

559 (a) The additional budget authority is necessary to pay
 560 the cost of performing new or additional functions required by

561 changes in law or court rule; or

562 (b) The additional budget authority is necessary to pay
 563 the cost of supporting increases in the number of judges or
 564 magistrates authorized by the Legislature.

565 ~~(4) The budget request must identify the service units to~~
 566 ~~be provided within each core service. The service units shall be~~
 567 ~~developed by the corporation, in consultation with the Supreme~~
 568 ~~Court, the Chief Financial Officer, and the appropriations~~
 569 ~~committees of the Senate and the House of Representatives.~~

570 ~~(5) The budget request must propose a unit cost for each~~
 571 ~~service unit. The corporation shall provide a copy of each~~
 572 ~~clerk's budget request to the Supreme Court.~~

573 ~~(6) The corporation shall review each individual clerk's~~
 574 ~~prior year expenditures, projected revenue, proposed unit costs,~~
 575 ~~and the proposed budget for each of the core services~~
 576 ~~categories. The corporation shall compare each clerk's prior~~
 577 ~~year expenditures and unit costs for core services with a peer~~
 578 ~~group of clerks' offices having a population of a similar size~~
 579 ~~and a similar number of case filings. If the corporation finds~~
 580 ~~that the expenditures, unit costs, or proposed budget of a clerk~~
 581 ~~is significantly higher than those of clerks in that clerk's~~
 582 ~~peer group, the corporation shall require the clerk to submit~~
 583 ~~documentation justifying the difference in each core services~~
 584 ~~category. Justification for higher expenditures may include, but~~
 585 ~~is not limited to, collective bargaining agreements, county~~
 586 ~~civil service agreements, and the number and distribution of~~
 587 ~~courthouses served by the clerk. If the expenditures and unit~~
 588 ~~costs are not justified, the corporation shall recommend a~~

589 ~~reduction in the funding for that core services category in the~~
590 ~~budget request to an amount similar to the peer group of clerks~~
591 ~~or to an amount that the corporation determines is justified.~~

592 ~~(7) The corporation shall complete its review and~~
593 ~~adjustments to the clerks' budget requests and make its~~
594 ~~recommendations to the Legislature and the Supreme Court by~~
595 ~~December 1 each year.~~

596 ~~(8) The Chief Financial Officer shall review the proposed~~
597 ~~unit costs associated with each clerk of court's budget request~~
598 ~~and make recommendations to the Legislature. The Chief Financial~~
599 ~~Officer may conduct any audit of the corporation or a clerk of~~
600 ~~court as authorized by law. The Chief Justice of the Supreme~~
601 ~~Court may request an audit of the corporation or any clerk of~~
602 ~~court by the Chief Financial Officer.~~

603 ~~(9) The Legislature shall appropriate the total amount for~~
604 ~~the budgets of the clerks in the General Appropriations Act. The~~
605 ~~Legislature may reject or modify any or all of the unit costs~~
606 ~~recommended by the corporation. If the Legislature does not~~
607 ~~specify the unit costs in the General Appropriations Act or~~
608 ~~other law, the unit costs recommended by the corporation shall~~
609 ~~be the official unit costs for that budget period.~~

610 ~~(10) (a) Beginning in the 2010-2011 fiscal year, the~~
611 ~~corporation shall release appropriations to each clerk~~
612 ~~quarterly. If funds in the Clerks of Court Trust Fund are~~
613 ~~insufficient to provide a release in a quarter in a single~~
614 ~~release, the corporation may release partial amounts for that~~
615 ~~quarter so long as the total of those partial amounts does not~~
616 ~~exceed that quarter's release. If funds in the Clerks of Court~~

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617 ~~Trust Fund are insufficient for the first quarter release, the~~
618 ~~corporation may make a request to the Governor for a trust fund~~
619 ~~loan pursuant to chapter 215. The amount of the first three~~
620 ~~releases shall be based on one quarter of the estimated budget~~
621 ~~for each clerk as identified in the General Appropriations Act.~~

622 ~~(b) The corporation shall estimate the fourth quarter's~~
623 ~~number of units to be performed by each clerk. The amount of the~~
624 ~~fourth quarter release shall be based on the approved unit cost~~
625 ~~times the estimated number of units of the fourth quarter with~~
626 ~~the following adjustment: the fourth quarter release shall be~~
627 ~~adjusted based on the first three quarter's actual number of~~
628 ~~service units provided as reported to the corporation by each~~
629 ~~clerk. If the clerk has performed fewer service units in the~~
630 ~~first three quarters of the year compared to three quarters of~~
631 ~~the estimated number of service units in the General~~
632 ~~Appropriations Act, the corporation shall decrease the fourth-~~
633 ~~quarter release. The amount of the decrease shall equal the~~
634 ~~amount of the difference between the estimated number of service~~
635 ~~units for the first three quarters and the actual number of~~
636 ~~service units provided in the first three quarters times the~~
637 ~~approved unit cost.~~

638 ~~(c) No adjustment for the fourth quarter release shall be~~
639 ~~made if the clerk has performed more units than the estimate for~~
640 ~~the first three quarters.~~

641 ~~(d) If the clerk performs fewer units in the fourth~~
642 ~~quarter than estimated by the corporation, the corporation shall~~
643 ~~decrease the first quarter release for the clerk in the next~~
644 ~~fiscal year by the amount of the difference between the~~

645 ~~estimated number of service units for the fourth quarter and the~~
646 ~~actual number of service units performed in that quarter times~~
647 ~~the approved unit cost.~~

648 ~~(e) The total of all releases to the clerks of court may~~
649 ~~not exceed the amount appropriated in the General Appropriations~~
650 ~~Act. If, during the year, the corporation determines that the~~
651 ~~projected releases of appropriations for service units will~~
652 ~~exceed the estimate used in the General Appropriations Act and~~
653 ~~result in statewide expenditures greater than the amount~~
654 ~~appropriated by law, the corporation shall reduce all service~~
655 ~~unit costs of all clerks by the amount necessary to ensure that~~
656 ~~service units are funded within the total amount appropriated to~~
657 ~~the clerks of court. If such action is necessary, the~~
658 ~~corporation shall notify the Legislative Budget Commission. If~~
659 ~~the Legislative Budget Commission objects to the adjustments,~~
660 ~~the Legislative Budget Commission shall adjust all service unit~~
661 ~~costs by the amount necessary to ensure that projected units of~~
662 ~~service are funded within the total amount appropriated to the~~
663 ~~clerks of court at its next scheduled meeting.~~

664 ~~(11) The corporation may submit proposed legislation to~~
665 ~~the Governor, the President of the Senate, and the Speaker of~~
666 ~~the House of Representatives relating to the preparation of~~
667 ~~budget requests of the clerks of court.~~

668 Section 8. Section 28.365, Florida Statutes, is created to
669 read:

670 28.365 Procurement.—The clerks of the court and the
671 Florida Clerks of Court Operations Corporation are subject to
672 the procurement requirements and limitations of chapter 287 for

673 expenditures made pursuant to the budget provided for in ss.
 674 28.35 and 28.36.

675 Section 9. Section 28.37, Florida Statutes, is amended to
 676 read:

677 28.37 Fines, fees, service charges, and costs remitted to
 678 the state.—

679 (1) Pursuant to s. 14(b), Art. V of the State
 680 Constitution, selected salaries, costs, and expenses of the
 681 state courts system and court-related functions shall be funded
 682 from a portion of the revenues derived from statutory fines,
 683 fees, service charges, and costs collected by the clerks of the
 684 court.

685 (2) Beginning November 1, 2013, that portion of all fines,
 686 fees, service charges, and costs collected by the clerks of the
 687 court for the previous month that is in excess of one-twelfth of
 688 the clerks' total budget for the performance of court-related
 689 functions shall be remitted to the Department of Revenue for
 690 deposit into the Clerks of the Court Trust Fund. Such
 691 collections do not include funding received for the operation of
 692 the Title IV-D child support collections and disbursement
 693 program. The clerk of the court shall remit the revenues
 694 collected during the previous month due to the state on or
 695 before the 10th day of each month.

696 (3) No later than January 25, 2015, and each January 25
 697 thereafter for the previous county fiscal year, the clerks of
 698 court, in consultation with the Florida Clerks of Court
 699 Operations Corporation, shall remit to the Department of Revenue
 700 for deposit in the General Revenue Fund the cumulative excess of

701 all fines, fees, service charges, and costs retained by the
 702 clerks of the court, plus any funds received by the clerks of
 703 the court from the Clerks of the Court Trust Fund under s.
 704 28.36(3), that exceed the amount needed to meet their authorized
 705 budget amounts established under s. 28.35, and the Florida
 706 Clerks of Court Operations Corporation shall remit to the
 707 Department of Revenue for deposit in the General Revenue Fund
 708 the cumulative excess of all fines, fees, service charges, and
 709 costs retained in the Clerks of the Court Trust Fund. However,
 710 if the official estimate for funds accruing to the Clerks of the
 711 Court Trust Fund made by the Revenue Estimating Conference for
 712 the current fiscal year or the next fiscal year included in the
 713 estimate is less than the cumulative amount of authorized
 714 budgets from the Clerks of the Court Trust Fund for the current
 715 fiscal year, the Department of Revenue shall deposit the
 716 difference in the Clerks of the Court Trust Fund rather than in
 717 the General Revenue Fund.

718 (4) The Department of Revenue shall collect any funds that
 719 the Florida Clerks of Court Operations Corporation determines
 720 upon investigation were due no later than January 20 but not
 721 remitted to the department.

722 (5) ~~(2)~~ Ten Except as otherwise provided in ss. 28.241 and
 723 34.041, all court related fines, fees, service charges, and
 724 costs are considered state funds and shall be remitted by the
 725 clerk to the Department of Revenue for deposit into the Clerks
 726 of the Court Trust Fund within the Justice Administrative
 727 Commission. However, 10 percent of all court-related fines
 728 collected by the clerk, except for penalties or fines

729 distributed to counties or municipalities under s.
 730 316.0083(1)(b)3. or s. 318.18(15)(a), shall be deposited into
 731 the clerk's Public Records Modernization Trust Fund to be used
 732 exclusively for additional clerk court-related operational needs
 733 and program enhancements.

734 Section 10. Paragraph (b) of subsection (1) of section
 735 34.041, Florida Statutes, is amended, and paragraph (a) of that
 736 subsection is published, to read:

737 34.041 Filing fees.—

738 (1)(a) Filing fees are due at the time a party files a
 739 pleading to initiate a proceeding or files a pleading for
 740 relief. Reopen fees are due at the time a party files a pleading
 741 to reopen a proceeding if at least 90 days have elapsed since
 742 the filing of a final order or final judgment with the clerk. If
 743 a fee is not paid upon the filing of the pleading as required
 744 under this section, the clerk shall pursue collection of the fee
 745 pursuant to s. 28.246. Upon the institution of any civil action,
 746 suit, or proceeding in county court, the party shall pay the
 747 following filing fee, not to exceed:

- 748 1. For all claims less than \$100\$50.
- 749 2. For all claims of \$100 or more but not more than \$500\$75.
- 750 3. For all claims of more than \$500 but not more than
- 751 \$2,500\$170.
- 752 4. For all claims of more than \$2,500\$295.
- 753 5. In addition, for all proceedings of garnishment,
- 754 attachment, replevin, and distress\$85.
- 755 6. Notwithstanding subparagraphs 3. and 5., for all claims
- 756 of not more than \$1,000 filed simultaneously with an action for

757 replevin of property that is the subject of the claim\$125.

758 7. For removal of tenant action\$180.

759
760 The filing fee in subparagraph 6. is the total fee due under
761 this paragraph for that type of filing, and no other filing fee
762 under this paragraph may be assessed against such a filing.

763 (b) ~~The first \$80 of the filing fee collected under~~
764 ~~subparagraph (a)4. shall be remitted to the Department of~~
765 ~~Revenue for deposit into the General Revenue Fund. The next \$15~~
766 ~~of the filing fee collected under subparagraph (a)4.7 and the~~
767 ~~first \$10 of the filing fee collected under subparagraph (a)7.7~~
768 ~~shall be deposited in the State Courts Revenue Trust Fund. By~~
769 the 10th day of each month, the clerk shall submit that portion
770 of the fees collected in the previous month that is in excess of
771 one-twelfth of the clerk's total budget for the performance of
772 court-related functions to the Department of Revenue for deposit
773 into the Clerks of the Court Trust Fund. An additional filing
774 fee of \$4 shall be paid to the clerk. The clerk shall transfer
775 \$3.50 to the Department of Revenue for deposit into the Court
776 Education Trust Fund and shall transfer 50 cents to the
777 Department of Revenue for deposit into the Administrative Clerks
778 ~~of the Court~~ Trust Fund within the Department of Financial
779 Services Justice Administrative Commission to fund clerk
780 education provided by the Florida Clerks of Court Operations
781 Corporation. Postal charges incurred by the clerk of the county
782 court in making service by mail on defendants or other parties
783 shall be paid by the party at whose instance service is made.
784 Except as provided in this section ~~herein~~, filing fees and

785 service charges for performing duties of the clerk relating to
 786 the county court shall be as provided in ss. 28.24 and 28.241.
 787 Except as otherwise provided in this section ~~herein~~, all filing
 788 fees shall be retained as fee income of the office of the clerk
 789 of the circuit court ~~remitted to the Department of Revenue for~~
 790 ~~deposit into the Clerks of the Court Trust Fund within the~~
 791 ~~Justice Administrative Commission~~. Filing fees imposed by this
 792 section may not be added to any penalty imposed by chapter 316
 793 or chapter 318.

794 Section 11. Subsection (5) of section 43.16, Florida
 795 Statutes, is amended to read:

796 43.16 Justice Administrative Commission; membership,
 797 powers and duties.—

798 (5) The duties of the commission shall include, but not be
 799 limited to, the following:

800 (a) The maintenance of a central state office for
 801 administrative services and assistance when possible to and on
 802 behalf of the state attorneys and public defenders of Florida,
 803 the capital collateral regional counsel of Florida, the criminal
 804 conflict and civil regional counsel, and the Guardian Ad Litem
 805 Program, ~~and the Florida Clerks of Court Operations Corporation.~~

806 (b) Each state attorney, public defender, and criminal
 807 conflict and civil regional counsel and, the Guardian Ad Litem
 808 Program, ~~and the Florida Clerks of Court Operations Corporation~~
 809 shall continue to prepare necessary budgets, vouchers that
 810 represent valid claims for reimbursement by the state for
 811 authorized expenses, and other things incidental to the proper
 812 administrative operation of the office, such as revenue

813 transmittals to the Chief Financial Officer and automated
 814 systems plans, but will forward such items ~~same~~ to the
 815 commission for recording and submission to the proper state
 816 officer. However, when requested by a state attorney, a public
 817 defender, a criminal conflict and civil regional counsel, or the
 818 Guardian Ad Litem Program, the commission will either assist in
 819 the preparation of budget requests, voucher schedules, and other
 820 forms and reports or accomplish the entire project involved.

821 Section 12. Paragraph (x) of subsection (2) of section
 822 110.205, Florida Statutes, is amended to read:

823 110.205 Career service; exemptions.—

824 (2) EXEMPT POSITIONS.—The exempt positions that are not
 825 covered by this part include the following:

826 (x) All officers and employees of the Justice
 827 Administrative Commission, Office of the State Attorney, Office
 828 of the Public Defender, regional offices of capital collateral
 829 counsel, offices of criminal conflict and civil regional
 830 counsel, and Statewide Guardian Ad Litem Office, including the
 831 circuit guardian ad litem programs ~~and the Florida Clerks of~~
 832 ~~Court Operations Corporation.~~

833 Section 13. Section 142.01, Florida Statutes, is amended
 834 to read:

835 142.01 Fine and forfeiture fund; disposition of revenue;
 836 clerk of the circuit court.—

837 (1) There shall be established by the clerk of the circuit
 838 court in each county of this state a separate fund to be known
 839 as the fine and forfeiture fund for use by the clerk of the
 840 circuit court in performing court-related functions. The fund

841 shall consist of the following:

842 (a) Fines and penalties pursuant to ss. 28.2402(2),
 843 34.045(2), 316.193, 327.35, 327.72, 379.2203(1), and 775.083(1).

844 (b) That portion of civil penalties directed to this fund
 845 pursuant to s. 318.21.

846 (c) Court costs pursuant to ss. 28.2402(1)(b),
 847 34.045(1)(b), 318.14(10)(b), 318.18(11)(a), 327.73(9)(a) and
 848 (11)(a), and 938.05(3).

849 (d) Proceeds from forfeited bail bonds, unclaimed bonds,
 850 unclaimed moneys, or recognizances pursuant to ss. 321.05(4)(a),
 851 379.2203(1), and 903.26(3)(a).

852 (e) Fines and forfeitures pursuant to s. 34.191.

853 (f) Filing fees received pursuant to ss. 28.241 and 34.041,
 854 unless the disposition of such fees is otherwise required by
 855 law.

856 (g) ~~(f)~~ All other revenues received by the clerk as revenue
 857 authorized by law to be retained by the clerk.

858 ~~(2) All revenues received by the clerk in the fine and~~
 859 ~~forfeiture fund from court related fees, fines, costs, and~~
 860 ~~service charges are considered state funds and shall be remitted~~
 861 ~~monthly to the Department of Revenue for deposit into the Clerks~~
 862 ~~of the Court Trust Fund within the Justice Administrative~~
 863 ~~Commission.~~

864 ~~(3)~~ Notwithstanding the provisions of this section, all
 865 fines and forfeitures arising from operation of the provisions
 866 of s. 318.1215 shall be disbursed in accordance with that
 867 section.

868 Section 14. Section 213.131, Florida Statutes, is amended

869 to read:

870 213.131 Clerks of the Court Trust Fund within the
 871 Department of Revenue ~~Justice Administrative Commission~~.—The
 872 Clerks of the Court Trust Fund is created within the Department
 873 of Revenue ~~Justice Administrative Commission~~.

874 Section 15. Subsection (2) of section 215.22, Florida
 875 Statutes, is amended to read:

876 215.22 Certain income and certain trust funds exempt.—

877 (2) Moneys and income of a revenue nature shared with
 878 political subdivisions or received from taxes or fees authorized
 879 to be levied by any political subdivision, including moneys from
 880 service charges, fees, costs, and fines deposited into the
 881 Clerks of the Court Trust Fund within the Department of Revenue,
 882 shall be exempt from the deduction required by s. 215.20(1).

883 Section 16. Paragraph (qq) of subsection (1) of section
 884 216.011, Florida Statutes, is amended to read:

885 216.011 Definitions.—

886 (1) For the purpose of fiscal affairs of the state,
 887 appropriations acts, legislative budgets, and approved budgets,
 888 each of the following terms has the meaning indicated:

889 (qq) "State agency" or "agency" means any official,
 890 officer, commission, board, authority, council, committee, or
 891 department of the executive branch of state government. For
 892 purposes of this chapter and chapter 215, "state agency" or
 893 "agency" includes, but is not limited to, state attorneys,
 894 public defenders, criminal conflict and civil regional counsel,
 895 capital collateral regional counsel, ~~the Florida Clerks of Court~~
 896 ~~Operations Corporation,~~ the Justice Administrative Commission,

897 the Florida Housing Finance Corporation, and the Florida Public
 898 Service Commission. Solely for the purposes of implementing s.
 899 19(h), Art. III of the State Constitution, the terms "state
 900 agency" or "agency" include the judicial branch.

901 Section 17. For the period of July 1, 2013, through
 902 September 30, 2013, the authorized budget for the clerks of the
 903 circuit court shall be \$110,845,078 and the authorized budget
 904 for the Florida Clerks of Court Operations Corporation shall be
 905 \$405,412. The Florida Clerks of Court Operations Corporation
 906 shall determine budget amounts for the individual clerks for
 907 that period. For the county fiscal year beginning October 1,
 908 2013, and ending September 30, 2014, the authorized budget for
 909 the clerks of the circuit court shall be \$443,380,312 and the
 910 authorized budget for the Florida Clerks of Court Operations
 911 Corporation shall be \$1,621,648. The Florida Clerks of Court
 912 Operations Corporation shall determine budget amounts for the
 913 individual clerks for that period.

914 Section 18. Except as otherwise expressly provided in this
 915 act and except for this section, which shall take effect upon
 916 this act becoming a law, this act shall take effect July 1,
 917 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 583 Estates

SPONSOR(S): Insurance & Banking Subcommittee; Civil Justice Subcommittee; Spano

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 492

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
3) Justice Appropriations Subcommittee		Toms <i>SA</i>	Jones Darity <i>JJD</i>
4) Judiciary Committee			

SUMMARY ANALYSIS

The administration of estates and trusts is governed by the Florida Probate Code (Chapters 731-735, Florida Statutes) and the Florida Trust Code (Chapter 736, Florida Statutes). The bill makes a number of changes to the Florida Unclaimed Property Act (ch. 717, F.S.), the Florida Probate Code (chs. 731 and 732), and the Florida Trust Code (ch. 736). The bill provides:

- A trustee may report and deliver unclaimed intangible property to the Department of Financial Services after two years, instead of five years.
- A caveator is not required to serve notice on him or herself when filing a petition for administration of the estate.
- Any gift received by a lawyer, or a relative of the lawyer, pursuant to a written instrument that the lawyer prepared is void.
- A clerk of court, upon receipt of a will, is required to keep the will in its original form for 20 years.
- The jurisdiction of Florida courts to adjudicate trust disputes is expanded by the creation of an applicable long arm statute.
- Notice to certain trust beneficiaries may be provided by mail requiring return receipt, in certain circumstances.
- A conflicting definition of "distributee" found in the statutes is reconciled.
- Conflict between a statute and the Florida Rules of Civil Procedure over *forum non conveniens* is reconciled by a repeal of the statute.
- A trustee may provide trust accountings more frequently than once per year.
- Federal estate tax returns for decedents dying after December 31, 2012, must be copied to the Department of Revenue.

This bill may have an insignificant fiscal impact due to workload to state and local governments. See FISCAL COMMENTS.

The bill provides an effective date of October 1, 2013, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Estate Tax Returns

The provisions of the Internal Revenue Code eliminating the state death tax credit and state generation-skipping transfer tax credit had been scheduled to sunset on December 31, 2012. However, as a result of the passage of The American Taxpayer Relief Act of 2012,¹ the state death tax credit and state generation-skipping transfer tax credit were permanently eliminated and replaced with a federal estate tax deduction for state death taxes.

Accordingly, Section 1 of the bill eliminates the language of s. 198.13(4), F.S. that indicates that subsection (4) does not apply to estates of decedents dying after December 31, 2012. The bill provides that Section 1 of the bill applies retroactively to January 1, 2013, to avoid the need for some estates to file zero tax returns.

Unclaimed Property Held by a Trustee

Current Situation

Property is considered legally unclaimed after the holder of the property is unable to find the lawful owner. This may happen because the lawful owner has failed to make contact for a period of time, no lawful owner is known, or when the lawful owner refuses to accept the property. The "Florida Disposition of Unclaimed Property Act"² determines how long an unclaimed asset must be held, what reporting requirements must be observed by the holder, and how unclaimed property is determined. After delivery to the state, the property is managed and held by the Florida Department of Financial Services and may be claimed thereafter by the rightful owner.

Under current law, a trustee holding property for an unknown beneficiary³ must retain the property for five years before the property is presumed unclaimed.⁴ Funds held by a financial organization (including a trust company), an agent, or a fiduciary are presumed unclaimed after five years unless the owner has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file with the fiduciary. After five years of inactivity, the trustee must report and deliver the unclaimed property to the Department of Financial Services.⁵

Corporate fiduciaries have procedures to continue management of unclaimed assets for the five year time frame. However, when individuals serve as trustees, they may not realize that they must manage assets which remain unclaimed. Failure to properly manage these assets is a breach of the fiduciary duty of the trustee. Further, the trustee administering a testamentary bequest has a much longer obligation to hold unclaimed property than the personal representative of an estate with the same duties of distribution.

¹ H.R. 8--112th Congress: American Taxpayer Relief Act of 2012. (2012). In www.GovTrack.us. Retrieved March 6, 2013, from <http://www.govtrack.us/congress/bills/112/hr8>

² Section 717.001, et seq; F.S.

³ This includes beneficiaries who cannot be located, who are undetermined heirs, or who refuse to accept distributions, among others.

⁴ Section 717.112(1), F.S.

⁵ Sections 717.117, 717.119, F.S.

While the Florida Probate Code⁶ provides that a personal representative holding unclaimed property must petition the court to deposit unclaimed funds in the registry of the court, there is no analogous provision in the Florida Trust Code⁷ for a trustee. The only provision is the general one for all holders of unclaimed property in ch. 717, F.S., which requires the five year wait to commence distribution of unclaimed assets. While a personal representative will usually dispose of unclaimed funds by court order within one year,⁸ a trustee must wait and administer unclaimed assets for five years of inactivity.

Effect of Proposed Changes

Sections 2, 3, and 4 of the bill addresses unclaimed intangible⁹ property held by trustees of trusts administered pursuant to ch. 736, F.S.,¹⁰ putting trust administration more on a par with probate administration by shortening the time that a trustee must hold unclaimed property from the current five years to two years. At the end of the two year period, the trustee would deliver the unclaimed property to the Florida Department of Financial Services in the same manner as under current law.

Petitions for Administration Filed by Caveators

Current Situation

Under current law, a 'caveat'¹¹ is filed with the clerk of court by a person who might have an interest in an estate administration, but who might not otherwise be entitled to notice of the proceeding. This might be a creditor or an heir. If a caveat "has been filed by an interested person other than a creditor, the court may not admit a will of the decedent to probate or appoint a personal representative until formal notice of the petition for administration has been served on the caveator. . ."¹²

Anecdotal evidence suggests that in some circuits the caveator is required to actually serve formal notice of the petition on him or herself, as caveator, before the petition for administration can be considered by the court. The caveator is placed in a position otherwise of being required to withdraw the caveat, thus opening a window to another party to file a competing petition for administration and secure appointment without consideration of the caveat.

Effect of Proposed Changes

Section 5 of the bill amends s. 731.110(3), F.S., to avoid the need for a caveator to serve formal notice of his or her own petition for administration on him or herself before the court may consider the petition. The change makes it unnecessary for the caveator to withdraw the caveat should the caveator fail to provide itself formal notice of its own petition for administration. The changes will eliminate an unnecessary delay in the issuance of Letters of Administration to an otherwise qualified personal representative.

⁶ See, s. 733.816(1), F.S. The Florida Probate Code is found in chs. 731 -735, F.S.

⁷ The Florida Trust Code is found in ch. 736, F.S.

⁸ See, Fla. R. Pro. Proc. 5.400(c).

⁹ Tangible personal property was specifically omitted by amendment adopted March 6, 2013.

¹⁰ The bill amends ss. 717.112 and 717.101(24), F.S., and creates s. 717.1125, F.S.

¹¹ "Let him beware.[Lat.] A formal notice or warning given by a party interested to a court, judge, or ministerial officer against the performance of certain acts within his power and jurisdiction. This process may be used in the proper courts to prevent (temporarily or provisionally) the proving of a will or the grant of administration . . ." Black's Law Dictionary, 2d Ed., online edition <http://thelawdictionary.org/caveat/>. [Last accessed February 21, 2013].

¹² Section 731.110(3), F.S.

Gifts to Lawyers

Current Situation

Chapter 4 of the Rules Regulating the Florida Bar contains the Rules of Professional Conduct for lawyers, and Rule 4-1.8 addresses conflicts of interest and prohibited transactions. Rule 4-1.8(c) provides in pertinent part, "A lawyer shall not solicit any substantial gift from a client, including a testamentary gift or prepare on behalf of a client an instrument giving the lawyer or person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to client."

A violation of this Rule, however, does not give rise to a civil cause of action or render the gift to the lawyer void as a matter of law. As a consequence, a lawyer may be entitled to retain a gift or bequest from a client even though the lawyer is subject to discipline. Further, even if the bequest or gift is ultimately set aside, costs of litigation are involved to achieve that result.

In the absence of a specific statutory prohibition, Florida courts have held that a violation of Rule 4-1.8 does not render a gift to the lawyer in violation of the Rule void. In *Agee v. Brown*, 73 So. 3d 882 (Fla. 4th DCA 2011), the 4th DCA reversed the trial court which had found that a gift to a drafting lawyer under a will was void as a matter of law because it violated Rule 4-1.8 and public policy. The *Agee* court held that the trial court had improperly "incorporated Rule 4-1.8(c) of the Rules Regulating The Florida Bar into the statutory framework of the probate code." *Id.* at 886. The court found that this interpretation was erroneous as "[i]t is a well-established tenet of statutory construction that courts are not at liberty to add words to the statute that were not placed there by the Legislature." *Id.* The court noted that the "best way to protect the public from unethical attorneys in the drafting of wills . . . is entirely within the province of the Florida Legislature." *Id.* at 887.

In the absence of a specific statute rendering a gift void, beneficiaries are left to challenge the instrument in court based upon standard allegations of fraud, undue influence, or duress.

Effect of Proposed Changes

Section 7 of the bill adds a new section to the Florida Probate Code¹³ that would render any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift. It is noted that the provision makes the gift void rather than voidable,¹⁴ avoiding proof requirements in the event of a contest.

The bill is comprehensive in its application. It provides that "any part of a written instrument which makes a gift to a lawyer or a person related to the lawyer is void if the lawyer prepared or supervised the execution of the written instrument, or solicited the gift, unless the lawyer or other recipient of the gift is related to the person making the gift." It further provides that this provision may not be waived.

There are safeguards in the bill for bona fide purchaser without notice. If a transfer is made, the lender or purchaser takes title free of any claims, whether or not the gift is void.

The bill does not prevent a lawyer from acting as a fiduciary (for example, as a personal representative or under a power of attorney). It does not prevent a lawyer from inheriting from a client. A client is free to draft a will or other instrument making a gift to the lawyer or the lawyer's family. The statute prevents the lawyer or persons related to the lawyer from preparing the document making the gift. In such circumstances, the client should be advised to go to an independent lawyer to have the instrument

¹³ Section 732.806, F.S.

¹⁴ A voidable event is arguable, and facts may be presented to challenge it. In contrast, a void event requires no proof of fact because it is a legal nullity. See, eg., *McMurrer v. Marion County*, 936 So.2d 19 (Fla. 5th DCA 2006).

making the gift prepared. The bill makes an exception for the typical situation in which the lawyer prepares a document for a family member or other related person.

Production of Wills

Current Situation

The Florida Supreme Court has made changes to the Rules of Judicial Administration to implement electronic filing and record keeping for all circuit courts in the state of Florida.¹⁵ There are two reasons that original wills and codicils require special attention in response to this system. First, the originals of these documents are required for evidentiary purposes, and second, the clerk of the court is used as the depository for these documents.

In probate proceedings, original wills and codicils and information regarding the identity of interested persons are often submitted *ex parte*. Some wills are simply deposited with the clerk without probate administration. If heirs are unknown, notice is not properly given, or in the event of fraud on the court, months or years might pass before interested parties learn of the administration. If proper notice was not provided, the interested person may be able to petition to reopen the estate even after a final order is issued.¹⁶ If a forgery has occurred or a will has been altered in some way, the retention of the original document is crucial from an evidentiary standpoint to establish the true beneficiaries of an estate.

Because of the unique nature of the documents, s. 732.901, F.S., currently provides that original wills are "deposited," not filed with the clerk. Further, the Clerk's Schedule (GS-11)¹⁷ for the General Records Schedules for all agencies, posted on the Department of State's Division of Library Services website, requires the clerk to retain an original will deposited for safekeeping for 20 years. In addition, Fla. R. Prob. Proc. 5.043 provides:

Notwithstanding any rule to the contrary, and unless the court orders otherwise, any original executed will or codicil deposited with the court shall be retained by the clerk in its original form and may not be destroyed or disposed of by the clerk for 20 years after submission regardless of whether the will or codicil has been permanently recorded as defined by Rule 2.430, Florida Rules of Judicial Administration.

When a probate administration is opened, the original will is added to the court file. In the event of electronic storage and eventual destruction of the file, it is not clear under present law that the will is in the nature of original evidence which must be preserved.

With the deposit of the will, the custodian is required to provide the date of death and social security number of the decedent.¹⁸

¹⁵ Fla. R. Jud. Admin. 2.525.

¹⁶ Fla. R. Civ. Pro. 1.540 provides for setting aside a final order, including orders of discharge, in the event of fraud on the court.

¹⁷ The full document may be found at dliis.dos.state.fl.us/barm/genschedules/GS11-2010.doc (Last viewed February 19, 2013).

¹⁸ See, s. 732.901(1), F.S.

Effect of Proposed Changes

Section 8 of the bill changes s. 732.901, F.S., to codify the probate rule and specify that all wills and codicils are "deposited" not filed. In addition, regardless of where the original is maintained by the clerk, the original will or codicil must be maintained in its original form for a period not less than 20 years. For record keeping purposes, the clerk may maintain the will or codicil as part of the probate file. However, the original will or codicil may not be scanned and destroyed during the 20 year period. The bill also provides for when an original will or codicil can be submitted.

Further, the bill provides that the term "will" also includes a separate writing as defined in s. 732.515, F.S. "Separate writings" referred to in a will¹⁹ often contain devises of valuable tangible property and are subject to the same dangers of forgery or alteration as an original will or codicil.

Finally, the bill revises the statute to require only the last four digits of the decedent's social security number be supplied to the clerk upon deposit of the original document to comply with new confidentiality rules.²⁰

Definitions for Distributee and Permissible Distributee

Current Situation

There are two definitions in use for the word, "distributee." In the Florida Trust Code, the word "distributee" is used to mean a person who is *entitled* to a distribution. Section 736.0103(14), F.S., defines the term "qualified beneficiary" as a living beneficiary who is a "distributee or a permissible distributee" on the date the qualification is being determined. In this statute the word "distributee" is used in its plain and ordinary meaning – a person who is entitled to a distribution.

In the Florida Probate Code, however, the term "distributee" means a person who has *already* received estate property from a personal representative or other fiduciary, per the definition in s. 731.201(12), F.S.

In s. 731.201(12), F.S., a person who has not yet received a distribution, but who is entitled to or eligible to receive a distribution, is not yet a "distributee." Comparatively, in ch. 736, F.S., a person who has not yet received a distribution but who is entitled to or eligible to receive a distribution should also be a "distributee." Further, a person who received a complete distribution is a "distributee" under s. 731.201(12), F.S.

Applying the s. 731.201, F.S., definition of "distributee" to ch. 736, F.S., creates an absurd result. For example, if qualified beneficiaries are limited to persons who are "distributees" as defined in s. 731.201(12), F.S., then only persons who have already received distributions could be qualified beneficiaries, and by implication, any beneficiary who has not yet received a distribution would not be a qualified beneficiary. This is not the logical or intended result. In ch. 736, F.S., a person who has received a complete distribution would no longer be a "beneficiary," as defined in s. 736.0103(4), F.S., and therefore would not be a "qualified beneficiary" as defined in s. 736.0103(14), F.S. In short, in the trust context, those persons who have received their complete distributions should no longer be qualified beneficiaries, and those persons yet to receive their distribution should be qualified beneficiaries. The definitional sections should not impede this result.

¹⁹ Section 732.515, F.S., allows a testator to devise personalty by separate writing without changing the entire will, as long as there is an intention expressed in the will to take advantage of that provision.

²⁰ Fla. R. Jud. Admin. 2.425.

Even though s. 731.201, F.S., provides that the definitions apply to ch. 736, F.S., subject to additional definitions and unless the context requires otherwise, the usage of the word "distributee" in ch. 736, F.S., without a definition other than the one in s. 731.201, F.S., creates confusion.

Effect of Proposed Changes

Section 9 of the bill resolves the definition of "distributee" for purposes of the Florida Trust Code. The bill adds new definitions of "distributee" and "permissible distributee" that will apply for purposes of ch. 736, F.S., the Florida Trust Code, by adding two new paragraphs to s. 736.0103 to create new definitions for "distributee" and "permissible distributee."

"Distributee" means a beneficiary who is currently entitled to receive a distribution, thereby excluding those persons who have already received their distributions.

"Permissible distributee" means a beneficiary who is currently eligible to receive a distribution but who has not yet received a distribution.

Currently, the word "distributee" appears in s. 736.0103(14), F.S., (qualified beneficiary), s. 736.0110, F.S., (others treated as qualified beneficiaries), and the title of s. 736.1018, F.S., (liability of distributee). The new definition of "distributee" will not create an unintended result when applied to any of these sections.²¹

In Rem Jurisdiction over Trustees and Beneficiaries

Current Situation

Section 736.0202(1), F.S. provides that a trustee, including a nonresident trustee, who accepts trusteeship of a trust having its principal place of administration in Florida, or who moves the principal place of administration of a trust to Florida, submits personally to the jurisdiction of the courts of Florida regarding any matter involving the trust. The acts of accepting trusteeship or moving a trust to Florida are hidden "long-arm" provisions, not contained in s. 48.193(1), F.S., designed to allow Florida courts to acquire personal jurisdiction over nonresidents who engage in those acts.

Under decisions of the United States Supreme Court, followed in the leading Florida case of *Venetian Salami Co. v. Parthenais*, 554 So.2d 499 (Fla. 1989), a Florida court may exercise jurisdiction over a defendant who cannot be served with process within the state (and who does not appear voluntarily) only if Florida law authorizes it, and then only if the defendant has sufficient minimum contacts with Florida such that maintaining the suit does not offend traditional notions of fair play and substantial justice. That, in turn, depends on whether the relationship among the defendant, the forum, and the litigation is such that the defendant should reasonably expect to be sued in Florida. This "minimum contacts" requirement always requires a factual analysis. So-called "long-arm" statutes are intended to specify factual situations that are likely to satisfy a minimum contacts test, but falling within the statute's parameters does not automatically satisfy that test.²²

Many Florida trusts have trustees and beneficiaries who are not residents of the state, and it is reported among practitioners that it is difficult under current laws to acquire jurisdiction over all necessary parties in a case involving a trust. Florida's generic long-arm statute, s. 47.193(1), F.S., is reportedly too limited to include the necessary parties in most actions involving trusts, and the first step in acquiring jurisdiction over a nonresident is that Florida law must authorize it.

²¹ Note that the word "distributee" as used in the title of s. 736.1018, F.S., is not inconsistent with the definition of the word "distributee" in s. 731.201(12), F.S., or the new definition in s. 736.0103, F.S.

²² *Id.* at 502.

Effect of Proposed Changes

The bill creates s. 736.02025, F.S., a statutory means for Florida courts to acquire jurisdiction over nonresident trustees and trust beneficiaries in cases involving trusts administered in Florida through enactment of trust-related "long-arm" provisions. Such provisions specify the acts that will give a Florida court jurisdiction over nonresident trustees and trust beneficiaries who have sufficient contacts with Florida to be subject to jurisdiction of its courts consistent with constitutional due process principles, but which are not covered by the existing "long-arm" provisions in ch. 48, F.S.

Service of Process upon Trustees and Beneficiaries

Current Situation

The Florida Probate Code²³ provides for service upon beneficiaries and creditors by mail in respect to their interests in the property. There is no analogous provision allowing a trustee to provide service for matters involving the trust under administration by any less means than consent or formal service under s. 48, F.S.

Effect of Proposed Changes

Section 10 of the bill creates s. 736.02025, F.S., which provides for service of process as provided in ch. 48, F.S., the general statute on service of process. It also provides for service of process by mail or commercial delivery service when the case involves an interest in trust property but does not seek a personal judgment or an order compelling a trustee or trust beneficiary to take specific action.²⁴ Subsection (2) of the new section parallels existing service by mail provisions in s. 48.194, F.S. Subsection (3) of the new section, allowing service by first-class mail in certain circumstances, contains elements of s. 48.194(3), F.S. This makes service of process in trust administration more like service in an estate administration, when the matter to be heard or decided is limited to the beneficiary's interest in the trust.

Repeal of s. 736.0205, F.S.

Current Situation

Section 736.0205 is identical to former s. 737.203, F.S., which was enacted in 1974 before the Florida Supreme Court added Fla. R. Civ. Pro. 1.061, which adopted the federal doctrine of *forum non conveniens* in 1996.²⁵ Section 736.0205, F.S., on its face appears to provide a defendant in trust litigation an absolute right to object to allowing the trust litigation to proceed in Florida if the trust has its principal place of administration in another state (unless all interested parties could not be bound by litigation of the courts in the state where the trust is registered or has its principal place of administration).

However, the statute has not been construed that way. Florida courts have held that s. 736.0205, F.S., is not jurisdictional, but is rather a *forum non conveniens* statute which requires a court to determine

²³ Chs. 731-735, F.S. See, also s. 731.301, F.S., and Fla. R. Pro. Proc. 5.040 for notice provisions.

²⁴ An action limited in scope to particular property that does not seek a personal judgment is called an *in rem* or *quasi in rem* action.

²⁵ "Forum non conveniens [a Latin phrase which translates as "inconvenient forum"] is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere. Forum non conveniens also serves as a brake on the tendency of some plaintiffs to shop for the "best" jurisdiction in which to bring suit." See, *Kinney System, Inc. v. Continental Insurance Co.*, 674 So.2d 86 at 87 (Fla. 1996).

the “most appropriate forum” in which the case should proceed.²⁶ Although s. 736.0205, F.S., has been labeled a statute of *forum non conveniens*, the wording of the statute suggests that courts have limited discretion in allowing litigation to proceed over the objection of a defendant. This has led to significant confusion and litigation over the standards and burdens of proof for Florida courts to apply in addressing objections raised under the statute. It has also been suggested that the statute shifts the burden to the plaintiff to prove that their choice of venue is appropriate.²⁷ This conflicts with Fla. R. Civ. Pro. 1.061, which provides specifically that the defendant has the burden of pleading and proving the facts necessary to obtain a change of venue, and provides for a balancing of interests before dismissing a lawsuit.

In addition to conflict with Rule 1.061, the statute is misleading to attorneys and their clients in providing for a seemingly automatic dismissal of a trust case in which the trust’s principal place of administration is in another state. This is contrary to the long-arm jurisdictional principle that nonresidents should be accountable in Florida courts for tortious actions by them that have consequences or repercussions within Florida.²⁸

Effect of Proposed Changes

Section 12 of the bill repeals s. 736.0205, F.S., and will thus require courts to conduct the four-part analysis contained in Fla. R. Civ. Pro. 1.061 in deciding a motion to dismiss a case on the basis of *forum non conveniens*. The repeal will also provide clarity in that existing law provides little guidance on the factors for a court to consider in deciding a motion to dismiss under the current statute.

Section 13 of the bill also repeals 736.0807(4), F.S., which is unnecessary after the amendments to s. 736.0202, F.S., outlined above.

Trust accountings

Current Situation

Under current law, a trustee has a duty to provide an accounting. The current statutory provision concerning the duty to account by a trustee provides in F.S. 736.0813(1)(d), F.S.: “A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee.” The accounting must be in the format dictated by s. 736.08135, F.S.

There are no express provisions regarding what the resulting duties are if the trustee accounts on a period more often than annually. The statute implies, but does not make explicit, that a trustee who provides more frequent accountings to a qualified beneficiary satisfies its duty to account to qualified beneficiaries.

Corporate fiduciaries commonly provide monthly or quarterly accountings to qualified beneficiaries. Limited confusion has arisen at the trial court level about whether accountings provided more frequently than annually satisfy the trustee’s duty to account.

Effect of Proposed Changes

Section 14 of the bill modifies s. 736.0813(1)(d), F.S., to provide that a trustee may provide accountings to qualified beneficiaries more frequently than annually and satisfy the duty to account, without providing a specific annual accounting. The bill provides that an accounting must cover the time period

²⁶ See, e.g., *Estate of McMillian*, 603 So. 2d 685 (Fla. 1st DCA 1992).

²⁷ *Id.* at 688.

²⁸ See, *Wendt v. Horowitz*, 822 So.2d 1252 (Fla. 2002); *Canale v. Rubin*, 20 So.3d 463 (Fla. 2d DCA 2009).

from the last accounting or, if there are no previous accountings, from the date the trustee first became accountable.

Conforming Changes

Sections 15-20 of the bill amend ss. 607.0802, 731.201, 733.212, 736.0802, 736.08125, and 738.104, F.S., to conform cross-references to changes made by the bill.

Effective date

Section 21 of the bill provides for an effective date of October 1, 2013, except as otherwise provided.

B. SECTION DIRECTORY:

Section 1 amends s. 198.13, F.S., regarding tax return to be made in certain cases and certificate of nonliability.

Section 2 amends s. 717.101, F.S., regarding definitions.

Section 3 amends s. 717.112, F.S., regarding property held by agents and fiduciaries.

Section 4 creates s. 717.1125, F.S., regarding property held by fiduciaries under trust instruments.

Section 5 amends s. 731.110, F.S., regarding caveats.

Section 6 amends s. 732.703, F.S., regarding effect of divorce, dissolution, or invalidity of marriage on disposition of certain assets at death.

Section 7 creates s. 732.806, F.S., regarding gifts to lawyers and other disqualified persons.

Section 8 amends s. 732.901, F.S., regarding production of wills.

Section 9 amends s. 736.0103, F.S., regarding definitions.

Section 10 amends s. 736.0202, F.S., regarding jurisdiction over trustee and beneficiary.

Section 11 creates s. 736.02025, F.S., regarding service of process.

Section 12 repeals s. 736.0205, F.S., regarding trust proceedings.

Section 13 repeals s. 736.0807, F.S., regarding delegation by trustee.

Section 14 amends s. 736.0813, F.S., regarding duty to inform and account.

Section 15 amends s. 607.0802, F.S., regarding qualifications of directors.

Section 16 amends s. 731.201, F.S., regarding general definitions.

Section 17 amends s. 733.212, F.S., regarding notice of administration.

Section 18 amends s. 736.0802, F.S., regarding duty of loyalty.

Section 19 amends s. 736.08125, F.S., regarding protection of successor trustees.

Section 20 amends s. 738.104, F.S., regarding trustee's power to adjust.

Section 21 provides an effective date of October 1, 2013, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
See fiscal comments.
2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
The bill does not appear to have any impact on local government revenues.
2. Expenditures:
See fiscal comments.

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:

The Florida Court Clerks and Comptrollers Association has indicated that this bill will have an insignificant fiscal impact on the Clerks of Court. The Office of State Courts Administrator has indicated the courts may see an insignificant increased number of cases relating to administration of trusts owing to expanded in rem and personal jurisdiction, and likely an insignificant increase in relation to civil actions against lawyers preparing or supervising preparation of instruments impermissibly transferring gifts to disqualified lawyers and related persons. The courts may also experience an insignificant increase in revenue from additional filing fees.

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:

Changes to s. 732.806, F.S., indicate that gifts to lawyers under certain circumstances are void, yet attempts to protect transferees without notice in subsection (4). A void event is a nullity and cannot convey title.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments provide:

- Section 198.13(4), F.S., is amended to remove its application to estates of decedents dying after December 31, 2012; and
- Section 3 of the bill, which creates s. 717.1125, F.S., is amended to provide that only intangible property held by fiduciaries is presumed unclaimed after two years.

On March 19, 2013, the Insurance & Banking Subcommittee considered and adopted two amendments to the committee substitute. The amendments provide:

- Section 1 of the bill applies retroactively to January 1, 2013, to avoid the need for some estates to file zero tax returns.
- The bill's effective date remains October 1, 2013, except as otherwise provided.

The Insurance & Banking Subcommittee reported the bill favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

1 A bill to be entitled
2 An act relating to estates; amending s. 198.13, F.S.;
3 deleting a provision that provides that certain
4 information relating to a state death tax credit or a
5 generation-skipping transfer credit is not applicable
6 to estates of decedents dying after a specified date;
7 providing for retroactive effect and application;
8 amending s. 717.101, F.S.; providing a definition;
9 amending s. 717.112, F.S.; providing an exception to
10 property held by agents and fiduciaries; creating s.
11 717.1125, F.S.; providing that intangible property
12 held by fiduciaries under trust instruments is
13 presumed unclaimed under certain circumstances;
14 amending s. 731.110, F.S.; specifying that a certain
15 subsection does not require a caveator to be served
16 with formal notice of its own petition for
17 administration; amending s. 732.703, F.S.; revising
18 language regarding instruments governed by the laws of
19 a different state; creating s. 732.806, F.S.;
20 providing provisions relating to gifts to lawyers and
21 other disqualified persons; amending s. 732.901, F.S.;
22 requiring the custodian of a will to supply the
23 testator's date of death or the last four digits of
24 the testator's social security number upon deposit;
25 providing that an original will submitted with a
26 pleading is considered to be deposited with the clerk;
27 requiring the clerk to retain and preserve the
28 original will in its original form for a certain

29 | period of time; amending s. 736.0103, F.S.; providing
 30 | definitions; amending s. 736.0202, F.S.; providing for
 31 | in rem jurisdiction and personal jurisdiction over a
 32 | trustee, beneficiary, or other person; deleting a
 33 | provision referring to other methods of obtaining
 34 | jurisdiction; creating s. 736.02025, F.S.; providing
 35 | provisions for methods of service of process in
 36 | actions involving trusts and trust beneficiaries;
 37 | repealing s. 736.0205, F.S., relating to trust
 38 | proceedings and the dismissal of matters relating to
 39 | foreign trusts; repealing s. 736.0807(4), F.S.,
 40 | relating to delegation of powers by a trustee;
 41 | amending s. 736.0813, F.S.; clarifying the duties of a
 42 | trustee to provide a trust accounting; amending ss.
 43 | 607.0802, 731.201, 733.212, 736.0802, 736.08125, and
 44 | 738.104, F.S.; conforming cross-references; providing
 45 | effective dates.

46 |

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

48 |

49 | Section 1. Effective upon this act becoming a law and
 50 | operating retroactively to January 1, 2013, subsection (4) of
 51 | section 198.13, Florida Statutes, is amended to read:

52 | 198.13 Tax return to be made in certain cases; certificate
 53 | of nonliability.—

54 | (4) Notwithstanding any other provisions of this section
 55 | and applicable to the estate of a decedent who dies after
 56 | December 31, 2004, if, upon the death of the decedent, a state

57 death tax credit or a generation-skipping transfer credit is not
 58 allowable pursuant to the Internal Revenue Code of 1986, as
 59 amended:

60 (a) The personal representative of the estate is not
 61 required to file a return under subsection (1) in connection
 62 with the estate.

63 (b) The person who would otherwise be required to file a
 64 return reporting a generation-skipping transfer under subsection
 65 (3) is not required to file such a return in connection with the
 66 estate.

67
 68 ~~The provisions of this subsection do not apply to estates of~~
 69 ~~decedents dying after December 31, 2012.~~

70 Section 2. Present subsections (22) and (23) of section
 71 717.101, Florida Statutes, are redesignated as subsections (23)
 72 and (24), respectively, and a new subsection (22) is added to
 73 that section, to read:

74 717.101 Definitions.—As used in this chapter, unless the
 75 context otherwise requires:

76 (22) "Trust instrument" means a trust instrument as
 77 defined in s. 736.0103.

78 Section 3. Subsection (1) of section 717.112, Florida
 79 Statutes, is amended to read:

80 717.112 Property held by agents and fiduciaries.—

81 (1) Except as provided in ss. 717.1125 and 733.816, all
 82 intangible property and any income or increment thereon held in
 83 a fiduciary capacity for the benefit of another person is
 84 presumed unclaimed unless the owner has within 5 years after it

85 | has become payable or distributable increased or decreased the
 86 | principal, accepted payment of principal or income, communicated
 87 | concerning the property, or otherwise indicated an interest as
 88 | evidenced by a memorandum or other record on file with the
 89 | fiduciary.

90 | Section 4. Section 717.1125, Florida Statutes, is created
 91 | to read:

92 | 717.1125 Property held by fiduciaries under trust
 93 | instruments.—All intangible property and any income or increment
 94 | thereon held in a fiduciary capacity for the benefit of another
 95 | person under a trust instrument is presumed unclaimed unless the
 96 | owner has, within 2 years after it has become payable or
 97 | distributable, increased or decreased the principal, accepted
 98 | payment of principal or income, communicated concerning the
 99 | property, or otherwise indicated an interest as evidenced by a
 100 | memorandum or other record on file with the fiduciary.

101 | Section 5. Subsection (3) of section 731.110, Florida
 102 | Statutes, is amended to read:

103 | 731.110 Caveat; proceedings.—

104 | (3) If a caveat has been filed by an interested person
 105 | other than a creditor, the court may not admit a will of the
 106 | decedent to probate or appoint a personal representative until
 107 | formal notice of the petition for administration has been served
 108 | on the caveator or the caveator's designated agent and the
 109 | caveator has had the opportunity to participate in proceedings
 110 | on the petition, as provided by the Florida Probate Rules. This
 111 | subsection does not require a caveator to be served with formal
 112 | notice of its own petition for administration.

113 Section 6. Subsection (4) of section 732.703, Florida
 114 Statutes, is amended to read:

115 732.703 Effect of divorce, dissolution, or invalidity of
 116 marriage on disposition of certain assets at death.—

117 (4) Subsection (2) does not apply:

118 (a) To the extent that controlling federal law provides
 119 otherwise;

120 (b) If the governing instrument is signed by the decedent,
 121 or on behalf of the decedent, after the order of dissolution or
 122 order declaring the marriage invalid and such governing
 123 instrument expressly provides that benefits will be payable to
 124 the decedent's former spouse;

125 (c) To the extent a will or trust governs the disposition
 126 of the assets and s. 732.507(2) or s. 736.1105 ~~736.1005~~ applies;

127 (d) If the order of dissolution or order declaring the
 128 marriage invalid requires that the decedent acquire or maintain
 129 the asset for the benefit of a former spouse or children of the
 130 marriage, payable upon the death of the decedent either outright
 131 or in trust, only if other assets of the decedent fulfilling
 132 such a requirement for the benefit of the former spouse or
 133 children of the marriage do not exist upon the death of the
 134 decedent;

135 (e) If, under the terms of the order of dissolution or
 136 order declaring the marriage invalid, the decedent could not
 137 have unilaterally terminated or modified the ownership of the
 138 asset, or its disposition upon the death of the decedent;

139 (f) If the designation of the decedent's former spouse as
 140 a beneficiary is irrevocable under applicable law;

141 (g) If the governing instrument ~~directing the disposition~~
 142 ~~of the asset at death~~ is governed by the laws of a state other
 143 than this state;

144 (h) To an asset held in two or more names as to which the
 145 death of one coowner vests ownership of the asset in the
 146 surviving coowner or coowners;

147 (i) If the decedent remarries the person whose interest
 148 would otherwise have been revoked under this section and the
 149 decedent and that person are married to one another at the time
 150 of the decedent's death; or

151 (j) To state-administered retirement plans under chapter
 152 121.

153 Section 7. Section 732.806, Florida Statutes, is created
 154 to read:

155 732.806 Gifts to lawyers and other disqualified persons.-

156 (1) Any part of a written instrument which makes a gift to
 157 a lawyer or a person related to the lawyer is void if the lawyer
 158 prepared or supervised the execution of the written instrument,
 159 or solicited the gift, unless the lawyer or other recipient of
 160 the gift is related to the person making the gift.

161 (2) This section is not applicable to a provision in a
 162 written instrument appointing a lawyer, or a person related to
 163 the lawyer, as a fiduciary.

164 (3) A provision in a written instrument purporting to
 165 waive the application of this section is unenforceable.

166 (4) If property distributed in kind, or a security
 167 interest in that property, is acquired by a purchaser or lender
 168 for value from a person who has received a gift in violation of

169 this section, the purchaser or lender takes title free of any
 170 claims arising under this section and incurs no personal
 171 liability by reason of this section, whether or not the gift is
 172 void under this section.

173 (5) In all actions brought under this section, the court
 174 must award taxable costs as in chancery actions, including
 175 attorney fees. When awarding taxable costs and attorney fees
 176 under this section, the court may direct payment from a party's
 177 interest in the estate or trust, or enter a judgment that may be
 178 satisfied from other property of the party, or both. Attorney
 179 fees and costs may not be awarded against a party who, in good
 180 faith, initiates an action under this section to declare a gift
 181 void.

182 (6) If a part of a written instrument is invalid by reason
 183 of this section, the invalid part is severable and may not
 184 affect any other part of the written instrument which can be
 185 given effect, including a term that makes an alternate or
 186 substitute gift. In the case of a power of appointment, this
 187 section does not affect the power to appoint in favor of persons
 188 other than the lawyer or a person related to the lawyer.

189 (7) For purposes of this section:

190 (a) A lawyer is deemed to have prepared, or supervised the
 191 execution of, a written instrument if the preparation, or
 192 supervision of the execution, of the written instrument was
 193 performed by an employee or lawyer employed by the same firm as
 194 the lawyer.

195 (b) A person is "related" to an individual if, at the time
 196 the lawyer prepared or supervised the execution of the written

197 instrument or solicited the gift, the person is:

- 198 1. A spouse of the individual;
- 199 2. A lineal ascendant or descendant of the individual;
- 200 3. A sibling of the individual;
- 201 4. A relative of the individual or of the individual's
 202 spouse with whom the lawyer maintains a close, familial
 203 relationship;
- 204 5. A spouse of a person described in subparagraph 2.,
 205 subparagraph 3., or subparagraph 4.; or
- 206 6. A person who cohabitates with the individual.

207 (c) The term "written instrument" includes, but is not
 208 limited to, a will, a trust, a deed, a document exercising a
 209 power of appointment, or a beneficiary designation under a life
 210 insurance contract or any other contractual arrangement that
 211 creates an ownership interest or permits the naming of a
 212 beneficiary.

213 (d) The term "gift" includes an inter vivos gift, a
 214 testamentary transfer of real or personal property or any
 215 interest therein, and the power to make such a transfer
 216 regardless of whether the gift is outright or in trust;
 217 regardless of when the transfer is to take effect; and
 218 regardless of whether the power is held in a fiduciary or
 219 nonfiduciary capacity.

220 (8) The rights and remedies granted in this section are in
 221 addition to any other rights or remedies a person may have at
 222 law or in equity.

223 Section 8. Section 732.901, Florida Statutes, is amended
 224 to read:

225 732.901 Production of wills.—

226 (1) The custodian of a will must deposit the will with the
 227 clerk of the court having venue of the estate of the decedent
 228 within 10 days after receiving information that the testator is
 229 dead. The custodian must supply the testator's date of death or
 230 the last four digits of the testator's social security number to
 231 the clerk upon deposit.

232 (2) Upon petition and notice, the custodian of any will
 233 may be compelled to produce and deposit the will ~~as provided in~~
 234 ~~subsection (1)~~. All costs, damages, and a reasonable attorney's
 235 fee shall be adjudged to petitioner against the delinquent
 236 custodian if the court finds that the custodian had no just or
 237 reasonable cause for failing to deposit the will.

238 (3) An original will submitted to the clerk with a
 239 petition or other pleading is deemed to have been deposited with
 240 the clerk.

241 (4) Upon receipt, the clerk shall retain and preserve the
 242 original will in its original form for at least 20 years. If the
 243 probate of a will is initiated, the original will may be
 244 maintained by the clerk with the other pleadings during the
 245 pendency of the proceedings, but the will must at all times be
 246 retained in its original form for the remainder of the 20-year
 247 period whether or not the will is admitted to probate or the
 248 proceedings are terminated. Transforming and storing a will on
 249 film, microfilm, magnetic, electronic, optical, or other
 250 substitute media or recording a will onto an electronic record-
 251 keeping system, whether or not in accordance with the standards
 252 adopted by the Supreme Court of Florida, or permanently

253 recording a will does not eliminate the requirement to preserve
 254 the original will.

255 (5) For purposes of this section, the term "will" includes
 256 a separate writing as described in s. 732.515.

257 Section 9. Present subsections (6) through (11) of section
 258 736.0103, Florida Statutes, are redesignated as subsections (7)
 259 through (12), respectively, present subsections (12) through
 260 (21) of that section are redesignated as subsections (14)
 261 through (23), respectively, and new subsections (6) and (13) are
 262 added to that section, to read:

263 736.0103 Definitions.—Unless the context otherwise
 264 requires, in this code:

265 (6) "Distributee" means a beneficiary who is currently
 266 entitled to receive a distribution.

267 (13) "Permissible distributee" means a beneficiary who is
 268 currently eligible to receive a distribution.

269 Section 10. Section 736.0202, Florida Statutes, is amended
 270 to read:

271 736.0202 Jurisdiction over trustee and beneficiary.—

272 (1) IN REM JURISDICTION.—Any beneficiary ~~By accepting the~~
 273 ~~trusteeship~~ of a trust having its principal place of
 274 administration in this state is subject ~~or by moving the~~
 275 ~~principal place of administration to this state, the trustee~~
 276 ~~submits personally~~ to the jurisdiction of the courts of this
 277 state to the extent of the beneficiary's interest in ~~regarding~~
 278 ~~any matter involving~~ the trust.

279 (2) PERSONAL JURISDICTION.—

280 (a) Any trustee, trust beneficiary, or other person,

281 whether or not a citizen or resident of this state, who
 282 personally or through an agent does any of the following acts
 283 related to a trust, submits to the jurisdiction of the courts of
 284 this state involving that trust: ~~With respect to their interests~~
 285 ~~in the trust, the beneficiaries of a trust having its principal~~
 286 ~~place of administration in this state are subject to the~~
 287 ~~jurisdiction of the courts of this state regarding any matter~~
 288 ~~involving the trust. By accepting a distribution from such a~~
 289 ~~trust, the recipient submits personally to the jurisdiction of~~
 290 ~~the courts of this state regarding any matter involving the~~
 291 ~~distribution.~~

292 1. Accepts trusteeship of a trust having its principal
 293 place of administration in this state at the time of acceptance.

294 2. Moves the principal place of administration of a trust
 295 to this state.

296 3. Serves as trustee of a trust created by a settlor who
 297 was a resident of this state at the time of creation of the
 298 trust or serves as trustee of a trust having its principal place
 299 of administration in this state.

300 4. Accepts or exercises a delegation of powers or duties
 301 from the trustee of a trust having its principal place of
 302 administration in this state.

303 5. Commits a breach of trust in this state, or commits a
 304 breach of trust with respect to a trust having its principal
 305 place of administration in this state at the time of the breach.

306 6. Accepts compensation from a trust having its principal
 307 place of administration in this state.

308 7. Performs any act or service for a trust having its

309 principal place of administration in this state.

310 8. Accepts a distribution from a trust having its
 311 principal place of administration in this state with respect to
 312 any matter involving the distribution.

313 (b) A court of this state may exercise personal
 314 jurisdiction over a trustee, trust beneficiary, or other person,
 315 whether found within or outside the state, to the maximum extent
 316 permitted by the State Constitution or the Federal Constitution.

317 ~~(3) This section does not preclude other methods of~~
 318 ~~obtaining jurisdiction over a trustee, beneficiary, or other~~
 319 ~~person receiving property from the trust.~~

320 Section 11. Section 736.02025, Florida Statutes, is
 321 created to read:

322 736.02025 Service of process.-

323 (1) Except as otherwise provided in this section, service
 324 of process upon any person may be made as provided in chapter
 325 48.

326 (2) Where only in rem or quasi in rem relief is sought
 327 against a person in a matter involving a trust, service of
 328 process on that person may be made by sending a copy of the
 329 summons and complaint by any commercial delivery service
 330 requiring a signed receipt or by any form of mail requiring a
 331 signed receipt. Service under this subsection shall be complete
 332 upon signing of a receipt by the addressee or by any person
 333 authorized to receive service of a summons on behalf of the
 334 addressee as provided in chapter 48. Proof of service shall be
 335 by verified statement of the person serving the summons, to
 336 which must be attached the signed receipt or other evidence

337 satisfactory to the court that delivery was made to the
338 addressee or other authorized person.

339 (3) Under any of the following circumstances, service of
340 original process pursuant to subsection (2) may be made by
341 first-class mail:

342 (a) If registered or certified mail service to the
343 addressee is unavailable and if delivery by commercial delivery
344 service is also unavailable.

345 (b) If delivery is attempted and is refused by the
346 addressee.

347 (c) If delivery by mail requiring a signed receipt is
348 unclaimed after notice to the addressee by the delivering
349 entity.

350 (4) If service of process is obtained under subsection
351 (3), proof of service shall be made by verified statement of the
352 person serving the summons. The verified statement must state
353 the basis for service by first-class mail, the date of mailing,
354 and the address to which the mail was sent.

355 Section 12. Section 736.0205, Florida Statutes, is
356 repealed.

357 Section 13. Subsection (4) of section 736.0807, Florida
358 Statutes, is repealed.

359 Section 14. Paragraph (d) of subsection (1) of section
360 736.0813, Florida Statutes, is amended to read:

361 736.0813 Duty to inform and account.—The trustee shall
362 keep the qualified beneficiaries of the trust reasonably
363 informed of the trust and its administration.

364 (1) The trustee's duty to inform and account includes, but

365 | is not limited to, the following:

366 | (d) A trustee of an irrevocable trust shall provide a
 367 | trust accounting, as set forth in s. 736.08135, from the date of
 368 | the last accounting or, if none, from the date on which the
 369 | trustee became accountable, to each qualified beneficiary at
 370 | least annually and on termination of the trust or on change of
 371 | the trustee.

372 |
 373 | Paragraphs (a) and (b) do not apply to an irrevocable trust
 374 | created before the effective date of this code, or to a
 375 | revocable trust that becomes irrevocable before the effective
 376 | date of this code. Paragraph (a) does not apply to a trustee who
 377 | accepts a trusteeship before the effective date of this code.

378 | Section 15. Subsection (2) of section 607.0802, Florida
 379 | Statutes, is amended to read:

380 | 607.0802 Qualifications of directors.—

381 | (2) In the event that the eligibility to serve as a member
 382 | of the board of directors of a condominium association,
 383 | cooperative association, homeowners' association, or mobile home
 384 | owners' association is restricted to membership in such
 385 | association and membership is appurtenant to ownership of a
 386 | unit, parcel, or mobile home, a grantor of a trust described in
 387 | s. 733.707(3), or a qualified beneficiary as defined in s.
 388 | 736.0103~~(14)~~ of a trust which owns a unit, parcel, or mobile
 389 | home shall be deemed a member of the association and eligible to
 390 | serve as a director of the condominium association, cooperative
 391 | association, homeowners' association, or mobile home owners'
 392 | association, provided that said beneficiary occupies the unit,

393 parcel, or mobile home.

394 Section 16. Subsections (2) and (11) of section 731.201,
 395 Florida Statutes, are amended to read:

396 731.201 General definitions.—Subject to additional
 397 definitions in subsequent chapters that are applicable to
 398 specific chapters or parts, and unless the context otherwise
 399 requires, in this code, in s. 409.9101, and in chapters 736,
 400 738, 739, and 744, the term:

401 (2) "Beneficiary" means heir at law in an intestate estate
 402 and devisee in a testate estate. The term "beneficiary" does not
 403 apply to an heir at law or a devisee after that person's
 404 interest in the estate has been satisfied. In the case of a
 405 devise to an existing trust or trustee, or to a trust or trustee
 406 described by will, the trustee is a beneficiary of the estate.
 407 Except as otherwise provided in this subsection, the beneficiary
 408 of the trust is not a beneficiary of the estate of which that
 409 trust or the trustee of that trust is a beneficiary. However, if
 410 each trustee is also a personal representative of the estate,
 411 each qualified beneficiary of the trust as defined in s.
 412 736.0103~~(14)~~ shall be regarded as a beneficiary of the estate.

413 (11) "Devisee" means a person designated in a will or
 414 trust to receive a devise. Except as otherwise provided in this
 415 subsection, in the case of a devise to an existing trust or
 416 trustee, or to a trust or trustee of a trust described by will,
 417 the trust or trustee, rather than the beneficiaries of the
 418 trust, is the devisee. However, if each trustee is also a
 419 personal representative of the estate, each qualified
 420 beneficiary of the trust as defined in s. 736.0103~~(14)~~ shall be

421 regarded as a devisee.

422 Section 17. Subsection (1) of section 733.212, Florida
 423 Statutes, is amended to read:

424 733.212 Notice of administration; filing of objections.—

425 (1) The personal representative shall promptly serve a
 426 copy of the notice of administration on the following persons
 427 who are known to the personal representative:

428 (a) The decedent's surviving spouse;

429 (b) Beneficiaries;

430 (c) The trustee of any trust described in s. 733.707(3)
 431 and each qualified beneficiary of the trust as defined in s.
 432 736.0103~~(14)~~, if each trustee is also a personal representative
 433 of the estate; and

434 (d) Persons who may be entitled to exempt property

435

436 in the manner provided for service of formal notice, unless
 437 served under s. 733.2123. The personal representative may
 438 similarly serve a copy of the notice on any devisees under a
 439 known prior will or heirs or others who claim or may claim an
 440 interest in the estate.

441 Section 18. Paragraph (f) of subsection (5) of section
 442 736.0802, Florida Statutes, is amended to read:

443 736.0802 Duty of loyalty.—

444 (5)

445 (f)1. The trustee of a trust as defined in s. 731.201 may
 446 request authority to invest in investment instruments described
 447 in this subsection other than a qualified investment instrument,
 448 by providing to all qualified beneficiaries a written request

449 containing the following:

450 a. The name, telephone number, street address, and mailing
 451 address of the trustee and of any individuals who may be
 452 contacted for further information.

453 b. A statement that the investment or investments cannot
 454 be made without the consent of a majority of each class of the
 455 qualified beneficiaries.

456 c. A statement that, if a majority of each class of
 457 qualified beneficiaries consent, the trustee will have the right
 458 to make investments in investment instruments, as defined in s.
 459 660.25(6), which are owned or controlled by the trustee or its
 460 affiliate, or from which the trustee or its affiliate receives
 461 compensation for providing services in a capacity other than as
 462 trustee, that such investment instruments may include investment
 463 instruments sold primarily to trust accounts, and that the
 464 trustee or its affiliate may receive fees in addition to the
 465 trustee's compensation for administering the trust.

466 d. A statement that the consent may be withdrawn
 467 prospectively at any time by written notice given by a majority
 468 of any class of the qualified beneficiaries.

469
 470 A statement by the trustee is not delivered if the statement is
 471 accompanied by another written communication other than a
 472 written communication by the trustee that refers only to the
 473 statement.

474 2. For purposes of paragraph (e) and this paragraph:

475 a. "Majority of the qualified beneficiaries" means:

476 (I) If at the time the determination is made there are one

477 or more beneficiaries as described in s. 736.0103(16)(c)
478 ~~736.0103(14)(e)~~, at least a majority in interest of the
479 beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~,
480 at least a majority in interest of the beneficiaries described
481 in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, and at least a majority
482 in interest of the beneficiaries described in s. 736.0103(16)(c)
483 ~~736.0103(14)(e)~~, if the interests of the beneficiaries are
484 reasonably ascertainable; otherwise, a majority in number of
485 each such class; or

486 (II) If there is no beneficiary as described in s.
487 736.0103(16)(c) ~~736.0103(14)(e)~~, at least a majority in interest
488 of the beneficiaries described in s. 736.0103(16)(a)
489 ~~736.0103(14)(a)~~ and at least a majority in interest of the
490 beneficiaries described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~,
491 if the interests of the beneficiaries are reasonably
492 ascertainable; otherwise, a majority in number of each such
493 class.

494 b. "Qualified investment instrument" means a mutual fund,
495 common trust fund, or money market fund described in and
496 governed by s. 736.0816(3).

497 c. An irrevocable trust is created upon execution of the
498 trust instrument. If a trust that was revocable when created
499 thereafter becomes irrevocable, the irrevocable trust is created
500 when the right of revocation terminates.

501 Section 19. Paragraph (a) of subsection (2) of section
502 736.08125, Florida Statutes, is amended to read:

503 736.08125 Protection of successor trustees.—

504 (2) For the purposes of this section, the term:

505 (a) "Eligible beneficiaries" means:
 506 1. At the time the determination is made, if there are one
 507 or more beneficiaries as described in s. 736.0103(16)(c)
 508 ~~736.0103(14)(e)~~, the beneficiaries described in s.
 509 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

510 2. If there is no beneficiary as described in s.
 511 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in
 512 s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

513 Section 20. Paragraph (d) of subsection (9) of section
 514 738.104, Florida Statutes, is amended to read:

515 738.104 Trustee's power to adjust.—

516 (9)

517 (d) For purposes of subsection (8) and this subsection,
 518 the term:

519 1. "Eligible beneficiaries" means:

520 a. If at the time the determination is made there are one
 521 or more beneficiaries described in s. 736.0103(16)(c)
 522 ~~736.0103(14)(e)~~, the beneficiaries described in s.
 523 736.0103(16)(a) ~~736.0103(14)(a)~~ and (c); or

524 b. If there is no beneficiary described in s.
 525 736.0103(16)(c) ~~736.0103(14)(e)~~, the beneficiaries described in
 526 s. 736.0103(16)(a) ~~736.0103(14)(a)~~ and (b).

527 2. "Super majority of the eligible beneficiaries" means:

528 a. If at the time the determination is made there are one
 529 or more beneficiaries described in s. 736.0103(16)(c)
 530 ~~736.0103(14)(e)~~, at least two-thirds in interest of the
 531 beneficiaries described in s. 736.0103(16)(a) ~~736.0103(14)(a)~~ or
 532 two-thirds in interest of the beneficiaries described in s.

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2013

533 736.0103(16)(c) ~~736.0103(14)(e)~~, if the interests of the
 534 beneficiaries are reasonably ascertainable; otherwise, it means
 535 two-thirds in number of either such class; or

536 b. If there is no beneficiary described in s.
 537 736.0103(16)(c) ~~736.0103(14)(e)~~, at least two-thirds in interest
 538 of the beneficiaries described in s. 736.0103(16)(a)
 539 ~~736.0103(14)(a)~~ or two-thirds in interest of the beneficiaries
 540 described in s. 736.0103(16)(b) ~~736.0103(14)(b)~~, if the
 541 interests of the beneficiaries are reasonably ascertainable,
 542 otherwise, two-thirds in number of either such class.

543 Section 21. Except as otherwise expressly provided in this
 544 act and except for this section, which shall take effect upon
 545 this act becoming a law, this act shall take effect October 1,
 546 2013.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Rouson offered the following:

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

6 Between lines 463 and 464, insert:

7 (4) This chapter does not ban class actions in an
8 arbitration setting, and any arbitration agreement or provision
9 contained in such an agreement that purports to bar or waive the
10 right of any party to seek class action certification or status
11 is void and unenforceable.

12
13
14
15 -----
16 **T I T L E A M E N D M E N T**

17 Remove line 41 and insert:

18 consolidation; providing that class actions are not
19 precluded in arbitration; providing that provision of
20 arbitration agreement that purports to bar or waive class

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 693 (2013)

Amendment No.

21 | action certification or status is void and unenforceable;
22 | amending s. 682.04, F.S.; revising

23 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 693 Dispute Resolution
SPONSOR(S): Civil Justice Subcommittee; Moraitis
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 530

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Justice Appropriations Subcommittee		Toms <i>ST</i>	Jones Darity <i>JD</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

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

This bill may have an impact on revenues, see fiscal section.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Arbitration is a form of alternative dispute resolution, where an arbitrator, or a panel of arbitrators, hears a case in instead of a court.¹ Generally, the agreement provides for terms of the arbitration, but the Arbitration Code provides some default rules where the agreement is silent.² An arbitration clause is often included in contracts, and it is a well-established principle that arbitration is generally favored by the courts where agreed to by the parties.³ It is the public policy of both the federal⁴ and state⁵ governments to favor arbitration.

Current Situation

Florida's current arbitration code⁶ is based on the 1955 Uniform Arbitration Act (UAA). This bare-bones act remains largely unchanged since Florida adopted the UAA in 1957⁷ and modified it in 1967⁸, even as the use of binding arbitration has become more widespread.

Effect of Proposed Changes

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

Notice

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

Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised code. The revised code applies prospectively for agreements to arbitrate. It also applies retrospectively if all parties agree to apply the revised act. On July 1, 2016, the revised code will apply to all arbitration agreements.

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., providing that a party may waive procedural requirements of the revised code except that a party may not waive certain relief or remedies, jurisdiction, the right to appeal, notice, right to disclosure, or the right to an attorney, before a controversy arises. A party may

¹ Black's Law Dictionary, 6th Ed., defines arbitration as "A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard."

² For instance, if the agreement does not provide a method for picking the arbitrator(s), the court may appoint one or more arbitrators, in accordance with s. 682.04, F.S.

³ *Roger E. Freilich, D.M.D., P.A. v. Shochet*, 96 So.3d 1135 (Fla. 4th DCA 2012), citing *Roe v. Amica Mut. Ins. Co.*, 533 So.2d 279, 281 (Fla. 1988).

⁴ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).

⁵ See *Jackson v. Shakespeare Foundation, Inc.*, 2013 WL 362786 (Fla. 2013).

⁶ Chapter 682, F.S.

⁷ Chapter 57-402, L.O.F.

⁸ Chapter 67-254, L.O.F.

not waive other procedural requirements that would fundamentally undermine the arbitration agreement at any time.

Judicial Relief

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

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration continues during a court challenge of this nature unless the court orders otherwise.

Compelling or Staying Arbitration

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

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

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely matter or provide an adequate remedy. If an arbitrator awards a provisional remedy for injunctive or equitable relief, the arbitrator must state in the award the factual findings and legal basis for the award. A party may then petition to confirm or vacate the provisional remedy.

Initiation of Arbitration

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

Consolidation of Separate Arbitration Proceedings

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

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

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

Appointment of Arbitrators by the Court

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

Disclosure by Arbitrator

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

Majority Action by Arbitrators

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

Immunity of Arbitrator

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

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary judgment if the

parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least 5 days notice prior to the beginning of the hearing. The arbitrator then has control of the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

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

Witnesses, Subpoenas, and Depositions

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

Judicial Enforcement of Preaward Ruling by an Arbitrator

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

Award

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

Change of Award by Arbitrators

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

Remedies, Fees and Expenses of Arbitration Proceeding

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

Confirming or Vacating an Award

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

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

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

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party should have known of such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

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

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

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

Judgment or Decree on Award

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

Jurisdiction

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

Venue

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

Appeals

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

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

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

Electronic Signatures in Global and National Commerce Act

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

Effective Date and Applicability

The bill provides an effective date of July 1, 2013. The revised code does not affect an action or proceeding commenced or right accrued before the revised code takes effect.

Disputes Excluded

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

Other

The bill amends ss. 440.1926, 489.1402, and 731.401, F.S., to provide updated cross-references.

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 15 creates s. 682.051, F.S., relating to immunity of arbitrator, competency to testify, and attorney fees and costs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 36 creates s. 682.25, F.S., relating to excluded disputes.

Section 37 amends s. 440.1926, F.S., relating to alternate dispute resolution and claim arbitration.

Section 38 amends s. 489.1402, F.S., relating to homeowners' construction recover fund and definitions.

Section 39 amends s. 731.401, F.S., relating to arbitration of disputes.

Section 40 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See "fiscal comments".

2. Expenditures:

The Office of State Courts Administrator has stated this bill may result in additional judicial time being devoted to matters relating to arbitration proceedings. However, the increase in the use of more streamlined arbitration proceedings should result in fewer cases going to trial.⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See "fiscal comments".

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in less people filing civil proceedings and going to trial, which will them save money in attorney fees and court costs.

D. FISCAL COMMENTS:

The Office of the State Courts Administrator expects a potential reduction in revenue if the bill results in fewer civil filings.¹⁰ This could impact any trust fund that receives funds from the revenue generated from those filings; possible trust funds impacted are the Clerks of Court Trust Fund, the State Court

⁹ *Office of State Courts Administrator 2013 Judicial Impact Statement*, SB530/HB693, Eric Maclure. On file with the Justice Appropriations Subcommittee staff.

¹⁰ *Id.*

Revenues Trust Fund, and the Court Education Trust Fund. However, the Office of State Courts Administrator cannot accurately determine the potential revenues impacted as a result of the bill due to the unavailability of data needed to establish the potential decrease resulting from more cases going through arbitration causing fewer cases to go to trial.¹¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹¹ *Id.*

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

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

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

85 | revising a cross-reference; amending s. 682.08, F.S.;

86 | revising provisions relating to the issuance, service,

87 | and enforcement of subpoenas; revising provisions

88 | relating to depositions; authorizing an arbitrator to

89 | permit discovery in certain circumstances; authorizing

90 | an arbitrator to order compliance with discovery;

91 | authorizing protective orders by an arbitrator;

92 | providing for applicability of laws compelling a

93 | person under subpoena to testify and all fees for

94 | attending a judicial proceeding, a deposition, or a

95 | discovery proceeding as a witness; providing for court

96 | enforcement of a subpoena or discovery-related order;

97 | providing for witness fees; creating s. 682.081, F.S.;

98 | providing for judicial enforcement of a preaward

99 | ruling by an arbitrator in certain circumstances;

100 | providing exceptions; amending s. 682.09, F.S.;

101 | revising provisions relating to the record needed for

102 | an award; revising provisions relating to the time

103 | within which an award must be made; amending s.

104 | 682.10, F.S.; revising provisions relating to

105 | requirements for a motion to modify or correct an

106 | award; amending s. 682.11, F.S.; revising provisions

107 | relating to fees and expenses of arbitration;

108 | authorizing punitive damages and other exemplary

109 | relief and remedies; amending s. 682.12, F.S.;

110 | revising provisions relating to confirmation of an

111 | award; amending s. 682.13, F.S.; revising provisions

112 | relating to grounds for vacating an award; revising

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

141 Signatures in Global and National Commerce Act;
 142 providing for applicability; creating s. 682.25, F.S.;
 143 providing that the revised code does not apply to any
 144 dispute involving child custody, visitation, or child
 145 support; amending ss. 440.1926 and 489.1402, F.S.;
 146 conforming cross-references; amending s. 731.401,
 147 F.S.; conforming cross-references; providing for
 148 treatment of arbitration provisions in a will or trust
 149 as an agreement for specified purposes; providing an
 150 effective date.

151
 152 Be It Enacted by the Legislature of the State of Florida:

153
 154 Section 1. Section 682.01, Florida Statutes, is amended to
 155 read:

156 682.01 Short title Florida Arbitration Code.—This chapter
 157 Sections 682.01-682.22 may be cited as the "Revised Florida
 158 Arbitration Code."

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

161 682.011 Definitions.—As used in this chapter, the term:

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

166 (2) "Arbitrator" means an individual appointed to render
 167 an award, alone or with others, in a controversy that is subject
 168 to an agreement to arbitrate.

169 (3) "Court" means a court of competent jurisdiction in
 170 this state.

171 (4) "Knowledge" means actual knowledge.

172 (5) "Person" means an individual, corporation, business
 173 trust, estate, trust, partnership, limited liability company,
 174 association, joint venture, or government; governmental
 175 subdivision, agency, or instrumentality; public corporation; or
 176 any other legal or commercial entity.

177 (6) "Record" means information that is inscribed on a
 178 tangible medium or that is stored in an electronic or other
 179 medium and is retrievable in perceivable form.

180 Section 3. Section 682.012, Florida Statutes, is created
 181 to read:

182 682.012 Notice.—

183 (1) Except as otherwise provided in this chapter, a person
 184 gives notice to another person by taking action that is
 185 reasonably necessary to inform the other person in ordinary
 186 course, whether or not the other person acquires knowledge of
 187 the notice.

188 (2) A person has notice if the person has knowledge of the
 189 notice or has received notice.

190 (3) A person receives notice when it comes to the person's
 191 attention or the notice is delivered at the person's place of
 192 residence or place of business, or at another location held out
 193 by the person as a place of delivery of such communications.

194 Section 4. Section 682.013, Florida Statutes, is created
 195 to read:

196 682.013 Applicability of revised code.—

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197 (1) The Revised Florida Arbitration Code governs an
 198 agreement to arbitrate made on or after July 1, 2013.

199 (2) Until June 30, 2016, the Revised Florida Arbitration
 200 Code governs an agreement to arbitrate made before July 1, 2013,
 201 if all the parties to the agreement or to the arbitration
 202 proceeding so agree in a record. Otherwise, such agreements
 203 shall be governed by the applicable law existing at the time the
 204 parties entered into the agreement.

205 (3) The Revised Florida Arbitration Code does not affect
 206 an action or proceeding commenced or right accrued before July
 207 1, 2013.

208 (4) Beginning July 1, 2016, an agreement to arbitrate
 209 shall be subject to the Revised Florida Arbitration Code.

210 Section 5. Section 682.014, Florida Statutes, is created
 211 to read:

212 682.014 Effect of agreement to arbitrate; nonwaivable
 213 provisions.-

214 (1) Except as otherwise provided in subsections (2) and
 215 (3), a party to an agreement to arbitrate or to an arbitration
 216 proceeding may waive, or the parties may vary the effect of, the
 217 requirements of this chapter to the extent permitted by law.

218 (2) Before a controversy arises that is subject to an
 219 agreement to arbitrate, a party to the agreement may not:

220 (a) Waive or agree to vary the effect of the requirements
 221 of:

222 1. Commencing a petition for judicial relief under s.
 223 682.015(1);

224 2. Making agreements to arbitrate valid, enforceable, and

225 irrevocable under s. 682.02(1);
 226 3. Permitting provisional remedies under s. 682.031;
 227 4. Conferring authority on arbitrators to issue subpoenas
 228 and permit depositions under s. 682.08(1) or (2);
 229 5. Conferring jurisdiction under s. 682.181; or
 230 6. Stating the bases for appeal under s. 682.20;
 231 (b) Agree to unreasonably restrict the right under s.
 232 682.032 to notice of the initiation of an arbitration
 233 proceeding;
 234 (c) Agree to unreasonably restrict the right under s.
 235 682.041 to disclosure of any facts by a neutral arbitrator; or
 236 (d) Waive the right under s. 682.07 of a party to an
 237 agreement to arbitrate to be represented by an attorney at any
 238 proceeding or hearing under this chapter, but an employer and a
 239 labor organization may waive the right to representation by an
 240 attorney in a labor arbitration.
 241 (3) A party to an agreement to arbitrate or arbitration
 242 proceeding may not waive, or the parties may not vary the effect
 243 of, the requirements in this section or:
 244 (a) The applicability of this chapter, the Revised Florida
 245 Arbitration Code, under s. 682.013(1) or (4);
 246 (b) The availability of proceedings to compel or stay
 247 arbitration under s. 682.03;
 248 (c) The immunity conferred on arbitrators and arbitration
 249 organizations under s. 682.051;
 250 (d) A party's right to seek judicial enforcement of an
 251 arbitration preaward ruling under s. 682.081;
 252 (e) The authority conferred on an arbitrator to change an

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- 253 award under s. 682.10(4) or (5);
254 (f) The remedies provided under s. 682.12;
255 (g) The grounds for vacating an arbitration award under s.
256 682.13;
257 (h) The grounds for modifying an arbitration award under
258 s. 682.14;
259 (i) The validity and enforceability of a judgment or
260 decree based on an award under s. 682.15(1) or (2);
261 (j) The validity of the Electronic Signatures in Global
262 and National Commerce Act under s. 682.23; or
263 (k) The effect of excluding from arbitration under this
264 chapter disputes involving child custody, visitation, or child
265 support under s. 682.25.

266 Section 6. Section 682.015, Florida Statutes, is created
267 to read:

268 682.015 Petition for judicial relief.-

269 (1) Except as otherwise provided in s. 682.20, a petition
270 for judicial relief under this chapter must be made to the court
271 and heard in the manner provided by law or rule of court for
272 making and hearing motions.

273 (2) Unless a civil action involving the agreement to
274 arbitrate is pending, notice of an initial petition to the court
275 under this chapter must be served in the manner provided by law
276 for the service of a summons in a civil action. Otherwise,
277 notice of the motion must be given in the manner provided by law
278 or rule of court for serving motions in pending cases.

279 Section 7. Section 682.02, Florida Statutes, is amended to
280 read:

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281 682.02 Arbitration agreements made valid, irrevocable, and
282 enforceable; scope.—

283 (1) An agreement contained in a record to submit to
284 arbitration any existing or subsequent controversy arising
285 between the parties to the agreement is valid, enforceable, and
286 irrevocable except upon a ground that exists at law or in equity
287 for the revocation of a contract.

288 (2) The court shall decide whether an agreement to
289 arbitrate exists or a controversy is subject to an agreement to
290 arbitrate.

291 (3) An arbitrator shall decide whether a condition
292 precedent to arbitrability has been fulfilled and whether a
293 contract containing a valid agreement to arbitrate is
294 enforceable.

295 (4) If a party to a judicial proceeding challenges the
296 existence of, or claims that a controversy is not subject to, an
297 agreement to arbitrate, the arbitration proceeding may continue
298 pending final resolution of the issue by the court, unless the
299 court otherwise orders.

300 ~~(5) Two or more parties may agree in writing to submit to~~
301 ~~arbitration any controversy existing between them at the time of~~
302 ~~the agreement, or they may include in a written contract a~~
303 ~~provision for the settlement by arbitration of any controversy~~
304 ~~thereafter arising between them relating to such contract or the~~
305 ~~failure or refusal to perform the whole or any part thereof.~~

306 This section also applies to written interlocal agreements under
307 ss. 163.01 and 373.713 in which two or more parties agree to
308 submit to arbitration any controversy between them concerning

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309 water use permit applications and other matters, regardless of
310 whether or not the water management district with jurisdiction
311 over the subject application is a party to the interlocal
312 agreement or a participant in the arbitration. ~~Such agreement or~~
313 ~~provision shall be valid, enforceable, and irrevocable without~~
314 ~~regard to the justiciable character of the controversy; provided~~
315 ~~that this act shall not apply to any such agreement or provision~~
316 ~~to arbitrate in which it is stipulated that this law shall not~~
317 ~~apply or to any arbitration or award thereunder.~~

318 Section 8. Section 682.03, Florida Statutes, is amended to
319 read:

320 682.03 Proceedings to compel and to stay arbitration.—

321 (1) On motion of a person showing an agreement to
322 arbitrate and alleging another person's refusal to arbitrate
323 pursuant to the agreement:

324 (a) If the refusing party does not appear or does not
325 oppose the motion, the court shall order the parties to
326 arbitrate.

327 (b) If the refusing party opposes the motion, the court
328 shall proceed summarily to decide the issue and order the
329 parties to arbitrate unless it finds that there is no
330 enforceable agreement to arbitrate. A party to an agreement or
331 provision for arbitration subject to this law claiming the
332 neglect or refusal of another party thereto to comply therewith
333 may make application to the court for an order directing the
334 parties to proceed with arbitration in accordance with the terms
335 thereof. If the court is satisfied that no substantial issue
336 exists as to the making of the agreement or provision, it shall

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337 ~~grant the application. If the court shall find that a~~
338 ~~substantial issue is raised as to the making of the agreement or~~
339 ~~provision, it shall summarily hear and determine the issue and,~~
340 ~~according to its determination, shall grant or deny the~~
341 ~~application.~~

342 (2) On motion of a person alleging that an arbitration
343 proceeding has been initiated or threatened but that there is no
344 agreement to arbitrate, the court shall proceed summarily to
345 decide the issue. If the court finds that there is an
346 enforceable agreement to arbitrate, it shall order the parties
347 to arbitrate. If an issue referable to arbitration under an
348 agreement or provision for arbitration subject to this law
349 becomes involved in an action or proceeding pending in a court
350 having jurisdiction to hear an application under subsection (1),
351 such application shall be made in said court. Otherwise and
352 subject to s. 682.19, such application may be made in any court
353 of competent jurisdiction.

354 (3) If the court finds that there is no enforceable
355 agreement to arbitrate, it may not order the parties to
356 arbitrate pursuant to subsection (1) or subsection (2). Any
357 action or proceeding involving an issue subject to arbitration
358 under this law shall be stayed if an order for arbitration or an
359 application therefor has been made under this section or, if the
360 issue is severable, the stay may be with respect thereto only.
361 When the application is made in such action or proceeding, the
362 order for arbitration shall include such stay.

363 (4) The court may not refuse to order arbitration because
364 the claim subject to arbitration lacks merit or grounds for the

365 claim have not been established. ~~On application the court may~~
 366 ~~stay an arbitration proceeding commenced or about to be~~
 367 ~~commenced, if it shall find that no agreement or provision for~~
 368 ~~arbitration subject to this law exists between the party making~~
 369 ~~the application and the party causing the arbitration to be had.~~
 370 ~~The court shall summarily hear and determine the issue of the~~
 371 ~~making of the agreement or provision and, according to its~~
 372 ~~determination, shall grant or deny the application.~~

373 (5) If a proceeding involving a claim referable to
 374 arbitration under an alleged agreement to arbitrate is pending
 375 in court, a motion under this section must be made in that
 376 court. Otherwise, a motion under this section may be made in any
 377 court as provided in s. 682.19. ~~An order for arbitration shall~~
 378 ~~not be refused on the ground that the claim in issue lacks merit~~
 379 ~~or bona fides or because any fault or grounds for the claim~~
 380 ~~sought to be arbitrated have not been shown.~~

381 (6) If a party makes a motion to the court to order
 382 arbitration, the court on just terms shall stay any judicial
 383 proceeding that involves a claim alleged to be subject to the
 384 arbitration until the court renders a final decision under this
 385 section.

386 (7) If the court orders arbitration, the court on just
 387 terms shall stay any judicial proceeding that involves a claim
 388 subject to the arbitration. If a claim subject to the
 389 arbitration is severable, the court may limit the stay to that
 390 claim.

391 Section 9. Section 682.031, Florida Statutes, is created
 392 to read:

393 682.031 Provisional remedies.-

394 (1) Before an arbitrator is appointed and is authorized
 395 and able to act, the court, upon motion of a party to an
 396 arbitration proceeding and for good cause shown, may enter an
 397 order for provisional remedies to protect the effectiveness of
 398 the arbitration proceeding to the same extent and under the same
 399 conditions as if the controversy were the subject of a civil
 400 action.

401 (2) After an arbitrator is appointed and is authorized and
 402 able to act:

403 (a) The arbitrator may issue such orders for provisional
 404 remedies, including interim awards, as the arbitrator finds
 405 necessary to protect the effectiveness of the arbitration
 406 proceeding and to promote the fair and expeditious resolution of
 407 the controversy, to the same extent and under the same
 408 conditions as if the controversy were the subject of a civil
 409 action.

410 (b) A party to an arbitration proceeding may move the
 411 court for a provisional remedy only if the matter is urgent and
 412 the arbitrator is not able to act timely or the arbitrator
 413 cannot provide an adequate remedy.

414 (3) A party does not waive a right of arbitration by
 415 making a motion under this section.

416 (4) If an arbitrator awards a provisional remedy for
 417 injunctive or equitable relief, the arbitrator shall state in
 418 the award the factual findings and legal basis for the award.

419 (5) A party may seek to confirm or vacate a provisional
 420 remedy award for injunctive or equitable relief under s.

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421 682.081.

422 Section 10. Section 682.032, Florida Statutes, is created
423 to read:

424 682.032 Initiation of arbitration.-

425 (1) A person initiates an arbitration proceeding by giving
426 notice in a record to the other parties to the agreement to
427 arbitrate in the agreed manner between the parties or, in the
428 absence of agreement, by certified or registered mail, return
429 receipt requested and obtained, or by service as authorized for
430 the commencement of a civil action. The notice must describe the
431 nature of the controversy and the remedy sought.

432 (2) Unless a person objects for lack or insufficiency of
433 notice under s. 682.06(3) not later than the beginning of the
434 arbitration hearing, the person by appearing at the hearing
435 waives any objection to lack of or insufficiency of notice.

436 Section 11. Section 682.033, Florida Statutes, is created
437 to read:

438 682.033 Consolidation of separate arbitration
439 proceedings.-

440 (1) Except as otherwise provided in subsection (3), upon
441 motion of a party to an agreement to arbitrate or to an
442 arbitration proceeding, the court may order consolidation of
443 separate arbitration proceedings as to all or some of the claims
444 if:

445 (a) There are separate agreements to arbitrate or separate
446 arbitration proceedings between the same persons or one of them
447 is a party to a separate agreement to arbitrate or a separate
448 arbitration proceeding with a third person;

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449 (b) The claims subject to the agreements to arbitrate
450 arise in substantial part from the same transaction or series of
451 related transactions;

452 (c) The existence of a common issue of law or fact creates
453 the possibility of conflicting decisions in the separate
454 arbitration proceedings; and

455 (d) Prejudice resulting from a failure to consolidate is
456 not outweighed by the risk of undue delay or prejudice to the
457 rights of or hardship to parties opposing consolidation.

458 (2) The court may order consolidation of separate
459 arbitration proceedings as to some claims and allow other claims
460 to be resolved in separate arbitration proceedings.

461 (3) The court may not order consolidation of the claims of
462 a party to an agreement to arbitrate if the agreement prohibits
463 consolidation.

464 Section 12. Section 682.04, Florida Statutes, is amended
465 to read:

466 682.04 Appointment of arbitrators by court.—

467 (1) If the parties to an agreement to arbitrate agree on
468 ~~or provision for arbitration subject to this law provides a~~
469 ~~method for appointing the appointment of arbitrators or an~~
470 ~~umpire, this method must shall be followed, unless the method~~
471 fails.

472 (2) The court, on motion of a party to an arbitration
473 agreement, shall appoint one or more arbitrators, if:

474 (a) The parties have not agreed on a method;

475 (b) The agreed method fails;

476 (c) One or more of the parties failed to respond to the

477 demand for arbitration; or

478 (d) An arbitrator fails to act and a successor has not
 479 been appointed.

480 ~~(3) In the absence thereof, or if the agreed method fails~~
 481 ~~or for any reason cannot be followed, or if an arbitrator or~~
 482 ~~umpire who has been appointed fails to act and his or her~~
 483 ~~successor has not been duly appointed, the court, on application~~
 484 ~~of a party to such agreement or provision shall appoint one or~~
 485 ~~more arbitrators or an umpire. An arbitrator or umpire so~~
 486 ~~appointed~~ has all the shall have like powers of an arbitrator
 487 designated as if named or provided for in the agreement to
 488 arbitrate appointed pursuant to the agreed method or provision.

489 (4) An individual who has a known, direct, and material
 490 interest in the outcome of the arbitration proceeding or a
 491 known, existing, and substantial relationship with a party may
 492 not serve as an arbitrator required by an agreement to be
 493 neutral.

494 Section 13. Section 682.041, Florida Statutes, is created
 495 to read:

496 682.041 Disclosure by arbitrator.-

497 (1) Before accepting appointment, an individual who is
 498 requested to serve as an arbitrator, after making a reasonable
 499 inquiry, shall disclose to all parties to the agreement to
 500 arbitrate and arbitration proceeding and to any other
 501 arbitrators any known facts that a reasonable person would
 502 consider likely to affect the person's impartiality as an
 503 arbitrator in the arbitration proceeding, including:

504 (a) A financial or personal interest in the outcome of the

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505 arbitration proceeding.

506 (b) An existing or past relationship with any of the
507 parties to the agreement to arbitrate or the arbitration
508 proceeding, their counsel or representative, a witness, or
509 another arbitrator.

510 (2) An arbitrator has a continuing obligation to disclose
511 to all parties to the agreement to arbitrate and arbitration
512 proceeding and to any other arbitrators any facts that the
513 arbitrator learns after accepting appointment that a reasonable
514 person would consider likely to affect the impartiality of the
515 arbitrator.

516 (3) If an arbitrator discloses a fact required by
517 subsection (1) or subsection (2) to be disclosed and a party
518 timely objects to the appointment or continued service of the
519 arbitrator based upon the fact disclosed, the objection may be a
520 ground under s. 682.13(1)(b) for vacating an award made by the
521 arbitrator.

522 (4) If the arbitrator did not disclose a fact as required
523 by subsection (1) or subsection (2), upon timely objection by a
524 party, the court may vacate an award under s. 682.13(1)(b).

525 (5) An arbitrator appointed as a neutral arbitrator who
526 does not disclose a known, direct, and material interest in the
527 outcome of the arbitration proceeding or a known, existing, and
528 substantial relationship with a party is presumed to act with
529 evident partiality under s. 682.13(1)(b).

530 (6) If the parties to an arbitration proceeding agree to
531 the procedures of an arbitration organization or any other
532 procedures for challenges to arbitrators before an award is

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533 made, substantial compliance with those procedures is a
534 condition precedent to a motion to vacate an award on that
535 ground under s. 682.13(1)(b).

536 Section 14. Section 682.05, Florida Statutes, is amended
537 to read:

538 682.05 Majority action by arbitrators.—If there is more
539 than one arbitrator, the powers of an arbitrator must be
540 exercised by a majority of the arbitrators, but all of the
541 arbitrators shall conduct the hearing under s. 682.06(3). ~~The~~
542 ~~powers of the arbitrators may be exercised by a majority of~~
543 ~~their number unless otherwise provided in the agreement or~~
544 ~~provision for arbitration.~~

545 Section 15. Section 682.051, Florida Statutes, is created
546 to read:

547 682.051 Immunity of arbitrator; competency to testify;
548 attorney fees and costs.—

549 (1) An arbitrator or an arbitration organization acting in
550 that capacity is immune from civil liability to the same extent
551 as a judge of a court of this state acting in a judicial
552 capacity.

553 (2) The immunity afforded under this section supplements
554 any immunity under other law.

555 (3) The failure of an arbitrator to make a disclosure
556 required by s. 682.041 does not cause any loss of immunity under
557 this section.

558 (4) In a judicial, administrative, or similar proceeding,
559 an arbitrator or representative of an arbitration organization
560 is not competent to testify, and may not be required to produce

561 records as to any statement, conduct, decision, or ruling
 562 occurring during the arbitration proceeding, to the same extent
 563 as a judge of a court of this state acting in a judicial
 564 capacity. This subsection does not apply:

565 (a) To the extent necessary to determine the claim of an
 566 arbitrator, arbitration organization, or representative of the
 567 arbitration organization against a party to the arbitration
 568 proceeding; or

569 (b) To a hearing on a motion to vacate an award under s.
 570 682.13(1)(a) or (b) if the movant establishes prima facie that a
 571 ground for vacating the award exists.

572 (5) If a person commences a civil action against an
 573 arbitrator, arbitration organization, or representative of an
 574 arbitration organization arising from the services of the
 575 arbitrator, organization, or representative or if a person seeks
 576 to compel an arbitrator or a representative of an arbitration
 577 organization to testify or produce records in violation of
 578 subsection (4), and the court decides that the arbitrator,
 579 arbitration organization, or representative of an arbitration
 580 organization is immune from civil liability or that the
 581 arbitrator or representative of the organization is not
 582 competent to testify, the court shall award to the arbitrator,
 583 organization, or representative reasonable attorney fees and
 584 other reasonable expenses of litigation.

585 Section 16. Section 682.06, Florida Statutes, is amended
 586 to read:

587 682.06 Hearing.—

588 (1) An arbitrator may conduct an arbitration in such

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589 manner as the arbitrator considers appropriate for a fair and
590 expeditious disposition of the proceeding. The arbitrator's
591 authority includes the power to hold conferences with the
592 parties to the arbitration proceeding before the hearing and,
593 among other matters, determine the admissibility, relevance,
594 materiality, and weight of any evidence. Unless otherwise
595 provided by the agreement or provision for arbitration:

596 ~~(1)(a) The arbitrators shall appoint a time and place for~~
597 ~~the hearing and cause notification to the parties to be served~~
598 ~~personally or by registered or certified mail not less than 5~~
599 ~~days before the hearing. Appearance at the hearing waives a~~
600 ~~party's right to such notice. The arbitrators may adjourn their~~
601 ~~hearing from time to time upon their own motion and shall do so~~
602 ~~upon the request of any party to the arbitration for good cause~~
603 ~~shown, provided that no adjournment or postponement of their~~
604 ~~hearing shall extend beyond the date fixed in the agreement or~~
605 ~~provision for making the award unless the parties consent to a~~
606 ~~later date. An umpire authorized to hear and decide the cause~~
607 ~~upon failure of the arbitrators to agree upon an award shall, in~~
608 ~~the course of his or her jurisdiction, have like powers and be~~
609 ~~subject to like limitations thereon.~~

610 ~~(b) The arbitrators, or umpire in the course of his or her~~
611 ~~jurisdiction, may hear and decide the controversy upon the~~
612 ~~evidence produced notwithstanding the failure or refusal of a~~
613 ~~party duly notified of the time and place of the hearing to~~
614 ~~appear. The court on application may direct the arbitrators, or~~
615 ~~the umpire in the course of his or her jurisdiction, to proceed~~
616 ~~promptly with the hearing and making of the award.~~

617 (2) An arbitrator may decide a request for summary
 618 disposition of a claim or particular issue:
 619 (a) If all interested parties agree; or
 620 (b) Upon request of one party to the arbitration
 621 proceeding, if that party gives notice to all other parties to
 622 the proceeding and the other parties have a reasonable
 623 opportunity to respond. ~~The parties are entitled to be heard, to~~
 624 ~~present evidence material to the controversy and to cross-~~
 625 ~~examine witnesses appearing at the hearing.~~
 626 (3) If an arbitrator orders a hearing, the arbitrator
 627 shall set a time and place and give notice of the hearing at
 628 least 5 days before the hearing begins. Unless a party to the
 629 arbitration proceeding makes an objection to lack or
 630 insufficiency of notice not later than the beginning of the
 631 hearing, the party's appearance at the hearing waives the
 632 objection. Upon request of a party to the arbitration proceeding
 633 and for good cause shown, or upon the arbitrator's own
 634 initiative, the arbitrator may adjourn the hearing from time to
 635 time as necessary but may not postpone the hearing to a time
 636 later than that fixed by the agreement to arbitrate for making
 637 the award unless the parties to the arbitration proceeding
 638 consent to a later date. The arbitrator may hear and decide the
 639 controversy upon the evidence produced although a party who was
 640 duly notified of the arbitration proceeding did not appear. The
 641 court, on request, may direct the arbitrator to conduct the
 642 hearing promptly and render a timely decision. ~~The hearing shall~~
 643 ~~be conducted by all of the arbitrators but a majority may~~
 644 ~~determine any question and render a final award. An umpire~~

645 ~~authorized to hear and decide the cause upon the failure of the~~
 646 ~~arbitrators to agree upon an award shall sit with the~~
 647 ~~arbitrators throughout their hearing but shall not be counted as~~
 648 ~~a part of their quorum or in the making of their award. If,~~
 649 ~~during the course of the hearing, an arbitrator for any reason~~
 650 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~
 651 ~~appointed to act as neutrals may continue with the hearing and~~
 652 ~~determination of the controversy.~~

653 (4) At a hearing under subsection (3), a party to the
 654 arbitration proceeding has a right to be heard, to present
 655 evidence material to the controversy, and to cross-examine
 656 witnesses appearing at the hearing.

657 (5) If an arbitrator ceases or is unable to act during the
 658 arbitration proceeding, a replacement arbitrator must be
 659 appointed in accordance with s. 682.04 to continue the
 660 proceeding and to resolve the controversy.

661 Section 17. Section 682.07, Florida Statutes, is amended
 662 to read:

663 682.07 Representation by attorney.—A party has the right
 664 to be represented by an attorney at any arbitration proceeding
 665 or hearing under this chapter law. ~~A waiver thereof prior to the~~
 666 ~~proceeding or hearing is ineffective.~~

667 Section 18. Section 682.08, Florida Statutes, is amended
 668 to read:

669 682.08 Witnesses, subpoenas, depositions.—

670 (1) An arbitrator may issue a subpoena for the attendance
 671 of a witness and for the production of records and other
 672 evidence at any hearing and may administer oaths. A subpoena

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673 must be served in the manner for service of subpoenas in a civil
674 action and, upon motion to the court by a party to the
675 arbitration proceeding or the arbitrator, enforced in the manner
676 for enforcement of subpoenas in a civil action. Arbitrators, or
677 an umpire authorized to hear and decide the cause upon failure
678 of the arbitrators to agree upon an award, in the course of her
679 or his jurisdiction, may issue subpoenas for the attendance of
680 witnesses and for the production of books, records, documents
681 and other evidence, and shall have the power to administer
682 oaths. Subpoenas so issued shall be served, and upon application
683 to the court by a party to the arbitration or the arbitrators,
684 or the umpire, enforced in the manner provided by law for the
685 service and enforcement of subpoenas in a civil action.

686 (2) In order to make the proceedings fair, expeditious,
687 and cost effective, upon request of a party to, or a witness in,
688 an arbitration proceeding, an arbitrator may permit a deposition
689 of any witness to be taken for use as evidence at the hearing,
690 including a witness who cannot be subpoenaed for or is unable to
691 attend a hearing. The arbitrator shall determine the conditions
692 under which the deposition is taken. On application of a party
693 to the arbitration and for use as evidence, the arbitrators, or
694 the umpire in the course of her or his jurisdiction, may permit
695 a deposition to be taken, in the manner and upon the terms
696 designated by them or her or him of a witness who cannot be
697 subpoenaed or is unable to attend the hearing.

698 (3) An arbitrator may permit such discovery as the
699 arbitrator decides is appropriate in the circumstances, taking
700 into account the needs of the parties to the arbitration

701 proceeding and other affected persons and the desirability of
 702 making the proceeding fair, expeditious, and cost effective. All
 703 ~~provisions of law compelling a person under subpoena to testify~~
 704 ~~are applicable.~~

705 (4) If an arbitrator permits discovery under subsection
 706 (3), the arbitrator may order a party to the arbitration
 707 proceeding to comply with the arbitrator's discovery-related
 708 orders, issue subpoenas for the attendance of a witness and for
 709 the production of records and other evidence at a discovery
 710 proceeding, and take action against a noncomplying party to the
 711 extent a court could if the controversy were the subject of a
 712 civil action in this state.

713 (5) An arbitrator may issue a protective order to prevent
 714 the disclosure of privileged information, confidential
 715 information, trade secrets, and other information protected from
 716 disclosure to the extent a court could if the controversy were
 717 the subject of a civil action in this state.

718 (6) All laws compelling a person under subpoena to testify
 719 and all fees for attending a judicial proceeding, a deposition,
 720 or a discovery proceeding as a witness apply to an arbitration
 721 proceeding as if the controversy were the subject of a civil
 722 action in this state.

723 (7) The court may enforce a subpoena or discovery-related
 724 order for the attendance of a witness within this state and for
 725 the production of records and other evidence issued by an
 726 arbitrator in connection with an arbitration proceeding in
 727 another state upon conditions determined by the court so as to
 728 make the arbitration proceeding fair, expeditious, and cost

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729 effective. A subpoena or discovery-related order issued by an
730 arbitrator in another state must be served in the manner
731 provided by law for service of subpoenas in a civil action in
732 this state and, upon motion to the court by a party to the
733 arbitration proceeding or the arbitrator, enforced in the manner
734 provided by law for enforcement of subpoenas in a civil action
735 in this state.

736 (8)~~(4)~~ Fees for attendance as a witness shall be the same
737 as for a witness in the circuit court.

738 Section 19. Section 682.081, Florida Statutes, is created
739 to read:

740 682.081 Judicial enforcement of preaward ruling by
741 arbitrator.-

742 (1) Except as provided in subsection (2), if an arbitrator
743 makes a preaward ruling in favor of a party to the arbitration
744 proceeding, the party may request that the arbitrator
745 incorporate the ruling into an award under s. 682.12. A
746 prevailing party may make a motion to the court for an expedited
747 order to confirm the award under s. 682.12, in which case the
748 court shall summarily decide the motion. The court shall issue
749 an order to confirm the award unless the court vacates,
750 modifies, or corrects the award under s. 682.13 or s. 682.14.

751 (2) A party to a provisional remedy award for injunctive
752 or equitable relief may make a motion to the court seeking to
753 confirm or vacate the provisional remedy award.

754 (a) The court shall confirm a provisional remedy award for
755 injunctive or equitable relief if the award satisfies the legal
756 standards for awarding a party injunctive or equitable relief.

757 (b) The court shall vacate a provisional remedy award for
758 injunctive or equitable relief which fails to satisfy the legal
759 standards for awarding a party injunctive or equitable relief.

760 Section 20. Section 682.09, Florida Statutes, is amended
761 to read:

762 682.09 Award.—

763 (1) An arbitrator shall make a record of an award. The
764 record must be signed or otherwise authenticated by any
765 arbitrator who concurs with the award. The arbitrator or the
766 arbitration organization shall give notice of the award,
767 including a copy of the award, to each party to the arbitration
768 proceeding. ~~The award shall be in writing and shall be signed by~~
769 ~~the arbitrators joining in the award or by the umpire in the~~
770 ~~course of his or her jurisdiction. They or he or she shall~~
771 ~~deliver a copy to each party to the arbitration either~~
772 ~~personally or by registered or certified mail, or as provided in~~
773 ~~the agreement or provision.~~

774 (2) An award must be made within the time specified by the
775 agreement to arbitrate or, if not specified therein, within the
776 time ordered by the court. The court may extend, or the parties
777 to the arbitration proceeding may agree in a record to extend,
778 the time. The court or the parties may do so within or after the
779 time specified or ordered. A party waives any objection that an
780 award was not timely made unless the party gives notice of the
781 objection to the arbitrator before receiving notice of the
782 award. ~~An award shall be made within the time fixed therefor by~~
783 ~~the agreement or provision for arbitration or, if not so fixed,~~
784 ~~within such time as the court may order on application of a~~

785 ~~party to the arbitration. The parties may, by written agreement,~~
 786 ~~extend the time either before or after the expiration thereof.~~
 787 ~~Any objection that an award was not made within the time~~
 788 ~~required is waived unless the objecting party notifies the~~
 789 ~~arbitrators or umpire in writing of his or her objection prior~~
 790 ~~to the delivery of the award to him or her.~~

791 Section 21. Section 682.10, Florida Statutes, is amended
 792 to read:

793 682.10 Change of award by arbitrators ~~or umpire.~~-

794 (1) On motion to an arbitrator by a party to an
 795 arbitration proceeding, the arbitrator may modify or correct an
 796 award:

797 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

798 (b) Because the arbitrator has not made a final and
 799 definite award upon a claim submitted by the parties to the
 800 arbitration proceeding; or

801 (c) To clarify the award.

802 (2) A motion under subsection (1) must be made and notice
 803 given to all parties within 20 days after the movant receives
 804 notice of the award.

805 (3) A party to the arbitration proceeding must give notice
 806 of any objection to the motion within 10 days after receipt of
 807 the notice.

808 (4) If a motion to the court is pending under s. 682.12,
 809 s. 682.13, or s. 682.14, the court may submit the claim to the
 810 arbitrator to consider whether to modify or correct the award:

811 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

812 (b) Because the arbitrator has not made a final and

813 definite award upon a claim submitted by the parties to the
 814 arbitration proceeding; or

815 (c) To clarify the award.

816 (5) An award modified or corrected pursuant to this
 817 section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14.

818 ~~On application of a party to the arbitration, or if an~~
 819 ~~application to the court is pending under s. 682.12, s. 682.13~~
 820 ~~or s. 682.14, on submission to the arbitrators, or to the umpire~~
 821 ~~in the case of an umpire's award, by the court under such~~
 822 ~~conditions as the court may order, the arbitrators or umpire may~~
 823 ~~modify or correct the award upon the grounds stated in s.~~
 824 ~~682.14(1)(a) and (c) or for the purpose of clarifying the award.~~
 825 ~~The application shall be made within 20 days after delivery of~~
 826 ~~the award to the applicant. Written notice thereof shall be~~
 827 ~~given forthwith to the other party to the arbitration, stating~~
 828 ~~that he or she must serve his or her objections thereto, if any,~~
 829 ~~within 10 days from the notice. The award so modified or~~
 830 ~~corrected is subject to the provisions of ss. 682.12-682.14.~~

831 Section 22. Section 682.11, Florida Statutes, is amended
 832 to read:

833 682.11 Remedies; fees and expenses of arbitration
 834 proceeding.-

835 (1) An arbitrator may award punitive damages or other
 836 exemplary relief if such an award is authorized by law in a
 837 civil action involving the same claim and the evidence produced
 838 at the hearing justifies the award under the legal standards
 839 otherwise applicable to the claim.

840 (2) An arbitrator may award reasonable attorney fees and

841 other reasonable expenses of arbitration if such an award is
 842 authorized by law in a civil action involving the same claim or
 843 by the agreement of the parties to the arbitration proceeding.

844 (3) As to all remedies other than those authorized by
 845 subsections (1) and (2), an arbitrator may order such remedies
 846 as the arbitrator considers just and appropriate under the
 847 circumstances of the arbitration proceeding. The fact that such
 848 a remedy could not or would not be granted by the court is not a
 849 ground for refusing to confirm an award under s. 682.12 or for
 850 vacating an award under s. 682.13.

851 (4) An arbitrator's expenses and fees, together with other
 852 expenses, must be paid as provided in the award.

853 (5) If an arbitrator awards punitive damages or other
 854 exemplary relief under subsection (1), the arbitrator shall
 855 specify in the award the basis in fact justifying and the basis
 856 in law authorizing the award and state separately the amount of
 857 the punitive damages or other exemplary relief. Unless otherwise
 858 provided in the agreement or provision for arbitration, the
 859 arbitrators' and umpire's expenses and fees, together with other
 860 expenses, not including counsel fees, incurred in the conduct of
 861 the arbitration, shall be paid as provided in the award.

862 Section 23. Section 682.12, Florida Statutes, is amended
 863 to read:

864 682.12 Confirmation of an award.—After a party to an
 865 arbitration proceeding receives notice of an award, the party
 866 may make a motion to the court for an order confirming the award
 867 at which time the court shall issue a confirming order unless
 868 the award is modified or corrected pursuant to s. 682.10 or s.

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869 ~~682.14 or is vacated pursuant to s. 682.13. Upon application of~~
 870 ~~a party to the arbitration, the court shall confirm an award,~~
 871 ~~unless within the time limits hereinafter imposed grounds are~~
 872 ~~urged for vacating or modifying or correcting the award, in~~
 873 ~~which case the court shall proceed as provided in ss. 682.13 and~~
 874 ~~682.14.~~

875 Section 24. Section 682.13, Florida Statutes, is amended
 876 to read:

877 682.13 Vacating an award.—

878 (1) Upon motion ~~application~~ of a party to an arbitration
 879 proceeding, the court shall vacate an arbitration award if when:

880 (a) The award was procured by corruption, fraud, or other
 881 undue means;—

882 (b) There was:

883 1. Evident partiality by an arbitrator appointed as a
 884 neutral arbitrator;

885 2. Corruption by an arbitrator; or

886 3. Misconduct by an arbitrator prejudicing the rights of a
 887 party to the arbitration proceeding; ~~or corruption in any of the~~
 888 ~~arbitrators or umpire or misconduct prejudicing the rights of~~
 889 ~~any party.~~

890 (c) An arbitrator refused to postpone the hearing upon
 891 showing of sufficient cause for postponement, refused to hear
 892 evidence material to the controversy, or otherwise conducted the
 893 hearing contrary to s. 682.06, so as to prejudice substantially
 894 the rights of a party to the arbitration proceeding; ~~The~~
 895 ~~arbitrators or the umpire in the course of her or his~~
 896 ~~jurisdiction exceeded their powers.~~

897 (d) An arbitrator exceeded the arbitrator's powers; ~~The~~
 898 ~~arbitrators or the umpire in the course of her or his~~
 899 ~~jurisdiction refused to postpone the hearing upon sufficient~~
 900 ~~cause being shown therefor or refused to hear evidence material~~
 901 ~~to the controversy or otherwise so conducted the hearing,~~
 902 ~~contrary to the provisions of s. 682.06, as to prejudice~~
 903 ~~substantially the rights of a party.~~

904 (e) There was no agreement to arbitrate, unless the person
 905 participated in the arbitration proceeding without raising the
 906 objection under s. 682.06(3) not later than the beginning of the
 907 arbitration hearing; or ~~There was no agreement or provision for~~
 908 ~~arbitration subject to this law, unless the matter was~~
 909 ~~determined in proceedings under s. 682.03 and unless the party~~
 910 ~~participated in the arbitration hearing without raising the~~
 911 ~~objection.~~

912 (f) The arbitration was conducted without proper notice of
 913 the initiation of an arbitration as required in s. 682.032 so as
 914 to prejudice substantially the rights of a party to the
 915 arbitration proceeding.

916 ~~But the fact that the relief was such that it could not or would~~
 917 ~~not be granted by a court of law or equity is not ground for~~
 918 ~~vacating or refusing to confirm the award.~~

919 (2) A motion under this section must be filed within 90
 920 days after the movant receives notice of the award pursuant to
 921 s. 682.09 or within 90 days after the movant receives notice of
 922 a modified or corrected award pursuant to s. 682.10, unless the
 923 movant alleges that the award was procured by corruption, fraud,
 924 or other undue means, in which case the motion must be made

925 within 90 days after the ground is known or by the exercise of
926 reasonable care would have been known by the movant. An
927 ~~application under this section shall be made within 90 days~~
928 ~~after delivery of a copy of the award to the applicant, except~~
929 ~~that, if predicated upon corruption, fraud or other undue means,~~
930 ~~it shall be made within 90 days after such grounds are known or~~
931 ~~should have been known.~~

932 (3) If the court vacates an award on a ground other than
933 that set forth in paragraph (1)(e), it may order a rehearing. If
934 the award is vacated on a ground stated in paragraph (1)(a) or
935 paragraph (1)(b), the rehearing must be before a new arbitrator.
936 If the award is vacated on a ground stated in paragraph (1)(c),
937 paragraph (1)(d), or paragraph (1)(f), the rehearing may be
938 before the arbitrator who made the award or the arbitrator's
939 successor. The arbitrator must render the decision in the
940 rehearing within the same time as that provided in s. 682.09(2)
941 for an award. In vacating the award on grounds other than those
942 stated in paragraph (1)(e), the court may order a rehearing
943 before new arbitrators chosen as provided in the agreement or
944 provision for arbitration or by the court in accordance with s.
945 682.04, or, if the award is vacated on grounds set forth in
946 paragraphs (1)(c) and (d), the court may order a rehearing
947 before the arbitrators or umpire who made the award or their
948 successors appointed in accordance with s. 682.04. The time
949 within which the agreement or provision for arbitration requires
950 the award to be made is applicable to the rehearing and
951 commences from the date of the order therefor.

952 (4) If a motion ~~the application~~ to vacate is denied and no

953 motion to modify or correct the award is pending, the court
 954 shall confirm the award.

955 Section 25. Section 682.14, Florida Statutes, is amended
 956 to read:

957 682.14 Modification or correction of award.—

958 (1) Upon motion made within 90 days after the movant
 959 receives notice of the award pursuant to s. 682.09 or within 90
 960 days after the movant receives notice of a modified or corrected
 961 award pursuant to s. 682.10, the court shall modify or correct
 962 the award if ~~Upon application made within 90 days after delivery~~
 963 ~~of a copy of the award to the applicant, the court shall modify~~
 964 ~~or correct the award when:~~

965 (a) There is an evident miscalculation of figures or an
 966 evident mistake in the description of any person, thing, or
 967 property referred to in the award.

968 (b) The arbitrators ~~or umpire~~ have awarded upon a matter
 969 not submitted in the arbitration ~~to them or him or her~~ and the
 970 award may be corrected without affecting the merits of the
 971 decision upon the issues submitted.

972 (c) The award is imperfect as a matter of form, not
 973 affecting the merits of the controversy.

974 (2) If the motion ~~application~~ is granted, the court shall
 975 modify and correct the award ~~so as to effect its intent~~ and
 976 ~~shall~~ confirm the award as so modified and corrected. Otherwise,
 977 unless a motion to vacate the award under s. 682.13 is pending,
 978 the court shall confirm the award as made.

979 (3) A motion ~~An application~~ to modify or correct an award
 980 may be joined in the alternative with an application to vacate

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981 the award under s. 682.13.

982 Section 26. Section 682.15, Florida Statutes, is amended
983 to read:

984 682.15 Judgment or decree on award.—

985 (1) Upon granting an order confirming, vacating without
986 directing a rehearing, modifying, or correcting an award, the
987 court shall enter a judgment in conformity therewith. The
988 judgment may be recorded, docketed, and enforced as any other
989 judgment in a civil action.

990 (2) A court may allow reasonable costs of the motion and
991 subsequent judicial proceedings.

992 (3) On motion of a prevailing party to a contested
993 judicial proceeding under s. 682.12, s. 682.13, or s. 682.14,
994 the court may add reasonable attorney fees and other reasonable
995 expenses of litigation incurred in a judicial proceeding after
996 the award is made to a judgment confirming, vacating without
997 directing a rehearing, modifying, or correcting an award. ~~Upon~~
998 ~~the granting of an order confirming, modifying or correcting an~~
999 ~~award, judgment or decree shall be entered in conformity~~
1000 ~~therewith and be enforced as any other judgment or decree. Costs~~
1001 ~~of the application and of the proceedings subsequent thereto,~~
1002 ~~and disbursements may be awarded by the court.~~

1003 Section 27. Section 682.16, Florida Statutes, is repealed.

1004 Section 28. Section 682.17, Florida Statutes, is repealed.

1005 Section 29. Section 682.18, Florida Statutes, is repealed.

1006 Section 30. Section 682.181, Florida Statutes, is created

1007 to read:

1008 682.181 Jurisdiction.—

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1009 (1) A court of this state having jurisdiction over the
 1010 controversy and the parties may enforce an agreement to
 1011 arbitrate.

1012 (2) An agreement to arbitrate providing for arbitration in
 1013 this state confers exclusive jurisdiction on the court to enter
 1014 judgment on an award under this chapter.

1015 Section 31. Section 682.19, Florida Statutes, is amended
 1016 to read:

1017 682.19 Venue.—A petition pursuant to s. 682.015 must be
 1018 filed in the court of the county in which the agreement to
 1019 arbitrate specifies the arbitration hearing is to be held or, if
 1020 the hearing has been held, in the court of the county in which
 1021 it was held. Otherwise, the petition may be made in the court of
 1022 any county in which an adverse party resides or has a place of
 1023 business or, if no adverse party has a residence or place of
 1024 business in this state, in the court of any county in this
 1025 state. All subsequent petitions must be made in the court
 1026 hearing the initial petition unless the court otherwise directs.

1027 ~~Any application under this law may be made to the court of the~~
 1028 ~~county in which the other party to the agreement or provision~~
 1029 ~~for arbitration resides or has a place of business, or, if she~~
 1030 ~~or he has no residence or place of business in this state, then~~
 1031 ~~to the court of any county. All applications under this law~~
 1032 ~~subsequent to an initial application shall be made to the court~~
 1033 ~~hearing the initial application unless it shall order otherwise.~~

1034 Section 32. Section 682.20, Florida Statutes, is amended
 1035 to read:

1036 682.20 Appeals.—

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1037 (1) An appeal may be taken from:
 1038 (a) An order denying a motion ~~an application~~ to compel
 1039 arbitration made under s. 682.03.
 1040 (b) An order granting a motion ~~an application~~ to stay
 1041 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).
 1042 (c) An order confirming ~~or denying confirmation of~~ an
 1043 award.
 1044 (d) An order denying confirmation of an award unless the
 1045 court has entered an order under s. 682.10(4) or s. 682.13. All
 1046 other orders denying confirmation of an award are final orders.
 1047 ~~(e)~~ (d) An order modifying or correcting an award.
 1048 ~~(f)~~ (e) An order vacating an award without directing a
 1049 rehearing.
 1050 ~~(g)~~ (f) A judgment or decree entered pursuant to this
 1051 chapter ~~the provisions of this law~~.
 1052 (2) The appeal shall be taken in the manner and to the
 1053 same extent as from orders or judgments in a civil action.
 1054 Section 33. Section 682.21, Florida Statutes, is repealed.
 1055 Section 34. Section 682.22, Florida Statutes, is repealed.
 1056 Section 35. Section 682.23, Florida Statutes, is created
 1057 to read:
 1058 682.23 Relationship to Electronic Signatures in Global and
 1059 National Commerce Act.—The provisions of this chapter governing
 1060 the legal effect, validity, and enforceability of electronic
 1061 records or electronic signatures and of contracts performed with
 1062 the use of such records or signatures conform to the
 1063 requirements of s. 102 of the Electronic Signatures in Global
 1064 and National Commerce Act, 15 U.S.C. s. 7002.

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1065 Section 36. Section 682.25, Florida Statutes, is created
 1066 to read:

1067 682.25 Disputes excluded.—This chapter does not apply to
 1068 any dispute involving child custody, visitation, or child
 1069 support.

1070 Section 37. Section 440.1926, Florida Statutes, is amended
 1071 to read:

1072 440.1926 Alternate dispute resolution; claim arbitration.—
 1073 Notwithstanding any other provision of this chapter, the
 1074 employer, carrier, and employee may mutually agree to seek
 1075 consent from a judge of compensation claims to enter into
 1076 binding claim arbitration in lieu of any other remedy provided
 1077 for in this chapter to resolve all issues in dispute regarding
 1078 an injury. Arbitrations agreed to pursuant to this section shall
 1079 be governed by chapter 682, the Revised Florida Arbitration
 1080 Code, except that, notwithstanding any provision in chapter 682,
 1081 the term "court" shall mean a judge of compensation claims. An
 1082 arbitration award in accordance with this section is ~~shall be~~
 1083 enforceable in the same manner and with the same powers as any
 1084 final compensation order.

1085 Section 38. Paragraph (a) of subsection (1) of section
 1086 489.1402, Florida Statutes, is amended to read:

1087 489.1402 Homeowners' Construction Recovery Fund;
 1088 definitions.—

1089 (1) The following definitions apply to ss. 489.140-
 1090 489.144:

1091 (a) "Arbitration" means alternative dispute resolution
 1092 entered into between a claimant and a contractor either pursuant

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1093 to a construction contract that contains a mandatory arbitration
 1094 clause or through any binding arbitration under chapter 682, the
 1095 Revised Florida Arbitration Code.

1096 Section 39. Subsection (2) of section 731.401, Florida
 1097 Statutes, is amended to read:

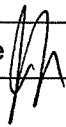

1098 731.401 Arbitration of disputes.-

1099 (2) Unless otherwise specified in the will or trust, a
 1100 will or trust provision requiring arbitration shall be presumed
 1101 to require binding arbitration under chapter 682, the Revised
 1102 Florida Arbitration Code ~~s. 44.104~~. If an arbitration
 1103 enforceable under this section is governed by chapter 682, the
 1104 arbitration provisions in the will or trust shall be treated as
 1105 an agreement for the purpose of applying chapter 682.

1106 Section 40. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 851 Animal Cruelty
SPONSOR(S): Criminal Justice Subcommittee; Moskowitz and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 828.12(1) and (2), F.S., provide the following:

- (1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a first degree misdemeanor or by a fine of not more than \$5,000, or both.
- (2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a third degree felony or by a fine of not more than \$10,000, or both.

The bill designates a violation of s. 828.12(1), F.S., as "animal cruelty," and a violation of s. 828.12(2), F.S., as "aggravated animal cruelty," and clarifies that aggravated animal cruelty can result from a person's *failure* to act. The bill adds a provision specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

The bill creates s. 828.1615, F.S., making it a second degree misdemeanor for a person to:

- Dye or artificially color animals under 12 weeks of age, or fowl or rabbits of any age;
- Bring dyed or artificially colored animals under 12 weeks of age, or fowl or rabbits of any age, into the state; or
- Sell, offer for sale, or give away as merchandising premiums baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys, or retail premiums.

The first two prohibitions listed above do not apply to animals that are temporarily dyed by agricultural entities for protective health purposes.

The bill also amends the definition of "racketeering activity" to include violations of s. 828.122, F.S., relating to animal fighting and baiting.

The Criminal Justice Impact Conference met on March 21, 2013 and determined this bill may have an insignificant negative impact on state prison beds. The bill may also have a negative jail bed impact on local governments. See fiscal section.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Animal Cruelty

Section 828.12(1) and (2), F.S., provide the following:

- (1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, is guilty of a first degree misdemeanor¹ or by a fine of not more than \$5,000, or both.
- (2) A person who intentionally commits an act to any animal which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, is guilty of a third degree felony² or by a fine of not more than \$10,000, or both.³

In 2009, Florida's 5th District Court of Appeal (DCA) reviewed a case in which the trial court held that acts of omission could not be charged as felony animal cruelty.⁴ In so ruling, the trial judge observed that the misdemeanor animal cruelty offense specifically referred to depriving an animal of necessary sustenance or shelter and expressed doubt that, given this specific reference to deprivation of sustenance in the misdemeanor section of the statute, that the felony could be committed by depriving the animal of sustenance.⁵ Due to procedural reasons, the 5th DCA could not overturn the trial court's ruling, but did note in its opinion that the trial court's ruling regarding acts of omission was "dangerously wrong."⁶

Regarding a separate issue, a circuit judge in the First Judicial Circuit recently held that, "a single act of cruelty injuring multiple animals will be insufficient to establish a basis for multiple convictions."⁷ The court also stated, "the confinement of animals without sufficient food, water, or exercise charges are not distinguishable into separate acts merely because of an allegation that individual animals are kept in separate pens."

Effect of the Bill

The bill designates a violation of s. 828.12(1), F.S., as "animal cruelty," and a violation of s. 828.12(2), F.S., as "aggravated animal cruelty." The bill clarifies that aggravated animal cruelty can occur when a person who owns or has custody or control of an animal fails to act, and such failure results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done.

The bill adds a new subsection (3) to s. 828.12, F.S. specifying that a person who commits multiple acts of animal cruelty or aggravated animal cruelty against one animal may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

¹ A first degree misdemeanor is punishable by up to one year in county jail. Sections 775.082, F.S.

² A third degree felony is punishable by up to five years imprisonment. Sections 775.082, F.S.

³ Section 828.12(2)(a) and (b), F.S., provide increased penalties for violations of subsection (2) when the violation involves knowing and intentional torture of an animal that results in specified injuries, or when the offense is a second or subsequent violation of subsection (2).

⁴ *Hynes v. State*, 1 So.3d 328 (Fla. 5th DCA 2009).

⁵ *Id.*

⁶ *Id.* at 330. Since the *Hynes* decision, the 2nd DCA held that a defendant's act of systematically depriving his dogs of nourishment was properly charged as felony animal cruelty rather than misdemeanor. *State v. Morival*, 75 So.3d 810 (Fla. 2nd DCA 2011).

⁷ *State v. Kervin, Sr.*, Case No. CF 000887A (Fla. 1st Cir. Ct. 2012).

Artificially Coloring Animals

Section 828.161, F.S. (2011), made it a second degree misdemeanor⁸ for a person to:

- Dye or color artificially any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings, or to bring any dyed or colored animal or fowl into this state; or
- Sell, offer for sale, or give away as merchandising premiums, baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys or retail premiums.

This statute was not construed to apply to any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings to be used or raised for agricultural purposes by persons with proper facilities to care for them or for poultry or livestock exhibitions.

In 2012, House Bill 1197, an omnibus agricultural bill, was enacted.⁹ Prior to its passage in the Florida Senate, a floor amendment was adopted which repealed s. 828.161, F.S.¹⁰

Effect of the Bill

The bill creates s. 828.1615, F.S., which largely recreates the provisions of former s. 828.161, F.S. The bill makes it a second degree misdemeanor for a person to:

- Dye or artificially color animals under 12 weeks of age, or fowl or rabbits of any age;
- Bring dyed or artificially colored animals under 12 weeks of age, or fowl or rabbits of any age, into the state; or
- Sell, offer for sale, or give away as merchandising premiums baby chickens, ducklings, or other fowl under 4 weeks of age or rabbits under 2 months of age to be used as pets, toys, or retail premiums.

The first two prohibitions listed above do not apply to animals that are temporarily dyed by agricultural entities for protective health purposes. The bill prohibits the statute from being construed to apply to any animal that is under 12 weeks of age, or any fowl or rabbit of any age that are used or raised for agricultural purposes by persons with proper facilities to care for them or for poultry or livestock exhibitions.

Racketeer Influenced and Corrupt Organization (RICO) Act

Florida's RICO Act¹¹ makes it a first degree felony,¹² ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart:¹³

- For any person who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;
- For any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property;

⁸ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

⁹ Chapter 2012-83, L.O.F.

¹⁰ Amendment barcode number 303390, filed by Senator Bogdanoff on March 6, 2012, adopted by the Florida Senate on March 6, 2012, concurred to by the Florida House of Representatives on March 6, 2012.

¹¹ Sections 895.01 – 895.06, F.S.

¹² 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.

¹³ 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 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the Legislature. 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; the defendant's prior criminal history record and other aggravating factors. The points are added in order to determine the "lowest permissible sentence" for the offense.

- For any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; or
- For any person to conspire or endeavor to violate any of the above-described provisions.¹⁴

Section 895.02, F.S., defines the term “racketeering activity,” in part, to mean to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit any crimes that are chargeable by indictment or information that are specifically listed in s. 895.02(1)(a), F.S. There are over 50 crimes currently listed in s. 895.02(1)(a), F.S., ranging from evasion of payment of cigarette taxes to homicide. Violations of the RICO Act may be investigated and prosecuted by the Office of Statewide prosecution.¹⁵

Effect of the Bill

The bill amends the definition of “racketeering activity” to include violations of s. 828.122, F.S., which makes it a third degree felony for a person to:

- Bait, breed, train, transport, sell, own, possess, or use any wild or domestic animal for the purpose of animal fighting or baiting; or
- Own, possess, or sell equipment for use in any activity described above.

B. SECTION DIRECTORY:

Section 1. Amends s. 828.12, F.S., relating to cruelty to animals.

Section 2. Creates s. 828.1615, F.S., relating to prohibiting artificial coloring and sale of certain animals.

Section 3. Amends s. 895.02, F.S., relating to definitions.

Section 4. 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 an impact on state government revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2013 and determined this bill may have an insignificant negative impact on state prison beds.

The bill clarifies that a person who commits multiple acts of aggravated animal cruelty may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon. To the extent judges have been interpreting s. 828.12, F.S., as only permitting a single charge for such acts of aggravated animal cruelty, the bill could have a negative prison bed impact on the Department of Corrections (DOC).

The bill could also have a negative prison bed impact on DOC because it includes violations of s. 828.122, F.S., relating to animal fighting or baiting, in the definition of “racketeering activity.” Under

¹⁴ Sections 895.03 and 895.04, F.S.

¹⁵ Section 16.56, F.S.

the RICO Act, a crime involving racketing activity is a first degree felony ranked in Level 8 of the Criminal Punishment Code offense severity ranking chart.

However, these are low volume offenses and are expected to have an insignificant impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill clarifies that a person who commits multiple acts of animal cruelty may be charged with a separate offense for each act. Similarly, the bill provides that a person who commits animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon. To the extent judges have been interpreting s. 828.12, F.S., as only permitting a single charge for such acts of animal cruelty, the bill could have a negative jail bed impact on local governments, but the impact will likely be insignificant.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed the provisions amending s. 828.122, F.S., relating to animal fighting or baiting, and created s. 828.1615, F.S., relating to artificially coloring animals. The bill also added a provision to s. 828.12, F.S., clarifying that aggravated animal cruelty can result from a person's failure to act.

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

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1 A bill to be entitled
2 An act relating to animal cruelty; amending s. 828.12,
3 F.S.; specifying that a person who commits multiple
4 acts of animal cruelty against one animal or acts of
5 animal cruelty against multiple animals may be charged
6 with a separate offense for each such act of animal
7 cruelty; specifying that a person who owns or has
8 custody or control of any animal and fails to act
9 commits aggravated animal cruelty if certain injuries
10 or death result; creating s. 828.1615, F.S.;
11 prohibiting specific acts relating to dyeing or
12 artificially coloring certain animals; prohibiting
13 persons from selling, offering for sale, or giving
14 away as merchandising premiums specified fowl or
15 rabbits to be used as pets, toys, or retail premiums;
16 providing exceptions; providing criminal penalties;
17 amending s. 895.02, F.S.; including illegal animal
18 fighting or baiting as an offense within the
19 definition of the term "racketeering activity" for
20 purposes of the Florida RICO (Racketeer Influenced and
21 Corrupt Organization) Act; providing an effective
22 date.

23

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

25

26 Section 1. Section 828.12, Florida Statutes, is amended to
27 read:

28 828.12 Cruelty to animals.—

29 (1) A person who unnecessarily overloads, overdrives,
 30 torments, deprives of necessary sustenance or shelter, or
 31 unnecessarily mutilates, or kills any animal, or causes the same
 32 to be done, or carries in or upon any vehicle, or otherwise, any
 33 animal in a cruel or inhumane manner, commits animal cruelty, ~~is~~
 34 ~~guilty of~~ a misdemeanor of the first degree, punishable as
 35 provided in s. 775.082 or by a fine of not more than \$5,000, or
 36 both.

37 (2) A person who intentionally commits an act to any
 38 animal, or a person who owns or has the custody or control of
 39 any animal and fails to act, which results in the cruel death,
 40 or excessive or repeated infliction of unnecessary pain or
 41 suffering, or causes the same to be done, commits aggravated
 42 animal cruelty, ~~is guilty of~~ a felony of the third degree,
 43 punishable as provided in s. 775.082 or by a fine of not more
 44 than \$10,000, or both.

45 (a) A person convicted of a violation of this subsection,
 46 where the finder of fact determines that the violation includes
 47 the knowing and intentional torture or torment of an animal that
 48 injures, mutilates, or kills the animal, shall be ordered to pay
 49 a minimum mandatory fine of \$2,500 and undergo psychological
 50 counseling or complete an anger management treatment program.

51 (b) A ~~Any~~ person convicted of a second or subsequent
 52 violation of this subsection shall be required to pay a minimum
 53 mandatory fine of \$5,000 and serve a minimum mandatory period of
 54 incarceration of 6 months. In addition, the person shall be
 55 released only upon expiration of sentence, is ~~shall not be~~
 56 eligible for parole, control release, or any form of early

57 release, and must serve 100 percent of the court-imposed
58 sentence. Any plea of nolo contendere shall be considered a
59 conviction for purposes of this subsection.

60 (3) A person who commits multiple acts of animal cruelty
61 or aggravated animal cruelty against an animal may be charged
62 with a separate offense for each such act. A person who commits
63 animal cruelty or aggravated animal cruelty against more than
64 one animal may be charged with a separate offense for each
65 animal such cruelty was committed upon.

66 (4)~~(3)~~ A veterinarian licensed to practice in the state
67 shall be held harmless from either criminal or civil liability
68 for any decisions made or services rendered under the provisions
69 of this section. Such a veterinarian is, therefore, under this
70 subsection, immune from a lawsuit for his or her part in an
71 investigation of cruelty to animals.

72 (5)~~(4)~~ A person who intentionally trips, fells, ropes, or
73 lassos the legs of a horse by any means for the purpose of
74 entertainment or sport shall be guilty of a third degree felony,
75 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
76 As used in this subsection, "trip" means any act that consists
77 of the use of any wire, pole, stick, rope, or other apparatus to
78 cause a horse to fall or lose its balance, and "horse" means any
79 animal of any registered breed of the genus Equus, or any
80 recognized hybrid thereof. The provisions of this subsection
81 shall not apply when tripping is used:

82 (a) To control a horse that is posing an immediate threat
83 to other livestock or human beings;

84 (b) For the purpose of identifying ownership of the horse

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85 when its ownership is unknown; or

86 (c) For the purpose of administering veterinary care to
87 the horse.

88 Section 2. Section 828.1615, Florida Statutes, is created
89 to read:

90 828.1615 Prohibiting artificial coloring and sale of
91 certain animals.-

92 (1) It is unlawful for a person to:

93 (a) Dye or artificially color an animal that is under 12
94 weeks of age, or a fowl or rabbit of any age;

95 (b) Bring a dyed or artificially colored animal that is
96 under 12 weeks of age, or a fowl or rabbit of any age, into this
97 state; or

98 (c) Sell, offer for sale, or give away as merchandising
99 premiums, baby chickens, ducklings, or other fowl under 4 weeks
100 of age or rabbits under 2 months of age to be used as pets,
101 toys, or retail premiums.

102 (2) The prohibitions in paragraphs (1)(a) and (1)(b) do
103 not apply to animals that are temporarily dyed by agricultural
104 entities for protective health purposes.

105 (3) This section does not apply to an animal that is under
106 12 weeks of age, or a fowl or rabbit of any age, that is used or
107 raised for agricultural purposes by a person with proper
108 facilities to care for it or for the purpose of poultry or
109 livestock exhibitions.

110 (4) A person who violates this section commits a
111 misdemeanor of the second degree, punishable as provided in s.
112 775.082 or s. 775.083.

113 Section 3. Paragraph (a) of subsection (1) of section
 114 895.02, Florida Statutes, is amended to read:

115 895.02 Definitions.—As used in ss. 895.01-895.08, the
 116 term:

117 (1) "Racketeering activity" means to commit, to attempt to
 118 commit, to conspire to commit, or to solicit, coerce, or
 119 intimidate another person to commit:

120 (a) Any crime that is chargeable by petition, indictment,
 121 or information under the following provisions of the Florida
 122 Statutes:

123 1. Section 210.18, relating to evasion of payment of
 124 cigarette taxes.

125 2. Section 316.1935, relating to fleeing or attempting to
 126 elude a law enforcement officer and aggravated fleeing or
 127 eluding.

128 3. Section 403.727(3)(b), relating to environmental
 129 control.

130 4. Section 409.920 or s. 409.9201, relating to Medicaid
 131 fraud.

132 5. Section 414.39, relating to public assistance fraud.

133 6. Section 440.105 or s. 440.106, relating to workers'
 134 compensation.

135 7. Section 443.071(4), relating to creation of a
 136 fictitious employer scheme to commit reemployment assistance
 137 fraud.

138 8. Section 465.0161, relating to distribution of medicinal
 139 drugs without a permit as an Internet pharmacy.

140 9. Section 499.0051, relating to crimes involving

- 141 | contraband and adulterated drugs.
- 142 | 10. Part IV of chapter 501, relating to telemarketing.
- 143 | 11. Chapter 517, relating to sale of securities and
- 144 | investor protection.
- 145 | 12. Section 550.235 or s. 550.3551, relating to dogracing
- 146 | and horseracing.
- 147 | 13. Chapter 550, relating to jai alai frontons.
- 148 | 14. Section 551.109, relating to slot machine gaming.
- 149 | 15. Chapter 552, relating to the manufacture,
- 150 | distribution, and use of explosives.
- 151 | 16. Chapter 560, relating to money transmitters, if the
- 152 | violation is punishable as a felony.
- 153 | 17. Chapter 562, relating to beverage law enforcement.
- 154 | 18. Section 624.401, relating to transacting insurance
- 155 | without a certificate of authority, s. 624.437(4)(c)1., relating
- 156 | to operating an unauthorized multiple-employer welfare
- 157 | arrangement, or s. 626.902(1)(b), relating to representing or
- 158 | aiding an unauthorized insurer.
- 159 | 19. Section 655.50, relating to reports of currency
- 160 | transactions, when such violation is punishable as a felony.
- 161 | 20. Chapter 687, relating to interest and usurious
- 162 | practices.
- 163 | 21. Section 721.08, s. 721.09, or s. 721.13, relating to
- 164 | real estate timeshare plans.
- 165 | 22. Section 775.13(5)(b), relating to registration of
- 166 | persons found to have committed any offense for the purpose of
- 167 | benefiting, promoting, or furthering the interests of a criminal
- 168 | gang.

169 23. Section 777.03, relating to commission of crimes by
 170 accessories after the fact.

171 24. Chapter 782, relating to homicide.

172 25. Chapter 784, relating to assault and battery.

173 26. Chapter 787, relating to kidnapping or human
 174 trafficking.

175 27. Chapter 790, relating to weapons and firearms.

176 28. Chapter 794, relating to sexual battery, but only if
 177 such crime was committed with the intent to benefit, promote, or
 178 further the interests of a criminal gang, or for the purpose of
 179 increasing a criminal gang member's own standing or position
 180 within a criminal gang.

181 29. Section 796.03, s. 796.035, s. 796.04, s. 796.05, or
 182 s. 796.07, relating to prostitution and sex trafficking.

183 30. Chapter 806, relating to arson and criminal mischief.

184 31. Chapter 810, relating to burglary and trespass.

185 32. Chapter 812, relating to theft, robbery, and related
 186 crimes.

187 33. Chapter 815, relating to computer-related crimes.

188 34. Chapter 817, relating to fraudulent practices, false
 189 pretenses, fraud generally, and credit card crimes.

190 35. Chapter 825, relating to abuse, neglect, or
 191 exploitation of an elderly person or disabled adult.

192 36. Section 827.071, relating to commercial sexual
 193 exploitation of children.

194 37. Section 828.122, relating to fighting or baiting
 195 animals.

196 38.37. Chapter 831, relating to forgery and

197 counterfeiting.
 198 ~~39.38.~~ Chapter 832, relating to issuance of worthless
 199 checks and drafts.
 200 ~~40.39.~~ Section 836.05, relating to extortion.
 201 ~~41.40.~~ Chapter 837, relating to perjury.
 202 ~~42.41.~~ Chapter 838, relating to bribery and misuse of
 203 public office.
 204 ~~43.42.~~ Chapter 843, relating to obstruction of justice.
 205 ~~44.43.~~ Section 847.011, s. 847.012, s. 847.013, s. 847.06,
 206 or s. 847.07, relating to obscene literature and profanity.
 207 ~~45.44.~~ Section 849.09, s. 849.14, s. 849.15, s. 849.23, or
 208 s. 849.25, relating to gambling.
 209 ~~46.45.~~ Chapter 874, relating to criminal gangs.
 210 ~~47.46.~~ Chapter 893, relating to drug abuse prevention and
 211 control.
 212 ~~48.47.~~ Chapter 896, relating to offenses related to
 213 financial transactions.
 214 ~~49.48.~~ Sections 914.22 and 914.23, relating to tampering
 215 with or harassing a witness, victim, or informant, and
 216 retaliation against a witness, victim, or informant.
 217 ~~50.49.~~ Sections 918.12 and 918.13, relating to tampering
 218 with jurors and evidence.
 219 Section 4. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875 Licensed Security Officers
SPONSOR(S): Workman and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>JAD</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (DACS) is responsible for licensure in the fields of private security, private investigations, and recovery services. Currently, ch. 493, F.S., does not contain any provisions specifically making it a crime to impersonate a licensee.

The bill amends s. 493.6120, F.S., to make it a first degree misdemeanor for an unlicensed person to engage in any activity for which ch. 493, F.S., requires a license. The bill also makes it a third degree felony for a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally force another person to assist the impersonator in an activity within the scope of duty of a person licensed under ch. 493, F.S. The penalties are increased for second or subsequent violations, or when violations occur while committing a felony.

The bill creates an unnumbered section of statute authorizing licensed security officers and licensed security agency managers who also possess a valid Class "G" license (firearm license), to temporarily detain a person, so long as the officer or manager:

- Is on duty and in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager;
- Is on the premises of a critical infrastructure facility; and
- Has probable cause to believe that the person has committed or is committing a crime against the client operating the premises or the client's patron.

The temporary detention must be for the purpose of ascertaining the person's identity and the circumstances of the person's activity.

The security officer must notify the appropriate law enforcement agency as soon as possible, and may only detain the person until a law enforcement officer arrives and is in the presence of the detainee. A security officer or security agency manager may search a detained person and his or her belongings if the detainee admits to having a weapon, or the officer or manager observes that the person is armed with a firearm, or other weapon that poses a threat. Such search may only be conducted to the extent necessary to disclose the presence of a weapon, which must be seized and transferred to the responding law enforcement officer.

The bill specifies that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with the provisions outlined above.

The Criminal Justice Impact Conference met on March 21, 2013 and determined the bill will have an insignificant impact on state prison beds. The bill may also have a negative jail bed impact on local governments.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Impersonating Security Officers, Private Investigators, and Recovery Agents

The Division of Licensing (Division) within the Department of Agriculture and Consumer Services (DACS) is responsible for licensure in the fields of private security, private investigations, and recovery services.¹ As reflected in the following chart,² the Division issues a variety of licenses within these three fields.³

PRIVATE INVESTIGATION		COMBINED PRIVATE INVESTIGATION AND SECURITY	
Agency	Class "A"	Agency	Class "A" & Class "B"
Private Investigator	Class "C"	Branch Office	Class "AB"
Armed Private Investigator	Class "C" & Class "G"	Manager	Class "M"
Branch Office	Class "AA"		
Manager	Class "C" or Class "MA" or Class "M"		
Intern	Class "CC"		
PRIVATE SECURITY		SCHOOLS	
Agency	Class "B"	Security Officer School or Training Facility	Class "DS"
Security Officer	Class "D"	Security Officer Instructor	Class "DI"
Armed Security Officer	Class "D" & Class "G"	Recovery Agent School or Training Facility	Class "RS"
Branch Office	Class "BB"	Recovery Agent Instructor	Class "RI"
Manager	Class "MB" or Class "M"		
REPOSSESSION ACTIVITY		FIREARMS	
Agency	Class "R"	Instructor	Class "K"
Recovery Agent	Class "E"	Statewide Firearm License	Class "G"
Branch Office	Class "RR"		
Manager	Class "MR" or Class "E"		
Intern	Class "EE"		

Section 493.6101, F.S., defines terms relating to the private security, private investigations, and recovery services fields as follows:

Private Security Services

- "Security officer" means any individual who, for consideration, advertises as providing or performs bodyguard services or otherwise guards persons or property; attempts to prevent theft or unlawful taking of goods, wares, and merchandise; or attempts to prevent the misappropriation or concealment of goods, wares or merchandise, money, bonds, stocks, choses in action, notes, or other documents, papers, and articles of value or procurement of the return thereof. The term also includes armored car personnel and those personnel engaged in the transportation of prisoners.⁴
- "Security agency" means any person⁵ who, for consideration, advertises as providing or is engaged in the business of furnishing security services, armored car services, or transporting prisoners.⁶

¹ Chapter 493, F.S.

² Rule 5N-1.116(1), F.A.C.

³ A variety of individuals are exempt from the licensing requirements of ch. 493, F.S. These include local, state, and federal law enforcement officers engaged in official duties or when performing superior-approved off-duty security activities, attorneys engaged in the regular practice of her or his profession, and any person duly authorized by the laws of this state to operate a central burglar or fire alarm business..." Section 493.6102(1)-(4), F.S.

⁴ Section 493.6101(19), F.S.

⁵ Section 493.6101(2), F.S., defines "person" as any individual, firm, company, agency, organization, partnership, or corporation.

⁶ Section 493.6101(18), F.S. This includes any person who utilizes dogs and individuals to provide security services.

Private Investigative Services

- “Private investigator” means any individual who, for consideration, advertises as providing or performs private investigation.⁷
- “Private investigative agency” means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.⁸
- “Private investigation” means the investigation by a person or persons for the purpose of obtaining information with reference to any of the following matters:
 - Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
 - The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
 - The credibility of witnesses or other persons.
 - The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
 - The location or recovery of lost or stolen property.
 - The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
 - The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation therefor.⁹

Recovery Services

- “Recovery agent” means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.¹⁰
- “Recovery agency” means any person who, for consideration, advertises as providing or is engaged in the business of performing repossessions.¹¹
- “Repossession” is defined as the recovery of a motor vehicle, mobile home, motorboat, aircraft, personal watercraft, all-terrain vehicle, farm equipment, or industrial equipment, by an individual who is authorized by the legal owner, lienholder, or lessor to recover, or to collect money payment in lieu of recovery of, that which has been sold or leased under a security agreement that contains a repossession clause.¹²

Section 493.6121, F.S., gives DACS the power to enforce the provisions of ch. 493, F.S., irrespective of the place or location in which the violation occurred and, upon the complaint of any person or on its own initiative, to investigate any suspected violation thereof or to cause to be investigated the business and business methods of an unlicensed person. DACS also has the authority to investigate an unlicensed person when such person is advertising as providing or is engaged in performing services which require licensure.¹³ In such instances, DACS has the authority to issue an order to cease and desist the further conduct of such activities, seek an injunction, deny an application, or impose an administrative fine.¹⁴

Currently, ch. 493, F.S., does not contain any provisions specifically making it a crime to impersonate a licensee.

⁷ Section 493.6101(16), F.S.

⁸ Section 493.6101(15), F.S.

⁹ Section 493.6101(17), F.S.

¹⁰ Section 493.6101(21), F.S.

¹¹ Section 493.6101(20), F.S.

¹² Section 493.6101(22), F.S.

¹³ Section 493.6121, F.S.

¹⁴ *Id.*

Effect of the Bill

The bill amends s. 493.6120, F.S., to create two criminal offenses relating to impersonating a licensee. The bill makes it a first degree misdemeanor¹⁵ for an unlicensed person to engage in any activity for which ch. 493, F.S., requires a license. A second or subsequent violation of this provision is a third degree felony,¹⁶ and DACS is authorized to seek a civil penalty of up to \$10,000. However, these penalties do not apply if the person engaged in unlicensed activity within 90 days after the expiration date of his or her license.

The bill also makes it a third degree felony for a person who, while impersonating a security officer, private investigator, recovery agent, or other person required to have a license under ch. 493, F.S., knowingly and intentionally forces another person to assist the impersonator in an activity within the scope of duty of a professional licensed under ch. 493, F.S. The penalty is increased to:

- A second degree felony¹⁷ if the offense occurred during the course of committing a felony; and
- A first degree felony¹⁸ if the offense occurred during the course of committing a felony that resulted in death or serious bodily injury.

Private Security Officers - The Power to Detain

Generally, only law enforcement officers have the power to detain an individual relating to criminal activity.¹⁹ However, there are some exceptions to this general rule. For example, s. 812.015(3)(a), F.S., authorizes law enforcement officers, merchants, farmers, and transit agency²⁰ employees or agents who have probable cause to believe that a retail theft,²¹ farm theft,²² a transit fare evasion,²³ or trespass,²⁴ or unlawful use or attempted use of any antishoplifting or inventory control device countermeasure,²⁵ has been committed to take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time for the purpose of attempting to effect recovery or for prosecution.²⁶ In the event a merchant, farmer, or a transit agency's employee takes the person into custody, a law enforcement officer must be immediately called to the scene.

Public lodging establishment and food service establishment operators have similar statutory authority to "take a person into custody and detain a person" if there is probable cause to believe the person is

¹⁵ 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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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.

¹⁹ See s. 901.151, F.S., which authorizes a law enforcement officer to temporarily detain a person if the officer encounters such person under circumstances that reasonably indicate that such person has committed, is committing, or is about to commit a crime. Such detention must be for the purpose of ascertaining the identity of the person temporarily detained and the circumstances surrounding the person's presence which led the officer to believe that the person had committed, was committing, or was about to commit a crime..

²⁰ Section 812.015(1), F.S., defines the terms "law enforcement officer," "merchant," "farmer," and "transit agency."

²¹ Section 812.015(1), F.S., defines "retail theft" as the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.

²² Section 812.015(1), F.S., defines "farm theft" as the unlawful taking possession of any items that are grown or produced on land owned, rented, or leased by another person.

²³ Section 812.015(1), F.S., defines "transit fare evasion" as the unlawful refusal to pay the appropriate fare for transportation upon a mass transit vehicle, or to evade the payment of such fare, or to enter any mass transit vehicle or facility by any door, passageway, or gate, except as provided for the entry of fare-paying passengers.

²⁴ Section 812.015(1), F.S., defines "trespass" in accordance with s. 810.08, F.S., which specifies that whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

²⁵ Section 812.015(1), F.S., defines "antishoplifting or inventory control device countermeasure" as any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device.

²⁶ In the case of a farmer, the taking into custody can only be effectuated on property owned or leased by the farmer. In the case of retail or farm theft, the law enforcement officer, merchant, farmer, or transit agency employee must also have probable cause to believe that the property can be recovered by taking the offender into custody. Section 812.015(3)(a), F.S.

engaging in disorderly conduct and that such conduct was creating a threat to the life or safety of the person or others.²⁷ In these situations, it is also required that law enforcement be called immediately.

Additionally, s. 311.124, F.S., specifies that a Class D or Class G seaport security officer certified under the federal Maritime Transportation Security Act of 2002 guidelines or any employee of the seaport security force certified under the federal Maritime Transportation Security Act of 2002 guidelines has the power to detain persons in a reasonable manner for a reasonable period of time pending arrival of a law enforcement officer if they have "probable cause to believe that a person is trespassing ... in a designated restricted area...."²⁸ The seaport security officer must, upon detaining a person for trespass, immediately call a certified law enforcement officer to the scene.²⁹ This action does not "render the security officer criminally or civilly liable for false arrest, false imprisonment, or unlawful detention."³⁰

Currently, ch. 493, F.S., does not specifically authorize security officers to detain individuals.

Effect of the Bill

The bill creates an unnumbered section of statute authorizing licensed security officers and licensed security agency managers who also possess a valid Class "G" license (firearm license), to temporarily detain a person, so long as the security officer or security agency manager:

- Is on duty and in a uniform with at least one patch or emblem visible at all times clearly identifying the agency employing the security officer or security agency manager;
- Is on the premises of a critical infrastructure facility; and
- Has probable cause to believe that the person has committed or is committing a crime against the client operating the premises or the client's patron.

The temporary detention must be for the purpose of ascertaining the person's identity and the circumstances of the person's activity.

After temporarily detained a person, a security officer or security agency manager must notify the appropriate law enforcement agency as soon as reasonably possible, and may detain the person until a responding law enforcement officer arrives on the premises and is in the presence of the detainee. The custody of any person temporarily detained must be immediately transferred to the responding law enforcement officer unless the officer requests the security officer to assist in detaining the person. The security officer's authority to continue to detain the person pursuant to such request does not extend beyond the place where the person was first detained or in the immediate vicinity of that place.

A security officer or security agency manager may search a detained person and his or her belongings if the security officer or manager observes that the person is armed with a firearm, concealed weapon, or destructive device that poses a threat to the safety of the security officer, security agency manager, or any person for whom the officer or manager is responsible for providing protection; or if the detainee admits to having a weapon. Such search may only be conducted to the extent necessary to disclose the presence of a weapon. The security officer or security agency manager is required to seize any weapon discovered and transfer it to the responding law enforcement officer.

The bill specifies that a law enforcement officer, security officer, or security agency manager is not criminally or civilly liable for false arrest, false imprisonment, or unlawful detention due to his or her custody and detention of a person if done in compliance with the provisions outlined above.

²⁷ Section 509.143, F.S.

²⁸ "Restricted area" is defined by 33 C.F.R. part 105. *Also see* s. 311.12, F.S.

²⁹ Section 311.124, F.S.

³⁰ *Id.*

The bill defines the term "critical infrastructure facility" as any of the following, *if* it employs measures such as fences, barriers, or guard posts that are designed to exclude unauthorized personnel:

- A chemical manufacturing facility;
- A refinery;
- An electrical power plant as defined in s. 403.031, F.S., including a substation, switching station, electrical control center, or electrical transmission or distribution facility;
- A water intake structure, water treatment facility, wastewater treatment plant, or pump station;
- A natural gas transmission compressor station;
- A liquid natural gas terminal or storage facility;
- A telecommunications central switching office;
- A deep water port or railroad switching yard; or
- A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas.

B. SECTION DIRECTORY:

Section 1. Amends s. 493.6120, F.S., relating to violations; penalty.

Section 2. Creates s. 493.631, F.S., relating to temporary detention by a licensed security officer or licensed security agency manager at critical infrastructure facilities.

Section 3. 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 an impact on state revenues.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2013 and determined the bill will have an insignificant impact on state prison beds. The bill creates first, second, and third degree felony offenses, but they are likely low volume offenses.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

Because the bill creates a new first degree misdemeanor offense, it may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Section 493.6103, F.S., requires DACS to adopt rules necessary to administer ch. 493, F.S. The bill does not appear to create a need for additional rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to licensed security officers;
 amending s. 493.6120, F.S.; providing penalties for an
 unlicensed person who engages in an activity for which
 ch. 493, F.S., requires a license; providing an
 exception; providing penalties if a person commits a
 felony while impersonating a security officer, private
 investigator, recovery agent, or other person required
 to have a license under ch. 493, F.S.; creating s.
 493.631, F.S.; defining terms; authorizing a licensed
 security officer or licensed security agency manager
 to detain a person on the premises of a critical
 infrastructure facility in certain circumstances;
 providing procedures and requirements with respect
 thereto; authorizing the security officer or security
 agency manager to search the person detained under
 certain circumstances; providing identification
 requirements for certain licensed security officers
 and security agency managers; providing immunity to
 law enforcement officers, licensed security officers,
 and licensed security agency managers under certain
 circumstances; providing an effective date.

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

Section 1. Section 493.6120, Florida Statutes, is amended
 to read:
 493.6120 Violations; penalty.—

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29 (1) (a) Except as provided in paragraph (b), a person who
30 engages in any activity for which this chapter requires a
31 license and who does not hold the required license commits:

32 1. For a first violation, a misdemeanor of the first
33 degree, punishable as provided in s. 775.082 or s. 775.083.

34 2. For a second or subsequent violation, a felony of the
35 third degree, punishable as provided in s. 775.082, s. 775.083,
36 or s. 775.084, and the department may seek the imposition of a
37 civil penalty not to exceed \$10,000.

38 (b) Paragraph (a) does not apply if the person engages in
39 unlicensed activity within 90 days after the date of the
40 expiration of his or her license.

41 (2) (a) A person who, while impersonating a security
42 officer, private investigator, recovery agent, or other person
43 required to have a license under this chapter, knowingly and
44 intentionally forces another person to assist the impersonator
45 in an activity within the scope of duty of a professional
46 licensed under this chapter commits a felony of the third
47 degree, punishable as provided in s. 775.082, s. 775.083, or s.
48 775.084.

49 (b) A person who violates paragraph (a) during the course
50 of committing a felony commits a felony of the second degree,
51 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

52 (c) A person who violates paragraph (a) during the course
53 of committing a felony resulting in death or serious bodily
54 injury to another human being commits a felony of the first
55 degree, punishable as provided in s. 775.082, s. 775.083, or s.
56 775.084.

57 ~~(3)(1)~~ Except as otherwise provided in this chapter, a ~~Any~~
 58 person who violates any provision of this chapter ~~except s.~~
 59 ~~493.6405~~ commits a misdemeanor of the first degree, punishable
 60 as provided in s. 775.082 or s. 775.083.

61 ~~(4)(2)~~ A ~~Any~~ person who is convicted of any violation of
 62 this chapter is ~~shall~~ not ~~be~~ eligible for licensure for a period
 63 of 5 years.

64 ~~(5)(3)~~ A ~~Any~~ person who violates or disregards a any cease
 65 and desist order issued by the department commits a misdemeanor
 66 of the first degree, punishable as provided in s. 775.082 or s.
 67 775.083. In addition, the department may seek the imposition of
 68 a civil penalty not to exceed \$5,000.

69 ~~(6)(4)~~ A person who was an owner, officer, partner, or
 70 manager of a licensed agency or a Class "DS" or "RS" school or
 71 training facility at the time of any activity that is the basis
 72 for revocation of the agency or branch office license or the
 73 school or training facility license and who knew or should have
 74 known of the activity, shall have his or her personal licenses
 75 or approval suspended for 3 years and may not have any financial
 76 interest in or be employed in any capacity by a licensed agency
 77 or a school or training facility during the period of
 78 suspension.

79 Section 2. Section 493.631, Florida Statutes, is created
 80 to read:

81 493.631 Temporary detention by a licensed security officer
 82 or licensed security agency manager at critical infrastructure
 83 facilities.-

84 (1) As used in this section, the term "critical

85 infrastructure facility" means any of the following, if it
 86 employs measures such as fences, barriers, or guard posts that
 87 are designed to exclude unauthorized persons:

- 88 (a) A chemical manufacturing facility.
- 89 (b) A refinery.
- 90 (c) An electrical power plant as defined in s. 403.031,
 91 including a substation, switching station, electrical control
 92 center, or electric transmission or distribution facility.
- 93 (d) A water intake structure, water treatment facility,
 94 wastewater treatment plant, or pump station.
- 95 (e) A natural gas transmission compressor station.
- 96 (f) A liquid natural gas terminal or storage facility.
- 97 (g) A telecommunications central switching office.
- 98 (h) A deepwater port or railroad switching yard.
- 99 (i) A gas processing plant, including a plant used in the
 100 processing, treatment, or fractionation of natural gas.

101 (2) As used in this section, the terms "security officer"
 102 and "security agency manager" mean a security officer or
 103 security agency manager who possess a valid Class "D" or Class
 104 "MB" license pursuant to s. 493.6301 and a valid Class "G"
 105 license pursuant to s. 493.6115.

106 (3) A security officer or security agency manager who is
 107 on duty, in uniform, and on the premises of a critical
 108 infrastructure facility, and who has probable cause to believe
 109 that a person has committed or is committing a crime against the
 110 client operating the premises or the client's patron may
 111 temporarily detain the person to ascertain his or her identity
 112 and the circumstances of the person's activity.

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113 (4) When temporarily detaining a person, the security
114 officer or security agency manager shall notify the appropriate
115 law enforcement agency of the detention as soon as reasonably
116 possible. A security officer or security agency manager may
117 temporarily detain a person only until a law enforcement officer
118 arrives at the premises of the client and is in the presence of
119 the detainee. Upon arrival of the law enforcement officer, the
120 security officer or security agency manager shall immediately
121 transfer custody of a person being temporarily detained to the
122 responding law enforcement officer.

123 (5) A security officer or security agency manager may not
124 detain a person under this section after the arrival of a law
125 enforcement officer unless the law enforcement officer requests
126 that the security officer or security agency manager continue
127 detaining the person. The authority of the security officer or
128 security agency manager to continue detaining a person after the
129 arrival of a law enforcement officer under this subsection does
130 not extend beyond the place where the person was first detained
131 or in the immediate vicinity of that place.

132 (6) A security officer or security agency manager may not
133 temporarily detain a person under this section longer than is
134 reasonably necessary to affect the purposes of this section.

135 (7) While detaining a person under this section, if a
136 security officer or security agency manager observes that the
137 person temporarily detained is armed with a firearm, concealed
138 weapon, or destructive device that poses a threat to the safety
139 of the security officer, the security agency manager, or any
140 person for whom the security officer or security agency manager

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141 is responsible for providing protection, or if the detainee
142 admits to having a weapon in his or her possession, the security
143 officer or security agency manager may conduct a search of the
144 person and his or her belongings only to the extent necessary to
145 disclose the presence of a weapon. If the security officer or
146 security agency manager finds a weapon during the search, he or
147 she shall seize and transfer the weapon to the responding law
148 enforcement officer.

149 (8) A security officer or security agency manager who
150 possesses a valid Class "G" license shall perform duties
151 regulated under this section in a uniform with at least one
152 patch or emblem visible at all times clearly identifying the
153 agency employing the security officer or security agency
154 manager.

155 (9) A law enforcement officer, security officer, or
156 security agency manager is not criminally or civilly liable for
157 false arrest, false imprisonment, or unlawful detention due to
158 his or her custody and detention of a person if done in
159 compliance with this section.

160 Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 935 Florida False Claims Act
SPONSOR(S): Civil Justice Subcommittee; Young
TIED BILLS: HB 1297 **IDEN./SIM. BILLS:** CS/SB 1494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>JDO</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida False Claims Act (FFCA) authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;
- Making or using a false record to get a false or fraudulent claim paid or approved;
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid; or
- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for FFCA violations. The bill:

- Expands the applicability of the FFCA to state subdivisions and instrumentalities.
- Adds definitions which conform to the Federal False Claims Act.
- Changes "intent to deceive" to "intent to defraud" the state.
- Makes the Department of Legal Affairs or the Department of Financial Services the sole state entities to pursue false claims.
- Grants the Department of Legal Affairs the ability to issue subpoenas to produce documents, to answer questions under oath, and to provide sworn testimony.
- Provides a civil penalty up to penalty up to \$1 million for destroyed or created evidence.
- Allows the state to pursue a false claims action though an administrative remedy.
- Precludes a private false claims action where the underlying facts were publicly disclosed.
- Deprives the courts of jurisdiction of an action brought under the act against a county or municipality.
- Provides that no action may be brought more than three years after material facts were known to the Department of Legal Affairs or the Department of Financial Services.
- Allows either department to amend or supplant the pleadings if it intervenes in an existing action.
- Provides that either department may intervene and make such changes in actions pending as of the effective date.
- Estops a defendant who has pleaded guilty or nolo contendere in a criminal action from denying underlying facts that would support a false claims action.

The bill is effective July 1, 2013.

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

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

STORAGE NAME: h0935b.JUAS.DOCX

DATE: 3/27/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida False Claims Act (FFCA)¹ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. The FFCA is modeled after the Federal False Claims Act that was enacted during the Civil War in response to widespread fraud among defense contractors.² In addition to Florida, 30 states, the District of Columbia, New York City, and Chicago have a False Claims Acts with *qui tam* provisions.³

In Florida, the FFCA has often been used to combat health care, nursing home, Medicaid, and Medicare fraud. An action under the FFCA can be brought either by the state itself, or by a private individual on behalf of the state. The Department of Legal Affairs and then the Department of Financial Services are responsible for investigating and litigating actions brought under the FFCA. Actions brought by private entities on behalf of the state are called *qui tam* actions.⁴

Section 68.083(3), F.S., provides that when a *qui tam* action is filed in the circuit court of the Second Judicial Circuit, in and for Leon County, a copy of the complaint and disclosure of all material evidence must be served on the Attorney General, as head of the Department of Legal Affairs, and the Chief Financial Officer, as head of the Department of Financial Services. The FFCA does not explicitly provide that a complaint is to be sealed automatically upon filing. However, certain provisions in s. 68.083, F.S., arguably only have meaning if they are construed to mean that a complaint is automatically sealed. Section 68.083(2), F.S., provides that “[p]rior to the court unsealing the complaint under subsection (3), the action may be voluntarily dismissed” Section 68.083(5), F.S., provides for the Department of Legal Affairs to request an extension of the time during which the complaint remains sealed under subsection (2). Furthermore, the Leon County Clerk of Courts office indicated that the office’s current practice in order to comply with s. 68.083, F.S., is to automatically seal such complaints for 90 days. The complaint is unsealed on the 91st day unless a party has successfully moved the court to keep it under seal.

Section 68.083(3), F.S., also provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, these departments have 60 days to decide whether they are going to intervene, and take over litigating the FFCA action from the private individual.

Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;
- Making or using a false record to get a false or fraudulent claim paid or approved;
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid; or

¹ Sections 68.081-68.092, F.S.

² *False Claims Amendments Act of 1986*, S. Rep. No. 99-345, at 8 (1986), reprinted in 1986 U.S.C.C.A.N 5266, 5273 (“The Claims Act was adopted in 1863 and signed into law by President Abraham Lincoln in order to combat rampant fraud in Civil War defense contracts.”); see also *Rainwater v. United States*, 356 U.S. 590, 592 (1958) (“The Act was originally passed in 1863 after disclosure of widespread fraud against the Government during the War Between the States.”).

³ See THE FALSE CLAIMS ACT LEGAL CENTER, TAXPAYERS AGAINST FRAUD EDUCATION FUND, *State False Claims Acts*, <http://www.taf.org/states-false-claims-acts> (last visited March 6, 2013).

⁴ *Qui tam* cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a *qui tam* action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private entity that brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment.

- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.⁵

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for FFCA violations. For example, if a person were found guilty of making a false claim where he or she defrauded \$100,000 from the state, that person would be liable to pay the state \$300,000 plus the \$5,500 to \$11,000 penalty per claim.

Section 68.089, F.S., provides a statute of limitation where a civil action under the FFCA cannot be brought:

- More than 6 years after the date on which the false claim against the state is committed; or
- More than 3 years after the date when the facts are known or reasonably should have been known by the state; but
- In no event more than 10 years after the date on which the violation is committed.

Section by Section Analysis

1. The Florida False Claims Act - Section 68.081, F.S.

The current statute includes a statement of purpose, that the Act is to deter the payment of false claims, and to provide remedies in the form of treble damages and civil penalties.

The bill removes the statement of purpose, and specifies that the Florida False Claims Act is contained in ss. 68.081 - 68.092, F.S.

2. Definitions - Section 68.082, F.S.

The current statute defines "agency" as an official or other subset of the executive branch of the state government.

The bill removes this definition, and consistently changes the term "agency" throughout the balance of the FFCA to "state." The term "state" is defined in the bill so as to include state agencies, authorities, and instrumentalities. The net effect of these changes is to expand the applicability of the FFCA to state subdivisions and instrumentalities where prior law limited it to agencies.⁶

The bill also adds definitions for "material" and "obligation"⁷ which conforms with definitions found in the Federal False Claims Act. "Material" includes the ability to influence the payment of money, and "obligation" now includes an established duty.

These changes culminate in s. 68.082(2)(g), F.S., to provide that any person who uses false information to make a claim against any state instrumentality, or conspires to do so, is liable to the state for a penalty of not less than \$5,500 and treble the amount of damages the state sustains as a result of the claim.

Currently, an agency or the department may address false claims. Because the bill consistently removes "agency" and replaces it with "department," the bill makes the Department of Legal Affairs the sole entity in the state to pursue the FFCA, except for those initiated by or intervened in by the Department of Financial Services pursuant to s. 68.083, F.S.

⁵ Section 68.082(2), F.S.

⁶ Cf. Fla. AGO 2011-10, which excludes municipalities from the act because of the definitions of "agency," and "instrumentality." 2011 WL 2429107.

⁷ See 31 U.S.C. 3729(b)(3) and (4).

3. Civil Actions for False Claims - Section 68.083, F.S.

Section 68.083(3), F.S., provides that when a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, these departments have 60 days to decide whether they are going to intervene and take over litigating the FFCA action from the private individual. The bill removes the reference to "on behalf of the state," specifying that only the department may intervene or bring a related action.

4. Subpoenas - Section 68.0831, F.S.

Under current law, the Attorney General's office may investigate claims but does not have subpoena powers. The department reports that the lack of subpoena authority can make it difficult for the department to determine if it is appropriate to intervene in a FFCA case.

The bill grants the Department of Legal Affairs discovery capabilities prior to the institution of a civil proceeding, if it has reason to believe that any person has testimony or evidence relevant to the investigation. The bill provides that the department may issue subpoenas requiring the recipient to:

- Produce documents;
- Answer interrogatories under oath; and
- Give sworn testimony.

The bill provides:

- A subpoena will be served as other process;
- A subpoena must detail the materials requested and the nature of the conduct to which the materials relate;
- The recipient of a subpoena may petition the Circuit Court of Leon County for relief from the subpoena;
- The recipient of a subpoena has 30 days to respond at the time and place specified, or risk being subject to contempt;
- Transcribed testimony may be reviewed by the deponent;
- The department may stipulate to protective orders;
- The department may request that a person who refuses to comply on Fifth Amendment grounds may be compelled to comply by the court.

The bill provides that the discovery provisions do not impair the ability of the department to:

- Institute a civil proceeding; or
- Invoke the power of the court to compel production of evidence before a grand jury.

The bill provides for a civil penalty up to \$100,000 for a natural person and \$1 million for any other entity, plus attorney fees and costs in the event a subpoena is pending, if evidence is knowingly created or destroyed by such person or entity.

5. Rights of Parties in Civil Actions - Section 68.084, F.S.

Currently, the department may dismiss a cause voluntarily over the objections of the person who initiated the action. The bill adds that the department may dismiss an action "at any point" over the objections of said person.

Currently the application of one civil remedy under the Act does not preclude another. The bill adds that the state may elect to pursue a false claim through an administrative remedy to determine a civil

monetary penalty, and if it does so, the person bringing the action has the same rights as the person has in an action brought through the courts.

The bill also specifies when a finding or ruling has become final, adding that a conclusion is final once the time for appeal has expired.

6. Awards to Plaintiffs Bringing Actions - Section 68.085, F.S.

Currently, the private party bringing the action is entitled to recover a portion of the proceeds awarded by the court in the event that the department prevails in a false claims action.

The bill adds that the person bringing the claim will also be entitled to expenses incurred in pursuit of the claim, including attorney fees and costs, and that such will be assessed against the defendant and are payable only from the proceeds of the action.

7. Expenses and Attorney Fees - Section 68.086, F.S.

Currently the provisions for the fees and costs of the person bringing the action and the department are contained in the same section of the FFCA. Since the provisions for the payment of private parties has been moved to s. 68.085, F.S., that provision was removed from s. 68.087, F.S., leaving provision for payment of attorney fees to the department intact.

8. Exemptions to Civil Actions - Section 68.087, F.S.

Publicly Disclosed Evidence

Currently if a false claim is brought based upon evidence which was disclosed in a pending investigation, the court does not have jurisdiction to entertain the action. Disclosure of the evidence through the media, or through a pending action by the state also causes the court to lose jurisdiction, unless the person bringing the action was the original source of the information.⁸

The bill provides that the court may dismiss an action brought upon publicly disclosed facts, and gives the department⁹ the opportunity to object to such dismissal of the action.

Local Governments

Currently, the statute provides that the court has no jurisdiction over a case brought against local governments, which is defined as a county or municipality.

The bill removes the reference to local governments and continues to provide that the court cannot have jurisdiction over an action brought under the act against a county or municipality.

9. Limitations and Interventions by the Department - Section 68.089, F.S.

Limitation of Actions

Currently, no action may be brought for false claims more than six years after the violation, or more than three years after the material facts were known to the public official charged with responsibility of the matter.

⁸ The current provision which deprives the court of jurisdiction subjects a suit in these circumstances to dismissal pursuant to Fla. R. Civ. Pro. 1.140 on the basis of a lack of subject matter jurisdiction. Further, a court order entered without jurisdiction is void. *Blewitt v. Nicholson*, 2 Fla. 200 (1848).

⁹ See Drafting Issues or Other Comments regarding the definition of "department."

The bill deletes the reference regarding the knowledge of public officials, and changes it to knowledge of the "department."¹⁰ Therefore, no action may be brought more than three years after material facts were known to the department.

Intervention by the Department

The bill adds a new provision which allows the department¹¹ to amend the pleadings if it intervenes in an existing action. It may also file a completely new complaint. The bill provides that such changes relate back to the original date the action was brought for statute of limitations purposes. The bill provides that the department may intervene and make such changes in pending actions.

10. Burden of Proof - Section 68.09, F.S.

Currently the statute provides that the State of Florida must prove the essential elements of a false claim action by a preponderance of the evidence.

The bill changes the "State of Florida" to the "department."¹²

The bill adds that if a defendant in a state or federal proceeding is found guilty, pleads guilty, or pleads *nolo contendere* in a criminal action with underlying facts that would support a *qui tam* action, the defendant is estopped (may not deny) any of the matters in the criminal proceeding, as if the department had been a party.

11. Effective date

The bill is effective July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 68.081, F.S., regarding the Florida False Claims Act.

Section 2 amends s. 68.082, F.S., regarding false claims against the state.

Section 3 amends s. 68.083, F.S., regarding civil actions for false claims.

Section 4 creates s. 68.0831, F.S., regarding subpoenas.

Section 5 amends s. 68.084, F.S., regarding rights of the parties in civil actions.

Section 6 amends s. 68.085, F.S., regarding awards to plaintiffs bringing actions.

Section 7 amends s. 68.086, F.S., regarding expenses.

Section 8 amends s. 68.087, F.S., regarding exemptions to civil actions.

Section 9 amends s. 68.089, F.S., regarding limitation of actions.

Section 10 amends s. 68.09, F.S., regarding burden of proof.

Section 11 provides an effective date of July 1, 2013.

¹⁰ Note that pursuant to s. 68.083(4), F.S., references to the "department" include the Department of Financial Services if it is the department which intervenes in the suit. See Drafting Issues or Other Comments..

¹¹ *Id.*

¹² *Id.*

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:

None.

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 3, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment deletes a proposed change to s. 68.087, F.S., and restored the word "state" for "department," thus leaving s. 68.087(1), F.S., unchanged. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to the Florida False Claims Act;
 3 amending s. 68.081, F.S.; revising a cross-reference;
 4 deleting a statement of purpose; amending s. 68.082,
 5 F.S.; deleting, revising, and providing definitions;
 6 revising conditions under which a person is liable for
 7 a specified civil penalty; amending s. 68.083, F.S.;
 8 revising terminology; revising language concerning who
 9 may intervene or bring a related action after a person
 10 files an action under the act; creating s. 68.0831,
 11 F.S.; authorizing the Department of Legal Affairs to
 12 issue subpoenas for specified purposes before the
 13 institution of civil proceedings; providing
 14 requirements for the content and service of subpoenas;
 15 providing that such subpoenas may not require
 16 specified protected documents or testimony; specifying
 17 that the department's power to require the appearance
 18 of witnesses or production of documents or other
 19 tangible evidence located outside the state is
 20 unaffected; providing for petitions to modify or set
 21 aside subpoenas; providing for orders to comply with
 22 subpoenas; providing for the examination of witnesses;
 23 providing for review of transcripts of testimony;
 24 authorizing the department to stipulate to protective
 25 orders of submitted documents and information;
 26 providing for natural persons who decline to testify
 27 or produce documents after asserting a privilege
 28 against self-incrimination to be ordered to testify or

29 produce documents; providing for contempt to comply
30 with such orders; providing for examination of
31 testimony, answers, or materials by the person who
32 produced such materials or answers; providing for
33 construction; prohibiting specified actions by a
34 person knowing or having reason to believe that a
35 subpoena is pending; providing civil penalties;
36 amending s. 68.084, F.S.; clarifying that the
37 department may dismiss actions at any point; revising
38 language concerning the costs to the department for
39 continuing to receive pleadings and transcripts of an
40 action after it has elected to withdraw; providing
41 that the state may elect to pursue available
42 alternative remedies, including administrative
43 proceedings; specifying what constitutes a final
44 finding or conclusion in an alternative proceeding
45 that is binding on all parties to an action under the
46 act; amending s. 68.085, F.S.; providing for
47 successful plaintiffs to receive, in addition to a
48 portion of the amount recovered, awards of expenses
49 and attorney fees and costs; amending s. 68.086, F.S.;
50 deleting references to awards of attorney fees to
51 successful plaintiffs; revising provisions relating to
52 awards of attorney fees to the department; amending s.
53 68.087, F.S.; revising terminology; revising
54 provisions relating to dismissal of an action if
55 substantially the same allegations or transactions as
56 alleged in the action were publicly disclosed;

57 amending s. 68.089, F.S.; providing for the treatment
 58 for statutes of limitations purposes of pleadings
 59 filed in interventions by the department; amending s.
 60 68.09, F.S.; providing for estoppel as to certain
 61 matters following a final judgment or decree rendered
 62 in favor of the state or the Federal Government in
 63 certain criminal proceedings; providing an effective
 64 date.

65

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

67

68 Section 1. Section 68.081, Florida Statutes, is amended to
 69 read:

70 68.081 Florida False Claims Act; short title; ~~purpose.~~

71 ~~(1)~~ Sections 68.081-68.092 ~~68.081-68.09~~ may be cited as
 72 the "Florida False Claims Act."

73 ~~(2) The purpose of the Florida False Claims Act is to~~
 74 ~~deter persons from knowingly causing or assisting in causing~~
 75 ~~state government to pay claims that are false or fraudulent, and~~
 76 ~~to provide remedies for obtaining treble damages and civil~~
 77 ~~penalties for state government when money is obtained from state~~
 78 ~~government by reason of a false or fraudulent claim.~~

79 Section 2. Section 68.082, Florida Statutes, is amended to
 80 read:

81 68.082 False claims against the state; definitions;
 82 liability.-

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

84 ~~(a) "Agency" means any official, officer, commission,~~

85 ~~board, authority, council, committee, or department of the~~
 86 ~~executive branch of state government.~~

87 (a)-(b) "Claim" means ~~includes~~ any ~~written or~~
 88 ~~electronically submitted~~ request or demand, whether under a
 89 contract or otherwise, for money or, property, regardless of
 90 whether the state has title to the money or property, that: or
 91 ~~services, which~~

92 1. Is presented ~~made~~ to any employee, officer, or agent of
 93 the state; an agency, or

94 2. Is made to a ~~any~~ contractor, grantee, or other
 95 recipient if the state agency provides or has provided any
 96 portion of the money or property requested or demanded, or if
 97 the state agency will reimburse the contractor, grantee, or
 98 other recipient for any portion of the money or property that is
 99 requested or demanded.

100 (b)-(e) "Department" means the Department of Legal Affairs,
 101 except as specifically provided in ss. 68.083 and 68.084.

102 (c) "Knowing" or "knowingly" means, with respect to
 103 information, that a person:

- 104 1. Has actual knowledge of the information;
- 105 2. Acts in deliberate ignorance of the truth or falsity of
 106 the information; or
- 107 3. Acts in reckless disregard of the truth or falsity of
 108 the information.

109
 110 No proof of specific intent to defraud is required. Innocent
 111 mistake shall be a defense to an action under this act.

112 (d) "Material" means having a natural tendency to

113 influence, or be capable of influencing, the payment or receipt
 114 of money or property.

115 (e) "Obligation" means an established duty, fixed or
 116 otherwise, arising from an express or implied contractual,
 117 grantor-grantee, or licensor-licensee relationship, from a fee-
 118 based or similar relationship, from statute or regulation, or
 119 from the retention of any overpayment.

120 (f)~~(d)~~ "State government" means the government of the
 121 state or any department, division, bureau, commission, regional
 122 planning agency, board, district, authority, agency, or other
 123 instrumentality of the state.

124 (2) Any person who:

125 (a) Knowingly presents or causes to be presented ~~to an~~
 126 ~~officer or employee of an agency~~ a false or fraudulent claim for
 127 payment or approval;

128 (b) Knowingly makes, uses, or causes to be made or used a
 129 false record or statement material to ~~get~~ a false or fraudulent
 130 claim ~~paid or approved by an agency;~~

131 (c) Conspires to commit a violation of this subsection
 132 ~~submit a false or fraudulent claim to an agency or to deceive an~~
 133 ~~agency for the purpose of getting a false or fraudulent claim~~
 134 ~~allowed or paid;~~

135 (d) Has possession, custody, or control of property or
 136 money used or to be used by the state ~~an agency~~ and, ~~intending~~
 137 ~~to deceive the agency or knowingly conceal the property,~~
 138 delivers or causes to be delivered less ~~property~~ than all of
 139 that money or property ~~the amount for which the person receives~~
 140 ~~a certificate or receipt;~~

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141 (e) Is authorized to make or deliver a document certifying
142 receipt of property used or to be used by the state ~~an agency~~
143 and, intending to defraud ~~deceive~~ the state ~~agency~~, makes or
144 delivers the receipt without knowing that the information on the
145 receipt is true;

146 (f) Knowingly buys or receives, as a pledge of an
147 obligation or a debt, public property from an officer or
148 employee of the state ~~an agency~~ who may not sell or pledge the
149 property ~~lawfully~~; or

150 (g) Knowingly makes, uses, or causes to be made or used a
151 false record or statement material to an obligation to pay or
152 transmit money or property to the state, or knowingly conceals
153 or knowingly and improperly avoids or decreases ~~to conceal,~~
154 ~~avoid, or decrease~~ an obligation to pay or transmit money or
155 property to the state ~~an agency~~,

156
157 is liable to the state for a civil penalty of not less than
158 \$5,500 and not more than \$11,000 and for treble the amount of
159 damages the state ~~agency~~ sustains because of the act ~~or omission~~
160 of that person.

161 (3) The court may reduce the treble damages authorized
162 under subsection (2) if the court finds one or more of the
163 following specific extenuating circumstances:

164 (a) The person committing the violation furnished the
165 department ~~officials of the agency responsible for investigating~~
166 ~~false claims violations~~ with all information known to the person
167 about the violation within 30 days after the date on which the
168 person first obtained the information;

169 (b) The person fully cooperated with any official
 170 investigation of the violation; or

171 (c) At the time the person furnished the department ~~agency~~
 172 with the information about the violation, no criminal
 173 prosecution, civil action, or administrative action had
 174 commenced under this section with respect to the violation, and
 175 the person did not have actual knowledge of the existence of an
 176 investigation into the violation;

177
 178 in which case the court shall award no less than 2 times the
 179 amount of damages sustained by the state ~~agency~~ because of the
 180 act of the person. The court shall set forth in a written order
 181 its findings and basis for reducing the treble damages award.

182 Section 3. Subsection (7) of section 68.083, Florida
 183 Statutes, is amended to read:

184 68.083 Civil actions for false claims.-

185 (7) When a person files an action under this section, no
 186 person other than the department ~~on behalf of the state~~ may
 187 intervene or bring a related ~~an~~ action ~~under this act~~ based on
 188 the facts underlying the pending action.

189 Section 4. Section 68.0831, Florida Statutes, is created
 190 to read:

191 68.0831 Subpoena.-

192 (1) Whenever the department has reason to believe that any
 193 person may be in possession, custody, or control of any
 194 documentary material or may have any information, which
 195 documentary material or information is relevant to a civil
 196 investigation authorized by s. 68.083, the department may,

197 before the institution of a civil proceeding thereon, issue in
 198 writing and cause to be served upon the person a subpoena
 199 requiring the person to:

200 (a) Produce such documentary material for inspection and
 201 copying or reproduction;

202 (b) Answer, under oath and in writing, written
 203 interrogatories;

204 (c) Give sworn oral testimony concerning the documentary
 205 material or information; or

206 (d) Furnish any combination of such material, answers, or
 207 testimony.

208 (2) The subpoena shall:

209 (a) Be served upon the person in the manner required for
 210 service of process in this state or by certified mail showing
 211 receipt by the addressee or by the authorized agent of the
 212 addressee.

213 (b) State the nature of the conduct that constitutes the
 214 violation of this act and that is alleged to have occurred or to
 215 be imminent.

216 (c) Describe the class or classes of documentary material
 217 to be produced thereunder with such definiteness and certainty
 218 as to permit such materials to be reasonably identified.

219 (d) Prescribe a date and time at which the person must
 220 appear to testify, under oath or affirmation, or by which the
 221 person must answer written interrogatories or produce the
 222 documentary material for inspection or copying; however, such
 223 date shall not be earlier than 30 days after the date of service
 224 of the subpoena.

225 (e) Specify a place for the taking of testimony or for the
226 submission of answers to interrogatories and identify the person
227 who is to take custody of any documentary material. Inspection
228 and copying of documentary material shall be carried out at the
229 place where the documentary material is located or at such other
230 place as may be thereafter agreed to by the person and such
231 designated custodian. Upon written agreement between the person
232 and the designated custodian, copies may be substituted for
233 original documents.

234 (3) Such subpoena may not require the production of any
235 documentary material, the submission of any answers to written
236 interrogatories, or the giving of any oral testimony if such
237 material, answers, or testimony would be protected from
238 disclosure under:

239 (a) The standards applicable to subpoenas or subpoenas
240 duces tecum issued by a court of this state in aid of a grand
241 jury investigation; or

242 (b) The standards applicable to a discovery request under
243 the Florida Rules of Civil Procedure, to the extent that the
244 application of such standards to any such subpoena is
245 appropriate and consistent with the provisions and purposes of
246 this act.

247 (4) This section does not limit the power of the
248 department to require the appearance of witnesses or production
249 of documents or other tangible evidence located outside the
250 state.

251 (5) Within 30 days after the service of a subpoena upon
252 any person or at any time before the return date specified

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253 therein, whichever period is longer, the person served may file,
254 and serve on the department, a petition for an order of the
255 court modifying or setting aside the subpoena. Any such petition
256 shall be filed in the circuit court of the Second Judicial
257 Circuit in and for Leon County. The time allowed for compliance
258 in whole or in part with the subpoena as deemed proper and
259 ordered by the court shall not run while the petition is pending
260 before the court. The petition shall specify each ground upon
261 which the petitioner relies in seeking relief and may be based
262 upon the failure of the subpoena to comply with this section or
263 upon any constitutional or other legal right or privilege of
264 such person.

265 (6) In case of the failure of any person to comply in
266 whole or in part with a subpoena and when such person has not
267 filed a petition under subsection (5), the circuit court of the
268 Second Judicial Circuit in and for Leon County, upon application
269 of the department, may issue an order requiring compliance. The
270 failure to obey the order of the court shall be punishable as a
271 contempt of court.

272 (7) The examination of all witnesses under this section
273 shall be conducted by the department before an officer
274 authorized to administer oaths in this state. The testimony
275 shall be taken stenographically or by a sound-recording device.
276 Any person compelled to appear under a subpoena for oral
277 testimony pursuant to this section may be accompanied,
278 represented, and advised by counsel. Counsel may advise such
279 person, in confidence, either upon the request of such person or
280 upon counsel's own initiative, with respect to any question

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281 asked of such person. Such person or counsel may object on the
282 record to any question, in whole or in part, and shall briefly
283 state for the record the reason for any such objection. If such
284 person refuses to answer any question, the person conducting the
285 examination may petition the circuit court as provided by
286 subsection (10).

287 (8) When the testimony is fully transcribed, the person
288 conducting the deposition shall afford the witness, and counsel,
289 if any, a reasonable opportunity to examine the transcript, and
290 the transcript shall be read to or by the witness, unless such
291 examination and reading is waived by the witness. Any changes in
292 form or substance that the witness desires to make shall be
293 entered and identified upon the transcript by the officer or the
294 department, with a statement of the reasons given by the witness
295 for making such changes. The transcript shall then be signed by
296 the witness unless the witness waives the signing in writing, is
297 ill, cannot be found, or refuses to sign. If the transcript is
298 not signed by the witness within 30 days after his or her being
299 afforded a reasonable opportunity to examine it, the person
300 conducting the examination shall sign it and state on the record
301 the fact of the waiver, illness, absence, or refusal to sign,
302 together with the reason, if any, given therefor. Any person
303 required to testify or to submit documentary evidence is
304 entitled, on payment of reasonable costs, to procure a copy of
305 any document produced by such person and of his or her own
306 testimony as stenographically reported or, in the case of a
307 deposition, as reduced to writing by or under the direction of
308 the person taking the deposition.

309 (9) The department shall have the authority to stipulate
 310 to protective orders with respect to documents and information
 311 submitted in response to a subpoena under this section.

312 (10) The department may request that any natural person
 313 who refuses to comply with this section on the ground that the
 314 testimony or documents may incriminate him or her be ordered by
 315 the circuit court to provide the testimony or the documents.
 316 Except in a prosecution for perjury, a natural person who
 317 complies with a court order to provide testimony or documents
 318 after asserting a privilege against self-incrimination to which
 319 he or she is entitled by law may not be subject to a criminal
 320 proceeding with respect to the transaction to which he or she is
 321 required to testify or produce documents. Any natural person who
 322 fails to comply with such a court order to testify or produce
 323 documents may be adjudged in contempt and imprisoned until the
 324 time the person purges himself or herself of the contempt.

325 (11) While in the possession of the custodian, documentary
 326 material, answers to interrogatories, and transcripts of oral
 327 testimony shall be available, under such reasonable terms and
 328 conditions as the department shall prescribe, for examination by
 329 the person who produced such materials or answers or that
 330 person's duly authorized representative.

331 (12) This section does not impair the authority of the
 332 department to:

333 (a) Institute a civil proceeding under s. 68.083; or

334 (b) Invoke the power of a court to compel the production
 335 of evidence before a grand jury.

336 (13) (a) A person who knows or has reason to believe that a

337 subpoena pursuant to this section is pending shall not:

338 1. Alter, destroy, conceal, or remove any record,
 339 document, or thing with the purpose of impairing its verity or
 340 availability in such proceeding or investigation; or

341 2. Make, present, or use any record, document, or thing
 342 knowing it to be false.

343 (b) Any natural person who violates this subsection is
 344 subject to a civil penalty of not more than \$100,000, reasonable
 345 attorney fees, and costs. Any other person who violates this
 346 subsection is subject to a civil penalty of not more than \$1
 347 million, reasonable attorney fees, and costs.

348 Section 5. Subsections (2) through (5) of section 68.084,
 349 Florida Statutes, are amended to read:

350 68.084 Rights of the parties in civil actions.—

351 (2) (a) The department may at any point voluntarily dismiss
 352 the action notwithstanding the objections of the person
 353 initiating the action.

354 (b) Subject to s. 17.04, nothing in this act shall be
 355 construed to limit the authority of the department or the qui
 356 tam plaintiff to compromise a claim brought in a complaint filed
 357 under this act if the court determines, after a hearing, that
 358 the proposed settlement is fair, adequate, and reasonable under
 359 all the circumstances.

360 (c) Upon a showing by the department that unrestricted
 361 participation during the course of the litigation by the person
 362 initiating the action would interfere with or unduly delay the
 363 department's prosecution of the case, or would be repetitious,
 364 irrelevant, or for purposes of harassment, the court may, in its

365 discretion, impose limitations on the person's participation,
 366 including, but not limited to:

- 367 1. Limiting the number of witnesses the person may call;
- 368 2. Limiting the length of the testimony of the person's
 369 witnesses;
- 370 3. Limiting the person's cross-examination of witnesses;
 371 or
- 372 4. Otherwise limiting the participation by the person in
 373 the litigation.

374 (d) Upon a showing by the defendant that unrestricted
 375 participation during the course of the litigation by the person
 376 initiating the action would be for purposes of harassment or
 377 would cause the defendant undue burden or unnecessary expense,
 378 the court may limit the participation by the person in the
 379 litigation.

380 (3) If the department elects not to proceed with the
 381 action, the person who initiated the action has the right to
 382 conduct the action. If the Attorney General, as head of the
 383 department, or the Chief Financial Officer, as head of the
 384 Department of Financial Services, so requests, it shall be
 385 served, ~~at the requesting department's expense,~~ with copies of
 386 all pleadings and motions filed in the action along with ~~and~~
 387 copies of all deposition transcripts at the requesting
 388 department's expense. When a person proceeds with the action,
 389 the court, without limiting the rights of the person initiating
 390 the action, may nevertheless permit the department to intervene
 391 and take over the action on behalf of the state at a later date
 392 upon showing of good cause.

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393 (4) Regardless of whether ~~or not~~ the department proceeds
394 with the action, upon a showing by the department that certain
395 actions of discovery by the person initiating the action would
396 interfere with an investigation by the state ~~government~~ or the
397 prosecution of a criminal or civil matter arising out of the
398 same facts, the court may stay such discovery for a period of
399 not more than 60 days. Such a showing shall be conducted in
400 camera. The court may extend the 60-day period upon a further
401 showing in camera by the department that the criminal or civil
402 investigation or proceeding has been pursued with reasonable
403 diligence and any proposed discovery in the civil action will
404 interfere with an ongoing criminal or civil investigation or
405 proceeding.

406 (5) Notwithstanding paragraph (2)(b), the state may elect
407 to pursue its claim through any available alternate remedy,
408 including any administrative proceeding to determine a civil
409 money penalty. If any such alternate remedy is pursued in
410 another proceeding, the person initiating the action shall have
411 the same rights in such proceeding as the person would have had
412 if the action had continued under this section ~~The application~~
413 ~~of one civil remedy under this act does not preclude the~~
414 ~~application of any other remedy, civil or criminal, under this~~
415 ~~act or any other provision of law. Civil remedies under this act~~
416 ~~are supplemental, not mutually exclusive. Any finding of fact or~~
417 ~~conclusion of law made in such other proceeding that has become~~
418 ~~final shall be conclusive on all parties to an action under this~~
419 ~~section. For purposes of As used in this subsection, a finding~~
420 ~~or conclusion is final if it has been finally determined on~~

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421 appeal to the appropriate court, if all time for filing such an
 422 appeal with respect to the finding or conclusion has expired, or
 423 if the finding or conclusion is ~~the term "final" means not~~
 424 subject to judicial review.

425 Section 6. Section 68.085, Florida Statutes, is amended to
 426 read:

427 68.085 Awards to plaintiffs bringing action.-

428 (1) (a) If the department proceeds with ~~and prevails in~~ an
 429 action brought by a person under this act, subject to the
 430 requirements of paragraph (b), the person shall receive ~~except~~
 431 ~~as provided in subsection (2), the court shall order the~~
 432 ~~distribution to the person of~~ at least 15 percent but not more
 433 than 25 percent of the proceeds of the ~~recovered under any~~
 434 ~~judgment obtained by the department in an~~ action under ~~s. 68.082~~
 435 ~~or of the proceeds of any~~ settlement of the claim, depending
 436 upon the extent to which the person substantially contributed to
 437 the prosecution of the action.

438 (b)-(2) If the ~~department proceeds with an~~ action which the
 439 court finds the action to be based primarily on disclosures of
 440 specific information, other than information ~~that~~ provided by
 441 the person bringing the action, relating to allegations or
 442 transactions in a criminal, civil, or administrative hearing; a
 443 legislative, administrative, inspector general, or auditor
 444 general report, hearing, audit, or investigation; or from the
 445 news media, the court may award such sums as it considers
 446 appropriate, but in no case more than 10 percent of the proceeds
 447 ~~recovered under a judgment or received in settlement of a claim~~
 448 ~~under this act,~~ taking into account the significance of the

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449 information and the role of the person bringing the action in
 450 advancing the case to litigation.

451 (c) Any payment to a person under paragraph (a) or
 452 paragraph (b) shall be made from the proceeds. The person shall
 453 also receive an amount for reasonable expenses that the court
 454 finds to have been necessarily incurred, plus reasonable
 455 attorney fees and costs. All such expenses, fees, and costs
 456 shall be awarded against the defendant.

457 (2)-(3) If the department does not proceed with an action
 458 under this section, the person bringing the action or settling
 459 the claim shall receive an amount that ~~which~~ the court decides
 460 is reasonable for collecting the civil penalty and damages. The
 461 amount shall be not less than 25 percent and not more than 30
 462 percent of the proceeds of the action or settlement and shall be
 463 paid out of such proceeds ~~recovered under a judgment rendered in~~
 464 ~~an action under this act or in settlement of a claim under this~~
 465 ~~act.~~ The person shall also receive an amount for reasonable
 466 expenses that the court finds to have been necessarily incurred,
 467 plus reasonable attorney fees and costs. All such expenses,
 468 fees, and costs shall be awarded against the defendant.

469 (3)-(4) Following any distributions under subsection (1)
 470 or ~~or~~ subsection (2), ~~or subsection (3),~~ the state entity ~~agency~~
 471 injured by the submission of a false or fraudulent claim shall
 472 be awarded an amount not to exceed its compensatory damages. If
 473 the action was based on a claim of funds from the state Medicaid
 474 program, 10 percent of any remaining proceeds shall be deposited
 475 into the Operating Trust Fund to fund rewards for persons who
 476 report and provide information relating to Medicaid fraud

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477 pursuant to s. 409.9203. Any remaining proceeds, including civil
 478 penalties awarded under s. 68.082, shall be deposited in the
 479 General Revenue Fund.

480 ~~(5) Any payment under this section to the person bringing~~
 481 ~~the action shall be paid only out of the proceeds recovered from~~
 482 ~~the defendant.~~

483 (4)~~(6)~~ Regardless of whether ~~or not~~ the department
 484 proceeds with the action, if the court finds that the action was
 485 brought by a person who planned and initiated the violation of
 486 s. 68.082 upon which the action was brought, the court may, to
 487 the extent the court considers appropriate, reduce the share of
 488 the proceeds of the action that ~~which~~ the person would otherwise
 489 receive under this section, taking into account the role of the
 490 person in advancing the case to litigation and any relevant
 491 circumstances pertaining to the violation. If the person
 492 bringing the action is convicted of criminal conduct arising
 493 from his or her role in the violation of s. 68.082, the person
 494 shall be dismissed from the civil action and shall not receive
 495 any share of the proceeds of the action. Such dismissal shall
 496 not prejudice the right of the department to continue the
 497 action.

498 Section 7. Section 68.086, Florida Statutes, is amended to
 499 read:

500 68.086 Expenses; attorney ~~attorney's~~ fees and costs.—

501 (1) If the department initiates an action under this act
 502 or assumes control of an action brought by a person under this
 503 act, the department shall be awarded its reasonable attorney
 504 ~~attorney's~~ fees, expenses, and costs.

505 ~~(2) If the court awards the person bringing the action~~
 506 ~~proceeds under this act, the person shall also be awarded an~~
 507 ~~amount for reasonable attorney's fees and costs. Payment for~~
 508 ~~reasonable attorney's fees and costs shall be made from the~~
 509 ~~recovered proceeds before the distribution of any award.~~

510 (2)~~(3)~~ If the department does not proceed with an action
 511 under this act and the person bringing the action conducts the
 512 action, the court may award to the defendant its reasonable
 513 attorney ~~attorney's~~ fees and expenses ~~costs~~ if the defendant
 514 prevails in the action and the court finds that the claim of the
 515 person bringing the action was clearly frivolous, clearly
 516 vexatious, or brought primarily for purposes of harassment.

517 (3)~~(4)~~ No liability shall be incurred by the state
 518 ~~government, the affected agency,~~ or the department for any
 519 expenses, attorney ~~attorney's~~ fees, or other costs incurred by
 520 any person in bringing or defending an action under this act.

521 Section 8. Subsections (2), (3), and (6) of section
 522 68.087, Florida Statutes, are amended to read:

523 68.087 Exemptions to civil actions.—

524 (2) In no event may a person bring an action under s.
 525 68.083(2) based upon allegations or transactions that are the
 526 subject of a civil action or an administrative proceeding in
 527 which the state ~~agency~~ is already a party.

528 (3) The ~~No~~ court shall dismiss ~~have jurisdiction over~~ an
 529 action brought under this act unless opposed by the department,
 530 if substantially the same ~~based upon the public disclosure of~~
 531 allegations or transactions as alleged in the action were
 532 publicly disclosed:

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533 (a) In a criminal, civil, or administrative hearing in
 534 which the state is a party;

535 (b) In a legislative, administrative, inspector general,
 536 or other state Auditor General, Chief Financial Officer, or
 537 Department of Financial Services report, hearing, audit, or
 538 investigation; or

539 (c) From the news media,

540

541 unless the action is brought by the department, ~~or unless~~ the
 542 person bringing the action is an original source of the
 543 information. For purposes of this subsection, the term "original
 544 source" means an individual who, before a public disclosure
 545 under subsection (3), has voluntarily disclosed to the
 546 department the information on which allegations or transactions
 547 in a claim are based, or who has knowledge that is independent
 548 of and materially adds to the publicly disclosed allegations or
 549 transactions ~~has direct and independent knowledge of the~~
 550 ~~information on which the allegations are based~~ and has
 551 voluntarily provided the information to the department before
 552 filing an action under this section ~~act based on the~~
 553 ~~information.~~

554 (6) No court shall have jurisdiction over an action
 555 brought under this act against ~~a local government. For the~~
 556 ~~purposes of this subsection, the term "local government" means~~
 557 any county or municipality.

558 Section 9. Section 68.089, Florida Statutes, is amended to
 559 read:

560 68.089 Limitation of actions; effect of interventions by

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561 department.—A civil action under this act may not be brought:

562 (1) More than 6 years after the date on which the
563 violation of s. 68.082 is committed; or

564 (2) More than 3 years after the date when facts material
565 to the right of action are known or reasonably should have been
566 known by the department ~~state official charged with~~
567 ~~responsibility to act in the circumstances,~~ but in no event more
568 than 10 years after the date on which the violation is
569 committed, whichever occurs last.

570 (3) If the department elects to intervene and proceed with
571 an action brought under s. 68.083(2), the department may file
572 its own complaint or amend the complaint of a person who has
573 brought an action under s. 68.083(2) to clarify or add detail to
574 the claims in which the department is intervening and to add any
575 additional claims with respect to which the department contends
576 it is entitled to relief. For statute of limitations purposes,
577 any such pleading shall relate back to the filing date of the
578 complaint of the person who originally brought the action, to
579 the extent that the claim of the state arises out of the
580 conduct, transactions, or occurrences set forth, or attempted to
581 be set forth, in the prior complaint of that person. This
582 subsection applies to any actions under s. 68.083(2) pending on
583 or filed after July 1, 2013.

584 Section 10. Section 68.09, Florida Statutes, is amended to
585 read:

586 68.09 Burden of proof.—

587 (1) In any action brought under this act, the department
588 ~~State of Florida~~ or the qui tam plaintiff shall be required to

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589 | prove all essential elements of the cause of action, including
590 | damages, by a preponderance of the evidence.

591 | (2) Notwithstanding any other provision of law, a final
592 | judgment or decree rendered in favor of the state or the Federal
593 | Government in any criminal proceeding concerning the conduct of
594 | the defendant that forms the basis for a civil cause of action
595 | under this act, whether upon a verdict after trial or upon a
596 | plea of guilty or nolo contendere, shall estop the defendant in
597 | any action by the department pursuant to this act as to all
598 | matters as to which such judgment or decree would be an estoppel
599 | as if the department had been a party in the criminal
600 | proceeding.

601 | Section 11. This act shall take effect July 1, 2013.

HB 1147

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1147 (2013)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee



3 Representative Fitzenhagen offered the following:

4
5 **Amendment**

6 Remove lines 32-33 and insert:
7 budgets for the antitrust, consumer protection and racketeering
8 sections of the Attorney General's office for the
9

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1147 Office of the Attorney General
SPONSOR(S): Fitzenhagen
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1464

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Williams	Bond
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

The Office of the Attorney General, known as the Department of Legal Affairs (department), provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida in criminal appeals in state and federal courts. In addition, the Attorney General's Office conducts various programs to assist victims of crime.

The bill revises current law to more accurately reflect current practices of the department and the Attorney General and amends several statutory provisions under the scope of the department, to:

- Limit trust fund accumulations.
- Change which trust fund pays Medicaid Fraud rewards.
- Update references to federal law.
- Update procedures related to enforcement of the Motor Vehicle Warranty Enforcement Act.
- Give the Attorney General discretion regarding whether to pursue a Fair Housing complaint.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Office of the Attorney General, also known as the Department of Legal Affairs (department), serves as the people's law firm. Led by the Attorney General, the department provides a wide variety of legal services, including protecting Florida consumers in cases of Medicaid fraud, defending the state in civil litigation cases and representing the people of Florida when criminals appeal their convictions in state and federal courts.¹ The Attorney General's Office also conducts various programs to assist victims of crime.²

Effect of the Bill

This bill makes several changes to the following statutory provisions under the scope of the department and Attorney General:

Legal Affairs Revolving Trust Fund

Prior to 2003, s. 501.2101, F.S., provided that all funds received by the Department of Legal Affairs for attorney's fees and costs of investigation or litigation in proceedings brought enforcing certain consumer protection provisions of ch. 501, F.S., were deposited into the Consumer Fraud Trust Fund or the Legal Affairs Revolving Trust Fund. In 2003 that section was amended to provide that such funds would be deposited into the Legal Affairs Revolving Trust Fund; however, the Legal Affairs Revolving Trust Fund Statute (s. 16.53, F.S.) was never amended to reflect the changes in s. 501.2101, F.S., that the consumer fraud unit was depositing funds and being funded through the Legal Affairs Revolving Trust Fund. Therefore, the Department of Legal Affairs has been operating under the requirements of s. 501.2101, F.S., without the proper authority under the Legal Affairs Revolving Trust Fund statute.

Section 16.53(7), F.S., provides that any moneys remaining in the Legal Affairs Revolving Trust Fund at the end of a fiscal year in excess of three times the amount of the combined budgets for the antitrust and racketeering sections of the department for the forthcoming fiscal year must be transferred to the General Revenue Fund unallocated.

The bill requires all monies in excess of three times the amount of the combined budgets for all sections of the department which are support by the fund for the forthcoming fiscal year be transferred to the General Revenue Fund unallocated. See Drafting Issues and Other Comments section.

Reporting Medicaid Fraud

Current law requires the Department of Law Enforcement or director of the Medicaid Fraud Control Unit to pay a reward to a person who furnishes original information and reports of Medicaid fraud.³ Section 409.9203(3), F.S., requires the reward to be paid from the Legal Affairs Revolving Trust Fund. However, according to the Attorney General's office, funds to pay these rewards are currently deposited into the Operating Trust Fund.⁴

The bill requires the reward to be paid from the Operating Trust Fund.

Florida Deceptive and Unfair Trade Practices Act/ Federal Trade Commission Act

¹ Florida Office of the Attorney General, *The Role and Function of the Attorney General*. (<http://myfloridalegal.com/pages.nsf/Main/F06F66DA272F37C885256CCB0051916F>)(last visited March 12, 2013).

² *Id.*

³ Section 409.9203(1), F.S.

⁴ Office of the Attorney General summary of HB 1147. (On file with the House Civil Justice Subcommittee).

The Florida Deceptive and Unfair Trade Practices Act declares that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.⁵ In construing this provision, due consideration and great weight are to be given to the interpretations of the Federal Trade Commission and the federal courts relating to the analogous provision of the Federal Trade Commission Act, as of July 1, 2006.⁶ The department enforces portions of this law.

The bill updates ss. 501.203 (definitions) and 501.204, F.S., (unlawful acts and practices), to make references of the Federal Trade Commission Act rules and regulations as of July 1, 2013.

Motor Vehicle Warranty Enforcement Act

Chapter 681, F.S., creates the Motor Vehicle Warranty Enforcement Act (act) to provide procedures whereby a consumer may receive a replacement motor vehicle, or a full refund, for a motor vehicle which cannot be brought into conformity with the warranty provided by the act.⁷ The act provides procedures for consumer notification of nonconformity motor vehicles and procedures and guidelines for dispute settlements. The department enforces portions of this law.

The bill makes the following changing to provisions of the act:

Definitions

The bill amends s. 681.102(14), F.S., to extend the definition of "motor vehicle", to include a vehicle registered in Florida.

The bill amends the definition of "reasonable offset for use" in s. 681.102(19), F.S., to provide that the base selling or sale price of a vehicle as reflected on the purchase invoice, exclusive of taxes, government fees, and dealer fees, or in the case of a lease, the agreed upon value as reflected in the lease agreement, be used to calculate the offset when new vehicles are purchased or leased.

Nonconformity of motor vehicles

Section 681.104, F.S., requires the consumer give written notification by registered or express mail to the manufacturer of the need to repair the nonconformity or of the vehicle being out of service due to the need of a repair of one or more nonconformities, to allow the manufacturer to repair the vehicle.

The bill allows the consumer to give written notification to the manufacturer of the need to repair the nonconformity by any method providing a delivery confirmation.

Dispute-settlement procedures

Section 681.108(2), F.S., provides that once the department has received and evaluated a manufacturer's application for certification of its procedure the department must certify the procedure or notify the manufacture of any deficiencies in the application or the procedure.

The bill requires the department, upon receipt and evaluation of a manufacturer's application for certification, to:

- Notify the manufacturer of any deficiencies in the application or the procedure;
- Certify the procedure as substantially complying with the provisions of federal rules and law, and with the provisions and rule of the act, for a period not exceeding one year; or
- Deny certification, stating the reasons for the denial.

The bill requires the department to review each certified procedure annually to determine certification renewal and requires manufacturers seeking renewal to notify the department in writing at least 60 days before the end of the one-year certification period. The bill provides that if a manufacturer ceases

⁵ Section 501.204(1), F.S.

⁶ Section 501.204(2), F.S.

⁷ Section 681.101, F.S.

operation of a certified procedure, the manufacturer must notify the department immediately in writing, and upon receipt of such notice, the department must revoke certification for that procedure.

Florida New Motor Vehicle Arbitration Board

Section 681.109, F.S., provides that if a consumer files a claim pursuant to a certified procedure within six months after expiration of the rights period and either a decision is not timely rendered, or the consumer is not satisfied with the decision or manufacturer's compliance, the consumer may apply to the department to have the dispute removed to the New Motor Vehicle Arbitration Board (board). However, the department may reject the dispute if it is determined to be fraudulent or outside of the scope of the board's authority.⁸

The bill removes the requirement that the department notify the consumer of the rejected dispute by registered mail.

Fair Housing Act

Section 760.34, F.S., authorizes any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur to file a complaint with the Florida Commission on Human Relations (commission). After a complaint is received, the commission must investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve it.⁹ If the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General must bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of the Fair Housing Act.¹⁰

The bill allows the Office of the Attorney General to use discretion when determining whether or not to initiate a civil action in the name of the State for a claim under the Fair Housing Act.

B. SECTION DIRECTORY:

Section 1. Amends s. 16.53, F.S., relating to Legal Affairs Revolving Trust Fund.

Section 2. Amends s. 409.9203, F.S., relating to rewards for reporting Medicaid fraud.

Section 3. Amends s. 501.203, F.S., relating to definitions.

Section 4. Amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 5. Amends s. 681.102, F.S., relating to definitions.

Section 6. Amends s. 681.104, F.S., relating to nonconformity of motor vehicles.

Section 7. Amends s. 681.108, F.S., relating to dispute-settlement procedures.

Section 8. Amends s. 681.109, F.S., relating to Florida New Motor Vehicle Arbitration Board.

Section 9. Amends s. 760.34, F.S., relating to enforcement.

Section 10. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁸ Section 681.109(6), F.S.

⁹ Section 760.34(1), F.S.

¹⁰ Section 760.34(4), F.S.

1. Revenues:

The bill may have an impact on state revenues as drafted because it provides the level of funding triggering the reversion of General Revenue would be for all programs supported by the fund and not explicitly the antitrust and racketeering protection programs.

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:

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:

If the goal of the bill is to correct the conforming issue identified in the analysis, the scope of Section 1 of the bill should be narrowed to ensure that the three times threshold only applies to the antitrust, racketeering and consumer protection sections of the Department of Legal Affairs and not all sections supported by the fund.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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1 A bill to be entitled
2 An act relating to the Office of the Attorney General;
3 amending s. 16.53, F.S.; revising the Legal Affairs
4 Revolving Trust Fund with regard to which funds are
5 required to be transferred to the General Revenue Fund
6 unallocated; amending s. 409.9203, F.S.; providing
7 that rewards for reporting Medicaid fraud shall be
8 paid from the Operating Trust Fund; amending ss.
9 501.203 and 501.204, F.S.; revising obsolete dates;
10 amending s. 681.102, F.S.; revising definitions;
11 amending s. 681.104, F.S.; revising notice
12 requirements; amending s. 681.108, F.S.; revising
13 duties of the Department of Legal Affairs relating to
14 manufacturer certification of dispute-settlement
15 procedures; providing notice requirements for certain
16 manufacturers seeking renewal of certification or
17 ceasing operation of a certified procedure; amending
18 s. 681.109, F.S.; revising notice requirements
19 relating to the rejection of a dispute by the
20 department; amending s. 760.34, F.S.; authorizing,
21 rather than requiring, the office to bring an action
22 for complaints involving discriminatory housing
23 practices; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Subsection (7) of section 16.53, Florida
28 Statutes, is amended to read:

29 16.53 Legal Affairs Revolving Trust Fund.—

30 (7) Any moneys remaining in the fund at the end of any
 31 fiscal year in excess of 3 times the amount of the combined
 32 budgets for the ~~antitrust and racketeering~~ sections of the
 33 Attorney General's office supported by the fund for the
 34 forthcoming fiscal year shall be transferred to the General
 35 Revenue Fund unallocated.

36 Section 2. Subsection (3) of section 409.9203, Florida
 37 Statutes, is amended to read:

38 409.9203 Rewards for reporting Medicaid fraud.—

39 (3) The reward shall be paid from the Operating Legal
 40 ~~Affairs Revolving~~ Trust Fund from moneys collected pursuant to
 41 s. 68.085.

42 Section 3. Subsection (3) of section 501.203, Florida
 43 Statutes, is amended to read:

44 501.203 Definitions.—As used in this chapter, unless the
 45 context otherwise requires, the term:

46 (3) "Violation of this part" means any violation of this
 47 act or the rules adopted under this act and may be based upon
 48 any of the following as of July 1, 2013 ~~2006~~:

49 (a) Any rules promulgated pursuant to the Federal Trade
 50 Commission Act, 15 U.S.C. ss. 41 et seq.;

51 (b) The standards of unfairness and deception set forth
 52 and interpreted by the Federal Trade Commission or the federal
 53 courts;

54 (c) Any law, statute, rule, regulation, or ordinance which
 55 proscribes unfair methods of competition, or unfair, deceptive,
 56 or unconscionable acts or practices.

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57 Section 4. Subsection (2) of section 501.204, Florida
58 Statutes, is amended to read:

59 501.204 Unlawful acts and practices.—

60 (2) It is the intent of the Legislature that, in
61 construing subsection (1), due consideration and great weight
62 shall be given to the interpretations of the Federal Trade
63 Commission and the federal courts relating to s. 5(a)(1) of the
64 Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July
65 1, 2013 ~~2006~~.

66 Section 5. Subsections (14) and (19) of section 681.102,
67 Florida Statutes, are amended to read:

68 681.102 Definitions.—As used in this chapter, the term:

69 (14) "Motor vehicle" means a new vehicle, propelled by
70 power other than muscular power, which is sold or registered in
71 this state to transport persons or property, and includes a
72 recreational vehicle or a vehicle used as a demonstrator or
73 leased vehicle if a manufacturer's warranty was issued as a
74 condition of sale, or the lessee is responsible for repairs, but
75 does not include vehicles run only upon tracks, off-road
76 vehicles, trucks over 10,000 pounds gross vehicle weight,
77 motorcycles, mopeds, or the living facilities of recreational
78 vehicles. "Living facilities of recreational vehicles" are those
79 portions designed, used, or maintained primarily as living
80 quarters and include, but are not limited to, the flooring,
81 plumbing system and fixtures, roof air conditioner, furnace,
82 generator, electrical systems other than automotive circuits,
83 the side entrance door, exterior compartments, and windows other
84 than the windshield and driver and front passenger windows.

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85 (19) "Reasonable offset for use" means the number of miles
86 attributable to a consumer up to the date of a settlement
87 agreement or arbitration hearing, whichever occurs first,
88 multiplied by the base selling or sale ~~purchase~~ price of the
89 vehicle as reflected on the purchase invoice, exclusive of
90 taxes, government fees, and dealer fees, or in the case of a
91 lease, the agreed upon value as reflected in the lease agreement
92 and divided by 120,000, except in the case of a recreational
93 vehicle, in which event it shall be divided by 60,000.

94 Section 6. Subsection (1) of section 681.104, Florida
95 Statutes, is amended to read:

96 681.104 Nonconformity of motor vehicles.—

97 (1)(a) After three attempts have been made to repair the
98 same nonconformity, the consumer shall give written
99 notification, ~~by registered or express mail~~ to the manufacturer,
100 by any method providing a delivery confirmation, of the need to
101 repair the nonconformity to allow the manufacturer a final
102 attempt to cure the nonconformity. The manufacturer shall have
103 10 days, commencing upon receipt of such notification, to
104 respond and give the consumer the opportunity to have the motor
105 vehicle repaired at a reasonably accessible repair facility
106 within a reasonable time after the consumer's receipt of the
107 response. The manufacturer shall have 10 days, except in the
108 case of a recreational vehicle, in which event the manufacturer
109 shall have 45 days, commencing upon the delivery of the motor
110 vehicle to the designated repair facility by the consumer, to
111 conform the motor vehicle to the warranty. If the manufacturer
112 fails to respond to the consumer and give the consumer the

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113 opportunity to have the motor vehicle repaired at a reasonably
114 accessible repair facility or perform the repairs within the
115 time periods prescribed in this subsection, the requirement that
116 the manufacturer be given a final attempt to cure the
117 nonconformity does not apply.

118 (b) If the motor vehicle is out of service by reason of
119 repair of one or more nonconformities by the manufacturer or its
120 authorized service agent for a cumulative total of 15 or more
121 days, exclusive of downtime for routine maintenance prescribed
122 by the owner's manual, the consumer shall so notify the
123 manufacturer in writing by any method providing a delivery
124 confirmation ~~registered or express mail~~ to give the manufacturer
125 or its authorized service agent an opportunity to inspect or
126 repair the vehicle.

127 Section 7. Section 681.108, Florida Statutes, is amended
128 to read:

129 681.108 Dispute-settlement procedures.—

130 (1) If a manufacturer has established a procedure that the
131 department has certified as substantially complying with the
132 provisions of 16 C.F.R. part 703, in effect October 1, 1983, as
133 amended, and with the provisions of this chapter and the rules
134 adopted under this chapter, and has informed the consumer how
135 and where to file a claim with such procedure pursuant to s.
136 681.103(3), the provisions of s. 681.104(2) apply to the
137 consumer only if the consumer has first resorted to such
138 procedure. The decisionmakers for a certified procedure shall,
139 in rendering decisions, take into account all legal and
140 equitable factors germane to a fair and just decision,

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141 including, but not limited to, the warranty; the rights and
 142 remedies conferred under 16 C.F.R. part 703, in effect October
 143 1, 1983, as amended; the provisions of this chapter; and any
 144 other equitable considerations appropriate under the
 145 circumstances. Decisionmakers and staff for a procedure shall be
 146 trained in the provisions of this chapter and in 16 C.F.R. part
 147 703, in effect October 1, 1983, as amended. In an action brought
 148 by a consumer concerning an alleged nonconformity, the decision
 149 that results from a certified procedure is admissible in
 150 evidence.

151 (2) A manufacturer may apply to the department for
 152 certification of its procedure. After receipt and evaluation of
 153 the application, the department shall:

154 (a) ~~certify the procedure or~~ Notify the manufacturer of
 155 any deficiencies in the application or the procedure;

156 (b) Certify the procedure as substantially complying with
 157 the provisions of 16 C.F.R. part 703, in effect October 1, 1983,
 158 as amended, and with the provisions of this chapter and rules
 159 adopted under this chapter, for a period not to exceed 1 year;
 160 or

161 (c) Deny certification, stating the reasons for such
 162 denial.

163 (3) A certified procedure or a procedure of an applicant
 164 seeking certification shall submit to the department a copy of
 165 each settlement approved by the procedure or decision made by a
 166 decisionmaker within 30 days after the settlement is reached or
 167 the decision is rendered. The decision or settlement must
 168 contain at a minimum the:

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- 169 (a) Name and address of the consumer;
- 170 (b) Name of the manufacturer and address of the dealership
- 171 from which the motor vehicle was purchased;
- 172 (c) Date the claim was received and the location of the
- 173 procedure office that handled the claim;
- 174 (d) Relief requested by the consumer;
- 175 (e) Name of each decisionmaker rendering the decision or
- 176 person approving the settlement;
- 177 (f) Statement of the terms of the settlement or decision;
- 178 (g) Date of the settlement or decision; and
- 179 (h) Statement of whether the decision was accepted or
- 180 rejected by the consumer.

181 (4) Any manufacturer establishing or applying to establish
 182 a certified procedure must file with the department a copy of
 183 the annual audit required under the provisions of 16 C.F.R. part
 184 703, in effect October 1, 1983, as amended, together with any
 185 additional information required for purposes of certification,
 186 including the number of refunds and replacements made in this
 187 state pursuant to the provisions of this chapter by the
 188 manufacturer during the period audited.

189 (5) The department shall review each certified procedure
 190 at least annually to determine if certification should be
 191 renewed. A manufacturer seeking renewal of certification shall
 192 notify the department in writing at least 60 days before the end
 193 of the 1-year certification period. Upon review, the department
 194 shall: ~~prepare an annual report evaluating the operation of~~
 195 ~~certified procedures established by motor vehicle manufacturers~~
 196 ~~and procedures of applicants seeking certification, and, for a~~

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197 ~~period not to exceed 1 year, shall grant certification to, or~~
 198 (a) Renew certification for a period not to exceed 1 year
 199 if the procedure is found to ~~, those manufacturers whose~~
 200 ~~procedures~~ substantially comply with the provisions of 16 C.F.R.
 201 part 703, in effect October 1, 1983, as amended, and with the
 202 provisions of this chapter and rules adopted under this chapter;

203 (b) Notify the manufacturer of any deficiencies in the
 204 procedure; or

205 (c) Decline to renew certification. If certification is
 206 declined, ~~revoked or denied~~, the department shall state the
 207 reasons for such action. ~~The reports and records of actions~~
 208 ~~taken with respect to certification shall be public records.~~

209 (6) If a manufacturer ceases operation of a certified
 210 procedure, the manufacturer shall notify the department
 211 immediately in writing, and upon receipt of such notification,
 212 the department shall revoke certification for that procedure,
 213 effective the date the certified procedure ceased.

214 (7) ~~(6)~~ A manufacturer whose certification is declined
 215 ~~denied or revoked~~ is entitled to a hearing pursuant to chapter
 216 120.

217 (8) ~~(7)~~ If federal preemption of state authority to
 218 regulate procedures occurs, the provisions of subsection (1)
 219 concerning prior resort do not apply.

220 (9) ~~(8)~~ The department may adopt rules to administer this
 221 section.

222 Section 8. Subsection (6) of section 681.109, Florida
 223 Statutes, is amended to read:

224 681.109 Florida New Motor Vehicle Arbitration Board;

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225 | dispute eligibility.-

226 | (6) The department may reject a dispute that it determines
 227 | to be fraudulent or outside the scope of the board's authority.
 228 | Any dispute deemed by the department to be ineligible for
 229 | arbitration by the board due to insufficient evidence may be
 230 | reconsidered upon the submission of new information regarding
 231 | the dispute. The department after a second review, may reject a
 232 | dispute if the evidence is clearly insufficient to qualify for
 233 | relief. If the department rejects a dispute, it must provide
 234 | notice of the rejection and a brief explanation of the reason
 235 | for rejection to the consumer and to the manufacturer. ~~If a~~
 236 | ~~dispute is rejected by the department, the department shall send~~
 237 | ~~by registered mail to the consumer and the manufacturer a brief~~
 238 | ~~explanation as to the reason for rejection.~~

239 | Section 9. Subsection (4) of section 760.34, Florida
 240 | Statutes, is amended to read:

241 | 760.34 Enforcement.-

242 | (4) If, within 180 days after a complaint is filed with
 243 | the commission or within 180 days after expiration of any period
 244 | of reference under subsection (3), the commission has been
 245 | unable to obtain voluntary compliance with ss. 760.20-760.37,
 246 | the person aggrieved may commence a civil action in any
 247 | appropriate court against the respondent named in the complaint
 248 | or petition for an administrative determination pursuant to s.
 249 | 760.35 to enforce the rights granted or protected by ss. 760.20-
 250 | 760.37. If, as a result of its investigation under subsection
 251 | (1), the commission finds there is reasonable cause to believe
 252 | that a discriminatory housing practice has occurred, at the

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253 | request of the person aggrieved, the Attorney General may ~~shall~~
 254 | bring an action in the name of the state on behalf of the
 255 | aggrieved person to enforce the provisions of ss. 760.20-760.37.

256 | Section 10. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1173 Florida Communications Fraud Act
SPONSOR(S): Criminal Justice Subcommittee; Spano and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1404

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 775.15, F.S., establishes the following statutes of limitations for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within four years after it is committed;
- Prosecution for any other felony must be commenced within three years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within two years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within one year after it is committed.

The statutes of limitations in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitations only applicable to that crime.

Section 817.034, F.S., the Communication Fraud Act (CFA), makes it a crime for a person to engage in a scheme to defraud and obtain property; or engage in a scheme to defraud and, in furtherance of that scheme, communicate with any person with intent to obtain property from that person. The statute does not contain a provision specifying a specific statute of limitations for violations. As such, the general statutes of limitations contained in s. 775.15, F.S., apply.

The bill amends s. 817.034, F.S., to add a statute of limitations to the CFA. The bill provides that any criminal or civil action under the CFA may commence any time within five years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by one year.

The bill also moves s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 to Level 7 in the offense severity ranking chart. This has the effect of increasing the lowest permissible sentence for such offense.

The Criminal Justice Impact Conference met on March 21, 2013 and determined this bill may have an insignificant impact on state prison beds. The bill may also have a negative jail bed impact on local governments. See fiscal section.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Statutes of Limitation

Statutes of limitation are a statutory creation. In *State v. Hickman*, the court found that:

Statutes of Limitation are construed as being acts of grace, and as a surrendering by the sovereign of its right to prosecute or of its right to prosecute at its discretion, and they are considered as equivalent to acts of amnesty. Such statutes are founded on the liberal theory that prosecutions should not be allowed to ferment endlessly in the files of the government to explode only after witnesses and proofs necessary to the protection of accused have by sheer lapse of time passed beyond availability. They serve, not only to bar prosecutions on aged and untrustworthy evidence, but also to cut off prosecution for crimes a reasonable time after completion, when no further danger to society is contemplated from the criminal activity.¹

In *State v. Garofalo*, the court found that "The sole purpose of a statute of limitations in a criminal context is to prevent the State from hampering defense preparation by delaying prosecution until a point in time when its evidence is stale and defense witnesses have died, disappeared or otherwise become unavailable."²

Section 775.15, F.S., establishes the following statutes of limitations for commencing criminal prosecutions:

- Prosecution for a felony of the first degree must be commenced within four years after it is committed;
- Prosecution for any other felony must be commenced within three years after it is committed;
- Prosecution for a misdemeanor of the first degree must be commenced within two years after it is committed; and
- Prosecution for a misdemeanor of the second degree or a noncriminal violation must be commenced within one year after it is committed.

The statute provides that time for prosecution of a criminal case starts to run on the day after the offense is committed. An offense is deemed to have been committed either when every element of the offense has occurred, or, if the legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated.³

The statutes of limitations in s. 775.15, F.S., generally apply to all crimes. However, some criminal statutes provide a specific statute of limitations only applicable to that crime. For example, s. 812.035(10), F.S., allows for any criminal or civil action under ss. 812.012-812.037 or 812.081, F.S. (all relating to theft), to be commenced at any time within five years after the cause of action accrues. The statute further specifies that in criminal proceedings, the period of limitation does not run during any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state.⁴ However, this provision can only extend the limitation period by one year.⁵

Communication Fraud Act

When creating the Communication Fraud Act (CFA), the legislature recognized that schemes to defraud were on the rise and that those operating the schemes were using communications technology

¹ *State v. Hickman*, 189 So.2d 254, 262 (Fla. 2nd DCA 1966).

² 453 So.2d 905, 906 (Fla. 4th DCA 1984) (citing *State v. Hickman*, 189 So.2d 254 (Fla. 2nd DCA 1966)).

³ Section 775.15(3), F.S.

⁴ Section 812.035(10), F.S.

⁵ *Id.*

to further their schemes to defraud.⁶ Codified in s. 817.034, F.S., subsection (4) and (5) of the CFA create the following criminal offenses:

- (a) Any person who engages in a scheme to defraud and obtains property thereby is guilty of organized fraud, punishable as follows:
1. If the amount of property obtained has an aggregate value of \$50,000 or more, the violator is guilty of a felony of the first degree⁷, ranked in Level 6 of the Criminal Punishment Code offense severity ranking chart;⁸
 2. If the amount of property obtained has an aggregate value of \$20,000 or more, but less than \$50,000, the violator is guilty of a felony of the second degree;⁹ or
 3. If the amount of property obtained has an aggregate value of less than \$20,000, the violator is guilty of a felony of the third degree.¹⁰
- (b) Any person who engages in a scheme to defraud and, in furtherance of that scheme, communicates with any person with intent to obtain property from that person is guilty, for each such act of communication, of communications fraud, punishable as follows:
1. If the value of property obtained or endeavored to be obtained by the communication is valued at \$300 or more, the violator is guilty of a third degree felony; or
 2. If the value of the property obtained or endeavored to be obtained by the communication is valued at less than \$300, the violator is guilty of a misdemeanor of the first degree.¹¹

The CFA does not currently contain a statute of limitations for the above-described crimes. As such, the general statutes of limitations contained in s. 775.15, F.S., apply (prosecutions must be commenced within four years of the commission of a first degree felony, within three years of the commission of any other felony, and within two years of the commission of a first degree misdemeanor).

Effect of the Bill

The bill amends s. 817.034, F.S., to add a statute of limitations. The bill provides that any criminal or civil action under the CFA may commence any time within five years after the cause of action accrues. The bill specifies that in criminal cases, the period of limitation does not run at any time when the defendant is continuously absent from the state or is without a reasonably ascertainable place of abode or work within the state. However, this provision can only extend the limitation period by one year.

The bill amends s. 921.0022, F.S., to move s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 in the offense severity ranking chart (36 points) to Level 7 (56 points). This has the effect of increasing the lowest permissible sentence for such offense.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.034, F.S., relating to Florida Communications Fraud Act.

⁶ Section 817.034(1), F.S.

⁷ 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.

⁸ 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.

⁹ 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.

¹⁰ 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.

¹¹ 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.

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

Section 3. Provides an effective date of October 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 Criminal Justice Impact Conference met on March 21, 2013 and determined this bill may have an insignificant impact on state prison beds. While the bill may have a negative prison bed impact on the Department of Corrections because it extends the statute of limitations for violations of s. 817.034, F.S. (which includes felony offenses), and moves s. 817.034(4)(a)1., F.S. (the first degree felony offense of communications fraud with a value of \$50,000 or more), from Level 6 in the offense severity ranking chart to Level 7, they are low volume offenses and will likely have an insignificant impact.

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 may have a negative jail bed impact on local governments because it extends the statute of limitations for violations of s. 817.034, F.S. (which includes a 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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 19, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment removes a provision requiring the statute of limitation to be suspended in certain instances.

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

1 A bill to be entitled
 2 An act relating to the Florida Communications Fraud
 3 Act; amending s. 817.034, F.S.; providing a
 4 limitations period for civil and criminal actions
 5 under that act; providing that in a criminal
 6 proceeding the period does not run during any time the
 7 defendant is absent from the state or without a
 8 reasonably ascertainable place of abode or work within
 9 the state; limiting the amount of such an exception;
 10 amending s. 921.0022, F.S.; reclassifying the offense
 11 of communications fraud with a value greater than
 12 \$50,000 on the offense severity ranking chart of the
 13 Criminal Punishment Code; providing an effective date.

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

16
 17 Section 1. Paragraph (d) is added to subsection (4) of
 18 section 817.034, Florida Statutes, to read:

19 817.034 Florida Communications Fraud Act.—

20 (4) OFFENSES.—

21 (d) Notwithstanding any other provision of law, a criminal
 22 action or civil action or proceeding under this section may be
 23 commenced at any time within 5 years after the cause of action
 24 accrues; however, in a criminal proceeding under this section,
 25 the period of limitation does not run during any time when the
 26 defendant is continuously absent from the state or is without a
 27 reasonably ascertainable place of abode or work within the
 28 state, but in no case shall this extend the period of limitation

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29 otherwise applicable by more than 1 year.

30 Section 2. Paragraphs (f) and (g) of subsection (3) of
 31 section 921.0022, Florida Statutes, are amended to read:

32 921.0022 Criminal Punishment Code; offense severity
 33 ranking chart.—

34 (3) OFFENSE SEVERITY RANKING CHART

35 (f) LEVEL 6

36

Florida Statute	Felony Degree	Description
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.

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43	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
44	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
45	784.041	3rd	Felony battery; domestic battery by strangulation.
46	784.048(3)	3rd	Aggravated stalking; credible threat.
47	784.048(5)	3rd	Aggravated stalking of person under 16.
48	784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
49	784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
50	784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
51	784.081(2)	2nd	Aggravated assault on specified official or employee.

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52	784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
53	784.083(2)	2nd	Aggravated assault on code inspector.
54	787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
55	790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
56	790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
57	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
58	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.

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59	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
60	794.05(1)	2nd	Unlawful sexual activity with specified minor.
61	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.
62	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
63	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
64	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
65	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
	812.014(2)(b)1.	2nd	Property stolen \$20,000 or

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			more, but less than \$100,000, grand theft in 2nd degree.
66	812.014 (6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
67	812.015 (9) (a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
68	812.015 (9) (b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
69	812.13 (2) (c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
70	817.034 (4) (a) 1.	1st	Communications fraud, value greater than \$50,000.
71	817.4821 (5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
72	825.102 (1)	3rd	Abuse of an elderly person or disabled adult.
73			

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74	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
75	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
76	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
77	827.03(2)(c)	3rd	Abuse of a child.
78	827.03(2)(d)	3rd	Neglect of a child.
79	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
80	836.05	2nd	Threats; extortion.
81	836.10	2nd	Written threats to kill or do bodily injury.
82	843.12	3rd	Aids or assists person to escape.
	847.011	3rd	Distributing, offering to

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83			distribute, or possessing with intent to distribute obscene materials depicting minors.
84	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
85	847.0135 (2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
86	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
87	944.35 (3) (a) 2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
88	944.40	2nd	Escapes.
89	944.46	3rd	Harboring, concealing, aiding escaped prisoners.

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90	944.47 (1) (a) 5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
91	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
92	(g) LEVEL 7		
93	Florida Statute	Felony Degree	Description
94	316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.
95	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
96	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
97			

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98	327.35(3)(c)2.	3rd	Vessel BUI resulting in serious bodily injury.
99	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
100	409.920 (2)(b)1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
101	409.920 (2)(b)1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
102	456.065(2)	3rd	Practicing a health care profession without a license.
103	456.065(2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
104	458.327(1)	3rd	Practicing medicine without a license.
	459.013(1)	3rd	Practicing osteopathic medicine

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			without a license.
105	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
106	461.012 (1)	3rd	Practicing podiatric medicine without a license.
107	462.17	3rd	Practicing naturopathy without a license.
108	463.015 (1)	3rd	Practicing optometry without a license.
109	464.016 (1)	3rd	Practicing nursing without a license.
110	465.015 (2)	3rd	Practicing pharmacy without a license.
111	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
112	467.201	3rd	Practicing midwifery without a license.
113	468.366	3rd	Delivering respiratory care services without a license.

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114

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

115

483.901(9) 3rd Practicing medical physics
without a license.

116

484.013(1)(c) 3rd Preparing or dispensing optical
devices without a prescription.

117

484.053 3rd Dispensing hearing aids without
a license.

118

494.0018(2) 1st Conviction of any violation of
ss. 494.001-494.0077 in which
the total money and property
unlawfully obtained exceeded
\$50,000 and there were five or
more victims.

119

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

120

560.125(5)(a) 3rd Money services business by
unauthorized person, currency

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or payment instruments
 exceeding \$300 but less than
 \$20,000.

121

655.50(10)(b)1. 3rd Failure to report financial
 transactions exceeding \$300 but
 less than \$20,000 by financial
 institution.

122

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

123

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

124

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

125

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

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126	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
127	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
128	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
129	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
130	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
131	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
132	784.048(4)	3rd	Aggravated stalking; violation

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			of injunction or court order.
133			
	784.048(7)	3rd	Aggravated stalking; violation of court order.
134			
	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
135			
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
136			
	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
137			
	784.081(1)	1st	Aggravated battery on specified official or employee.
138			
	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
139			
	784.083(1)	1st	Aggravated battery on code inspector.
140			
	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.

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141

787.06(3)(e) 1st Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.

142

790.07(4) 1st Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).

143

790.16(1) 1st Discharge of a machine gun under specified circumstances.

144

790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

145

790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

146

790.166(3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

147

790.166(4) 2nd Possessing, displaying, or

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148	790.23	1st, PBL	threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
149	794.08 (4)	3rd	Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.
150	796.03	2nd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
151	800.04 (5) (c) 1.	2nd	Procuring any person under 16 years for prostitution.
152	800.04 (5) (c) 2.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
			Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.

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153	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
154	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
155	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
156	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
157	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
158	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
159	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand

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160			theft in 2nd degree.
	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
161			
	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
162			
	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
163			
	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
164			
	812.131 (2) (a)	2nd	Robbery by sudden snatching.
165			
	812.133 (2) (b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
166			
	<u>817.034 (4) (a) 1.</u>	<u>1st</u>	<u>Communications fraud, value greater than \$50,000.</u>
167			
	817.234 (8) (a)	2nd	Solicitation of motor vehicle accident victims with intent to

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168			defraud.
	817.234 (9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
169			
	817.234 (11) (c)	1st	Insurance fraud; property value \$100,000 or more.
170			
	817.2341 (2) (b) & (3) (b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
171			
	825.102 (3) (b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
172			
	825.103 (2) (b)	2nd	Exploiting an elderly person or disabled adult and property is valued at \$20,000 or more, but less than \$100,000.
173			
	827.03 (2) (b)	2nd	Neglect of a child causing

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174	827.04 (3)	3rd	great bodily harm, disability, or disfigurement.
175	837.05 (2)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
176	838.015	2nd	Giving false information about alleged capital felony to a law enforcement officer.
177	838.016	2nd	Bribery.
178	838.021 (3) (a)	2nd	Unlawful compensation or reward for official behavior.
179	838.22	2nd	Unlawful harm to a public servant.
180	847.0135 (3)	2nd	Bid tampering.
181	847.0135 (4)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
182		2nd	Traveling to meet a minor to commit an unlawful sex act.

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183	872.06	2nd	Abuse of a dead human body.
184	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
185	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
186	893.13(1)(e)1.	1st	Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

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187	893.13(4)(a)	1st	Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).
188	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
189	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
190	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
191	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
192	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
192	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.

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193

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

194

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

195

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

196

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

197

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

198

896.101 (5) (a) 3rd Money laundering, financial transactions exceeding \$300 but less than \$20,000.

199

896.104 (4) (a) 1. 3rd Structuring transactions to evade reporting or registration

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200	943.0435(4)(c)	2nd	requirements, financial transactions exceeding \$300 but less than \$20,000.
201	943.0435(8)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
202	943.0435(9)(a)	3rd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
203	943.0435(13)	3rd	Sexual offender; failure to comply with reporting requirements.
204	943.0435(14)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
205	943.0435(14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.

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206	944.607(9)	3rd	Sexual offender; failure to comply with reporting requirements.
207	944.607(10)(a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
208	944.607(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
209	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
210	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
211	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
	985.4815(13)	3rd	Sexual offender; failure to

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report and reregister; failure
to respond to address
verification.

212

213

Section 3. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1221 Murder of a Child 17 Years of Age or Younger
SPONSOR(S): Artiles
TIED BILLS: IDEN./SIM. **BILLS:** SB 1476

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N	Cox	Cunningham
2) Justice Appropriations Subcommittee		McAuliffe	Jones Darity <i>JD</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

HB 1221 creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged will be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S., (second degree murder) from a first degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S., (third degree murder) from a second degree felony to a first degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill prohibits a court from suspending, deferring, or withholding adjudication of guilt or imposition of sentence for any violation of s. 782.066, F.S.

The Criminal Justice Impact Conference met March 21, 2013, and determined the bill may have an insignificant prison bed impact on the Department of Corrections.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

First Degree Murder

Section 782.04(1), F.S., defines first degree murder as the unlawful killing of a human being:

- When perpetrated from a premeditated design to effect the death of the person killed or any human being;
- When committed by a person engaged in the perpetration of, or in the attempt to perpetrate:
 - Trafficking offense prohibited by s. 893.135(1), F.S.;
 - Arson;
 - Sexual battery;
 - Robbery;
 - Burglary;
 - Kidnapping;
 - Escape;
 - Aggravated child abuse;
 - Aggravated abuse of an elderly person or disabled adult;
 - Aircraft piracy;
 - Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - Carjacking;
 - Home-invasion robbery;
 - Aggravated stalking;
 - Murder of another human being;
 - Resisting an officer with violence to his or her person;
 - Felony that is an act of terrorism¹ or is in furtherance of an act of terrorism; or
- Which resulted from the unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user.

First degree murder is a capital felony punishable by death if the sentencing proceeding held in accordance with s. 921.141, F.S.,² results in findings by the court that such person shall be punished by death. If such proceeding results in findings by the court that the person shall not be punished by death, such person must be punished by life imprisonment and is ineligible for parole.

Second Degree Murder

Section 782.04(2), F.S., provides that it is second degree murder to unlawfully kill a human being when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual.

¹ Section 782.04(5), F.S., defines "terrorism" as an activity that involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States, or involves a violation of s. 815.06; and is intended to:

- Intimidate, injure, or coerce a civilian population;
- Influence the policy of a government by intimidation or coercion; or
- Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

² Section 921.141, F.S., requires a court, upon conviction or adjudication of guilt of a defendant of a capital felony, to conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. After hearing all the evidence, the jury must deliberate and render an advisory sentence to the court, based upon specified aggravating and mitigating circumstances. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, must enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it must set forth in writing its findings upon which the sentence of death is based.

Second degree murder, as provided in s. 782.04(2), F.S., is a first degree felony punishable by imprisonment for a term of years not exceeding life or by up to 30 years imprisonment and a \$10,000 fine.

Third Degree Murder

Section 782.04(4), F.S., defines third degree murder as the unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- Trafficking offense prohibited by s. 893.135(1), F.S.;
- Arson;
- Sexual battery;
- Robbery;
- Burglary;
- Kidnapping;
- Escape;
- Aggravated child abuse;
- Aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Unlawful throwing, placing, or discharging of a destructive device or bomb;
- Unlawful distribution of any substance controlled under s. 893.03(1), F.S., cocaine as described in s. 893.03(2)(a)4., F.S., or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user;
- Carjacking;
- Home-invasion robbery;
- Aggravated stalking;
- Murder of another human being;
- Resisting an officer with violence to his or her person; or
- Felony that is an act of terrorism or is in furtherance of an act of terrorism.

Third degree murder is a second degree felony punishable by up to 15 years imprisonment and a \$10,000 fine.

Effect of the Bill

The bill creates s. 782.066, F.S., entitled "Murder; child 17 years of age or younger." The bill provides that when a person is charged with second or third degree murder pursuant to s. 782.04(2) or (4), F.S., where the victim was a child 17 years of age or younger, the offense for which the person is charged will be reclassified, regardless of whether the person had a reason to know the age of the victim. The bill reclassifies the offenses as follows:

- In the case of a violation of s. 782.04(2), F.S., (second degree murder) from a first degree felony to a capital felony.
- In the case of a violation of s. 782.04(4), F.S., (third degree murder) from a second degree felony to a first degree felony punishable by up to 30 years imprisonment and a \$10,000 fine.

The bill provides that notwithstanding s. 948.01, F.S.,³ the court may not suspend, defer, or withhold adjudication of guilt or imposition of sentence for any violation.

³ Section 948.01(2), F.S., provides that if it appears to the court upon a hearing of the matter that a defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law, the court, in its discretion, may either adjudge the defendant to be guilty or stay and withhold the adjudication of guilt. In either case, the court shall stay and withhold the imposition of sentence upon the defendant and shall place a felony defendant upon probation.

B. SECTION DIRECTORY:

Section 1. Creates s. 782.066, F.S., relating to murder; child 17 years of age or younger.

Section 2. 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 Criminal Justice Impact Conference met March 21, 2013 and determined the bill may have an insignificant prison bed impact on the Department of Corrections.

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:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to murder of a child 17 years of age
 3 or younger; creating s. 782.066, F.S.; providing for
 4 reclassification of specified murder offenses if
 5 committed upon a child 17 years of age or younger;
 6 prohibiting a court from suspending, deferring, or
 7 withholding adjudication of guilt or imposition of
 8 sentence; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 782.066, Florida Statutes, is created
 13 to read:

14 782.066 Murder; child 17 years of age or younger.-

15 (1) Whenever a person is charged with committing a
 16 violation of s. 782.04, other than s. 782.04(1), upon a child 17
 17 years of age or younger, the offense for which the person is
 18 charged may be reclassified as follows, regardless of whether he
 19 or she had a reason to know the age of the victim:

20 (a) In the case of a violation of s. 782.04(2), from a
 21 felony of the first degree to a capital felony, punishable as
 22 provided in s. 775.082.

23 (b) In the case of a violation of s. 782.04(4), from a
 24 felony of the second degree to a felony of the first degree.

25 (2) Notwithstanding s. 948.01, a court may not suspend,
 26 defer, or withhold adjudication of guilt or imposition of
 27 sentence for any violation of this section.

28 Section 2. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 7005 (2013)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Pilon offered the following:

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

6 Between lines 23 and 24, insert:

7 Section 1. Subsection (9) of section 480.033, Florida
8 Statutes, is amended to read:

9 480.033 Definitions.—As used in this act:

10 (9) "Board-approved massage school" means a facility which
11 meets minimum standards for training and curriculum as
12 determined by rule of the board and which is licensed by the
13 Department of Education pursuant to chapter 1005 or the
14 equivalent licensing authority of another state or is within the
15 public school system of this state, or a college or university
16 which is eligible to participate in the William F. Boyd, IV,
17 Florida Resident Access Grant Program.

Amendment No.

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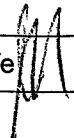

T I T L E A M E N D M E N T

Remove line 3 and insert:

480.033, F.S.; expanding the definition of a board-approved
massage school; amending s. 480.043, F.S.; requiring the denial
of an application

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7005 (PCB CRJS 13-01) Massage Establishments
SPONSOR(S): Health Quality Subcommittee; Criminal Justice Subcommittee, Kerner and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 500

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	13 Y, 0 N	Cunningham	Cunningham
1) Health Quality Subcommittee	13 Y, 0 N, As CS	Guzzo	O'Callaghan
2) Justice Appropriations Subcommittee		McAuliffe 	Jones Darity 
3) Judiciary Committee			

SUMMARY ANALYSIS

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage." While the majority of massage establishments engage in the legitimate practice of massage, some have been recognized as sites where illegal activity, such as human trafficking, occurs.

The Act currently contains numerous provisions prohibiting operators of massage establishments from committing specified acts. Both administrative and criminal penalties may be imposed upon those who do. While these provisions help in preventing illegal activity in massage establishments, recent news reports indicate that a small number of massage establishments continue to engage in illegal activity.

The bill amends ss. 480.043 and 480.046, F.S., to provide additional grounds for disciplinary action or the denial of a massage establishment license, including the arrest or conviction of certain criminal offenses and advertising to induce or engage a client in sexual activity.

The bill amends the Act to create additional prohibitions that are designed to curb illegal activity in massage establishments. Specifically, the bill creates s. 480.0475, F.S., which makes it a first degree misdemeanor for:

- A person to operate a massage establishment between the hours of midnight and 5:00 a.m.; or
- A person operating a massage establishment to use or permit such establishment to be used as a principle domicile unless the establishment is zoned for residential use under local ordinance.

A second or subsequent violation is a third degree felony.

The prohibition relating to operating hours does not apply to massage establishments:

- Located on the premises of a health care facility, health care clinic, hotel, motel, bed and breakfast inn, public airport, or a pari-mutuel facility; or
- In which every massage performed between the hours of midnight and 5:00 a.m. are performed by a massage therapist acting under the prescription of a physician or physician assistant, an osteopathic physician or physician assistant, a chiropractic physician, a podiatric physician, an advanced registered nurse, or a dentist.

In addition, a county or municipality may waive the hours of operation restrictions during special events.

The bill also amends s. 823.05, F.S., to declare massage establishments that operate in violation of the above-described provisions (and s. 480.0535(2), F.S., which requires massage establishment operators to provide identification upon request of a law enforcement officer) a nuisance that may be abated or enjoined as provided in ss. 60.05 and 60.06, F.S.

The Criminal Justice Impact Conference met on March 21, 2013 and determined this bill may have an insignificant negative impact on state prison beds. Because the bill creates new misdemeanors, it may have a negative jail bed impact on local governments.

The bill provides an effective date of October 1, 2013.

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

STORAGE NAME: h7005b.JUAS.DOCX

DATE: 3/26/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Massage Establishments

In October 2010, the Center for the Advancement of Human Rights at Florida State University provided the Florida Task Force on Human Trafficking a "Statewide Strategic Plan on Human Trafficking."¹ The Strategic Plan found that Florida is the third most popular American destination for human traffickers and that sex trafficking is the most under-reported offense.² The Strategic Plan noted that massage establishments have been noted as sites where trafficking occurs.³

Chapter 480, F.S., entitled the "Massage Practice Act" (Act), governs the practice of massage⁴ in Florida. A significant portion of the Act is dedicated to regulating massage establishments, which are defined as "a site or premises, or portion thereof, wherein a massage therapist practices massage."⁵

Massage establishments may only operate if they have applied for and received a license from the Department of Health (DOH) in accordance with rules adopted by the Board of Massage Therapy (Board).⁶ The Board's rules:

- Govern the operation of massage establishments and their facilities; personnel, safety and sanitary requirements, financial responsibility, and insurance coverage;
- Require DOH to inspect a proposed massage establishment upon receipt of an application for licensure to ensure that the site is to be utilized for massage; and
- Require DOH to periodically inspect licensed massage establishments at least once a year.⁷

Administrative Penalties

The Act sets forth a multitude of instances in which an operator of a massage establishment can be administratively disciplined by the Board. These include:

- Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of massage or to the ability to practice massage;
- False, deceptive, or misleading advertising;
- Aiding, assisting, procuring, or advising any unlicensed person to practice massage contrary to the provisions of the Act or to a rule of the Board;
- Making deceptive, untrue, or fraudulent representations in the practice of massage;
- Violating a lawful order of the Board previously entered in a disciplinary hearing;
- Refusing to permit the department to inspect the business premises of the licensee during regular business hours; and
- Failing to keep the equipment and premises of the massage establishment in a clean and sanitary condition.⁸

¹ The plan is available and can be viewed at http://www.cahr.fsu.edu/sub_category/Florida_StrategicPlanonHumanTrafficking.html (last visited March 11, 2013).

² Page 3 of the Strategic Plan.

³ Page 11 of the Strategic Plan.

⁴ The term "massage" is defined as the manipulation of the soft tissues of the human body with the hand, foot, arm, or elbow, whether or not such manipulation is aided by hydrotherapy, including colonic irrigation, or thermal therapy; any electrical or mechanical device; or the application to the human body of a chemical or herbal preparation. Section 480.033(3), F.S.

⁵ Section 480.033(7), F.S.

⁶ Section 480.043(1), F.S.

⁷ See Rules 64B7-26.003, 64B7-26.004, and 64B7-26.005, F.A.C.

⁸ Section 480.046(1), F.S.

Operators of massage establishments may also be administratively disciplined for violating *any provision* of the Act or ch. 456, F.S.,⁹ or any rules adopted pursuant thereto.¹⁰ Administrative disciplinary action includes:

- License denial;
- Refusal to certify, or certify with restrictions, an application for a license;
- Suspension or permanent revocation of a license;
- Restricting one's practice or license;
- Imposition of an administrative fine not to exceed \$10,000 for each count or separate offense; and
- Placing the licensee on probation and subject to such conditions as the Board may specify.¹¹

The Board can also revoke or suspend the license of a massage establishment in the following instances:

- Upon proof that a license has been obtained by fraud or misrepresentation; or
- Upon proof that the holder of a license is guilty of fraud or deceit or of gross negligence, incompetency, or misconduct in the operation of the licensed establishment.¹²

The Board has adopted a rule¹³ outlining the administrative disciplinary guidelines to be used when it finds that an applicant or licensee has violated the Act.¹⁴ These guidelines range from small fines for first-time minor violations to large fines, and license revocation for more serious violations.¹⁵

Massage Establishment Enforcement Data¹⁶

Measure	FY 2007-08	FY 2008-09	FY 2009-10	FY 2010-11	FY 2011-12
Number of Licensees	8,106	9,674	8,974	10,942	10,348
Disciplinary Actions Taken	40	44	42	52	44
Licensure Denials	3	0	0	19	9
Licensure Suspensions	2	0	3	4	3
Licensure Permanently Revoked	19	16	20	16	25
Number of Fines	41	36	45	72	24
Amount of Fines	\$63,850.00	\$37,850.00	\$49,000.00	\$47,050.00	\$26,450.00
Probations Imposed	5	1	1	2	5

⁹ Chapter 456, F.S., regulates health professions and occupations.

¹⁰ Section 480.046(1)(o), F.S.

¹¹ Sections 480.046(2) and 456.072(2), F.S.

¹² Section 480.046(3), F.S.

¹³ Rule 64B7-30.002, F.A.C.

¹⁴ The disciplinary guidelines also apply when the Board finds that an applicant or licensee as committed an act set forth in s. 480.0485, F.S. (relating to sexual misconduct); s. 480.047, F.S. (setting forth prohibited acts subject to criminal penalties); and s. 456.072, F.S. (containing general grounds for discipline for those in health professions). *See* Rule 64B7-30.002, F.A.C.

¹⁵ Disciplinary proceedings must be conducted in accordance with ch. 120, F.S. Section 480.046(4), F.S.

¹⁶ E-mail from Florida Department of Health-Division of Medical Quality Assurance Enforcement Data by Fiscal Year (Feb. 13, 2013) (on filed with Health Quality Subcommittee staff).

Criminal Penalties

The Act also imposes criminal penalties for certain violations. Section 480.047, F.S., makes it a first degree misdemeanor¹⁷ for a person to:

- Hold himself or herself out as a massage therapist or to practice massage unless duly licensed under the Act or unless otherwise specifically exempted from licensure under the Act;
- Operate any massage establishment unless it has been duly licensed;
- Permit an employed person to practice massage unless duly licensed;
- Present as his or her own the license of another;
- Allow the use of his or her license by an unlicensed person;
- Give false or forged evidence to DOH in obtaining any license;
- Falsely impersonate any other license-holder of like or different name;
- Use or attempt to use a license that has been revoked; or
- Otherwise violate any of the provisions of the Act.

A new criminal penalty was created in 2012, when the Legislature passed House Bill 7049. The bill, which contained a variety of provisions designed to enhance Florida's human trafficking laws, attempted to curb illegal activity in massage establishments by creating s. 480.0535, F.S. The statute makes it a second degree misdemeanor¹⁸ if a person operating a massage establishment cannot:

- Immediately present, upon the request of a DOH investigator or a law enforcement officer:
 - Valid government identification while in the establishment; and
 - A copy of specified documentation for each employee and any person performing massage in the establishment.
- Ensure that each employee and any person performing massage in the massage establishment is able to immediately present, upon the request of a DOH investigator or a law enforcement officer, valid government identification while in the establishment.¹⁹

Despite the Act's numerous administrative and criminal penalties, recent news reports indicate that some massage establishments continue to engage in illegal activity.²⁰

Effect of the Bill

The bill creates s. 480.0475, F.S., which prohibits, and provides criminal penalties for, certain practices. Specifically, the bill makes it a first degree misdemeanor for:

- A person to operate a massage establishment between the hours of midnight and 5:00 a.m.; or
- A person operating a massage establishment to use or permit such establishment to be used as a principle domicile unless the establishment is zoned for residential use under local ordinance.

A second or subsequent violation of the above-described provisions is a third degree felony.²¹

Further, the bill provides that the prohibition relating to operating hours does not apply to massage establishments:

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 480.0535(3), F.S. Subsequent violations of the statute are subject to increased penalties.

²⁰ See, e.g., "FBI raiding 'body-rub' joints in booming South Florida massage industry" http://articles.sun-sentinel.com/2012-11-24/news/fl-fbi-massage-raids-20121124_1_massage-parlors-massage-businesses-massage-therapist (last visited on March 11, 2013), and "3 arrested at massage parlor" <http://www.newsherald.com/news/crime-public-safety/3-arrested-at-massage-parlor-1.31152> (last visited on March 11, 2013).

²¹ 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.

- Located on the premises of a health care facility as defined in s. 408.07, F.S.; a health care clinic as defined in s. 400.9905(4); a hotel, motel, or a bed and breakfast inn, as those terms are defined in s. 509.242, F.S.; a public airport as defined in s. 330.27; or a pari-mutuel facility as defined in s. 550.002; or
- In which every massage performed between the hours of midnight and 5:00 a.m. are performed by a massage therapist acting under the prescription of a physician or physician assistant licensed under ch. 458, F.S.; an osteopathic physician or physician assistant licensed under ch. 459, F.S.; a chiropractic physician licensed under ch. 460, F.S.; a podiatric physician licensed under ch. 461, F.S.; an advanced registered nurse practitioner licensed under part I of ch. 464, F.S.; or a dentist licensed under ch. 466, F.S.

In addition, the bill provides that a county or municipality may waive the massage establishment hours of operation restrictions during special events occurring within such county or municipality's jurisdiction.

Because any violation of the Act is grounds for administrative disciplinary action, the two new prohibitions created by the bill now constitute grounds for such action by the Board.

The bill amends s. 480.043, F.S., to require the denial of a massage establishment license if an applicant has been arrested for or convicted of any of the 51 criminal offenses listed under s. 435.04(2), F.S. Additionally, the bill amends s. 480.046, F.S., to provide that if an applicant or licensee advertises to induce or engage, or engages or attempts to engage, the client in sexual activity, the applicant or licensee may be denied a license or administratively disciplined.

Public Nuisances

Section 823.05, F.S., deems certain places public nuisances. For example, subsection (1) of the statute currently specifies that a person is guilty of maintaining a nuisance if they erect, establish, continue, maintain, own or lease any:

- Building, booth, tent or place which tends to annoy the community or injure the health of the community, or become manifestly injurious to the morals or manners of the people as described in s. 823.01, F.S.;
- House or place of prostitution, assignation, or lewdness;
- Place or building where games of chance are engaged in violation of law; or
- Place where any law of the state is violated.

The statute declares such buildings, places, tents, or booths and the furniture, fixtures, and contents a nuisance. Subsection (2) of the statute declares places used on two or more occasions by a criminal gang, criminal gang members, or criminal gang associates for the purpose of engaging in criminal gang-related activity a nuisance.

Nuisances described in s. 823.05, F.S., must be abated and enjoined pursuant to ss. 60.05 and 60.06, F.S. Section 60.05, F.S., authorizes the Attorney General, state attorney, city attorney, county attorney, and any citizen to sue in the name of the state to enjoin the nuisance, the person(s) maintaining it, and the owner or agent of the building or ground on which the nuisance exists. The court, based on evidence²² or affidavit, may issue a temporary injunction enjoining:

- The maintaining of a nuisance;
- The operating and maintaining of the place or premises where the nuisance is maintained;
- The owner or agent of the building or ground upon which the nuisance exists; and

²² Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of a nuisance. Section 60.05(3), F.S.

- The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with the maintenance of the nuisance.²³

The injunction must specify the activities enjoined and must not preclude the operation of any lawful business not conducive to the maintenance of the alleged nuisance.²⁴ If the existence of a nuisance is shown at the final hearing, the court must issue a permanent injunction.²⁵

Section 60.06, F.S., requires the court, upon proper proof, to order the abatement of nuisances mentioned in s. 823.05, F.S., and authorizes the court to enforce injunctions by contempt.

Effect of the Bill

The bill amends s. 823.05, F.S., to declare massage establishments that operate in violation of s. 480.0475, F.S. (the newly created operating hours and domicile prohibitions), and s. 480.0535(2), F.S. (which requires massage establishment operators to provide identification upon request of a law enforcement officer), a nuisance that may be abated or enjoined as provided in ss. 60.05 and 60.06, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 480.043, F.S., relating to massage establishments; requisites; licensure; and inspection.

Section 2: Amends s. 480.046, F.S., relating to grounds for disciplinary action by the board.

Section 3: Amends s. 480.047, F.S., relating to penalties.

Section 4: Creates s. 480.0475, F.S., relating to massage establishments; prohibited practices.

Section 5: Amends s. 480.052, F.S., relating to power of counties or municipalities to regulate massage.

Section 6: Amends s. 823.05, F.S., relating to places and groups engaged in criminal gang-related activity declared a nuisance; may be abated and enjoined.

Section 7: Provides an effective date of October 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 Criminal Justice Impact Conference met on March 21, 2013 and determined this bill may have an insignificant negative impact on state prison beds.

The Board of Massage Therapy is likely to incur insignificant costs associated with rule-making.

²³ Section 60.05(2), F.S.

²⁴ Section 60.05(2), F.S. At least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction.

²⁵ Section 60.05(4), F.S.

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 creates two new first degree misdemeanor offenses relating to massage establishments. This may have a negative jail bed impact on local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Massage establishments will no longer be permitted to operate between the hours of midnight and 5:00 a.m., which may result in a loss of revenue to the business; nor will such establishments be able to be used as a principle domicile unless zoned as such by local ordinance.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears 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 Board will likely amend their rules to establish disciplinary guidelines applicable to the prohibitions created by the bill. However, because the Board currently has broad authority to adopt rules to implement the provisions of the Act, it does not appear that additional rulemaking authority is needed.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 16, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the PCB favorably. The first amendment clarifies that massage establishments that meet *either* of the exceptions are exempt from the operating hours prohibition. The second amendment makes second or subsequent violations of s. 480.0475, F.S., a third degree felony.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.

On March 12, 2013, the Health Quality Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides for the denial of massage establishment licensure if an applicant has been arrested for or convicted of certain criminal offenses;

- Provides additional grounds for the denial of a license or for disciplinary action;
- Changes the hours during which a massage establishment is prohibited to operate and provides additional exemptions to that prohibition;
- Requires a “prescription” instead of directions from a physician or physician assistant to be authorized to perform massages in an establishment during a specified time; and
- Authorizes a county or municipality to waive the hours of operation restrictions on massage establishments during special events.

This analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.

1 A bill to be entitled

2 An act relating to massage establishments; amending s.
 3 480.043, F.S.; requiring the denial of an application
 4 for a massage establishment license in certain
 5 circumstances; amending s. 480.046, F.S.; providing
 6 additional grounds for the denial of a license or
 7 disciplinary action; amending s. 480.047, F.S.;
 8 revising penalties; creating s. 480.0475, F.S.;
 9 prohibiting the operation of a massage establishment
 10 during specified times; providing exceptions;
 11 prohibiting the use of a massage establishment as a
 12 principal domicile unless the establishment is zoned
 13 for residential use under a local ordinance; providing
 14 penalties; amending s. 480.052, F.S.; authorizing a
 15 county or municipality to waive massage establishment
 16 operating hours restrictions during certain special
 17 events; amending s. 823.05, F.S.; declaring that a
 18 massage establishment operating in violation of
 19 specified statutes is a nuisance that may be abated or
 20 enjoined; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (2) of section 480.043, Florida
 25 Statutes, is amended to read:

26 480.043 Massage establishments; requisites; licensure;
 27 inspection.—

28 (2) The board shall adopt rules governing the operation of

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29 establishments and their facilities, personnel, safety and
30 sanitary requirements, financial responsibility, insurance
31 coverage, and the license application and granting process. An
32 application shall be denied upon a finding that an applicant has
33 been arrested for and is awaiting final disposition of, or has
34 been convicted of, regardless of adjudication, any offense in s.
35 435.04(2) or a similar law of another jurisdiction.

36 Section 2. Paragraphs (e) through (o) of subsection (1) are
37 redesignated as paragraphs (f) through (p), respectively, and a
38 new paragraph (e) of subsection (1) of section 480.046, Florida
39 Statutes, is added to read:

40 480.046 Grounds for disciplinary action by the board.—

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

43 (e) Advertising to induce or attempt to induce, or to
44 engage or attempt to engage, the client in sexual activity.

45 Section 3. Section 480.047, Florida Statutes, is amended
46 to read:

47 480.047 Penalties.—

48 (1) It is unlawful for any person to:

49 (a) Hold himself or herself out as a massage therapist or
50 to practice massage unless duly licensed under this chapter or
51 unless otherwise specifically exempted from licensure under this
52 chapter.

53 (b) Operate any massage establishment unless it has been
54 duly licensed as provided herein, except that nothing herein
55 shall be construed to prevent the teaching of massage in this
56 state at a board-approved massage school.

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57 (c) Permit an employed person to practice massage unless
58 duly licensed as provided herein.

59 (d) Present as his or her own the license of another.

60 (e) Allow the use of his or her license by an unlicensed
61 person.

62 (f) Give false or forged evidence to the department in
63 obtaining any license provided for herein.

64 (g) Falsely impersonate any other licenseholder of like or
65 different name.

66 (h) Use or attempt to use a license that has been revoked.

67 (i) Otherwise violate any of the provisions of this act.

68 (2) Except as otherwise provided in this chapter, any
69 person violating the provisions of this section is guilty of a
70 misdemeanor of the first degree, punishable as provided in s.
71 775.082 or s. 775.083.

72 Section 4. Section 480.0475, Florida Statutes, is created
73 to read:

74 480.0475 Massage establishments; prohibited practices.-

75 (1) A person may not operate a massage establishment
76 between the hours of midnight and 5 a.m. This subsection does
77 not apply to a massage establishment:

78 (a) Located on the premises of a health care facility as
79 defined in s. 408.07; a health care clinic as defined in s.
80 400.9905(4); a hotel, motel, or bed and breakfast inn, as those
81 terms are defined in s. 509.242; a public airport as defined in
82 s. 330.27; or a pari-mutuel facility as defined in s. 550.002;
83 or

84 (b) In which every massage performed between the hours of

85 midnight and 5 a.m. is performed by a massage therapist acting
 86 under the prescription of a physician or physician assistant
 87 licensed under chapter 458, an osteopathic physician or
 88 physician assistant licensed under chapter 459, a chiropractic
 89 physician licensed under chapter 460, a podiatric physician
 90 licensed under chapter 461, an advanced registered nurse
 91 practitioner licensed under part I of chapter 464, or a dentist
 92 licensed under chapter 466.

93 (2) A person operating a massage establishment may not use
 94 or permit the establishment to be used as a principal domicile
 95 unless the establishment is zoned for residential use under a
 96 local ordinance.

97 (3) A person violating the provisions of this section
 98 commits a misdemeanor of the first degree, punishable as
 99 provided in s. 775.082 or s. 775.083. A second or subsequent
 100 violation of this section is a felony of the third degree,
 101 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

102 Section 5. Section 480.052, Florida Statutes, is amended
 103 to read:

104 480.052 Power of county or municipality to regulate
 105 massage.—

106 (1) A county or municipality, within its jurisdiction, may
 107 regulate persons and establishments licensed under this chapter.
 108 Such regulation shall not exceed the powers of the state under
 109 this act or be inconsistent with this act. This section shall
 110 not be construed to prohibit a county or municipality from
 111 enacting any regulation of persons or establishments not
 112 licensed pursuant to this act.

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113 (2) A county or municipality may waive the massage
114 establishment hours of operation restrictions contained in s.
115 480.0475 during special events occurring within the jurisdiction
116 of the county or municipality.

117 Section 6. Subsection (3) is added to section 823.05,
118 Florida Statutes, to read:

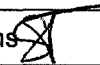

119 823.05 Places and groups engaged in criminal gang-related
120 activity declared a nuisance; massage establishments engaged in
121 prohibited activity; may be abated and enjoined.—

122 (3) A massage establishment as defined in s. 480.033(7)
123 that operates in violation of s. 480.0475 or s. 480.0535(2) is
124 declared a nuisance and may be abated or enjoined as provided in
125 ss. 60.05 and 60.06.

126 Section 7. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7015 PCB CJS 13-02 Expert Testimony
SPONSOR(S): Civil Justice Subcommittee, Metz and others
TIED BILLS: IDEN./SIM. BILLS: SB 1412

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee	8 Y, 4 N	Cary	Bond
1) Justice Appropriations Subcommittee		Toms 	Jones Darity 
2) Judiciary Committee			

SUMMARY ANALYSIS

An expert witness is a person who has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder during a hearing or trial. In evaluating whether testimony of a particular expert witness will be admitted in a Florida court, the court looks at whether or not the underlying basic principles of evidence are generally accepted within the scientific community. The standard is known as the *Frye* standard.

This bill rejects the *Frye* standard and provides a three-part test to determine whether or not expert testimony will be admitted in a particular case. This bill adopts a standard commonly referred to as the *Daubert* standard, which requires the court to determine if (1) the testimony is based upon sufficient facts or data; (2) the testimony is the product of reliable principles and methods; and (3) the witness has applied the principles and methods reliably to the facts of the case.

This bill may have a fiscal impact on state government, see fiscal impact section.

This bill contains an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Expert Witness

An expert witness is a person, who, through education or experience, has developed skill or knowledge in a particular subject, so that he or she may form an opinion that will assist the fact-finder.¹ Previously, both Federal and Florida courts used the standard established in *Frye v. United States*² to determine whether scientific and expert testimony could be admitted into evidence. In *Frye*, the court established a test regarding the admission of expert testimony about new or novel theories. The court held that in order to introduce expert testimony deduced from a scientific principle or discovery, the principle or discovery "must be sufficiently established to have gained general acceptance in the particular field in which it belongs."³ Under the *Frye* standard, a judge must determine that the basic underlying principles of scientific evidence have been tested and accepted by the scientific community.

The Federal Rules of Evidence were formally promulgated in 1975. Federal courts still continued to use the *Frye* standard until 1993, though, when the United States Supreme Court held in *Daubert*⁴ that the *Frye* standard had been superseded by the Federal Rules of Evidence which provides in relevant part that:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.⁵

The Florida Evidence Code was established in 1979 and was patterned after the Federal Rules of Evidence. Section 90.102, F.S., provides that the Florida Evidence Code replaces and supersedes existing statutory or common law in conflict with its provisions. Section 90.702, F.S., relates to the admissibility of expert witness testimony and provides that:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion; however, the opinion is admissible only if it can be applied to evidence at trial.⁶

Florida courts still use the *Frye* standard, however, for expert testimony.⁷ The Florida Supreme Court held in *Brim v. State* that "despite the federal adoption of a more lenient standard in *Daubert* . . . we have maintained the higher standard of reliability as dictated by *Frye*."⁸

¹ Bryan A. Garner, *Black's Law Dictionary*, 9th Edition (West Publishing Co. 2009), "expert."

² *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).

³ *Id.* at 1013.

⁴ *Daubert v. Merrell Dow Pharmaceuticals*, 509 US. 579 (1993).

⁵ Rule 702, Federal Rules of Evidence.

⁶ Section 90.702, F.S.

⁷ *Flanagan v. State*, 625 So.2d 827 (Fla. 1993); *Hadden v. State*, 690 So.2d 573 (Fla. 1997).

⁸ *Brim v. State*, 695 So.2d 268, 271 (Fla. 1997).

In November 2007, the Florida Supreme Court decided *Marsh v. Valyou*.⁹ In the case, the court addressed a conflict between the 1st and the 5th Florida District Courts of Appeal regarding expert testimony on fibromyalgia.¹⁰ The court held that the testimony should have come in under pure opinion testimony¹¹ and in the alternative should have also come in under *Frye*. In the concurring opinion, Justice Anstead questioned why Florida still uses the *Frye* standard, stating that "we have never explained how *Frye* has survived the adoption of the rules of evidence."¹² Both the concurring and dissenting opinions concluded that *Frye* was superseded by the adoption of Florida's Evidence Code.

Effect of the Bill

This bill amends s. 90.702, F.S., to provide a standard regarding witness testimony that is more closely related to *Daubert* and the Federal Code of Evidence than *Frye*. This bill provides a three-part test to be used in determining whether an expert may testify. The test provides that an expert may testify in the particular field in which he or she is qualified in the form of an opinion or otherwise if:

- The testimony is based on sufficient facts or data,
- The testimony is the product of reliable principles and methods, and
- The witness has applied the principles and methods reliably to the facts.

The bill requires the courts of this state to interpret and apply the above requirements and s. 90.704, F.S., in accordance with *Daubert v. Merrel Dow Pharmaceuticals, Inc.*, and subsequent U.S. Supreme Court cases that reaffirm expert witness testimony under the *Daubert* standard. The *Daubert* standard laid out in the bill will also apply to all proposed expert testimony, including pure opinion testimony as discussed in *Marsh v. Valyou*. The bill also provides that *Frye v. United States* and subsequent Florida decisions applying and implementing *Frye* no longer apply to s. 90.702, F.S., or s. 90.704, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 90.702, F.S., regarding testimony by experts.

Section 2 amends s. 90.704, F.S., regarding the basis of opinion testimony by experts.

Section 3 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 change in standard to admit expert opinions in Florida courts may have an impact on the number of pre-trial hearings needed. The bill may necessitate an increase in judicial education as judges will be required to become more familiar with scientific principles. Over the long term, the

⁹ *Marsh v. Valyou*, 977 So.2d 543 (Fla. 2007).

¹⁰ Fibromyalgia is a chronic condition characterized by widespread pain in the muscles, ligaments and tendons, as well as fatigue and multiple tender points. See <http://www.mayoclinic.com/health/fibromyalgia/DS00079> (last visited February 7, 2013).

¹¹ Pure opinion testimony is based on the expert's personal experience and training and does not have to meet the *Frye* standard. See *Flanagan*, 625 So. 2d at 828.

¹² *Marsh* at 551.

change from Frye to Daubert likely will not substantially change the number of pre-trial hearings. In the nearer term, however, there is expected to be an increase as litigants test the limits of the new standard. It is unclear how long the transition will take to stabilize.¹³

The Florida Prosecuting Attorneys Association has stated this bill will create an increase in workload as it will become a trial within a trial; requiring a much larger use of expert witnesses and court hearing time. The Prosecuting Attorneys Association has estimated a fiscal impact of \$1.1 million¹⁴. However, it is difficult for legislative staff to quantify a fiscal impact, in that well-established evidentiary standards in areas involving mental health, substance abuse, cognitive dysfunction, dual diagnosis, psychosis, and other areas litigated in some criminal cases may be expanded beyond the already extensive body of testimony and evidence currently litigated.

The Florida Public Defender Association has stated an insignificant fiscal impact due to this bill.

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:

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, it may refuse to adopt the changes in the bill as a rule.¹⁵

¹³ *Office of the State Courts Administrator 2013 Judicial Impact Statement*, HB 7015, Eric Maclure, March 6, 2013. On file with the Justice Appropriations Subcommittee.

¹⁴ *Florida Prosecuting Attorneys Association Analysis Report*, HB 7015, Buddy Jacobs, March 4, 2013. On file with the Justice Appropriations Subcommittee.

¹⁵ *See, e.g., In re Florida Evidence Code*, 782 So.2d 339 (Fla. 2000) (Florida Supreme Court adopting Evidence Code to the extent it is procedural and rejecting hearsay exception as a rule of court); *compare In re Florida Evidence Code*, 372

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

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29 education may testify about it in the form of an opinion or
 30 otherwise, if:

31 (a) The testimony is based upon sufficient facts or data;

32 (b) The testimony is the product of reliable principles
 33 and methods; and

34 (c) The witness has applied the principles and methods
 35 reliably to the facts of the case; however, the opinion is
 36 admissible only if it can be applied to evidence at trial.

37 (2) The courts of this state shall interpret and apply the
 38 requirements of subsection (1) and s. 90.704 in accordance with
 39 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579
 40 *(1993); General Electric Co. v. Joiner*, 522 U.S. 136 (1997); and
 41 *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999). *Frye v.*
 42 *United States*, 293 F. 1013 (D.C. Cir. 1923) and subsequent
 43 Florida decisions applying or implementing *Frye* no longer apply
 44 to subsection (1) or s. 90.704. All proposed expert testimony,
 45 including pure opinion testimony as discussed in *Marsh v.*
 46 *Valyou*, 977 So. 2d 543 (Fla. 2007), is subject to subsection (1)
 47 and s. 90.704.

48 Section 2. Section 90.704, Florida Statutes, is amended to
 49 read:

50 90.704 Basis of opinion testimony by experts.—The facts or
 51 data upon which an expert bases an opinion or inference may be
 52 those perceived by, or made known to, the expert at or before
 53 the trial. If the facts or data are of a type reasonably relied
 54 upon by experts in the subject to support the opinion expressed,
 55 the facts or data need not be admissible in evidence. Facts or
 56 data that are otherwise inadmissible shall not be disclosed to

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57 | the jury by the proponent of the opinion or inference unless the
58 | court determines that their probative value in assisting the
59 | jury to evaluate the expert's opinion substantially outweighs
60 | their prejudicial effect.

61 | Section 3. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB CRJS 13-02 Sex Offenses
SPONSOR(S): Criminal Justice Subcommittee, Harrell
TIED BILLS: IDEN./SIM. **BILLS:** SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	9 Y, 2 N	Cunningham	Cunningham
1) Justice Appropriations Subcommittee		McAuliffe	Jones Darity
2) Judiciary Committee			

SUMMARY ANALYSIS

The bill amends a variety of statutes related to sexual offenders to bring them further in line with the federal Adam Walsh Act. Specifically, the bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to add the following offenses to the list of offenses that qualify a person as a sexual predator and sexual offender:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill also:

- Broadens a hearsay exception for child victims of abuse and sexual abuse;
- Requires sexual predators and offenders to provide the sheriff and the Florida Department of Law Enforcement (FDLE) any Internet identifier the offender uses and defines the term "Internet identifier;"
- Requires sexual offenders and predators to provide information about their passport, immigration status, vehicles, professional licenses, and other specified information to the sheriff as part of the registration process;
- Permits specified sexual offenders to petition the court for removal from the requirement to register as a sexual offender if 15 years have elapsed since the offender's registration period began and if other criteria are met;
- Expands the victim age criteria that must be met before a person can be removed from the sexual offender registry pursuant to s. 943.04354, F.S.;
- Requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work at specified locations, to conduct a search of that person's name or other identifying information through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice;
- Increases the penalty for third or subsequent violations of s. 800.03, F.S. (exposure of sexual organs), from a first degree misdemeanor to a third degree felony;
- Requires sexual offenders who are arrested for an offense (other than a misdemeanor offense under ch. 316, F.S.) to be held until first appearance in order to ensure the full participation of the prosecutor and the protection of the public; and
- Makes technical corrections to the Criminal Punishment Code; offense severity ranking chart.

The Criminal Justice Impact Conference met on March 21, 2013 and determined that this bill will have an insignificant impact on state prison beds. The bill will have a fiscal impact on FDLE which can be absorbed in existing resources. The bill may also have a jail bed impact. See fiscal section.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hearsay Evidence (Section 1)

Section 90.803, F.S., contains a variety of hearsay exceptions. Subsection (23) of the statute specifies that unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by a child victim with a physical, mental, emotional, or developmental age of 11 or less describing certain sex crimes¹ is admissible in evidence in any civil or criminal proceeding if:

- The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability;² and
- The child either:
 - Testifies; or
 - Is unavailable as a witness, provided that there is other corroborative evidence of the abuse or offense. Unavailability includes a finding by the court that the child's participation in the trial or proceeding would result in a substantial likelihood of severe emotional or mental harm, in addition to findings pursuant to s. 90.804(1), F.S.³

Effect of the Bill

The bill amends s. 90.803(23), F.S., by increasing the age of a child to which the hearsay exception applies from 11 to 16.

Sexual Predator Qualifying Offenses (Section 2)

Section 775.21, F.S., which contains various registration requirements for sexual predators, provides in part, that a person must be designated a sexual predator if the person is convicted, on or after October 1, 1993, of:

1. A capital, life, or first degree felony violation, or any attempt thereof, of any of the criminal offenses prescribed in the following statutes in this state or a similar offense in another jurisdiction:
 - Sections 787.01 (kidnapping) or 787.02, F.S. (false imprisonment), where the victim is a minor and the defendant is not the victim's parent or guardian
 - Section 794.011, F.S. (sexual battery)

¹ These crimes include child abuse or neglect, any act of sexual abuse against a child, the offense of child abuse, the offense of aggravated child abuse, or any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by, or on the declarant child. Section 90.803(23)(a), F.S.

² In making its determination, the court may consider the mental and physical age and maturity of the child, the nature and duration of the abuse or offense, the relationship of the child to the offender, the reliability of the assertion, the reliability of the child victim, and any other factor deemed appropriate. Section 90.803(23)(a)1., F.S.

³ Section 90.804(1), F.S., specifies that "unavailability as a witness" means that the declarant:

- Is exempted by a ruling of a court on the ground of privilege from testifying concerning the subject matter of the declarant's statement;
- Persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so;
- Has suffered a lack of memory of the subject matter of his or her statement so as to destroy the declarant's effectiveness as a witness during the trial;
- Is unable to be present or to testify at the hearing because of death or because of then-existing physical or mental illness or infirmity; or
- Is absent from the hearing, and the proponent of a statement has been unable to procure the declarant's attendance or testimony by process or other reasonable means.

However, a declarant is not unavailable as a witness if such exemption, refusal, claim of lack of memory, inability to be present, or absence is due to the procurement or wrongdoing of the party who is the proponent of his or her statement in preventing the witness from attending or testifying.

- Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
 - Section 847.0145, F.S. (selling or buying of minors); or
2. Any felony violation, or attempt thereof, of:
- Sections 787.01 (kidnapping), 787.02 (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
 - Section 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking)
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.⁴
 - Section 794.05, F.S. (unlawful activity with certain minors)
 - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
 - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)
 - Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
 - Section 810.145(8)(b), F.S. (relating to video voyeurism)
 - Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
 - Section 827.071, F.S. (sexual performance by a child)
 - Section 847.0135(5), F.S. (computer pornography)
 - Section 847.0145, F.S. (selling or buying of minors)
 - Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and
 - The offender has previously been convicted of any of the statutes enumerated above, including s. 847.0133, F.S. (protection of minors / obscenity).

Effect of the Bill

The bill amends s. 775.21, F.S., to add the following qualifying offenses to the list of offenses contained in 2. (enumerated above):

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

The bill also changes the reference to s. 847.0135(5), F.S., in the above list to "s. 847.0135, F.S., excluding s. 847.0135(6), F.S." As a result, all of the computer-related sexual offenses in s. 847.0135, F.S., are qualifying offenses, except for subsection (6), which prohibits an owner or operator of a computer online service to knowingly permit a subscriber to use the service to commit a violation of the statute.

Sexual Offender Qualifying Offenses (Sections 5, 9 and 10)

Section 943.0435, F.S., which contains various registration requirements for sexual offenders, defines the term "sexual offender," in part, as a person who:

1. Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction:
 - Sections 787.01, (kidnapping), 787.02, (false imprisonment), and 787.025(2)(c), F.S. (luring or enticing a child), where the victim is a minor and the defendant is not the victim's parent or guardian
 - Section 787.06(3)(b),(d),(f),(g), or (h), F.S. (relating to human trafficking)
 - Section 794.011, F.S. (sexual battery) excluding s. 794.011(10), F.S.
 - Section 794.05, F.S. (unlawful activity with certain minors)
 - Section 796.03, F.S. (procuring a person under the age of 18 for prostitution)
 - Section 796.035, F.S. (selling or buying of minors into sex trafficking or prostitution)

⁴ Section 794.011(10), F.S., relates to falsely accusing specified persons of sexual battery.

- Section 800.04, F.S. (lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age)
- Section 810.145(8), F.S. (relating to video voyeurism)
- Section 825.1025, F.S. (lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person)
- Section 827.071, F.S. (sexual performance by a child)
- Section 847.0133, F.S. (prohibition of certain acts in connection with obscenity)
- Section 847.0135, F.S. (computer pornography and traveling to meet a minor) excluding s. 847.0135(6), F.S.
- Section 847.0137, F.S. (transmission of pornography by electronic device or equipment)
- Section 847.0138, F.S. (transmission of material harmful to minors to a minor by electronic device or equipment)
- Section 847.0145, F.S. (selling or buying of minors)
- Section 985.701(1), F.S. (sexual misconduct with a juvenile offender); and

2. Has been released on or after October 1, 1997, from the sanction⁵ imposed for any conviction of an offense described above.

Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the Department of Corrections (DOC), also contain definitions of the term "sexual offender" that include the list of qualifying offenses enumerated above.

Effect of the Bill

The bill amends the definition of the term "sexual offender" in ss. 943.0435, 944.606, and 944.607, F.S., to add the following qualifying offenses:

- Section 393.135(2), F.S. (sexual misconduct with an individual with a developmental disability);
- Section 394.4593(2), F.S. (sexual misconduct with a patient); and
- Section 916.1075(2), F.S. (sexual misconduct with a forensic client).

Sexual Predator and Sexual Offender Registration (Sections 2, 5, 9, 10, 13 and 14)

In very general terms, the distinction between a sexual predator and a sexual offender depends on what offense the person has been convicted of, whether the person has previously been convicted of a sexual offense, and the date the offense occurred.⁶ A sexual predator or sexual offender must comply with a number of statutory registration requirements.⁷ Failure to comply with these requirements is generally a third degree felony.⁸

Sexual predators and offenders must register at the sheriff's office within 48 hours of establishing or maintaining a residence.⁹ During initial registration, a sexual predator or sexual offender is required to provide certain information, including their name, address, e-mail address, home and cellular telephone number, and instant message name, to the sheriff's department, who then provides the information to the Florida Department of Law Enforcement (FDLE) for inclusion in the statewide database.¹⁰

A sexual predator or sexual offender is also required to re-register at specified intervals and to immediately report any changes to his or her registration information.¹¹ For example, a predator or

⁵ A sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility. Section 943.0435(1)(a), F.S.

⁶ See generally, ss. 775.21, 943.0435, and 944.607, F.S.

⁷ *Id.*

⁸ Sections 775.21(10) and 943.0435(14), F.S. 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.

⁹ See ss. 775.21 and 943.0435, F.S. Sexual predators or sexual offenders who are in the custody of or under the supervision of DOC or a local jail are required to register with DOC and the jail, respectively.

¹⁰ See generally, ss. 775.21, 943.0435, 944.607, and 985.4815, F.S.

¹¹ *Id.*

offender who changes his or her residence or name must, within 48 hours after such change, report in person to a Department of Highway Safety and Motor Vehicles (DHSMV) driver license office.¹² In addition, predators or offenders who intend to establish a residence in another state or jurisdiction other than Florida are required to report in person to the sheriff of the county of current residence within 48 hours before the date he or she intends to leave the state.¹³

Effect of the Bill

The bill amends ss. 775.21, 943.0435, 944.606, 944.607, 985.481, and 985.4815 F.S., to require sexual predators and offenders to provide the following registration information:

- Information about any tattoos or other identifying marks the offender may have.
- All e-mail addresses, home telephone numbers, and cellular telephone numbers (current law only requires offenders to provide *one* of each).
- The make, model, color, registration numbers, and license tag number of all vehicles the offender owns.
- Palm prints.
- Information about the offender's passport, if the offender has one.
- Documents establishing the offender's immigration status, if the offender is an alien.
- Information about any professional licenses the offender may have.
- Whether the offender is volunteering at an institution of higher education.

The bill amends ss. 775.21 and 943.0435, F.S., to:

- Require sexual predators and offenders who are unable to obtain or update a driver license or state identification card with DHSMV to report any change in the offender's residence or name within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to DHSMV.
- Require sexual predators and offenders to report to the sheriff of the county of current residence within 21 days before his or her planned departure if the intended residence of five days or more is outside of the United States.
- Require sexual predators and offenders who intend to establish a residence in another country to provide the sheriff the address, municipality, county, state, and *country* of the offender's intended residence.
- Require FDLE to notify the applicable law enforcement agency in the country where the offender intends to reside.
- Provides that an offender who knowingly provides false registration information by act or omission commits a third degree felony (this provision is also added to ss. 944.607 and 985.4815, F.S.).

Sexual Predator / Offender Registration - Instant Message Name (Sections 2, 5, 8, 9, and 10)

In addition to providing the above-described information during initial registration, sexual predators and offenders are required to provide the sheriff any instant message name the offender wants to use.¹⁴ Sexual predators and offenders must also register any instant message name with FDLE prior to using such name.¹⁵

Sections 775.21, 943.0435, 944.606, and 944.607, F.S., define the term "instant message name" as "an identifier that allows a person to communicate in real time with another person using the Internet."

Effect of the Bill

The bill amends ss. 775.21, 943.0435, 944.606, and 944.607, F.S., to replace the term "instant message name" with "Internet identifier." The bill defines the term "Internet identifier" as "all electronic

¹² *Id.*

¹³ *Id.*

¹⁴ See generally, ss. 775.21, 943.0435, 944.606, and 944.607, F.S.

¹⁵ FDLE maintains an online system through which sexual predators and offenders can update their instant message name information.

Sections 775.21 and 943.0435, F.S.

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mail, chat, instant messenger, social networking, or similar name used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).” The bill specifies that an offender’s voluntary disclosure of his or her date of birth, social security number, or PIN as an Internet identifier waives the disclosure exemption for such personal information. As a result, sexual predators and offenders will be required to register their Internet identifiers with the sheriff and with FDLE.

The bill also replaces the term “instant message name” with the term “Internet identifier” in s. 943.0437, F.S., which authorizes FDLE to provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sex offender registry to commercial social networking websites.¹⁶

Search of Registration Information (Section 6)

Section 943.04351, F.S., requires states agencies and governmental subdivisions, prior to making any decision to appoint or employ a person to work, whether for compensation or as a volunteer, at specified locations,¹⁷ to conduct a search of that person’s name or other identifying information against the registration information regarding sexual predators and sexual offenders maintained by FDLE.

Effect of the Bill

The bill amends s. 943.04351, F.S., to require states agencies and governmental subdivisions to also search the person’s name through the Dru Sjodin National Sex Offender Public Website maintained by the United States Department of Justice.

Removal of the Requirement to Register as a Sexual Offender (Sections 5 and 7)

Generally, sexual predators and offenders must maintain registration with FDLE for the duration of the offender’s life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that met the criteria for the sexual predator designation or that met the criteria for classifying the person as a sexual offender for purposes of registration.¹⁸ However, there are ways in which the registration requirement can be removed.

Section 943.0435(11), F.S.

Section 943.0435(11)(a), F.S., currently permits sexual offenders who have been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and have not been arrested for any felony or misdemeanor offense since release to petition the criminal division of the circuit court of the circuit in which the sexual offender resides for the purpose of removing the requirement for registration as a sexual offender, provided that the offender’s requirement to register was not based on an adult conviction:

- For a violation of ss. 787.01 or 787.02, F.S.;
- For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
- For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
- For a violation of s. 800.04(5)(b), F.S.;
- For a violation of s. 800.04(5)(c)2., F.S., where the court finds the offense involved unclothed genitals or genital area;
- For any attempt or conspiracy to commit any such offense; or
- For a violation of similar law of another jurisdiction.¹⁹

¹⁶ Such websites can use this information for the purpose of comparing users and potential users of the website against the list provided by FDLE. Section 943.0437(2), F.S.

¹⁷ These locations include parks, playgrounds, day care centers, or other places where children regularly congregate.

¹⁸ Sections 775.21(6) and 943.0435(11), F.S.

¹⁹ The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before

Effect of the Bill

The bill amends s. 943.0435(11)(a), F.S., to modify and expand the instances in which specified sexual offenders can petition the court to have the registration requirement removed. These changes bring the statute in line with the federal Adam Walsh Act.

1. Sexual offenders may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
 - 25 years have elapsed since the offender's registration period for the most recent conviction requiring registration began, excluding any period in which the offender was supervised by DOC;
 - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 25 years prior to petitioning the court;
 - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
 - The offender's requirement to register was not based upon an adult conviction:
 - For a violation of s. 787.01, F.S.;
 - For a violation of s. 794.011, F.S., excluding s. 794.011(10), F.S.;
 - For a violation of s. 800.04(4)(b), F.S., where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
 - For a violation of s. 800.04(5)(b), F.S.;
 - For a violation of s. 800.04(5)(c)2., F.S., where the court finds the offense involved the use of force or coercion and unclothed genitals or genital area;
 - For any attempt or conspiracy to commit any of the above-described offenses;
 - For a violation of similar law of another jurisdiction; or
 - For a violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed above.
 - For offenders whose requirement to register is based upon a conviction in another state, the offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
2. Sexual offenders whose requirement to register was based upon an adult conviction for a violation of ss. 787.02 or 827.071(5), F.S., for any attempt or conspiracy to commit such offenses, or for a violation of a similar law in another jurisdiction, may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:
 - 15 years have elapsed since the offender's registration period for the most recent conviction requiring registration began, excluding any period in which the offender was supervised by DOC;
 - The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 10 years prior to petitioning the court;
 - The offender has successfully completed all sanctions imposed for all offenses that required the offender to register;
 - For offenders whose requirement to register is based upon a conviction in another state, the offender is not required to register as a sexual offender pursuant to the laws of the state where the conviction occurred.
3. Sexual offenders required to register pursuant to s. 943.0435(1)(a)1.d., F.S. (specified juvenile sexual offenders), may petition the criminal division of the circuit court in the circuit in which the offender resides for removal from the requirement to register if:

the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief. Section 943.0435(11)(a), F.S.

- 25 years have elapsed since the offender's registration period for the most recent adjudication requiring registration began, excluding any period in which the offender was supervised by the Department of Juvenile Justice;
- The offender has not been convicted or adjudicated delinquent of any felony offense or of an offense punishable by more than one year imprisonment for 25 years prior to petitioning the court;
- The offender has successfully completed all sanctions imposed for all offenses that required the offender to register.

The bill specifies that the registration period of a sexual offender sentenced to a term of incarceration or committed to a residential program begins upon release for the most recent conviction that required the offender to register. Additionally, an offender's registration period is tolled during any period in which the offender is incarcerated, civilly committed, detained pursuant to ch. 985, F.S., or committed to a residential program.

The bill also requires FDLE to be given notice of the petition at least 3 weeks prior to the hearing on the matter (currently only the state attorney is required to be given notice), and requires the court to instruct the petitioner to provide FDLE with a certified copy of the order granting relief.

These changes will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed pursuant to s. 943.0435, F.S.

Section 943.04354, F.S.

Currently, s. 943.04354(1), F.S., provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was or will be convicted or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or the person committed a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., for which adjudication of guilt was or will be withheld, and the person does not have any other conviction, adjudication of delinquency, or withhold of adjudication of guilt for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S.;
2. Is required to register as a sexual offender or predator solely on the basis of this violation; and
3. Is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.

Subsection (2) of the statute provides that if a person meets the above criteria, and the violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or predator.²⁰ At sentencing or disposition of this violation, the court must rule on this motion and, if the court determines the person meets the above criteria and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement.²¹

Subsection (3) of the statute specifies that a person who meets the above criteria and who is subject to registration as a sexual offender or sexual predator for a violation of ss. 794.011, 800.04, or 827.071, F.S., that occurred before July 1, 2007, may petition the court in which the sentence or disposition for the violation of ss. 794.011, 800.04, or 827.071, F.S., occurred for removal of the requirement to register as a sexual offender or predator.²² The court shall rule on the petition and, if the court

²⁰ The person must allege in the motion that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. Section 943.04354(2), F.S.

²¹ If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement. Section 943.04354(2), F.S.

²² The person must allege in the petition that he or she meets the above criteria and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the petition at least 21 days before the hearing on the petition

determines the person meets the above criteria and removal of the registration requirement will not conflict with federal law, it may grant the petition and order the removal of the registration requirement.²³

Effect of the Bill

The bill makes a variety of changes to s. 943.04354(1), F.S., to bring the statute in line with the federal Adam Walsh Act. Specifically, the bill provides that a person can be considered for removal of the requirement to register as a sexual offender or predator if the person:

1. Was convicted, regardless of adjudication, or adjudicated delinquent of a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction, and the person does not have any other conviction, regardless of adjudication, or adjudication of delinquency for a violation of ss. 794.011, 800.04, 827.071, or 847.0135(5), F.S., or a similar offense in another jurisdiction;
2. (a) Was required to register as a sexual offender or predator solely on the basis of the conviction or adjudication described in 1.; or
(b) Was convicted, regardless of adjudication, or adjudicated delinquent of an offense in another jurisdiction that is similar to an offense listed in 1. and no longer meets the criteria for registration as a sexual offender under the laws of the jurisdiction where the similar offense occurred; and
3. Is not more than 4 years older than the victim of this violation who was 13 years of age or older but less than 18 years of age at the time the person committed this violation.

The bill amends s. 943.04354(2), F.S., to:

- Specify that the motion must be filed in the *sentencing* court, or for persons convicted or adjudicated delinquent in another jurisdiction, the criminal circuit court of the circuit in which the petitioner resides.
- Require persons convicted or adjudicated delinquent of an offense in another jurisdiction to provide the court written confirmation that he or she is not required to register in the state where the conviction or adjudication occurred.
- Require that FDLE be given notice of the motion at least 3 weeks prior to the date of sentencing, disposition of the violation, or hearing on the motion (currently only the state attorney is required to be given notice).
- Require the court to instruct the moving party to provide FDLE with a certified copy of the order granting relief.

The bill also amends s. 943.04354(2), F.S., to remove the language requiring that the offense be committed on or after July 1, 2007, and repeals s. 943.04354(3), F.S. As a result, the registration removal provisions of s. 943.04354, F.S., will apply to all eligible sexual offenders, regardless of their offense date.

These changes will likely have the effect of increasing the number of persons eligible to have the requirement to register as a sexual predator or offender removed pursuant to s. 943.04354, F.S.

Definition of Risk Assessment (Section 11)

Section 947.1405(7), F.S., requires the Parole Commission (Commission) to impose specified special conditions of supervision on certain conditional releasees. One of these conditions prohibits contact with children under the age of 18, if the victim was under the age of 18, without review and approval by the Commission. The Commission may approve supervised contact with a child under the age of 18 if the approval is based upon a recommendation for contact issued by a qualified practitioner who is basing the recommendation on a risk assessment.

and may present evidence in opposition to the requested relief or may otherwise demonstrate why the petition should be denied. Section 943.04354(3)(a) and (b), F.S.

²³ If the court denies the petition, the person is not authorized under this section to file any further petition for removal of the registration requirement. Section 943.04354(3)(b), F.S.

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Section 947.005, F.S., currently defines the term “risk assessment” as “an assessment completed by an independent qualified practitioner to evaluate the level of risk associated when a sex offender has contact with a child.”

In 2010, the definition of the term “risk assessment” in s. 948.001, F.S. (relating to probation), was amended to remove the requirement that the assessment be completed by *an independent* qualified practitioner.²⁴ However, this change was not made to the definition contained in s. 947.005, F.S.

Effect of the Bill

The bill amends the definition of the term “risk assessment” in s. 947.005, F.S., to remove the requirement that the assessment be completed by *an independent* qualified practitioner.

Conditions of Supervision – Sex Offender Treatment (Section 12)

Since 1995, there has been a condition of probation requiring sexual offenders convicted of specified offenses to successfully complete sexual offender treatment.²⁵ Currently, this condition of probation, found in s. 948.30(1)(c), F.S., is a standard condition of probation and only applies to probationers whose crime was committed on or after October 1, 1995, and who are placed under supervision for violation of ch. 794, F.S., s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, F.S.

Section 948.31, F.S., mandates that courts require an evaluation by a qualified practitioner to determine the need of a probationer for treatment. If the court determines that such a need is established by the evaluation process, the court must require sex offender treatment as a term or condition of probation for any person who is required to register as a sexual predator or sexual offender. The court is required to impose a restriction against contact with minors if sexual offender treatment is recommended.²⁶ This section of statute applies to all sexual offenders on probation – not just those convicted of specified offenses.

Effect of the Bill

The bill amends s. 948.31, F.S., to authorize (rather than mandate) a court to require probationers who are required to register as a sexual offender to undergo an evaluation by a qualified practitioner to determine whether the offender needs sex offender treatment. If the practitioner recommends treatment, the offender must successfully complete and pay for such treatment, which must be provided by a qualified practitioner.

The bill also amends s. 948.31, F.S., to remove the requirement that the court impose a restriction against contact with minors if sexual offender treatment is recommended. This prohibition is not needed in s. 948.31, F.S., as there is already a standard condition of supervision in s. 948.30(1)(e), F.S., prohibiting specified sexual offenders from having contact with minors.

Exposure of Sexual Organs (Section 3)

Section 800.03, F.S., makes it a first degree misdemeanor²⁷ for a person to expose or exhibit one’s sexual organs in public or on the private premises of another, or so near thereto as to be seen from such private premises, in a vulgar or indecent manner, or to be naked in public except in any place provided or set apart for that purpose.

Effect of the Bill

The bill makes third or subsequent violations of s. 800.03, F.S., third degree felonies.

²⁴ Chapter 2010-92, L.O.F.

²⁵ Chapter 1995-283, L.O.F.

²⁶ Section 948.30, F.S., currently contains standard conditions of probation that require sex offender treatment for certain offenders and that prohibit certain sex offenders from having contact with minors if the victim of the offender’s offense was under 18. The bill requires courts to impose a restriction against contact with minors regardless of whether the offender’s victim was a minor.

²⁷ 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.

Bail Determinations (Section 4)

Pretrial release is an alternative to incarceration that allows arrested defendants to be released from jail while they await disposition of their criminal charges.²⁸ Generally, pretrial release is granted by releasing a defendant on their own recognizance, by requiring the defendant to post bail, and/or by requiring the defendant to participate in a pretrial release program.²⁹

Bail requires an accused to pay a set sum of money to the sheriff to secure his or her release. If a defendant released on bail fails to appear before the court at the appointed place and time, the bail is forfeited. Section 903.046, F.S., currently states that the purpose of a bail determination in criminal proceedings is to ensure the appearance of the criminal defendant at subsequent proceedings and to protect the community against unreasonable danger from the criminal defendant. The statute further specifies that when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be, courts must consider the following:

- The nature and circumstances of the offense charged.
- The weight of the evidence against the defendant.
- The defendant's family ties, length of residence in the community, employment history, financial resources, and mental condition.
- The defendant's past and present conduct, including any record of convictions, previous flight to avoid prosecution, or failure to appear at court proceedings.³⁰
- The nature and probability of danger which the defendant's release poses to the community.
- The source of funds used to post bail.
- Whether the defendant is already on release pending resolution of another criminal proceeding or on probation, parole, or other release pending completion of a sentence.
- The street value of any drug or controlled substance connected to or involved in the criminal charge.³¹
- The nature and probability of intimidation and danger to victims.
- Whether there is probable cause to believe that the defendant committed a new crime while on pretrial release.
- Any other facts that the court considers relevant.
- Whether the crime charged is a violation of ch. 874, F.S.,³² or alleged to be subject to enhanced punishment under ch. 874, F.S. If any such violation is charged against a defendant or if the defendant is charged with a crime that is alleged to be subject to such enhancement, he or she shall not be eligible for release on bail or surety bond until the first appearance on the case in order to ensure the full participation of the prosecutor and the protection of the public.³³

²⁸ Report No. 10-08, "Pretrial Release Programs' Compliance with New Reporting Requirements is Mixed," Office of Program Policy Analysis & Government Accountability, January 2010.

²⁹ *Id.*

³⁰ Section 903.046(2)(d), F.S., specifies that any defendant who failed to appear on the day of any required court proceeding in the case at issue, but who later voluntarily appeared or surrendered, is not eligible for a recognizance bond; and any defendant who failed to appear on the day of any required court proceeding in the case at issue and who was later arrested is not eligible for a recognizance bond or for any form of bond which does not require a monetary undertaking or commitment equal to or greater than \$2,000 or twice the value of the monetary commitment or undertaking of the original bond, whichever is greater. Section 903.046(2)(d), F.S., also specifies that notwithstanding anything in s. 903.046, F.S., the court has discretion in determining conditions of release if the defendant proves circumstances beyond his or her control for the failure to appear; and that s. 903.046, F.S., may not be construed as imposing additional duties or obligations on a governmental entity related to monetary bonds.

³¹ Section 903.046(2)(d), F.S., specifies that it is the finding and intent of the Legislature that crimes involving drugs and other controlled substances are of serious social concern, that the flight of defendants to avoid prosecution is of similar serious social concern, and that frequently such defendants are able to post monetary bail using the proceeds of their unlawful enterprises to defeat the social utility of pretrial bail. Therefore, the courts should carefully consider the utility and necessity of substantial bail in relation to the street value of the drugs or controlled substances involved.

³² Chapter 874, F.S., relates to criminal gang enforcement and prevention.

³³ Section 903.046, F.S.

Effect of the Bill

The bill amends s. 903.046, F.S., to add the following to the list of factors a court must consider when determining whether to release a defendant on bail or other conditions:

- Whether the defendant, other than a defendant whose only criminal charge is a misdemeanor offense under ch. 316, F.S.,³⁴ is required to register as a sexual offender under s. 943.0435, F.S., or a sexual predator under s. 775.21, F.S.; and, if so, he or she is not eligible for release on bail or surety bond until the first appearance³⁵ on the case in order to ensure the full participation of the prosecutor and the protection of the public.

The Criminal Punishment Code - Offense Severity Ranking Chart (Section 15)

The Criminal Punishment Code applies to sentencing for felony offenses (except capital felonies) committed on or after October 1, 1998.³⁶ Criminal offenses are ranked in the Offense Severity Ranking Chart from Level 1 (least severe) to Level 10 (most severe) and are assigned points based on the severity of the offense as determined by the legislature.³⁷ A defendant's sentence is calculated based on points and are added in order to determine the "lowest permissible sentence" for the offense.

A violation of s. 796.03, F.S. (procuring person under age of 18 for prostitution), is currently ranked in Level 7 of the ranking chart but is incorrectly described in the chart as "procuring any person under 16 years for prostitution."³⁸ Similarly, a violation of s. 787.02(3)(a), F.S. (false imprisonment of a child under 13 while committing other specified offenses) is currently ranked in Level 9 of the ranking chart, but is incorrectly listed as a first degree felony (the offense is a first degree felony punishable for life imprisonment).

Effect of the Bill

The bill amends the ranking chart to correct the above-described inaccuracies.

B. SECTION DIRECTORY:

Section 1. Amends s. 90.803, F.S., relating to hearsay exceptions; availability of declarant immaterial.

Section 2. Amends s. 775.21, F.S., relating to The Florida Sexual Predators Act.

Section 3. Amends s. 800.03, F.S., relating to exposure of sexual organs.

Section 4. Amends s. 903.046, F.S., relating to purpose of and criteria for bail determination.

Section 5. Amends s. 943.0435, F.S., relating to sexual offenders required to register with the department; penalty.

Section 6. Amends s. 943.04351, F.S., relating to search of registration information regarding sexual predators and sexual offenders required prior to appointment or employment.

Section 7. Amends s. 943.04354, F.S., relating to removal of the requirement to register as a sexual offender or sexual predator in special circumstances.

Section 8. Amends s. 943.0437, F.S., relating to commercial social networking websites.

Section 9. Amends s. 944.606, F.S., relating to sexual offenders; notification upon release.

³⁴ Chapter 316, F.S., is the State Uniform Traffic Control chapter.

³⁵ See Rule 3.130, Fla. R. Crim. Proc.

³⁶ Section 921.002, F.S.

³⁷ Section 921.0022, F.S.

³⁸ Section 921.0022(3)(g), F.S.

Section 10. Amends s. 944.607, F.S., relating to notification to Department of Law Enforcement of information on sexual offenders.

Section 11. Amends s. 947.005, F.S., relating to definitions.

Section 12. Amends s. 948.31, F.S., relating to evaluation and treatment of sexual predators and sexual offenders on probation or community control.

Section 13. Amends s. 985.481, F.S., relating to sexual offender adjudicated delinquent; notification upon release.

Section 14. Amends s. 985.4815, F.S., relating to notification to the Department of Law Enforcement of information on juvenile sexual offenders.

Section 15. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 16. The bill is effective October 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 Criminal Justice Impact Conference met on March 21, 2013 and determined that this bill may have an insignificant impact on state prison beds.

The possible prison bed impact on the Department of Corrections is that it increases the number of people subject to sex offender registration requirements and adds additional information that sexual predators and offenders must provide when registering. However, failure to register is generally punishable as an unranked third degree felony, so the impact to state prison beds may be insignificant. Also, the bill makes third or subsequent violations of s. 800.03, F.S. (exposure of sexual organs) a third degree felony (rather than a misdemeanor).

FDLE's estimated fiscal impact is \$66,425 in non-recurring expenditures to complete programming and testing necessary to implement the qualifying offense and registration provisions of the bill. The \$66,425 fiscal impact will be handled within the department's existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

In February 2013, there were 50,636 registered sexual offenders and 9,903 registered sexual predators in Florida. It is unknown how many of these persons are arrested each year. The bill prohibits such persons from being released on bail or surety bond until first appearance. However, since first appearance must occur within 24 hours of arrest, the impact on local jails will likely be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the bill:

- Does not appear to: require the counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties and municipalities; and
- 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

On February 19, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the PCB favorably. The first amendment corrected a statute citation in s. 775.21(4)(a)1., F.S. The second amendment made a variety of technical changes to statute cites and amended the sexual offender reregistration statutes to ensure that persons convicted of a sexual offense that was later renumbered are required to register as a sexual offender.

This analysis is drafted to the PCB as amended and passed by the Criminal Justice Subcommittee.

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1 A bill to be entitled
2 An act relating to sex offenses; amending s. 90.803,
3 F.S.; providing that an out-of-court statement by a
4 child victim with a physical, mental, emotional, or
5 developmental age of 16 or less rather than 11 or less
6 describing specified criminal acts is admissible in
7 evidence in certain instances; amending s. 775.21,
8 F.S.; replacing the definition of the term "instant
9 message name" with the definition of the term
10 "Internet identifier"; providing that voluntary
11 disclosure of specified information waives a
12 disclosure exemption for such information; conforming
13 provisions; adding additional offenses to the list of
14 sexual predator qualifying offenses; requiring
15 disclosure of additional information during the sexual
16 predator registration process; requiring that a sexual
17 predator who is unable to secure or update a driver
18 license or identification card within a specified
19 period must report specified information to the local
20 sheriff's office within a specified period after such
21 change with confirmation that he or she also reported
22 such information to the Department of Highway Safety
23 and Motor Vehicles; revising reporting requirements if
24 a sexual predator plans to leave the United States for
25 more than a specified period; providing criminal
26 penalties for knowingly providing false registration
27 information by act or omission; amending s. 800.03,
28 F.S.; providing enhanced penalties for third or

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29 subsequent indecent exposure violations; amending s.
30 903.046, F.S.; requiring a court considering whether
31 to release a defendant on bail to determine whether
32 the defendant is subject to registration as a sexual
33 offender or sexual predator and, if so, to hold the
34 defendant without bail until the first appearance on
35 the case; providing an exception; amending s.
36 943.0435, F.S.; adding additional offenses to the list
37 of sexual offender qualifying offenses; replacing the
38 definition of the term "instant message name" with the
39 definition of the term "Internet identifier";
40 conforming provisions; requiring disclosure of
41 additional sexual offender registration information;
42 requiring that a sexual offender who is unable to
43 secure or update a driver license or identification
44 card within a specified period must report specified
45 information to the local sheriff's office within a
46 specified period of such change with confirmation that
47 he or she also reported such information to the
48 Department of Highway Safety and Motor Vehicles;
49 providing additional requirements for sexual offenders
50 intending to reside outside of the United States;
51 revising criteria applicable to provisions allowing
52 removal from the requirement to register as a sexual
53 offender; providing criminal penalties for knowingly
54 providing false registration information by act or
55 omission; amending s. 943.04351, F.S.; requiring a
56 specified national search of registration information

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57 regarding sexual predators and sexual offenders prior
58 to appointment or employment of persons by state
59 agencies and governmental subdivisions; amending s.
60 943.04354, F.S.; revising the criteria applicable to
61 provisions allowing removal of the requirement to
62 register as a sexual offender or sexual predator;
63 amending s. 943.0437, F.S.; replacing the term
64 "instant message name" with the term "Internet
65 identifier"; amending ss. 944.606 and 944.607, F.S.;
66 adding additional offenses to the list of sexual
67 offender qualifying offenses; replacing the definition
68 of the term "instant message name" with the definition
69 of the term "Internet identifier"; conforming
70 provisions; requiring disclosure of additional
71 registration information; providing criminal penalties
72 for knowingly providing false registration information
73 by act or omission; amending s. 947.005, F.S.;
74 revising the definition of the term "risk assessment";
75 amending s. 948.31, F.S.; authorizing the court to
76 require sexual offenders and sexual predators who are
77 on probation or community control to undergo an
78 evaluation to determine whether the offender or
79 predator needs sexual offender treatment; requiring
80 the probationer or community controllee to pay for the
81 treatment; removing a provision prohibiting contact
82 with minors if sexual offender treatment is
83 recommended; amending ss. 985.481 and 985.4815, F.S.;
84 requiring disclosure of additional registration

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85 information by certain sexual offenders adjudicated
 86 delinquent and certain juvenile sexual offenders;
 87 providing criminal penalties for knowingly providing
 88 false registration information by act or omission;
 89 amending s. 921.0022, F.S.; correcting references;
 90 providing an effective date.

91

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

93

94 Section 1. Paragraph (a) of subsection (23) of section
 95 90.803, Florida Statutes, is amended to read:

96 90.803 Hearsay exceptions; availability of declarant
 97 immaterial.—The provision of s. 90.802 to the contrary
 98 notwithstanding, the following are not inadmissible as evidence,
 99 even though the declarant is available as a witness:

100 (23) HEARSAY EXCEPTION; STATEMENT OF CHILD VICTIM.—

101 (a) Unless the source of information or the method or
 102 circumstances by which the statement is reported indicates a
 103 lack of trustworthiness, an out-of-court statement made by a
 104 child victim with a physical, mental, emotional, or
 105 developmental age of 16 ~~14~~ or less describing any act of child
 106 abuse or neglect, any act of sexual abuse against a child, the
 107 offense of child abuse, the offense of aggravated child abuse,
 108 or any offense involving an unlawful sexual act, contact,
 109 intrusion, or penetration performed in the presence of, with,
 110 by, or on the declarant child, not otherwise admissible, is
 111 admissible in evidence in any civil or criminal proceeding if:

112 1. The court finds in a hearing conducted outside the

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113 presence of the jury that the time, content, and circumstances
 114 of the statement provide sufficient safeguards of reliability.
 115 In making its determination, the court may consider the mental
 116 and physical age and maturity of the child, the nature and
 117 duration of the abuse or offense, the relationship of the child
 118 to the offender, the reliability of the assertion, the
 119 reliability of the child victim, and any other factor deemed
 120 appropriate; and

121 2. The child either:

122 a. Testifies; or

123 b. Is unavailable as a witness, provided that there is
 124 other corroborative evidence of the abuse or offense.

125 Unavailability shall include a finding by the court that the
 126 child's participation in the trial or proceeding would result in
 127 a substantial likelihood of severe emotional or mental harm, in
 128 addition to findings pursuant to s. 90.804(1).

129 Section 2. Paragraph (i) of subsection (2), paragraph (a)
 130 of subsection (4), subsections (6) and (8), and paragraph (a) of
 131 subsection (10) of section 775.21, Florida Statutes, are amended
 132 to read:

133 775.21 The Florida Sexual Predators Act.—

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

135 (i) "Internet identifier ~~Instant message name~~" means all
 136 electronic mail, chat, instant messenger, social networking, or
 137 similar name used for Internet communication, but does not
 138 include a date of birth, social security number, or personal
 139 identification number (PIN). Voluntary disclosure by the sexual
 140 predator of his or her date of birth, social security number, or

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141 personal identification number (PIN) as an Internet identifier
 142 waives the disclosure exemption in this paragraph for such
 143 personal information ~~an identifier that allows a person to~~
 144 ~~communicate in real time with another person using the Internet.~~

145 (4) SEXUAL PREDATOR CRITERIA.—

146 (a) For a current offense committed on or after October 1,
 147 1993, upon conviction, an offender shall be designated as a
 148 "sexual predator" under subsection (5), and subject to
 149 registration under subsection (6) and community and public
 150 notification under subsection (7) if:

151 1. The felony is:

152 a. A capital, life, or first-degree felony violation, or
 153 any attempt thereof, of s. 787.01 or s. 787.02, where the victim
 154 is a minor and the defendant is not the victim's parent or
 155 guardian, or s. 794.011, s. 800.04, or s. 847.0145, or a
 156 violation of a similar law of another jurisdiction; or

157 b. Any felony violation, or any attempt thereof, of s.
 158 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 159 787.025(2)(c), where the victim is a minor and the defendant is
 160 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 161 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
 162 796.03; s. 796.035; s. 800.04; s. 810.145(8)(b); ~~s. 825.1025;~~
 163 ~~825.1025(2)(b);~~ s. 827.071; s. 847.0135(5), excluding s.
 164 847.0135(6); s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a
 165 violation of a similar law of another jurisdiction, and the
 166 offender has previously been convicted of or found to have
 167 committed, or has pled nolo contendere or guilty to, regardless
 168 of adjudication, any violation of s. 393.135(2); s. 394.4593(2);

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169 s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a
 170 minor and the defendant is not the victim's parent or guardian;
 171 s. 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 172 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 173 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s.
 174 847.0135(6); s. 847.0145; s. 916.1075(2); or s. 985.701(1); or a
 175 violation of a similar law of another jurisdiction;

176 2. The offender has not received a pardon for any felony
 177 or similar law of another jurisdiction that is necessary for the
 178 operation of this paragraph; and

179 3. A conviction of a felony or similar law of another
 180 jurisdiction necessary to the operation of this paragraph has
 181 not been set aside in any postconviction proceeding.

182 (6) REGISTRATION.—

183 (a) A sexual predator must register with the department
 184 through the sheriff's office by providing the following
 185 information to the department:

186 1. Name; social security number; age; race; sex; date of
 187 birth; height; weight; tattoos or other identifying marks; hair
 188 and eye color; photograph; address of legal residence and
 189 address of any current temporary residence, within the state or
 190 out of state, including a rural route address and a post office
 191 box; if no permanent or temporary address, any transient
 192 residence within the state; address, location or description,
 193 and dates of any current or known future temporary residence
 194 within the state or out of state; all any electronic mail
 195 addresses ~~address~~ and all Internet identifiers ~~any instant~~
 196 ~~message name~~ required to be provided pursuant to subparagraph

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197 | (g)4.; all home telephone numbers ~~number~~ and ~~any~~ cellular
198 | telephone numbers ~~number~~; date and place of any employment; the
199 | make, model, color, registration number, and license tag number
200 | of all vehicles owned; date and place of each conviction;
201 | fingerprints; palm prints; and a brief description of the crime
202 | or crimes committed by the offender. A post office box shall not
203 | be provided in lieu of a physical residential address. The
204 | sexual predator must also produce his or her passport, if he or
205 | she has a passport, and, if he or she is an alien, must produce
206 | or provide information about documents establishing his or her
207 | immigration status. The sexual predator must also provide
208 | information about any professional licenses that he or she may
209 | have.

210 | a. If the sexual predator's place of residence is a motor
211 | vehicle, trailer, mobile home, or manufactured home, as defined
212 | in chapter 320, the sexual predator shall also provide to the
213 | department written notice of the vehicle identification number;
214 | the license tag number; the registration number; and a
215 | description, including color scheme, of the motor vehicle,
216 | trailer, mobile home, or manufactured home. If a sexual
217 | predator's place of residence is a vessel, live-aboard vessel,
218 | or houseboat, as defined in chapter 327, the sexual predator
219 | shall also provide to the department written notice of the hull
220 | identification number; the manufacturer's serial number; the
221 | name of the vessel, live-aboard vessel, or houseboat; the
222 | registration number; and a description, including color scheme,
223 | of the vessel, live-aboard vessel, or houseboat.

224 | b. If the sexual predator is enrolled, employed,

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225 volunteering, or carrying on a vocation at an institution of
226 higher education in this state, the sexual predator shall also
227 provide to the department the name, address, and county of each
228 institution, including each campus attended, and the sexual
229 predator's enrollment, volunteer, or employment status. Each
230 change in enrollment, volunteer, or employment status shall be
231 reported in person at the sheriff's office, or the Department of
232 Corrections if the sexual predator is in the custody or control
233 of or under the supervision of the Department of Corrections,
234 within 48 hours after any change in status. The sheriff or the
235 Department of Corrections shall promptly notify each institution
236 of the sexual predator's presence and any change in the sexual
237 predator's enrollment, volunteer, or employment status.

238 2. Any other information determined necessary by the
239 department, including criminal and corrections records;
240 nonprivileged personnel and treatment records; and evidentiary
241 genetic markers when available.

242 (b) If the sexual predator is in the custody or control
243 of, or under the supervision of, the Department of Corrections,
244 or is in the custody of a private correctional facility, the
245 sexual predator must register with the Department of
246 Corrections. A sexual predator who is under the supervision of
247 the Department of Corrections but who is not incarcerated must
248 register with the Department of Corrections within 3 business
249 days after the court finds the offender to be a sexual predator.
250 The Department of Corrections shall provide to the department
251 registration information and the location of, and local
252 telephone number for, any Department of Corrections office that

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253 is responsible for supervising the sexual predator. In addition,
254 the Department of Corrections shall notify the department if the
255 sexual predator escapes or absconds from custody or supervision
256 or if the sexual predator dies.

257 (c) If the sexual predator is in the custody of a local
258 jail, the custodian of the local jail shall register the sexual
259 predator within 3 business days after intake of the sexual
260 predator for any reason and upon release, and shall forward the
261 registration information to the department. The custodian of the
262 local jail shall also take a digitized photograph of the sexual
263 predator while the sexual predator remains in custody and shall
264 provide the digitized photograph to the department. The
265 custodian shall notify the department if the sexual predator
266 escapes from custody or dies.

267 (d) If the sexual predator is under federal supervision,
268 the federal agency responsible for supervising the sexual
269 predator may forward to the department any information regarding
270 the sexual predator which is consistent with the information
271 provided by the Department of Corrections under this section,
272 and may indicate whether use of the information is restricted to
273 law enforcement purposes only or may be used by the department
274 for purposes of public notification.

275 (e)1. If the sexual predator is not in the custody or
276 control of, or under the supervision of, the Department of
277 Corrections or is not in the custody of a private correctional
278 facility, the sexual predator shall register in person:

279 a. At the sheriff's office in the county where he or she
280 establishes or maintains a residence within 48 hours after

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281 establishing or maintaining a residence in this state; and

282 b. At the sheriff's office in the county where he or she
283 was designated a sexual predator by the court within 48 hours
284 after such finding is made.

285 2. Any change in the sexual predator's permanent or
286 temporary residence, name, ~~or any~~ electronic mail addresses, or
287 Internet identifiers ~~address and any instant message name~~
288 required to be provided pursuant to subparagraph (g)4., after
289 the sexual predator registers in person at the sheriff's office
290 as provided in subparagraph 1., shall be accomplished in the
291 manner provided in paragraphs (g), (i), and (j). When a sexual
292 predator registers with the sheriff's office, the sheriff shall
293 take a photograph, ~~and~~ a set of fingerprints, and palm prints of
294 the predator and forward the photographs, palm prints, and
295 fingerprints to the department, along with the information that
296 the predator is required to provide pursuant to this section.

297 (f) Within 48 hours after the registration required under
298 paragraph (a) or paragraph (e), a sexual predator who is not
299 incarcerated and who resides in the community, including a
300 sexual predator under the supervision of the Department of
301 Corrections, shall register in person at a driver ~~driver's~~
302 license office of the Department of Highway Safety and Motor
303 Vehicles and shall present proof of registration. At the driver
304 ~~driver's~~ license office the sexual predator shall:

305 1. If otherwise qualified, secure a Florida driver
306 ~~driver's~~ license, renew a Florida driver ~~driver's~~ license, or
307 secure an identification card. The sexual predator shall
308 identify himself or herself as a sexual predator who is required

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309 to comply with this section, provide his or her place of
310 permanent, temporary, or transient residence, including a rural
311 route address and a post office box, and submit to the taking of
312 a photograph for use in issuing a driver ~~driver's~~ license,
313 renewed license, or identification card, and for use by the
314 department in maintaining current records of sexual predators. A
315 post office box shall not be provided in lieu of a physical
316 residential address. If the sexual predator's place of residence
317 is a motor vehicle, trailer, mobile home, or manufactured home,
318 as defined in chapter 320, the sexual predator shall also
319 provide to the Department of Highway Safety and Motor Vehicles
320 the vehicle identification number; the license tag number; the
321 registration number; and a description, including color scheme,
322 of the motor vehicle, trailer, mobile home, or manufactured
323 home. If a sexual predator's place of residence is a vessel,
324 live-aboard vessel, or houseboat, as defined in chapter 327, the
325 sexual predator shall also provide to the Department of Highway
326 Safety and Motor Vehicles the hull identification number; the
327 manufacturer's serial number; the name of the vessel, live-
328 aboard vessel, or houseboat; the registration number; and a
329 description, including color scheme, of the vessel, live-aboard
330 vessel, or houseboat.

331 2. Pay the costs assessed by the Department of Highway
332 Safety and Motor Vehicles for issuing or renewing a driver
333 ~~driver's~~ license or identification card as required by this
334 section. The driver ~~driver's~~ license or identification card
335 issued to the sexual predator must be in compliance with s.
336 322.141(3).

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337 3. Provide, upon request, any additional information
338 necessary to confirm the identity of the sexual predator,
339 including a set of fingerprints.

340 (g)1. Each time a sexual predator's driver ~~driver's~~
341 license or identification card is subject to renewal, and,
342 without regard to the status of the predator's driver ~~driver's~~
343 license or identification card, within 48 hours after any change
344 of the predator's residence or change in the predator's name by
345 reason of marriage or other legal process, the predator shall
346 report in person to a driver ~~driver's~~ license office and shall
347 be subject to the requirements specified in paragraph (f). The
348 Department of Highway Safety and Motor Vehicles shall forward to
349 the department and to the Department of Corrections all
350 photographs and information provided by sexual predators.
351 Notwithstanding the restrictions set forth in s. 322.142, the
352 Department of Highway Safety and Motor Vehicles is authorized to
353 release a reproduction of a color-photograph or digital-image
354 license to the Department of Law Enforcement for purposes of
355 public notification of sexual predators as provided in this
356 section. A sexual predator who is unable to secure or update a
357 driver license or identification card with the Department of
358 Highway Safety and Motor Vehicles as provided in paragraph (f)
359 and this paragraph must also report any change of the predator's
360 residence or change in the predator's name by reason of marriage
361 or other legal process within 48 hours after the change to the
362 sheriff's office in the county where the predator resides or is
363 located and provide confirmation that he or she reported such
364 information to the Department of Highway Safety and Motor

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365 Vehicles.

366 2. A sexual predator who vacates a permanent, temporary,
367 or transient residence and fails to establish or maintain
368 another permanent, temporary, or transient residence shall,
369 within 48 hours after vacating the permanent, temporary, or
370 transient residence, report in person to the sheriff's office of
371 the county in which he or she is located. The sexual predator
372 shall specify the date upon which he or she intends to or did
373 vacate such residence. The sexual predator must provide or
374 update all of the registration information required under
375 paragraph (a). The sexual predator must provide an address for
376 the residence or other place that he or she is or will be
377 located during the time in which he or she fails to establish or
378 maintain a permanent or temporary residence.

379 3. A sexual predator who remains at a permanent,
380 temporary, or transient residence after reporting his or her
381 intent to vacate such residence shall, within 48 hours after the
382 date upon which the predator indicated he or she would or did
383 vacate such residence, report in person to the sheriff's office
384 to which he or she reported pursuant to subparagraph 2. for the
385 purpose of reporting his or her address at such residence. When
386 the sheriff receives the report, the sheriff shall promptly
387 convey the information to the department. An offender who makes
388 a report as required under subparagraph 2. but fails to make a
389 report as required under this subparagraph commits a felony of
390 the second degree, punishable as provided in s. 775.082, s.
391 775.083, or s. 775.084.

392 4. A sexual predator must register all ~~any~~ electronic mail

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393 addresses and Internet identifiers ~~address or instant message~~
 394 ~~name~~ with the department prior to using such electronic mail
 395 addresses and Internet identifiers ~~address or instant message~~
 396 ~~name on or after October 1, 2007~~. The department shall establish
 397 an online system through which sexual predators may securely
 398 access and update all electronic mail address and Internet
 399 identifier ~~instant message name~~ information.

400 (h) The department must notify the sheriff and the state
 401 attorney of the county and, if applicable, the police chief of
 402 the municipality, where the sexual predator maintains a
 403 residence.

404 (i) A sexual predator who intends to establish a
 405 permanent, temporary, or transient residence in another state or
 406 jurisdiction other than the State of Florida shall report in
 407 person to the sheriff of the county of current residence within
 408 48 hours before the date he or she intends to leave this state
 409 to establish residence in another state or jurisdiction or
 410 within 21 days before his or her planned departure date if the
 411 intended residence of 5 days or more is outside of the United
 412 States. The sexual predator must provide to the sheriff the
 413 address, municipality, county, ~~and~~ state, and country of
 414 intended residence. The sheriff shall promptly provide to the
 415 department the information received from the sexual predator.
 416 The department shall notify the statewide law enforcement
 417 agency, or a comparable agency, in the intended state, ~~or~~
 418 jurisdiction, or country of residence of the sexual predator's
 419 intended residence. The failure of a sexual predator to provide
 420 his or her intended place of residence is punishable as provided

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421 in subsection (10).

422 (j) A sexual predator who indicates his or her intent to
423 establish a permanent, temporary, or transient residence in
424 another state, a ~~or~~ jurisdiction other than the State of
425 Florida, or another country and later decides to remain in this
426 state shall, within 48 hours after the date upon which the
427 sexual predator indicated he or she would leave this state,
428 report in person to the sheriff to which the sexual predator
429 reported the intended change of residence, and report his or her
430 intent to remain in this state. If the sheriff is notified by
431 the sexual predator that he or she intends to remain in this
432 state, the sheriff shall promptly report this information to the
433 department. A sexual predator who reports his or her intent to
434 establish a permanent, temporary, or transient residence in
435 another state, a ~~or~~ jurisdiction other than the State of
436 Florida, or another country, but who remains in this state
437 without reporting to the sheriff in the manner required by this
438 paragraph, commits a felony of the second degree, punishable as
439 provided in s. 775.082, s. 775.083, or s. 775.084.

440 (k)1. The department is responsible for the online
441 maintenance of current information regarding each registered
442 sexual predator. The department must maintain hotline access for
443 state, local, and federal law enforcement agencies to obtain
444 instantaneous locator file and offender characteristics
445 information on all released registered sexual predators for
446 purposes of monitoring, tracking, and prosecution. The
447 photograph and fingerprints do not have to be stored in a
448 computerized format.

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449 2. The department's sexual predator registration list,
450 containing the information described in subparagraph (a)1., is a
451 public record. The department is authorized to disseminate this
452 public information by any means deemed appropriate, including
453 operating a toll-free telephone number for this purpose. When
454 the department provides information regarding a registered
455 sexual predator to the public, department personnel must advise
456 the person making the inquiry that positive identification of a
457 person believed to be a sexual predator cannot be established
458 unless a fingerprint comparison is made, and that it is illegal
459 to use public information regarding a registered sexual predator
460 to facilitate the commission of a crime.

461 3. The department shall adopt guidelines as necessary
462 regarding the registration of sexual predators and the
463 dissemination of information regarding sexual predators as
464 required by this section.

465 (1) A sexual predator must maintain registration with the
466 department for the duration of his or her life, unless the
467 sexual predator has received a full pardon or has had a
468 conviction set aside in a postconviction proceeding for any
469 offense that met the criteria for the sexual predator
470 designation.

471 (8) VERIFICATION.—The department and the Department of
472 Corrections shall implement a system for verifying the addresses
473 of sexual predators. The system must be consistent with the
474 provisions of the federal Adam Walsh Child Protection and Safety
475 Act of 2006 and any other federal standards applicable to such
476 verification or required to be met as a condition for the

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477 receipt of federal funds by the state. The Department of
478 Corrections shall verify the addresses of sexual predators who
479 are not incarcerated but who reside in the community under the
480 supervision of the Department of Corrections and shall report to
481 the department any failure by a sexual predator to comply with
482 registration requirements. County and local law enforcement
483 agencies, in conjunction with the department, shall verify the
484 addresses of sexual predators who are not under the care,
485 custody, control, or supervision of the Department of
486 Corrections. Local law enforcement agencies shall report to the
487 department any failure by a sexual predator to comply with
488 registration requirements.

489 (a) A sexual predator must report in person each year
490 during the month of the sexual predator's birthday and during
491 every third month thereafter to the sheriff's office in the
492 county in which he or she resides or is otherwise located to
493 reregister. The sheriff's office may determine the appropriate
494 times and days for reporting by the sexual predator, which shall
495 be consistent with the reporting requirements of this paragraph.
496 Reregistration shall include any changes to the following
497 information:

498 1. Name; social security number; age; race; sex; date of
499 birth; height; weight; tattoos or other identifying marks; hair
500 and eye color; address of any permanent residence and address of
501 any current temporary residence, within the state or out of
502 state, including a rural route address and a post office box; if
503 no permanent or temporary address, any transient residence
504 within the state; address, location or description, and dates of

505 | any current or known future temporary residence within the state
 506 | or out of state; ~~any~~ electronic mail addresses or Internet
 507 | identifiers ~~address and any instant message name~~ required to be
 508 | provided pursuant to subparagraph (6)(g)4.; home telephone
 509 | numbers or number ~~and any~~ cellular telephone numbers ~~number~~;
 510 | date and place of any employment; the ~~vehicle~~ make, model,
 511 | color, registration number, and license tag number of any
 512 | vehicles owned; fingerprints; palm prints; and photograph. A
 513 | post office box shall not be provided in lieu of a physical
 514 | residential address. The sexual predator must also produce his
 515 | or her passport, if he or she has a passport, and, if he or she
 516 | is an alien, must produce or provide information about documents
 517 | establishing his or her immigration status. The sexual predator
 518 | must also provide information about any professional licenses
 519 | that he or she may have.

520 | 2. If the sexual predator is enrolled, employed,
 521 | volunteering, or carrying on a vocation at an institution of
 522 | higher education in this state, the sexual predator shall also
 523 | provide to the department the name, address, and county of each
 524 | institution, including each campus attended, and the sexual
 525 | predator's enrollment, volunteer, or employment status.

526 | 3. If the sexual predator's place of residence is a motor
 527 | vehicle, trailer, mobile home, or manufactured home, as defined
 528 | in chapter 320, the sexual predator shall also provide the
 529 | vehicle identification number; the license tag number; the
 530 | registration number; and a description, including color scheme,
 531 | of the motor vehicle, trailer, mobile home, or manufactured
 532 | home. If the sexual predator's place of residence is a vessel,

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533 live-aboard vessel, or houseboat, as defined in chapter 327, the
534 sexual predator shall also provide the hull identification
535 number; the manufacturer's serial number; the name of the
536 vessel, live-aboard vessel, or houseboat; the registration
537 number; and a description, including color scheme, of the
538 vessel, live-aboard vessel, or houseboat.

539 (b) The sheriff's office shall, within 2 working days,
540 electronically submit and update all information provided by the
541 sexual predator to the department in a manner prescribed by the
542 department.

543 (10) PENALTIES.—

544 (a) Except as otherwise specifically provided, a sexual
545 predator who fails to register; who fails, after registration,
546 to maintain, acquire, or renew a driver ~~driver's~~ license or
547 identification card; who fails to provide required location
548 information, electronic mail address information prior to use,
549 Internet identifier ~~instant message name~~ information prior to
550 use, all home telephone numbers ~~number~~ and ~~any~~ cellular
551 telephone numbers ~~number~~, or change-of-name information; who
552 fails to make a required report in connection with vacating a
553 permanent residence; who fails to reregister as required; who
554 fails to respond to any address verification correspondence from
555 the department within 3 weeks of the date of the correspondence;
556 who knowingly provides false registration information by act or
557 omission; or who otherwise fails, by act or omission, to comply
558 with the requirements of this section, commits a felony of the
559 third degree, punishable as provided in s. 775.082, s. 775.083,
560 or s. 775.084.

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561 Section 3. Section 800.03, Florida Statutes, is amended to
562 read:

563 800.03 Exposure of sexual organs.—

564 (1) It is unlawful to expose or exhibit one's sexual
565 organs in public or on the private premises of another, or so
566 near thereto as to be seen from such private premises, in a
567 vulgar or indecent manner, or to be naked in public except in
568 any place provided or set apart for that purpose.

569 (2)(a) Except as provided in paragraph (b), a violation of
570 this section is a misdemeanor of the first degree, punishable as
571 provided in s. 775.082 or s. 775.083.

572 (b) A third or subsequent violation of this section is a
573 felony of the third degree, punishable as provided in s.
574 775.082, s. 775.083, or s. 775.084.

575 (3) A mother's breastfeeding of her baby does not under
576 any circumstance violate this section.

577 Section 4. Paragraph (m) is added to subsection (2) of
578 section 903.046, Florida Statutes, to read:

579 903.046 Purpose of and criteria for bail determination.—

580 (2) When determining whether to release a defendant on
581 bail or other conditions, and what that bail or those conditions
582 may be, the court shall consider:

583 (m) Whether the defendant, other than a defendant whose
584 only criminal charge is a misdemeanor offense under chapter 316,
585 is required to register as a sexual offender under s. 943.0435
586 or a sexual predator under s. 775.21; and, if so, he or she is
587 not eligible for release on bail or surety bond until the first
588 appearance on the case in order to ensure the full participation

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589 of the prosecutor and the protection of the public.

590 Section 5. Paragraphs (a) and (g) of subsection (1),
 591 subsection (2), paragraphs (a) and (d) of subsection (4),
 592 subsections (7), (8), and (11), and paragraphs (b) and (c) of
 593 subsection (14) of section 943.0435, Florida Statutes, are
 594 amended to read:

595 943.0435 Sexual offenders required to register with the
 596 department; penalty.—

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

598 (a)1. "Sexual offender" means a person who meets the
 599 criteria in sub-subparagraph a., sub-subparagraph b., sub-
 600 subparagraph c., or sub-subparagraph d., as follows:

601 a.(I) Has been convicted of committing, or attempting,
 602 soliciting, or conspiring to commit, any of the criminal
 603 offenses proscribed in the following statutes in this state or
 604 similar offenses in another jurisdiction: s. 393.135(2); s.
 605 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where
 606 the victim is a minor and the defendant is not the victim's
 607 parent or guardian; s. 787.06(3)(b), (d), (f), (g), or (h); s.
 608 794.011, excluding s. 794.011(10); s. 794.05; s. 796.03; s.
 609 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s.
 610 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s.
 611 847.0138; s. 847.0145; s. 916.1075(2); or s. 985.701(1); or any
 612 similar offense committed in this state which has been
 613 redesignated from a former statute number to one of those listed
 614 in this sub-sub-subparagraph; and

615 (II) Has been released on or after October 1, 1997, from
 616 the sanction imposed for any conviction of an offense described

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617 in sub-sub-subparagraph (I). For purposes of sub-sub-
 618 subparagraph (I), a sanction imposed in this state or in any
 619 other jurisdiction includes, but is not limited to, a fine,
 620 probation, community control, parole, conditional release,
 621 control release, or incarceration in a state prison, federal
 622 prison, private correctional facility, or local detention
 623 facility;

624 b. Establishes or maintains a residence in this state and
 625 who has not been designated as a sexual predator by a court of
 626 this state but who has been designated as a sexual predator, as
 627 a sexually violent predator, or by another sexual offender
 628 designation in another state or jurisdiction and was, as a
 629 result of such designation, subjected to registration or
 630 community or public notification, or both, or would be if the
 631 person were a resident of that state or jurisdiction, without
 632 regard to whether the person otherwise meets the criteria for
 633 registration as a sexual offender;

634 c. Establishes or maintains a residence in this state who
 635 is in the custody or control of, or under the supervision of,
 636 any other state or jurisdiction as a result of a conviction for
 637 committing, or attempting, soliciting, or conspiring to commit,
 638 any of the criminal offenses proscribed in the following
 639 statutes or similar offense in another jurisdiction: s.
 640 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s.
 641 787.025(2)(c), where the victim is a minor and the defendant is
 642 not the victim's parent or guardian; s. 787.06(3)(b), (d), (f),
 643 (g), or (h); s. 794.011, excluding s. 794.011(10); s. 794.05; s.
 644 796.03; s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s.

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645 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s.
646 847.0137; s. 847.0138; s. 847.0145; s. 916.1075(2); or s.
647 985.701(1); or any similar offense committed in this state which
648 has been redesignated from a former statute number to one of
649 those listed in this sub-subparagraph; or

650 d. On or after July 1, 2007, has been adjudicated
651 delinquent for committing, or attempting, soliciting, or
652 conspiring to commit, any of the criminal offenses proscribed in
653 the following statutes in this state or similar offenses in
654 another jurisdiction when the juvenile was 14 years of age or
655 older at the time of the offense:

656 (I) Section 794.011, excluding s. 794.011(10);

657 (II) Section 800.04(4)(b) where the victim is under 12
658 years of age or where the court finds sexual activity by the use
659 of force or coercion;

660 (III) Section 800.04(5)(c)1. where the court finds
661 molestation involving unclothed genitals; or

662 (IV) Section 800.04(5)(d) where the court finds the use of
663 force or coercion and unclothed genitals.

664 2. For all qualifying offenses listed in sub-subparagraph
665 (1)(a)1.d., the court shall make a written finding of the age of
666 the offender at the time of the offense.

667
668 For each violation of a qualifying offense listed in this
669 subsection, except for a violation of s. 794.011, the court
670 shall make a written finding of the age of the victim at the
671 time of the offense. For a violation of s. 800.04(4), the court
672 shall additionally make a written finding indicating that the

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673 offense did or did not involve sexual activity and indicating
674 that the offense did or did not involve force or coercion. For a
675 violation of s. 800.04(5), the court shall additionally make a
676 written finding that the offense did or did not involve
677 unclothed genitals or genital area and that the offense did or
678 did not involve the use of force or coercion.

679 (g) "Internet identifier ~~Instant message name~~" has the
680 same meaning as provided in s. 775.21 ~~means an identifier that~~
681 ~~allows a person to communicate in real time with another person~~
682 ~~using the Internet.~~

683 (2) A sexual offender shall:

684 (a) Report in person at the sheriff's office:

685 1. In the county in which the offender establishes or
686 maintains a permanent, temporary, or transient residence within
687 48 hours after:

688 a. Establishing permanent, temporary, or transient
689 residence in this state; or

690 b. Being released from the custody, control, or
691 supervision of the Department of Corrections or from the custody
692 of a private correctional facility; or

693 2. In the county where he or she was convicted within 48
694 hours after being convicted for a qualifying offense for
695 registration under this section if the offender is not in the
696 custody or control of, or under the supervision of, the
697 Department of Corrections, or is not in the custody of a private
698 correctional facility.

699 Any change in the information required to be provided pursuant
700 to paragraph (b), including, but not limited to, any change in

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701 the sexual offender's permanent, temporary, or transient
702 residence, name, ~~any~~ electronic mail addresses, or Internet
703 identifiers ~~address and any instant message name~~ required to be
704 provided pursuant to paragraph (4)(d), after the sexual offender
705 reports in person at the sheriff's office, shall be accomplished
706 in the manner provided in subsections (4), (7), and (8).

707 (b) Provide his or her name; date of birth; social
708 security number; race; sex; height; weight; hair and eye color;
709 tattoos or other identifying marks; occupation and place of
710 employment; address of permanent or legal residence or address
711 of any current temporary residence, within the state or out of
712 state, including a rural route address and a post office box; if
713 no permanent or temporary address, any transient residence
714 within the state, address, location or description, and dates of
715 any current or known future temporary residence within the state
716 or out of state; the make, model, color, registration number,
717 and license tag number of all vehicles owned; all home telephone
718 numbers ~~number~~ and ~~any~~ cellular telephone numbers ~~number~~; all
719 ~~any~~ electronic mail addresses ~~address~~ and all Internet
720 identifiers ~~any instant message name~~ required to be provided
721 pursuant to paragraph (4)(d); fingerprints; palm prints;
722 photograph; date and place of each conviction; and a brief
723 description of the crime or crimes committed by the offender. A
724 post office box shall not be provided in lieu of a physical
725 residential address. The sexual offender must also produce his
726 or her passport, if he or she has a passport, and, if he or she
727 is an alien, must produce or provide information about documents
728 establishing his or her immigration status. The sexual offender

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729 must also provide information about any professional licenses
730 that he or she may have.

731 1. If the sexual offender's place of residence is a motor
732 vehicle, trailer, mobile home, or manufactured home, as defined
733 in chapter 320, the sexual offender shall also provide to the
734 department through the sheriff's office written notice of the
735 vehicle identification number; the license tag number; the
736 registration number; and a description, including color scheme,
737 of the motor vehicle, trailer, mobile home, or manufactured
738 home. If the sexual offender's place of residence is a vessel,
739 live-aboard vessel, or houseboat, as defined in chapter 327, the
740 sexual offender shall also provide to the department written
741 notice of the hull identification number; the manufacturer's
742 serial number; the name of the vessel, live-aboard vessel, or
743 houseboat; the registration number; and a description, including
744 color scheme, of the vessel, live-aboard vessel, or houseboat.

745 2. If the sexual offender is enrolled, employed,
746 volunteering, or carrying on a vocation at an institution of
747 higher education in this state, the sexual offender shall also
748 provide to the department through the sheriff's office the name,
749 address, and county of each institution, including each campus
750 attended, and the sexual offender's enrollment, volunteer, or
751 employment status. Each change in enrollment, volunteer, or
752 employment status shall be reported in person at the sheriff's
753 office, within 48 hours after any change in status. The sheriff
754 shall promptly notify each institution of the sexual offender's
755 presence and any change in the sexual offender's enrollment,
756 volunteer, or employment status.

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757 (c) Provide any other information determined necessary by
758 the department, including criminal and corrections records;
759 nonprivileged personnel and treatment records; and evidentiary
760 genetic markers, when available.

761 When a sexual offender reports at the sheriff's office, the
762 sheriff shall take a photograph, ~~and~~ a set of fingerprints, and
763 palm prints of the offender and forward the photographs, palm
764 prints, and fingerprints to the department, along with the
765 information provided by the sexual offender. The sheriff shall
766 promptly provide to the department the information received from
767 the sexual offender.

768 (4)(a) Each time a sexual offender's driver ~~driver's~~
769 license or identification card is subject to renewal, and,
770 without regard to the status of the offender's driver ~~driver's~~
771 license or identification card, within 48 hours after any change
772 in the offender's permanent, temporary, or transient residence
773 or change in the offender's name by reason of marriage or other
774 legal process, the offender shall report in person to a driver
775 ~~driver's~~ license office, and shall be subject to the
776 requirements specified in subsection (3). The Department of
777 Highway Safety and Motor Vehicles shall forward to the
778 department all photographs and information provided by sexual
779 offenders. Notwithstanding the restrictions set forth in s.
780 322.142, the Department of Highway Safety and Motor Vehicles is
781 authorized to release a reproduction of a color-photograph or
782 digital-image license to the Department of Law Enforcement for
783 purposes of public notification of sexual offenders as provided
784 in this section and ss. 943.043 and 944.606. A sexual offender

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785 who is unable to secure or update a driver license or
 786 identification card with the Department of Highway Safety and
 787 Motor Vehicles as provided in subsection (3) and this subsection
 788 must also report any change in the sexual offender's permanent,
 789 temporary, or transient residence or change in the offender's
 790 name by reason of marriage or other legal process within 48
 791 hours after the change to the sheriff's office in the county
 792 where the offender resides or is located and provide
 793 confirmation that he or she reported such information to the
 794 Department of Highway Safety and Motor Vehicles.

795 (d) A sexual offender must register all ~~any~~ electronic
 796 mail addresses and Internet identifiers ~~address or instant~~
 797 ~~message name~~ with the department prior to using such electronic
 798 mail addresses and Internet identifiers ~~address or instant~~
 799 ~~message name on or after October 1, 2007.~~ The department shall
 800 establish an online system through which sexual offenders may
 801 securely access and update all electronic mail address and
 802 Internet identifier ~~instant message name~~ information.

803 (7) A sexual offender who intends to establish a
 804 permanent, temporary, or transient residence in another state or
 805 jurisdiction other than the State of Florida shall report in
 806 person to the sheriff of the county of current residence within
 807 48 hours before the date he or she intends to leave this state
 808 to establish residence in another state or jurisdiction or
 809 within 21 days before his or her planned departure date if the
 810 intended residence of 5 days or more is outside of the United
 811 States. The notification must include the address, municipality,
 812 county, ~~and~~ state, and country of intended residence. The

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813 | sheriff shall promptly provide to the department the information
 814 | received from the sexual offender. The department shall notify
 815 | the statewide law enforcement agency, or a comparable agency, in
 816 | the intended state, ~~or~~ jurisdiction, or country of residence of
 817 | the sexual offender's intended residence. The failure of a
 818 | sexual offender to provide his or her intended place of
 819 | residence is punishable as provided in subsection (9).

820 | (8) A sexual offender who indicates his or her intent to
 821 | establish a permanent, temporary, or transient residence in
 822 | another state, a ~~or~~ jurisdiction other than the State of
 823 | Florida, or another country and later decides to remain in this
 824 | state shall, within 48 hours after the date upon which the
 825 | sexual offender indicated he or she would leave this state,
 826 | report in person to the sheriff to which the sexual offender
 827 | reported the intended change of permanent, temporary, or
 828 | transient residence, and report his or her intent to remain in
 829 | this state. The sheriff shall promptly report this information
 830 | to the department. A sexual offender who reports his or her
 831 | intent to establish a permanent, temporary, or transient
 832 | residence in another state, a ~~or~~ jurisdiction other than the
 833 | State of Florida, or another country but who remains in this
 834 | state without reporting to the sheriff in the manner required by
 835 | this subsection commits a felony of the second degree,
 836 | punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

837 | (11) Except as provided in this subsection and s.
 838 | 943.04354, a sexual offender must maintain registration with the
 839 | department for the duration of his or her life, unless the
 840 | sexual offender has received a full pardon or has had a

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841 conviction set aside in a postconviction proceeding for any
 842 offense that meets the criteria for classifying the person as a
 843 sexual offender for purposes of registration. ~~However, a sexual~~
 844 ~~offender:~~

845 (a)1. A sexual offender may petition the criminal division
 846 of the circuit court of the circuit in which the sexual offender
 847 resides for the purpose of removing the requirement for
 848 registration as a sexual offender if ~~Who has been lawfully~~
 849 ~~released from confinement, supervision, or sanction, whichever~~
 850 ~~is later, for at least 25 years and has not been arrested for~~
 851 ~~any felony or misdemeanor offense since release, provided that~~
 852 ~~the sexual offender's requirement to register was not based upon~~
 853 ~~an adult conviction:~~

854 a. Twenty-five years have elapsed since the sexual
 855 offender's registration period for the most recent conviction
 856 that required the offender to register began, excluding any
 857 period in which the offender was supervised by the Department of
 858 Corrections.

859 b. The sexual offender has not been convicted or
 860 adjudicated delinquent of any felony offense or of an offense
 861 punishable by more than 1 year of imprisonment during the 25
 862 years preceding the petition to the court.

863 c. The sexual offender has successfully completed all
 864 sanctions imposed for all offenses that required the offender to
 865 register.

866 d. The sexual offender's requirement to register was not
 867 based upon an adult conviction for a violation of ss. 787.01 and
 868 794.011, excluding s. 794.011(10), s. 800.04(4)(b) where the

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869 court finds the offense involved a victim under 12 years of age
 870 or sexual activity by the use of force or coercion, s.
 871 800.04(5)(b) or s. 800.04(5)(c)2. where the court finds the
 872 offense involved the use of force or coercion and unclothed
 873 genitals or genital area; for any attempt or conspiracy to
 874 commit any offense listed in this sub-subparagraph; for a
 875 violation of similar law of another jurisdiction; or for a
 876 violation of a similar offense committed in this state which has
 877 been redesignated from a former statute number to one of those
 878 listed in this sub-subparagraph.

879 e. For sexual offenders whose requirement to register is
 880 based upon a conviction in another state, the sexual offender is
 881 not required to register as a sexual offender pursuant to the
 882 laws of the state where the conviction occurred. Such an
 883 offender must provide the court written confirmation that he or
 884 she is not required to register in the state where the
 885 conviction occurred.

886 ~~a. For a violation of s. 787.01 or s. 787.02;~~

887 ~~b. For a violation of s. 794.011, excluding s.~~
 888 ~~794.011(10);~~

889 ~~c. For a violation of s. 800.04(4)(b) where the court~~
 890 ~~finds the offense involved a victim under 12 years of age or~~
 891 ~~sexual activity by the use of force or coercion;~~

892 ~~d. For a violation of s. 800.04(5)(b);~~

893 ~~e. For a violation of s. 800.04(5)c.2. where the court~~
 894 ~~finds the offense involved unclothed genitals or genital area;~~

895 ~~f. For any attempt or conspiracy to commit any such~~
 896 ~~offense; or~~

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897 ~~g. For a violation of similar law of another jurisdiction,~~
898 ~~may petition the criminal division of the circuit court of the~~
899 ~~circuit in which the sexual offender resides for the purpose of~~
900 ~~removing the requirement for registration as a sexual offender.~~

901 2. A sexual offender whose requirement to register was
902 based upon an adult conviction for a violation of s. 787.02 or
903 s. 827.071(5), for any attempt or conspiracy to commit any
904 offense listed in this subparagraph, or for a violation of
905 similar law of another jurisdiction may petition the criminal
906 division of the circuit court of the circuit in which the sexual
907 offender resides for the purpose of removing the requirement for
908 registration as a sexual offender if:

909 a. Fifteen years have elapsed since the sexual offender's
910 registration period for the most recent conviction that required
911 the offender to register began, excluding any period in which
912 the offender was supervised by the Department of Corrections.

913 b. The sexual offender has not been convicted or
914 adjudicated delinquent of any felony offense or of an offense
915 punishable by more than 1 year of imprisonment during the 10
916 years preceding the petition to the court.

917 c. The sexual offender has successfully completed all
918 sanctions imposed for all offenses that required the offender to
919 register.

920 d. For sexual offenders whose requirement to register is
921 based upon a conviction in another state, the sexual offender is
922 not required to register as a sexual offender pursuant to the
923 laws of the state where the conviction occurred. Such an
924 offender must provide the court written confirmation that he or

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925 she is not required to register in the state where the
926 conviction occurred.

927 3. A sexual offender required to register under sub-
928 subparagraph (1)(a)1.d. may petition the criminal division of
929 the circuit court of the circuit in which the sexual offender
930 resides for the purpose of removing the requirement for
931 registration as a sexual offender if:

932 a. Twenty-five years have elapsed since the sexual
933 offender's registration period for the most recent adjudication
934 that required the offender to register began, excluding any
935 period in which the offender was supervised by the Department of
936 Juvenile Justice.

937 b. The sexual offender has not been convicted or
938 adjudicated delinquent of any felony offense or of an offense
939 punishable by more than 1 year of imprisonment during the 25
940 years preceding the petition to the court.

941 c. The sexual offender has successfully completed all
942 sanctions imposed for all offenses that required the offender to
943 register.

944 4.2. The court may grant or deny relief if the offender
945 demonstrates to the court that ~~he or she has not been arrested~~
946 ~~for any crime since release;~~ the requested relief complies with
947 this paragraph, ~~the provisions of~~ the federal Adam Walsh Child
948 Protection and Safety Act of 2006, and any other federal
949 standards applicable to the removal of registration requirements
950 for a sexual offender or required to be met as a condition for
951 the receipt of federal funds by the state; and the court is
952 otherwise satisfied that the offender is not a current or

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953 potential threat to public safety. The state attorney in the
954 circuit in which the petition is filed and the department must
955 be given notice of the petition at least 3 weeks before the
956 hearing on the matter. The state attorney may present evidence
957 in opposition to the requested relief or may otherwise
958 demonstrate the reasons why the petition should be denied. If
959 the court grants the petition, the court shall instruct the
960 petitioner to provide the department with a certified copy of
961 the order granting relief. If the court denies the petition, the
962 court may set a future date at which the sexual offender may
963 again petition the court for relief, subject to the standards
964 for relief provided in this subsection.

965 ~~5.3.~~ The department shall remove an offender from
966 classification as a sexual offender for purposes of registration
967 if the offender provides to the department a certified copy of
968 the court's written findings or order that indicates that the
969 offender is no longer required to comply with the requirements
970 for registration as a sexual offender.

971 6. For purposes of this paragraph:

972 a. The registration period of a sexual offender sentenced
973 to a term of incarceration or committed to a residential program
974 begins upon the offender's release from incarceration or
975 commitment for the most recent conviction that required the
976 offender to register.

977 b. A sexual offender's registration period is tolled
978 during any period in which the offender is incarcerated, civilly
979 committed, detained pursuant to chapter 985, or committed to a
980 residential program.

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981 (b) A sexual offender as defined in sub-subparagraph
 982 (1)(a)1.b. must maintain registration with the department for
 983 the duration of his or her life until the person provides the
 984 department with an order issued by the court that designated the
 985 person as a sexual predator, as a sexually violent predator, or
 986 by another sexual offender designation in the state or
 987 jurisdiction in which the order was issued which states that
 988 such designation has been removed or demonstrates to the
 989 department that such designation, if not imposed by a court, has
 990 been removed by operation of law or court order in the state or
 991 jurisdiction in which the designation was made, and provided
 992 such person no longer meets the criteria for registration as a
 993 sexual offender under the laws of this state.

994 (14)

995 (b) However, a sexual offender who is required to register
 996 as a result of a conviction for:

997 1. Section 787.01 or s. 787.02 where the victim is a minor
 998 and the offender is not the victim's parent or guardian;

999 2. Section 794.011, excluding s. 794.011(10);

1000 3. Section 800.04(4)(b) where the court finds the offense
 1001 involved a victim under 12 years of age or sexual activity by
 1002 the use of force or coercion;

1003 4. Section 800.04(5)(b);

1004 5. Section 800.04(5)(c)1. where the court finds
 1005 molestation involving unclothed genitals or genital area;

1006 6. Section 800.04(5)c.2. where the court finds molestation
 1007 involving the use of force or coercion and unclothed genitals or
 1008 genital area;

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1009 7. Section 800.04(5)(d) where the court finds the use of
 1010 force or coercion and unclothed genitals or genital area;

1011 8. Any attempt or conspiracy to commit such offense; ~~or~~

1012 9. A violation of a similar law of another jurisdiction;
 1013 or

1014 10. A violation of a similar offense committed in this
 1015 state which has been redesignated from a former statute number
 1016 to one of those listed in this paragraph,

1017

1018 must reregister each year during the month of the sexual
 1019 offender's birthday and every third month thereafter.

1020 (c) The sheriff's office may determine the appropriate
 1021 times and days for reporting by the sexual offender, which shall
 1022 be consistent with the reporting requirements of this
 1023 subsection. Reregistration shall include any changes to the
 1024 following information:

1025 1. Name; social security number; age; race; sex; date of
 1026 birth; height; weight; hair and eye color; address of any
 1027 permanent residence and address of any current temporary
 1028 residence, within the state or out of state, including a rural
 1029 route address and a post office box; if no permanent or
 1030 temporary address, any transient residence within the state;
 1031 address, location or description, and dates of any current or
 1032 known future temporary residence within the state or out of
 1033 state; ~~any~~ electronic mail addresses or Internet identifiers
 1034 ~~address and any instant message name~~ required to be provided
 1035 pursuant to paragraph (4)(d); home telephone numbers or number
 1036 ~~and any~~ cellular telephone numbers number; date and place of any

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1037 employment; ~~the vehicle~~ make, model, color, registration number,
1038 and license tag number of any vehicles owned; fingerprints; palm
1039 prints; and photograph.. A post office box may ~~shall~~ not be
1040 provided in lieu of a physical residential address. The sexual
1041 offender must produce his or her passport, if he or she has a
1042 passport, and, if he or she is an alien, and must also produce
1043 or provide information about documents establishing his or her
1044 immigration status. The sexual offender must also provide
1045 information about any professional licenses that he or she may
1046 have.

1047 2. If the sexual offender is enrolled, volunteering,
1048 employed, or carrying on a vocation at an institution of higher
1049 education in this state, the sexual offender shall also provide
1050 to the department the name, address, and county of each
1051 institution, including each campus attended, and the sexual
1052 offender's enrollment, volunteer, or employment status.

1053 3. If the sexual offender's place of residence is a motor
1054 vehicle, trailer, mobile home, or manufactured home, as defined
1055 in chapter 320, the sexual offender shall also provide the
1056 vehicle identification number; the license tag number; the
1057 registration number; and a description, including color scheme,
1058 of the motor vehicle, trailer, mobile home, or manufactured
1059 home. If the sexual offender's place of residence is a vessel,
1060 live-aboard vessel, or houseboat, as defined in chapter 327, the
1061 sexual offender shall also provide the hull identification
1062 number; the manufacturer's serial number; the name of the
1063 vessel, live-aboard vessel, or houseboat; the registration
1064 number; and a description, including color scheme, of the

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1065 vessel, live-aboard vessel or houseboat.

1066 4. Any sexual offender who fails to report in person as
 1067 required at the sheriff's office, ~~or~~ who fails to respond to any
 1068 address verification correspondence from the department within 3
 1069 weeks of the date of the correspondence, ~~or~~ who fails to report
 1070 all electronic mail addresses and all Internet identifiers prior
 1071 to use ~~or instant message names,~~ or who knowingly provides false
 1072 registration information by act or omission commits a felony of
 1073 the third degree, punishable as provided in s. 775.082, s.
 1074 775.083, or s. 775.084.

1075 Section 6. Section 943.04351, Florida Statutes, is amended
 1076 to read:

1077 943.04351 Search of registration information regarding
 1078 sexual predators and sexual offenders required prior to
 1079 appointment or employment.—A state agency or governmental
 1080 subdivision, prior to making any decision to appoint or employ a
 1081 person to work, whether for compensation or as a volunteer, at
 1082 any park, playground, day care center, or other place where
 1083 children regularly congregate, must conduct a search of that
 1084 person's name or other identifying information against the
 1085 registration information regarding sexual predators and sexual
 1086 offenders maintained by the Department of Law Enforcement under
 1087 s. 943.043. The agency or governmental subdivision may conduct
 1088 the search using the Internet site maintained by the Department
 1089 of Law Enforcement. Also, a national search must be conducted
 1090 through the Dru Sjodin National Sex Offender Public Website
 1091 maintained by the United States Department of Justice. This
 1092 section does not apply to those positions or appointments within

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1093 a state agency or governmental subdivision for which a state and
 1094 national criminal history background check is conducted.

1095 Section 7. Section 943.04354, Florida Statutes, is amended
 1096 to read:

1097 943.04354 Removal of the requirement to register as a
 1098 sexual offender or sexual predator in special circumstances.-

1099 (1) For purposes of this section, a person shall be
 1100 considered for removal of the requirement to register as a
 1101 sexual offender or sexual predator only if the person:

1102 (a) Was ~~or will be~~ convicted, regardless of adjudication,
 1103 or adjudicated delinquent of a violation of s. 794.011, s.
 1104 800.04, s. 827.071, or s. 847.0135(5), or a similar offense in
 1105 another jurisdiction, ~~or the person committed a violation of s.~~
 1106 ~~794.011, s. 800.04, s. 827.071, or s. 847.0135(5) for which~~
 1107 ~~adjudication of guilt was or will be withheld,~~ and the person
 1108 does not have any other conviction, regardless of adjudication,
 1109 or adjudication of delinquency, or withhold of adjudication of
 1110 guilt for a violation of s. 794.011; s. 800.04, s. 827.071, or
 1111 s. 847.0135(5), or a similar offense in another jurisdiction;

1112 (b)1. Was convicted, regardless of adjudication, or
 1113 adjudicated delinquent of an offense listed in paragraph (a) and
 1114 is required to register as a sexual offender or sexual predator
 1115 solely on the basis of this conviction or adjudication
 1116 violation; ~~or and~~

1117 2. Was convicted, regardless of adjudication, or
 1118 adjudicated delinquent of an offense in another jurisdiction
 1119 that is similar to an offense listed in paragraph (a) and no
 1120 longer meets the criteria for registration as a sexual offender

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1121 or sexual predator under the laws of the jurisdiction where the
1122 similar offense occurred; and

1123 (c) Is not more than 4 years older than the victim of this
1124 violation who was 13 ~~14~~ years of age or older but less ~~not more~~
1125 than 18 ~~17~~ years of age at the time the person committed this
1126 violation.

1127 (2) If a person meets the criteria in subsection (1) ~~and~~
1128 ~~the violation of s. 794.011, s. 800.04, s. 827.071, or s.~~
1129 ~~847.0135(5) was committed on or after July 1, 2007, the person~~
1130 may move the criminal court of the circuit in which the offense
1131 occurred or the sentencing court or, for persons convicted or
1132 adjudicated delinquent of a qualifying offense in another
1133 jurisdiction, the criminal circuit court of the circuit in which
1134 the person resides ~~court that will sentence or dispose of this~~
1135 ~~violation~~ to remove the requirement that the person register as
1136 a sexual offender or sexual predator. The person must allege in
1137 the motion that he or she meets the criteria in subsection (1)
1138 and that removal of the registration requirement will not
1139 conflict with federal law. Persons convicted or adjudicated
1140 delinquent of an offense in another jurisdiction that is similar
1141 to an offense listed in paragraph (1)(a) must provide the court
1142 written confirmation that he or she is not required to register
1143 in the state where the conviction or adjudication occurred. The
1144 state attorney and the department must be given notice of the
1145 motion at least 21 days before the date of sentencing, ~~or~~
1146 disposition of the ~~this~~ violation, or hearing on the motion and
1147 may present evidence in opposition to the requested relief or
1148 may otherwise demonstrate why the motion should be denied. At

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1149 | sentencing, ~~or~~ disposition of the ~~this~~ violation, or hearing on
 1150 | the motion, the court shall rule on this motion and, if the
 1151 | court determines the person meets the criteria in subsection (1)
 1152 | and the removal of the registration requirement will not
 1153 | conflict with federal law, it may grant the motion and order the
 1154 | removal of the registration requirement. The court shall
 1155 | instruct the person to provide the department a certified copy
 1156 | of the order granting relief. If the court denies the motion,
 1157 | the person is not authorized under this section to file another
 1158 | motion ~~petition~~ for removal of the registration requirement.

1159 | ~~(3)(a) This subsection applies to a person who:~~

1160 | ~~1. Is not a person described in subsection (2) because the~~
 1161 | ~~violation of s. 794.011, s. 800.04, or s. 827.071 was not~~
 1162 | ~~committed on or after July 1, 2007;~~

1163 | ~~2. Is subject to registration as a sexual offender or~~
 1164 | ~~sexual predator for a violation of s. 794.011, s. 800.04, or s.~~
 1165 | ~~827.071; and~~

1166 | ~~3. Meets the criteria in subsection (1).~~

1167 | ~~(b) A person may petition the court in which the sentence~~
 1168 | ~~or disposition for the violation of s. 794.011, s. 800.04, or s.~~
 1169 | ~~827.071 occurred for removal of the requirement to register as a~~
 1170 | ~~sexual offender or sexual predator. The person must allege in~~
 1171 | ~~the petition that he or she meets the criteria in subsection (1)~~
 1172 | ~~and removal of the registration requirement will not conflict~~
 1173 | ~~with federal law. The state attorney must be given notice of the~~
 1174 | ~~petition at least 21 days before the hearing on the petition and~~
 1175 | ~~may present evidence in opposition to the requested relief or~~
 1176 | ~~may otherwise demonstrate why the petition should be denied. The~~

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1177 ~~court shall rule on the petition and, if the court determines~~
1178 ~~the person meets the criteria in subsection (1) and removal of~~
1179 ~~the registration requirement will not conflict with federal law,~~
1180 ~~it may grant the petition and order the removal of the~~
1181 ~~registration requirement. If the court denies the petition, the~~
1182 ~~person is not authorized under this section to file any further~~
1183 ~~petition for removal of the registration requirement.~~

1184 (3) ~~(4)~~ If a person provides to the Department of Law
1185 Enforcement a certified copy of the court's order removing the
1186 requirement that the person register as a sexual offender or
1187 sexual predator for the violation of s. 794.011, s. 800.04, s.
1188 827.071, or s. 847.0135(5), or a similar offense in another
1189 jurisdiction, the registration requirement will not apply to the
1190 person and the department shall remove all information about the
1191 person from the public registry of sexual offenders and sexual
1192 predators maintained by the department. However, the removal of
1193 this information from the public registry does not mean that the
1194 public is denied access to information about the person's
1195 criminal history or record that is otherwise available as a
1196 public record.

1197 Section 8. Subsection (2) and paragraph (a) of subsection
1198 (3) of section 943.0437, Florida Statutes, are amended to read:

1199 943.0437 Commercial social networking websites.—

1200 (2) The department may provide information relating to
1201 electronic mail addresses and Internet identifiers ~~instant~~
1202 ~~message names~~ maintained as part of the sexual offender registry
1203 to commercial social networking websites or third parties
1204 designated by commercial social networking websites. The

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1205 commercial social networking website may use this information
 1206 for the purpose of comparing registered users and screening
 1207 potential users of the commercial social networking website
 1208 against the list of electronic mail addresses and Internet
 1209 identifiers ~~instant message names~~ provided by the department.

1210 (3) This section shall not be construed to impose any
 1211 civil liability on a commercial social networking website for:

1212 (a) Any action voluntarily taken in good faith to remove
 1213 or disable any profile of a registered user associated with an
 1214 electronic mail address or Internet identifier ~~instant message~~
 1215 ~~name~~ contained in the sexual offender registry.

1216 Section 9. Paragraphs (b) and (d) of subsection (1) and
 1217 paragraph (a) of subsection (3) of section 944.606, Florida
 1218 Statutes, are amended to read:

1219 944.606 Sexual offenders; notification upon release.—

1220 (1) As used in this section:

1221 (b) "Sexual offender" means a person who has been
 1222 convicted of committing, or attempting, soliciting, or
 1223 conspiring to commit, any of the criminal offenses proscribed in
 1224 the following statutes in this state or similar offenses in
 1225 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1226 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1227 the defendant is not the victim's parent or guardian; s.
 1228 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 1229 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1230 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1231 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1232 916.1075(2); or s. 985.701(1); or any similar offense committed

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1233 in this state which has been redesignated from a former statute
 1234 number to one of those listed in this subsection, when the
 1235 department has received verified information regarding such
 1236 conviction; an offender's computerized criminal history record
 1237 is not, in and of itself, verified information.

1238 (d) "Internet identifier ~~Instant message name~~" has the
 1239 same meaning as provided in s. 775.21 ~~means an identifier that~~
 1240 ~~allows a person to communicate in real time with another person~~
 1241 ~~using the Internet.~~

1242 (3) (a) The department must provide information regarding
 1243 any sexual offender who is being released after serving a period
 1244 of incarceration for any offense, as follows:

1245 1. The department must provide: the sexual offender's
 1246 name, any change in the offender's name by reason of marriage or
 1247 other legal process, and any alias, if known; the correctional
 1248 facility from which the sexual offender is released; the sexual
 1249 offender's social security number, race, sex, date of birth,
 1250 height, weight, and hair and eye color; address of any planned
 1251 permanent residence or temporary residence, within the state or
 1252 out of state, including a rural route address and a post office
 1253 box; if no permanent or temporary address, any transient
 1254 residence within the state; address, location or description,
 1255 and dates of any known future temporary residence within the
 1256 state or out of state; date and county of sentence and each
 1257 crime for which the offender was sentenced; a copy of the
 1258 offender's fingerprints, palm prints, and a digitized photograph
 1259 taken within 60 days before release; the date of release of the
 1260 sexual offender; all ~~any~~ electronic mail addresses ~~address~~ and

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1261 all Internet identifiers ~~any instant message name~~ required to be
 1262 provided pursuant to s. 943.0435(4)(d); all ~~and~~ home telephone
 1263 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
 1264 about any professional licenses the offender may have, if known;
 1265 and passport information, if he or she has a passport, and, if
 1266 he or she is an alien, information about documents establishing
 1267 his or her immigration status ~~number~~. The department shall
 1268 notify the Department of Law Enforcement if the sexual offender
 1269 escapes, absconds, or dies. If the sexual offender is in the
 1270 custody of a private correctional facility, the facility shall
 1271 take the digitized photograph of the sexual offender within 60
 1272 days before the sexual offender's release and provide this
 1273 photograph to the Department of Corrections and also place it in
 1274 the sexual offender's file. If the sexual offender is in the
 1275 custody of a local jail, the custodian of the local jail shall
 1276 register the offender within 3 business days after intake of the
 1277 offender for any reason and upon release, and shall notify the
 1278 Department of Law Enforcement of the sexual offender's release
 1279 and provide to the Department of Law Enforcement the information
 1280 specified in this paragraph and any information specified in
 1281 subparagraph 2. that the Department of Law Enforcement requests.

1282 2. The department may provide any other information deemed
 1283 necessary, including criminal and corrections records,
 1284 nonprivileged personnel and treatment records, when available.

1285 Section 10. Paragraphs (a) and (f) of subsection (1),
 1286 subsection (4), and paragraphs (b) and (c) of subsection (13) of
 1287 section 944.607, Florida Statutes, are amended to read:

1288 944.607 Notification to Department of Law Enforcement of

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1289 information on sexual offenders.—

1290 (1) As used in this section, the term:

1291 (a) "Sexual offender" means a person who is in the custody
 1292 or control of, or under the supervision of, the department or is
 1293 in the custody of a private correctional facility:

1294 1. On or after October 1, 1997, as a result of a
 1295 conviction for committing, or attempting, soliciting, or
 1296 conspiring to commit, any of the criminal offenses proscribed in
 1297 the following statutes in this state or similar offenses in
 1298 another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01,
 1299 s. 787.02, or s. 787.025(2)(c), where the victim is a minor and
 1300 the defendant is not the victim's parent or guardian; s.
 1301 787.06(3)(b), (d), (f), (g), or (h); s. 794.011, excluding s.
 1302 794.011(10); s. 794.05; s. 796.03; s. 796.035; s. 800.04; s.
 1303 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135,
 1304 excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145;
 1305 s. 916.1075(2); or s. 985.701(1); or any similar offense
 1306 committed in this state which has been redesignated from a
 1307 former statute number to one of those listed in this paragraph;
 1308 or

1309 2. Who establishes or maintains a residence in this state
 1310 and who has not been designated as a sexual predator by a court
 1311 of this state but who has been designated as a sexual predator,
 1312 as a sexually violent predator, or by another sexual offender
 1313 designation in another state or jurisdiction and was, as a
 1314 result of such designation, subjected to registration or
 1315 community or public notification, or both, or would be if the
 1316 person were a resident of that state or jurisdiction, without

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1317 regard as to whether the person otherwise meets the criteria for
 1318 registration as a sexual offender.

1319 (f) "Internet identifier ~~Instant message name~~" has the
 1320 same meaning as provided in s. 775.21 ~~means an identifier that~~
 1321 ~~allows a person to communicate in real time with another person~~
 1322 ~~using the Internet.~~

1323 (4) A sexual offender, as described in this section, who
 1324 is under the supervision of the Department of Corrections but is
 1325 not incarcerated must register with the Department of
 1326 Corrections within 3 business days after sentencing for a
 1327 registrable offense and otherwise provide information as
 1328 required by this subsection.

1329 (a) The sexual offender shall provide his or her name;
 1330 date of birth; social security number; race; sex; height;
 1331 weight; hair and eye color; tattoos or other identifying marks;
 1332 all any electronic mail addresses ~~address~~ and all Internet
 1333 identifiers ~~any instant message name~~ required to be provided
 1334 pursuant to s. 943.0435(4)(d); all home telephone numbers and
 1335 cellular telephone numbers; the make, model, color, registration
 1336 number, and license tag number of all vehicles owned; permanent
 1337 or legal residence and address of temporary residence within the
 1338 state or out of state while the sexual offender is under
 1339 supervision in this state, including any rural route address or
 1340 post office box; if no permanent or temporary address, any
 1341 transient residence within the state; and address, location or
 1342 description, and dates of any current or known future temporary
 1343 residence within the state or out of state. The sexual offender
 1344 must also produce his or her passport, if he or she has a

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1345 passport, and, if he or she is an alien, must produce or provide
 1346 information about documents establishing his or her immigration
 1347 status. The sexual offender must also provide information about
 1348 any professional licenses that he or she may have. The
 1349 Department of Corrections shall verify the address of each
 1350 sexual offender in the manner described in ss. 775.21 and
 1351 943.0435. The department shall report to the Department of Law
 1352 Enforcement any failure by a sexual predator or sexual offender
 1353 to comply with registration requirements.

1354 (b) If the sexual offender is enrolled, employed,
 1355 volunteering, or carrying on a vocation at an institution of
 1356 higher education in this state, the sexual offender shall
 1357 provide the name, address, and county of each institution,
 1358 including each campus attended, and the sexual offender's
 1359 enrollment, volunteer, or employment status. Each change in
 1360 enrollment, volunteer, or employment status shall be reported to
 1361 the department within 48 hours after the change in status. The
 1362 Department of Corrections shall promptly notify each institution
 1363 of the sexual offender's presence and any change in the sexual
 1364 offender's enrollment, volunteer, or employment status.

1365 (13)

1366 (b) However, a sexual offender who is required to register
 1367 as a result of a conviction for:

1368 1. Section 787.01 or s. 787.02 where the victim is a minor
 1369 and the offender is not the victim's parent or guardian;

1370 2. Section 794.011, excluding s. 794.011(10);

1371 3. Section 800.04(4)(b) where the victim is under 12 years
 1372 of age or where the court finds sexual activity by the use of

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1373 force or coercion;
 1374 4. Section 800.04(5)(b);
 1375 5. Section 800.04(5)(c)1. where the court finds
 1376 molestation involving unclothed genitals or genital area;
 1377 6. Section 800.04(5)c.2. where the court finds molestation
 1378 involving the use of force or coercion and unclothed genitals or
 1379 genital area;
 1380 7. Section 800.04(5)(d) where the court finds the use of
 1381 force or coercion and unclothed genitals or genital area;
 1382 8. Any attempt or conspiracy to commit such offense; ~~or~~
 1383 9. A violation of a similar law of another jurisdiction;
 1384 or
 1385 10. A violation of a similar offense committed in this
 1386 state which has been redesignated from a former statute number
 1387 to one of those listed in this paragraph,
 1388
 1389 must reregister each year during the month of the sexual
 1390 offender's birthday and every third month thereafter.
 1391 (c) The sheriff's office may determine the appropriate
 1392 times and days for reporting by the sexual offender, which shall
 1393 be consistent with the reporting requirements of this
 1394 subsection. Reregistration shall include any changes to the
 1395 following information:
 1396 1. Name; social security number; age; race; sex; date of
 1397 birth; height; weight; hair and eye color; address of any
 1398 permanent residence and address of any current temporary
 1399 residence, within the state or out of state, including a rural
 1400 route address and a post office box; if no permanent or

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1401 temporary address, any transient residence; address, location or
 1402 description, and dates of any current or known future temporary
 1403 residence within the state or out of state; ~~any~~ electronic mail
 1404 addresses or Internet identifiers ~~address and any instant~~
 1405 ~~message name~~ required to be provided pursuant to s.
 1406 943.0435(4)(d); home telephone numbers or cellular telephone
 1407 numbers; date and place of any employment; the ~~vehicle~~ make,
 1408 model, color, registration number, and license tag number of any
 1409 vehicles owned; fingerprints; palm prints; and photograph. A
 1410 post office box shall not be provided in lieu of a physical
 1411 residential address. The sexual offender must also produce his
 1412 or her passport, if he or she has a passport, and, if he or she
 1413 is an alien, must produce or provide information about documents
 1414 establishing his or her immigration status. The sexual offender
 1415 must also provide information about any professional licenses
 1416 that he or she may have.

1417 2. If the sexual offender is enrolled, employed,
 1418 volunteering, or carrying on a vocation at an institution of
 1419 higher education in this state, the sexual offender shall also
 1420 provide to the department the name, address, and county of each
 1421 institution, including each campus attended, and the sexual
 1422 offender's enrollment, volunteer, or employment status.

1423 3. If the sexual offender's place of residence is a motor
 1424 vehicle, trailer, mobile home, or manufactured home, as defined
 1425 in chapter 320, the sexual offender shall also provide the
 1426 vehicle identification number; the license tag number; the
 1427 registration number; and a description, including color scheme,
 1428 of the motor vehicle, trailer, mobile home, or manufactured

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1429 home. If the sexual offender's place of residence is a vessel,
 1430 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1431 sexual offender shall also provide the hull identification
 1432 number; the manufacturer's serial number; the name of the
 1433 vessel, live-aboard vessel, or houseboat; the registration
 1434 number; and a description, including color scheme, of the
 1435 vessel, live-aboard vessel or houseboat.

1436 4. Any sexual offender who fails to report in person as
 1437 required at the sheriff's office, ~~or~~ who fails to respond to any
 1438 address verification correspondence from the department within 3
 1439 weeks of the date of the correspondence, ~~or~~ who fails to report
 1440 all electronic mail addresses or Internet identifiers prior to
 1441 use or instant message names, or who knowingly provides false
 1442 registration information by act or omission commits a felony of
 1443 the third degree, punishable as provided in s. 775.082, s.
 1444 775.083, or s. 775.084.

1445 Section 11. Subsection (11) of section 947.005, Florida
 1446 Statutes, is amended to read:

1447 947.005 Definitions.—As used in this chapter, unless the
 1448 context clearly indicates otherwise:

1449 (11) "Risk assessment" means an assessment completed by a
 1450 ~~an independent~~ qualified practitioner to evaluate the level of
 1451 risk associated when a sex offender has contact with a child.

1452 Section 12. Section 948.31, Florida Statutes, is amended
 1453 to read:

1454 948.31 Evaluation and treatment of sexual predators and
 1455 offenders on probation or community control.—The court may ~~shall~~
 1456 ~~require an evaluation by a qualified practitioner to determine~~

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1457 ~~the need of a probationer or community controllee for treatment.~~
 1458 ~~If the court determines that a need therefor is established by~~
 1459 ~~the evaluation process, the court shall require sexual offender~~
 1460 ~~treatment as a term or condition of probation or community~~
 1461 ~~control for any probationer or community controllee person who~~
 1462 ~~is required to register as a sexual predator under s. 775.21 or~~
 1463 ~~sexual offender under s. 943.0435, s. 944.606, or s. 944.607 to~~
 1464 ~~undergo an evaluation, at the probationer or community~~
 1465 ~~controllee's expense, by a qualified practitioner to determine~~
 1466 ~~whether such person needs sexual offender treatment. If the~~
 1467 ~~qualified practitioner determines that sexual offender treatment~~
 1468 ~~is needed and recommends treatment, the probationer or community~~
 1469 ~~controllee must successfully complete and pay for the treatment.~~
 1470 ~~Such treatment must ~~shall be required to~~ be obtained from a~~
 1471 ~~qualified practitioner as defined in s. 948.001. Treatment may~~
 1472 ~~not be administered by a qualified practitioner who has been~~
 1473 ~~convicted or adjudicated delinquent of committing, or~~
 1474 ~~attempting, soliciting, or conspiring to commit, any offense~~
 1475 ~~that is listed in s. 943.0435(1)(a)1.a.(I). ~~The court shall~~~~
 1476 ~~~~impose a restriction against contact with minors if sexual~~~~
 1477 ~~~~offender treatment is recommended. The evaluation and~~~~
 1478 ~~~~recommendations for treatment of the probationer or community~~~~
 1479 ~~~~controllee shall be provided to the court for review.~~~~

1480 Section 13. Paragraph (a) of subsection (3) of section
 1481 985.481, Florida Statutes, is amended to read:

1482 985.481 Sexual offenders adjudicated delinquent;
 1483 notification upon release.-

1484 (3) (a) The department must provide information regarding

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1485 any sexual offender who is being released after serving a period
 1486 of residential commitment under the department for any offense,
 1487 as follows:

1488 1. The department must provide the sexual offender's name,
 1489 any change in the offender's name by reason of marriage or other
 1490 legal process, and any alias, if known; the correctional
 1491 facility from which the sexual offender is released; the sexual
 1492 offender's social security number, race, sex, date of birth,
 1493 height, weight, and hair and eye color; the make, model, color,
 1494 registration number, and license tag number of all vehicles
 1495 owned, if known; address of any planned permanent residence or
 1496 temporary residence, within the state or out of state, including
 1497 a rural route address and a post office box; if no permanent or
 1498 temporary address, any transient residence within the state;
 1499 address, location or description, and dates of any known future
 1500 temporary residence within the state or out of state; date and
 1501 county of disposition and each crime for which there was a
 1502 disposition; a copy of the offender's fingerprints and a
 1503 digitized photograph taken within 60 days before release; the
 1504 date of release of the sexual offender; all ~~and~~ home telephone
 1505 numbers ~~number~~ and ~~any~~ cellular telephone numbers; information
 1506 about any professional licenses the offender may have, if known;
 1507 and passport information, if he or she has a passport, and, if
 1508 he or she is an alien, information about documents establishing
 1509 his or her immigration status ~~number~~. The department shall
 1510 notify the Department of Law Enforcement if the sexual offender
 1511 escapes, absconds, or dies. If the sexual offender is in the
 1512 custody of a private correctional facility, the facility shall

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1513 take the digitized photograph of the sexual offender within 60
 1514 days before the sexual offender's release and also place it in
 1515 the sexual offender's file. If the sexual offender is in the
 1516 custody of a local jail, the custodian of the local jail shall
 1517 register the offender within 3 business days after intake of the
 1518 offender for any reason and upon release, and shall notify the
 1519 Department of Law Enforcement of the sexual offender's release
 1520 and provide to the Department of Law Enforcement the information
 1521 specified in this subparagraph and any information specified in
 1522 subparagraph 2. which the Department of Law Enforcement
 1523 requests.

1524 2. The department may provide any other information
 1525 considered necessary, including criminal and delinquency
 1526 records, when available.

1527 Section 14. Subsection (4) and paragraph (b) of subsection
 1528 (13) of section 985.4815, Florida Statutes, are amended to read:

1529 985.4815 Notification to Department of Law Enforcement of
 1530 information on juvenile sexual offenders.—

1531 (4) A sexual offender, as described in this section, who
 1532 is under the supervision of the department but who is not
 1533 committed must register with the department within 3 business
 1534 days after adjudication and disposition for a registrable
 1535 offense and otherwise provide information as required by this
 1536 subsection.

1537 (a) The sexual offender shall provide his or her name;
 1538 date of birth; social security number; race; sex; height;
 1539 weight; hair and eye color; tattoos or other identifying marks;
 1540 the make, model, color, registration number, and license tag

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1541 number of all vehicles owned; permanent or legal residence and
1542 address of temporary residence within the state or out of state
1543 while the sexual offender is in the care or custody or under the
1544 jurisdiction or supervision of the department in this state,
1545 including any rural route address or post office box; if no
1546 permanent or temporary address, any transient residence;
1547 address, location or description, and dates of any current or
1548 known future temporary residence within the state or out of
1549 state; and the name and address of each school attended. The
1550 sexual offender must also produce his or her passport, if he or
1551 she has a passport, and, if he or she is an alien, must produce
1552 or provide information about documents establishing his or her
1553 immigration status. The offender must also provide information
1554 about any professional licenses that he or she may have. The
1555 department shall verify the address of each sexual offender and
1556 shall report to the Department of Law Enforcement any failure by
1557 a sexual offender to comply with registration requirements.

1558 (b) If the sexual offender is enrolled, employed,
1559 volunteering, or carrying on a vocation at an institution of
1560 higher education in this state, the sexual offender shall
1561 provide the name, address, and county of each institution,
1562 including each campus attended, and the sexual offender's
1563 enrollment, volunteer, or employment status. Each change in
1564 enrollment, volunteer, or employment status shall be reported to
1565 the department within 48 hours after the change in status. The
1566 department shall promptly notify each institution of the sexual
1567 offender's presence and any change in the sexual offender's
1568 enrollment, volunteer, or employment status.

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1569 (13)

1570 (b) The sheriff's office may determine the appropriate
1571 times and days for reporting by the sexual offender, which shall
1572 be consistent with the reporting requirements of this
1573 subsection. Reregistration shall include any changes to the
1574 following information:

1575 1. Name; social security number; age; race; sex; date of
1576 birth; height; weight; hair and eye color; fingerprints; palm
1577 prints; address of any permanent residence and address of any
1578 current temporary residence, within the state or out of state,
1579 including a rural route address and a post office box; if no
1580 permanent or temporary address, any transient residence;
1581 address, location or description, and dates of any current or
1582 known future temporary residence within the state or out of
1583 state; passport information, if he or she has a passport, and,
1584 if he or she is an alien, information about documents
1585 establishing his or her immigration status; name and address of
1586 each school attended; date and place of any employment; the
1587 ~~vehicle~~ make, model, color, registration number, and license tag
1588 number of all vehicles owned; ~~fingerprints;~~ and photograph. A
1589 post office box shall not be provided in lieu of a physical
1590 residential address. The offender must also provide information
1591 about any professional licenses that he or she may have.

1592 2. If the sexual offender is enrolled, employed,
1593 volunteering, or carrying on a vocation at an institution of
1594 higher education in this state, the sexual offender shall also
1595 provide to the department the name, address, and county of each
1596 institution, including each campus attended, and the sexual

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1597 offender's enrollment, volunteer, or employment status.

1598 3. If the sexual offender's place of residence is a motor
 1599 vehicle, trailer, mobile home, or manufactured home, as defined
 1600 in chapter 320, the sexual offender shall also provide the
 1601 vehicle identification number; the license tag number; the
 1602 registration number; and a description, including color scheme,
 1603 of the motor vehicle, trailer, mobile home, or manufactured
 1604 home. If the sexual offender's place of residence is a vessel,
 1605 live-aboard vessel, or houseboat, as defined in chapter 327, the
 1606 sexual offender shall also provide the hull identification
 1607 number; the manufacturer's serial number; the name of the
 1608 vessel, live-aboard vessel, or houseboat; the registration
 1609 number; and a description, including color scheme, of the
 1610 vessel, live-aboard vessel, or houseboat.

1611 4. Any sexual offender who fails to report in person as
 1612 required at the sheriff's office, ~~or~~ who fails to respond to any
 1613 address verification correspondence from the department within 3
 1614 weeks after the date of the correspondence, or who knowingly
 1615 provides false registration information by act or omission
 1616 commits a felony of the third degree, punishable as provided in
 1617 ss. 775.082, 775.083, and 775.084.

1618 Section 15. Paragraphs (g) and (i) of subsection (3) of
 1619 section 921.0022, Florida Statutes, are amended to read:

1620 921.0022 Criminal Punishment Code; offense severity
 1621 ranking chart.—

1622 (3) OFFENSE SEVERITY RANKING CHART

1623 (g) LEVEL 7

1624

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	Florida Statute	Felony Degree	Description
1625	316.027 (1) (b)	1st	Accident involving death, failure to stop; leaving scene.
1626	316.193 (3) (c) 2.	3rd	DUI resulting in serious bodily injury.
1627	316.1935 (3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
1628	327.35 (3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
1629	402.319 (2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.
1630	409.920	3rd	Medicaid provider fraud;

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1631	(2) (b) 1.a.		\$10,000 or less.
	409.920	2nd	Medicaid provider fraud; more
	(2) (b) 1.b.		than \$10,000, but less than
1632			\$50,000.
	456.065 (2)	3rd	Practicing a health care
1633			profession without a license.
	456.065 (2)	2nd	Practicing a health care
1634			profession without a license
			which results in serious bodily
			injury.
	458.327 (1)	3rd	Practicing medicine without a
1635			license.
	459.013 (1)	3rd	Practicing osteopathic medicine
1636			without a license.
	460.411 (1)	3rd	Practicing chiropractic
1637			medicine without a license.
	461.012 (1)	3rd	Practicing podiatric medicine
1638			without a license.
	462.17	3rd	Practicing naturopathy without
			a license.

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1639	463.015(1)	3rd	Practicing optometry without a license.
1640	464.016(1)	3rd	Practicing nursing without a license.
1641	465.015(2)	3rd	Practicing pharmacy without a license.
1642	466.026(1)	3rd	Practicing dentistry or dental hygiene without a license.
1643	467.201	3rd	Practicing midwifery without a license.
1644	468.366	3rd	Delivering respiratory care services without a license.
1645	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
1646	483.901(9)	3rd	Practicing medical physics without a license.
1647	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.

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1648	484.053	3rd	Dispensing hearing aids without a license.
1649	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
1650	560.123 (8) (b) 1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
1651	560.125 (5) (a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
1652	655.50 (10) (b) 1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
1653	775.21 (10) (a)	3rd	Sexual predator; failure to

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			register; failure to renew <u>driver</u> driver's license or identification card; other registration violations.
1654	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
1655	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
1656	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
1657	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
1658	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular

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1659			homicide).
1660	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
1661	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
1662	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
1663	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
1664	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
1665	784.048(7)	3rd	Aggravated stalking; violation of court order.
1666	784.07(2)(d)	1st	Aggravated battery on law enforcement officer.
	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility

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staff.

1667

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

1668

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

1669

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

1670

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

1671

787.06(3)(a) 1st Human trafficking using
coercion for labor and
services.

1672

787.06(3)(e) 1st Human trafficking using
coercion for labor and services
by the transfer or transport of
any individual from outside
Florida to within the state.

1673

790.07(4) 1st Specified weapons violation
subsequent to previous
conviction of s. 790.07(1) or

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(2).

1674

790.16(1) 1st Discharge of a machine gun under specified circumstances.

1675

790.165(2) 2nd Manufacture, sell, possess, or deliver hoax bomb.

1676

790.165(3) 2nd Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.

1677

790.166(3) 2nd Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.

1678

790.166(4) 2nd Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.

1679

790.23 1st,PBL Possession of a firearm by a person who qualifies for the penalty enhancements provided for in s. 874.04.

1680

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1681	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
1682	796.03	2nd	Procuring any person under <u>18</u> 16 years for prostitution.
1683	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
1684	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
1685	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
1686	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.

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1687	810.02(3)(d)	2nd	Burglary of occupied conveyance; unarmed; no assault or battery.
1688	810.02(3)(e)	2nd	Burglary of authorized emergency vehicle.
1689	812.014(2)(a)1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
1690	812.014(2)(b)2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
1691	812.014(2)(b)3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
1692	812.014(2)(b)4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
1693			

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1694	812.0145(2)(a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
1695	812.019(2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
1696	812.131(2)(a)	2nd	Robbery by sudden snatching.
1697	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
1698	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
1699	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
1700	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency

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of an insuring entity which are
a significant cause of the
insolvency of that entity.

1701

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

1702

825.103(2)(b) 2nd Exploiting an elderly person or
disabled adult and property is
valued at \$20,000 or more, but
less than \$100,000.

1703

827.03(2)(b) 2nd Neglect of a child causing
great bodily harm, disability,
or disfigurement.

1704

827.04(3) 3rd Impregnation of a child under
16 years of age by person 21
years of age or older.

1705

837.05(2) 3rd Giving false information about
alleged capital felony to a law
enforcement officer.

1706

838.015 2nd Bribery.

1707

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1708	838.016	2nd	Unlawful compensation or reward for official behavior.
1709	838.021(3)(a)	2nd	Unlawful harm to a public servant.
1710	838.22	2nd	Bid tampering.
1711	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
1712	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.
1713	872.06	2nd	Abuse of a dead human body.
1714	874.10	1st, PBL	Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
	893.13(1)(c)1.	1st	Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child

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care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

1715

893.13(1)(e)1. 1st Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

1716

893.13(4)(a) 1st Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

1717

893.135(1)(a)1. 1st Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.

1718

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

1719

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1720	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
1721	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
1722	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
1723	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
1724	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
1725	893.135 (1)(h)1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

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1732

943.0435(9)(a) 3rd Sexual offender; failure to
comply with reporting
requirements.

1733

943.0435(13) 3rd Failure to report or providing
false information about a
sexual offender; harbor or
conceal a sexual offender.

1734

943.0435(14) 3rd Sexual offender; failure to
report and reregister; failure
to respond to address
verification.

1735

944.607(9) 3rd Sexual offender; failure to
comply with reporting
requirements.

1736

944.607(10)(a) 3rd Sexual offender; failure to
submit to the taking of a
digitized photograph.

1737

944.607(12) 3rd Failure to report or providing
false information about a
sexual offender; harbor or
conceal a sexual offender.

1738

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1739	944.607(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1740	985.4815(10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
1741	985.4815(12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
1742	985.4815(13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
1743	(i) LEVEL 9		
1744	Florida Statute	Felony Degree	Description
1745	316.193 (3) (c) 3.b.	1st	DUI manslaughter; failing to render aid or give information.
1746	327.35 (3) (c) 3.b.	1st	BUI manslaughter; failing to

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render aid or give information.

1747

409.920
(2) (b) 1.c.

1st Medicaid provider fraud;
\$50,000 or more.

1748

499.0051 (9)

1st Knowing sale or purchase of
contraband prescription drugs
resulting in great bodily harm.

1749

560.123 (8) (b) 3.

1st Failure to report currency or
payment instruments totaling or
exceeding \$100,000 by money
transmitter.

1750

560.125 (5) (c)

1st Money transmitter business by
unauthorized person, currency,
or payment instruments totaling
or exceeding \$100,000.

1751

655.50 (10) (b) 3.

1st Failure to report financial
transactions totaling or
exceeding \$100,000 by financial
institution.

1752

775.0844

1st Aggravated white collar crime.

1753

782.04 (1)

1st Attempt, conspire, or solicit
to commit premeditated murder.

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1754	782.04(3)	1st, PBL	Accomplice to murder in connection with arson, sexual battery, robbery, burglary, aggravated fleeing or eluding with serious bodily injury or death, and other specified felonies.
1755	782.051(1)	1st	Attempted felony murder while perpetrating or attempting to perpetrate a felony enumerated in s. 782.04(3).
1756	782.07(2)	1st	Aggravated manslaughter of an elderly person or disabled adult.
1757	787.01(1)(a)1.	1st, PBL	Kidnapping; hold for ransom or reward or as a shield or hostage.
1758	787.01(1)(a)2.	1st, PBL	Kidnapping with intent to commit or facilitate commission of any felony.
1759	787.01(1)(a)4.	1st, PBL	Kidnapping with intent to interfere with performance of

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any governmental or political
function.

1760

787.02(3)(a) 1st, PBL False imprisonment; child under
age 13; perpetrator also
commits aggravated child abuse,
sexual battery, or lewd or
lascivious battery,
molestation, conduct, or
exhibition.

1761

787.06(3)(d) 1st Human trafficking using
coercion for commercial sexual
activity of an unauthorized
alien.

1762

787.06(3)(g) 1st, PBL Human trafficking for
commercial sexual activity of a
child under the age of 18.

1763

787.06(4) 1st Selling or buying of minors
into human trafficking.

1764

790.161 1st Attempted capital destructive
device offense.

1765

790.166(2) 1st, PBL Possessing, selling, using, or
attempting to use a weapon of

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1766			mass destruction.
	794.011(2)	1st	Attempted sexual battery; victim less than 12 years of age.
1767			
	794.011(2)	Life	Sexual battery; offender younger than 18 years and commits sexual battery on a person less than 12 years.
1768			
	794.011(4)	1st	Sexual battery; victim 12 years or older, certain circumstances.
1769			
	794.011(8)(b)	1st	Sexual battery; engage in sexual conduct with minor 12 to 18 years by person in familial or custodial authority.
1770			
	794.08(2)	1st	Female genital mutilation; victim younger than 18 years of age.
1771			
	796.035	1st	Selling or buying of minors into prostitution.
1772			
	800.04(5)(b)	Life	Lewd or lascivious molestation;

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victim less than 12 years;
offender 18 years or older.

1773

812.13(2)(a) 1st, PBL Robbery with firearm or other
deadly weapon.

1774

812.133(2)(a) 1st, PBL Carjacking; firearm or other
deadly weapon.

1775

812.135(2)(b) 1st Home-invasion robbery with
weapon.

1776

817.568(7) 2nd, PBL Fraudulent use of personal
identification information of
an individual under the age of
18 by his or her parent, legal
guardian, or person exercising
custodial authority.

1777

827.03(2)(a) 1st Aggravated child abuse.

1778

847.0145(1) 1st Selling, or otherwise
transferring custody or
control, of a minor.

1779

847.0145(2) 1st Purchasing, or otherwise
obtaining custody or control,
of a minor.

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1780	859.01	1st	Poisoning or introducing bacteria, radioactive materials, viruses, or chemical compounds into food, drink, medicine, or water with intent to kill or injure another person.
1781	893.135	1st	Attempted capital trafficking offense.
1782	893.135 (1) (a) 3.	1st	Trafficking in cannabis, more than 10,000 lbs.
1783	893.135 (1) (b) 1.c.	1st	Trafficking in cocaine, more than 400 grams, less than 150 kilograms.
1784	893.135 (1) (c) 1.c.	1st	Trafficking in illegal drugs, more than 28 grams, less than 30 kilograms.
1785	893.135 (1) (d) 1.c.	1st	Trafficking in phencyclidine, more than 400 grams.
1786	893.135 (1) (e) 1.c.	1st	Trafficking in methaqualone, more than 25 kilograms.

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1787

893.135 1st Trafficking in amphetamine,
(1) (f) 1.c. more than 200 grams.

1788

893.135 1st Trafficking in gamma-
(1) (h) 1.c. hydroxybutyric acid (GHB), 10
kilograms or more.

1789

893.135 1st Trafficking in 1,4-Butanediol,
(1) (j) 1.c. 10 kilograms or more.

1790

893.135 1st Trafficking in Phenethylamines,
(1) (k) 2.c. 400 grams or more.

1791

896.101(5) (c) 1st Money laundering, financial
instruments totaling or
exceeding \$100,000.

1792

896.104(4) (a) 3. 1st Structuring transactions to
evade reporting or registration
requirements, financial
transactions totaling or
exceeding \$100,000.

1793

1794

Section 16. This act shall take effect October 1, 2013.