



Judiciary Committee

February 21, 2013

12:00 PM

404 HOB

Meeting Packet

**Will Weatherford
Speaker**

**Dennis Baxley
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Judiciary Committee

Start Date and Time: Thursday, February 21, 2013 12:00 pm
End Date and Time: Thursday, February 21, 2013 02:00 pm
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 55 Deceptive and Unfair Trade Practices by Business & Professional Regulation Subcommittee, Gaetz
HB 351 Application of Foreign Law in Certain Cases by Metz
CS/HB 4019 Juvenile Justice by Criminal Justice Subcommittee, Harrell

NOTICE FINALIZED on 02/14/2013 16:27 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Deceptive and Unfair Trade Practices
SPONSOR(S): Business & Professional Regulation Subcommittee; Gaetz
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	11 Y, 1 N	Cary	Bond
2) Business & Professional Regulation Subcommittee	9 Y, 3 N, As CS	Collins	Luczynski
3) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Florida law prohibits certain deceptive and unfair trade practices of many different businesses. Current law allows the filing of a suit against an automobile dealer alleging commission of an unfair and deceptive trade act without prior notice to such dealer.

This bill requires that an individual alleging deceptive and unfair trade practices must first give a demand letter to the dealer. If the dealer pays the claim and an additional surcharge within the 30-day allotted time period, the individual may not file suit. This requirement only applies if the dealer provided the customer with notice of the requirement as a part of the transaction.

The bill does not apply to a certified class action or to enforcement by a State Attorney or the Attorney General.

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

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.¹ The law can be enforced either by enforcing authorities, generally a state attorney or the Department of Legal Affairs (DLA)², or by a private suit filed by an individual.³ Additionally, there is a separate part of FDUTPA that applies specifically to motor vehicle dealers.⁴

Effect of Proposed Changes

This bill creates s. 501.98, F.S. This section requires a consumer suing a motor vehicle dealer under FDUTPA to provide the dealer with a 30-day notice prior to filing suit. The demand letter must include:

- The name, address, and telephone number of the claimant;
- The name, address, and telephone number of the dealer;
- The underlying facts of the claim, including a detailed statement describing each item for which actual damages are claimed;
- To the extent available, all transaction or other documents upon which the claim is based; and
- The amount of damages claimed.

The demand letter must contain sufficient information to adequately put the dealer on notice as to the nature of the claim and the relief sought.

The claimant must send the demand letter by the United States Postal Service or by a nationally recognized carrier, return receipt requested. If the dealer is a corporate entity, the demand letter must be sent to any officer, director, or manager of the dealer as reported in the dealer's most recent annual report to the Secretary of State.

A claimant may not initiate civil litigation against a dealer under FDUTPA if the dealer pays, within 30 days after receipt of the notice, the amount sought in the demand letter plus a ten percent surcharge, which may not exceed \$500.

The dealer is not required to pay the claimant's attorney fees in any civil litigation initiated under FDUTPA if:

- The dealer responds to the claimant in writing, within 30 days, and a court agrees that the claim is not supported by the underlying facts or that the claim includes items that are not recoverable under FDUTPA; or
- The claimant fails to materially comply with the notice requirements, except that the demand letter will be satisfactory as long as it contains sufficient information to adequately put the dealer on notice as to the nature of the claim and the relief sought.

¹ Section 501.204, F.S.

² Section 501.203(2), F.S.

³ Section 501.211, F.S.

⁴ Section 501.976, F.S.

The bill provides that a dealer's payment of actual damages, or an offer to pay, is not an admission of wrongdoing or liability by the dealer and is inadmissible as evidence under s. 90.408, F.S.⁵ Further, payment or an offer to pay releases the dealer and its employees, agents, principals, sureties, and insurers from any claim, suit, or action that could be brought arising out of the transaction, event, or occurrence described in the demand letter.

The bill also provides a 30-day tolling period from the date of delivery of the demand letter for a claimant initiating an action under FDUTPA. The provisions of the bill do not apply to class action lawsuits against a motor vehicle dealer or apply to actions brought by a State Attorney or the Attorney General.

The bill provides a notice for the dealer to provide to the purchaser of an automobile. Without including such language, the dealer is not afforded the protections of this bill.

B. SECTION DIRECTORY:

Section 1: amends s. 501.975, F.S., relating to definitions.

Section 2: creates s. 501.98, F.S., relating to demand letter.

Section 3: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

⁵ Section 90.408, F.S., relating to compromise and offers to compromise, provides that "evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article I, sec. 21 of the Florida Constitution grants citizens the right to access to courts. A law violates this provision if it unduly restricts a cause of action unless the Legislature provides a reasonable alternative remedy or commensurate benefit, or the legislature makes a showing of an overpowering public necessity justifying a restriction with a finding that there is no alternative method of meeting such public necessity.⁶

This constitutional provision only applies to causes of action that existed at common law or by statute prior to the enactment of the 1968 Florida Constitution.⁷ The FDUTPA was created by the Legislature in 1973⁸ and the motor vehicle part of FDUTPA was created in 2001.⁹ As a result, Article I, sec. 21 of the Florida Constitution is not implicated.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

At the February 6, 2013, meeting of the Business & Professional Regulation Subcommittee, two amendments were adopted. The bill was reported favorably as a Committee Substitute.

The first amendment eliminated the requirement that a comprehensive statement describing each item must be included in the demand letter. Instead, only a detailed statement is required.

The second amendment clarifies that the demand letter must state the amount of damages claimed.

The analysis is drafted to the Committee Substitute.

⁶ *Psychiatric Assoc. v. Siegel*, 610 So.2d 419 (Fla. 1992).

⁷ *Kluger v. White*, 281 So.2d 1 (Fla. 1973).

⁸ Chapter 73-124, L.O.F.

⁹ Chapter 2001-196, L.O.F.

1 A bill to be entitled
 2 An act relating to deceptive and unfair trade
 3 practices; amending s. 501.975, F.S.; conforming
 4 provisions; creating s. 501.98, F.S.; requiring a
 5 claimant to provide a demand letter to the motor
 6 vehicle dealer as a condition precedent to initiating
 7 civil litigation against such dealer under the Florida
 8 Deceptive and Unfair Trade Practices Act; providing
 9 for the tolling of applicable time limitations for
 10 initiating actions; providing an additional
 11 opportunity for claimants to comply with specified
 12 provisions; providing a condition that constitutes
 13 waiver of notice; providing for applicability;
 14 requiring that a specified notice be provided to
 15 consumers before provisions may apply; providing an
 16 effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Section 501.975, Florida Statutes, is amended
 21 to read:

22 501.975 Definitions.—As used in this part ~~s. 501.976~~, the
 23 term following terms shall have the following meanings:

- 24 (1) "Customer" includes a customer's designated agent.
- 25 (2) "Dealer" means a motor vehicle dealer as defined in s.
 26 320.27, but does not include a motor vehicle auction as defined
 27 in s. 320.27(1)(c)4.
- 28 (3) "Replacement item" means a tire, bumper, bumper

29 fascia, glass, in-dashboard equipment, seat or upholstery cover
 30 or trim, exterior illumination unit, grill, sunroof, external
 31 mirror and external body cladding. The replacement of up to
 32 three of these items does not constitute repair of damage if
 33 each item is replaced because of a product defect or damaged due
 34 to vandalism while the new motor vehicle is under the control of
 35 the dealer and the items are replaced with original manufacturer
 36 equipment, unless an item is replaced due to a crash, collision,
 37 or accident.

38 (4) "Threshold amount" means 3 percent of the
 39 manufacturer's suggested retail price of a motor vehicle or
 40 \$650, whichever is less.

41 (5) "Vehicle" means any automobile, truck, bus,
 42 recreational vehicle, or motorcycle required to be licensed
 43 under chapter 320 for operation over the roads of Florida, but
 44 does not include trailers, mobile homes, travel trailers, or
 45 trailer coaches without independent motive power.

46 Section 2. Section 501.98, Florida Statutes, is created to
 47 read:

48 501.98 Demand letter.-

49 (1) As a condition precedent to initiating any civil
 50 litigation arising under this chapter against a motor vehicle
 51 dealer, which may also include its employees, agents,
 52 principals, sureties, and insurers, a claimant must give the
 53 dealer written notice of the claimant's intent to initiate such
 54 litigation at least 30 days before initiating the litigation.

55 (2) The demand letter, which must be completed in good
 56 faith, must:

57 (a) State the name, address, and telephone number of the
 58 claimant.

59 (b) State the name, address, and telephone number of the
 60 dealer.

61 (c) Describe the underlying facts of the claim, including
 62 a detailed statement describing each item for which actual
 63 damages are claimed.

64 (d) To the extent available, be accompanied by all
 65 transaction or other documents upon which the claim is based.

66 (e) State the amount of damages claimed.

67
 68 In any challenge to the claimant's compliance with this
 69 subsection, the demand letter shall be deemed satisfactory if it
 70 contains sufficient information to adequately put the dealer on
 71 notice of the nature of the claim and the relief sought.

72 (3) The demand letter must be delivered to the dealer by
 73 the United States Postal Service or by a nationally recognized
 74 carrier, return receipt requested. If the dealer is a corporate
 75 entity, the demand letter must be sent to any officer, director,
 76 or manager of the dealer as reported in the dealer's most recent
 77 annual report to the Secretary of State.

78 (4) Notwithstanding any provision of this chapter:

79 (a) A claimant may not initiate civil litigation against a
 80 dealer or its employees, agents, principals, sureties, or
 81 insurers for a claim arising under this chapter related to, or
 82 in connection with, the transaction or event described in the
 83 demand letter if, within 30 business days after receipt of the
 84 demand letter, the dealer pays the claimant the amount sought in

85 the demand letter, plus a surcharge equal to the lesser of \$500,
86 or 10 percent of the amount contained in the demand letter.

87 (b) A dealer and its employees, agents, principals,
88 sureties, and insurers may not be required to pay the attorney
89 fees of the claimant in any action brought under this chapter
90 if:

91 1. The dealer, within 30 business days after receipt of
92 the demand letter, notifies the claimant in writing, and a court
93 agrees, that the amount sought in the demand letter is not
94 supported by the facts of the transaction or event described in
95 the demand letter or if the demand letter includes items not
96 properly recoverable under this chapter; or

97 2. The claimant fails to materially comply with this
98 section; however, to the extent that there is a challenge to the
99 sufficiency of the demand letter, the demand letter shall be
100 deemed satisfactory if it contains sufficient information to
101 adequately put the dealer on notice of the nature of the claim
102 and the relief sought such that it could appropriately respond.

103 (5) Payment or offer of payment of the damages claimed in
104 the demand letter as set forth in this section:

105 (a) Does not constitute an admission of any wrongdoing or
106 liability by the dealer.

107 (b) Is protected under s. 90.408 from introduction as
108 evidence during any civil litigation.

109 (c) Releases the dealer and its employees, agents,
110 principals, sureties, and insurers from any claim, suit, action,
111 or other action that could be brought arising out of, or in
112 connection with, the specific transaction, event, or occurrence

113 described in the demand letter.

114 (6) The applicable time limitations for initiating an
 115 action under this chapter are tolled for 30 days after the date
 116 of delivery to the dealer pursuant to subsection (3), or such
 117 other period agreed to by the parties in writing.

118 (7) This section does not apply to any action brought as a
 119 class action that is ultimately certified as a class action or
 120 any action brought by the enforcing authority.

121 (8) This section applies only to civil litigation arising
 122 out of a transaction for which the dealer has provided the
 123 following notice to the consumer:

124
 125 "Section 501.98, Florida Statutes, requires that, at least
 126 30 days before bringing any claim against a motor vehicle
 127 dealer for an unfair or deceptive trade practice, a
 128 consumer must provide the dealer with written notice
 129 stating the name, address, and telephone number of the
 130 consumer; the name and address of the dealer; a description
 131 of the facts that serve as the basis for the claim; the
 132 amount of damages claimed; and copies of any documents in
 133 the possession of the consumer which relate to the claim.
 134 Such notice must be delivered by the United States Postal
 135 Service or any nationally recognized carrier, return
 136 receipt requested. Such notice must be provided to the
 137 dealer, or, if the dealer is a corporate entity, an
 138 officer, director, or manager of the dealer as reported by
 139 the Florida Division of Corporations at: (...insert current
 140 Internet website address of the Division of Corporations of

CS/HB 55

2013

141 | the Department of State...)."

142 | Section 3. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Gaetz offered the following:

3
4 **Amendment**

5 Remove lines 48-141 and insert:

6 501.98 Demand letter.-

7 (1) As a condition precedent to initiating any civil
8 litigation, including arbitration, arising under this chapter
9 against a motor vehicle dealer, which may also include its
10 employees, agents, principals, sureties, and insurers, a
11 claimant must give the dealer a written demand letter at least
12 30 days before initiating the litigation.

13 (2) The demand letter, which must be completed in good
14 faith, must:

15 (a) State the name, address, and telephone number of the
16 claimant.

17 (b) State the name and address of the dealer.

18 (c) Describe the underlying facts of the claim, including a
19 statement describing each item for which actual damages are
20 claimed.



Amendment No. 1

21 (d) State the amount of damages, or if not available, the
22 claimant's best estimate of the amount of damages.

23 (e) To the extent available to the claimant, be accompanied
24 by all transaction or other documents upon which the claim is
25 based.

26
27 In any challenge to the claimant's compliance with this
28 subsection, the demand letter shall be deemed satisfactory if it
29 contains sufficient information to reasonably put the dealer on
30 notice of the nature of the claim and the relief sought.

31 (3) The demand letter must be delivered by the United
32 States Postal Service or by a nationally recognized carrier,
33 return receipt requested, to the address where the subject
34 vehicle was purchased or leased, where the subject transaction
35 occurred, or any address at which the dealer regularly conducts
36 business.

37 (4) Notwithstanding any provision of this chapter:

38 (a) A claimant may not initiate civil litigation, including
39 arbitration, against a dealer or its employees, agents,
40 principals, sureties, or insurers for a claim arising under this
41 chapter related to, or in connection with, the transaction or
42 event described in the demand letter if, within 30 days after
43 receipt of the demand letter, the dealer pays the claimant the
44 amount sought in the demand letter, plus a surcharge of the
45 lesser of \$500 or ten percent of the damages claimed.

46 (b) A dealer and its employees, agents, principals,
47 sureties, and insurers may not be required to pay the attorney



Amendment No. 1

48 fees of the claimant in any action brought under this chapter
49 if:

50 1. The dealer, within 30 days after receipt of the demand
51 letter, notifies the claimant in writing, and a court or
52 arbitrator agrees in any subsequently filed litigation, that the
53 amount sought in the demand letter is not reasonable in light of
54 the facts of the transaction or event described in the demand
55 letter or if the demand letter includes items and amounts not
56 properly recoverable under this chapter; or

57 2. The claimant fails to sufficiently comply with this
58 section; however, to the extent that there is a challenge to the
59 sufficiency of the demand letter, the demand letter shall be
60 deemed satisfactory if it contains sufficient information to
61 reasonably put the dealer on notice of the nature of the claim
62 and the amount and relief sought such that the dealer could
63 appropriately respond.

64 (5) The demand letter required by this section expires 30
65 days after receipt by the dealer, unless renewed by the
66 claimant, and does not place a limitation on the damages that
67 the claimant may claim in subsequently maintained civil
68 litigation, including arbitration. Payment of the damages
69 claimed in the demand letter and the required surcharge as set
70 forth in this section within 30 days of receipt of the demand
71 letter:

72 (a) Does not constitute an admission of any wrongdoing or
73 liability by the dealer.

74 (b) Is protected under s. 90.408 from introduction as
75 evidence during any civil litigation, including arbitration.



Amendment No. 1

76 (c) Releases the dealer and its employees, agents,
77 principals, sureties, and insurers from any claim, suit, or
78 other action that could be brought arising out of, or in
79 connection with, the specific transaction, event, or occurrence
80 described in the demand letter; but does not serve as a release
81 as to items of damages that are not included in the demand
82 letter and not recoverable under this chapter.

83 (6) The applicable time limitations for initiating an
84 action under this chapter are tolled for 30 days after the date
85 of delivery of the demand letter to the dealer pursuant to
86 subsection (3), or such other period agreed to in writing and
87 signed by the parties after the demand letter is received by the
88 dealer.

89 (7) This section does not apply to any action brought as a
90 class action that is ultimately certified as a class action or
91 to any action brought by the enforcing authority.

92 (8) If a claimant initiates civil litigation, including
93 arbitration, without first complying with the provisions of this
94 section, the court or arbitrator shall stay the action upon
95 timely motion until the claimant complies with this section.
96 Attorney fees and court or arbitration costs incurred by the
97 claimant before compliance with this section are not recoverable
98 under this chapter.

99 (9) This section applies only to civil litigation,
100 including arbitration, arising out of a transaction for which
101 the dealer has provided the following written notice to the
102 consumer, which must be acknowledged by the consumer, and which
103 must be in a font size no smaller than that of the predominant



Amendment No. 1

104 | text on the page in which the notice is disclosed, or if it is
105 | disclosed by itself, in a font size of at least 12 point:

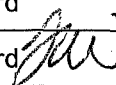

106

107 | "Section 501.98, Florida Statutes, requires that, at least
108 | 30 days before bringing any claim against a motor vehicle
109 | dealer for an unfair or deceptive trade practice, a
110 | consumer must provide the dealer with a written demand
111 | letter stating the name, address, and telephone number of
112 | the consumer; the name and address of the dealer; a
113 | description of the facts that serve as the basis for the
114 | claim; the amount of damages claimed; and copies of any
115 | documents in the possession of the consumer which relate to
116 | the claim. Such notice must be delivered by the United
117 | States Postal Service or by a nationally recognized
118 | carrier, return receipt requested, to the address where the
119 | subject vehicle was purchased or leased, where the subject
120 | transaction occurred, or any address at which the dealer
121 | regularly conducts business."

122

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 351 Application of Foreign Law in Certain Cases
SPONSOR(S): Metz and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 58

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 4 N	Ward	Bond
2) Judiciary Committee		Ward 	Havlicak 

SUMMARY ANALYSIS

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. Contracts may contain a clause which provides that disputes must be decided according to the laws of another jurisdiction, or that disputes must be adjudicated in another jurisdiction. These are known as "choice of law" and "forum selection" provisions, respectively.

Marriage contracts are enforceable as a general rule in Florida. A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract according to laws of another jurisdiction. Currently, case law holds that where foreign law frustrates the public policy of this state, it will not be enforced. This bill codifies these holdings, making clear that the public policy of Florida is to protect the constitutional rights of the parties above the enforcement of a foreign law or a forum selection clause.

The bill is limited in its application to marital dissolution proceedings and support enforcement under The Uniform Interstate Family Support Act.

Specifically, the bill:

- Defines foreign law or system as one originating from outside of the United States.
- Provides that any legal decision or contract provision is void and unenforceable if it is based upon a foreign law or system that does not grant the parties the same protections guaranteed by the state and federal constitutions.
- Provides that a forum selection clause in a contract violates the public policy of this state and is unenforceable if enforcement would result in a violation of constitutional protections.
- Provides that a claim of *forum non conveniens* must be denied if a court finds that granting the claim violates or would likely lead to a violation of any constitutional right of the non-claimant in the foreign forum.
- Acknowledges the rights of religious organizations to internal rulings.
- Acknowledges federal pre-emption in certain areas of law.
- Provides that constitutional rights may be waived, but directs that waivers will be interpreted to protect the party waiving his or her rights.

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

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. "A court may take judicial notice of . . . laws of foreign nations and of an organization of nations."¹ However, even if recognized, the laws of foreign nations are not necessarily enforced unless there is a reason to do so, usually by prior agreement of the parties.

Contracts often contain clauses which provide for dispute settlement according to the laws of a certain jurisdiction. These are known as "choice of law" provisions. These may direct interpretation or enforcement of the contract according to the laws of another state, but may require adherence to the law of another country. Contracts may also contain a "forum selection clause" providing that disputes must be decided in a particular jurisdiction. These clauses compel the court to decline jurisdiction, yielding it to the other state or country. Marital contracts (ante-nuptial and post-nuptial agreements) may contain either or both such provisions, and they are enforceable in a dissolution proceeding in Florida.

A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract or support order according to the law of another jurisdiction, or request that the case be transferred to another jurisdiction for decision. This bill addresses both types of provisions - the choice of substantive law to be applied and the choice of forum. It also covers the non-contractual situation which might cause a court to relinquish jurisdiction, i.e., a claim of forum non conveniens.² The bill is limited in its application to marital dissolution proceedings³ and support enforcement under The Uniform Interstate Family Support Act.⁴

Foreign support orders are enforced in Florida under the Uniform Interstate Family Support Act, which directs that as a general rule the law of the state issuing the order governs even if enforcement is requested in Florida.⁵ Likewise ch. 61, F.S., which governs dissolution of marriage, acknowledges the enforceability of a choice of law provision in an ante-nuptial agreement.⁶

If such provisions do not offend the public policy of Florida, they are enforceable, even if the law to be applied is different than Florida law.⁷ Historically, Florida courts have enforced a prenuptial contract according to the law of the place where it was entered into unless enforcement would be contrary to public policy or unconstitutional.⁸ For example, in *Akileh v. Elchahal*,⁹ the court enforced the parties' Islamic ante-nuptial agreement, arguably a religious arrangement, since it complied with Florida contract law and the court found nothing in the contract unconscionable.

¹ Section 90.202, F.S.

² "Forum non conveniens 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." *Kinney System, Inc., v. Continental Ins. Co.*, 674 So.2d 86 (Fla. 1996). See also s. 47.122, F.S.

³ Chapter 61, F.S.

⁴ Chapter 88, F.S.

⁵ See 28 USC sec. 1738B, which is entitled "The Full Faith and Credit for Child Support Orders Act." Federal law requires that all states recognize support orders as a matter of full faith and credit. As a side note, the recognition of a foreign support order is not absolute, but the exceptions are immaterial to this analysis.

⁶ See s. 61.079, F.S.

⁷ *McNamara v. McNamara*, 40 So.3d 78, 80 (Fla. 5th DCA 2010).

⁸ *Gessler v. Gessler*, 273 F.2d 302 (5th Cir. 1959).

⁹ 666 So.2d 246 (Fla. 2d DCA 1996).

Florida has also enacted the "Uniform Premarital Agreement Act," which directs that premarital agreements, including their choice of law provisions, are enforceable.¹⁰ Choice of law provisions in property settlement agreements are valid and enforceable pursuant to the Uniform Interstate Family Support Act.¹¹

However, despite these statutes, courts maintain that where the foreign law frustrates the public policy of this state, or is not established with specificity as a matter of fact,¹² it will not be enforced. For example, where the husband sought to enforce a Danish prenuptial agreement which left nothing to the wife in the event of divorce, the court refused, "where to do so would bring harm to a Florida citizen or would frustrate an established public policy of this state."¹³

Effect of Proposed Changes

Section 61.079, F.S., provides that choice of law provisions in premarital agreements are enforceable in Florida.¹⁴ This bill codifies current caselaw which holds generally that such agreements would not be enforced if enforcement would violate constitutional rights.

Likewise, the Uniform Interstate Family Support Act does not include support orders issued pursuant to a foreign country's law or system. It only applies to orders issued by a court in another state of the union. This bill codifies current case law, making clear that the public policy of the state in respect to all matters that might be adjudicated under these statutes is to protect constitutional rights.

The bill defines "foreign law, legal code, or system" as any law, legal code, or system of a jurisdiction outside any state or territory of the United States. The bill provides that:

- Any decision based on any law, legal code, or system that does not grant the parties affected the same fundamental liberties, rights, and privileges granted under the State Constitution and the Constitution of the United States, violates public policy of the State of Florida and is void and unenforceable.
- Any contractual provision, if severable, that provides for a choice of law, legal code, or system to govern disputes, is void and unenforceable if the system chosen includes law that would not provide the parties the same fundamental liberties, rights, and privileges guaranteed under the State Constitution and the Constitution of the United States.
- If a contractual provision provides for a choice of forum outside the state or territory of the United States and if enforcement of that choice of forum would result in a violation of any right guaranteed by the State Constitution or Constitution of the United States, then the provision must be construed to preserve the constitutional rights of the person against whom enforcement is sought.
- A claim of forum non conveniens must be denied if a court of this state finds that granting the claim violates or would likely lead to a violation of any constitutional right of the nonclaimant in the foreign forum.

These provisions only apply to actual or foreseeable denials of a natural person's constitutional rights.

¹⁰ See s. 61.079, F.S.

¹¹ See generally *Keeton v. Keeton*, 807 So.2d 186 (Fla.1st DCA 2002)(holding that property settlement agreement was enforceable in Florida with Kentucky law controlling), and *Blitz v. Florida Dept. of Revenue ex rel. Maxwell*, 898 So.2d 121, 125 (Fla. 4th DCA 2005).

¹² See *Courtlandt Corp. v. Whitmer*, 121 So.2d 57 (Fla. 2d DCA 1960); cf. *Hieber v. Hieber*, 151 So.2d 646 (Fla. 3d DCA 1963)(law of foreign state).

¹³ *Gustafson v. Jensen*, 515 So.2d 1298 (Fla. 3d DCA 1987).

¹⁴ "Parties to a premarital agreement may contract with respect to. . . the choice of law governing the construction of the agreement and any other matter, including their personal rights and obligations, not in violation of either the public policy of this state or a law imposing a criminal penalty." Section 61.079, F.S.

The bill allows for an individual to voluntarily restrict his or her fundamental liberties, rights, and privileges guaranteed by the Florida and U.S. constitutions; however, the language of any such contract or other waiver must be strictly construed in favor of preserving the individual's constitutional rights.

The bill provides that it is not to be construed to:

- Require or authorize a court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters if such adjudication or prohibition would violate art. I s. 3, Fla. Const., or the First Amendment of the U.S. Constitution.
- Conflict with any federal treaty or other international agreement to which the United States is a party and such treaty or agreement preempts state law on the matter at issue.

This bill is limited in its application to marital dissolution proceedings and support enforcement under the Uniform Interstate Family Support Act. It does not apply to a corporation, partnership, or other form of business association.

The bill contains a severability clause, providing that if any provision of this bill or its application is held invalid, the invalidity does not affect other provisions or applications of the bill.

B. SECTION DIRECTORY:

Section 1 creates s. 45.022, F.S., relating to application of foreign law contrary to public policy in certain cases.

Section 2 provides the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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:

Federal Preemption

The doctrine of preemption limits state action in any matter where legislation on the topic exists at the federal level. Article VI of the U.S. Constitution provides that the laws and treaties of the U.S. are the "Supreme Law of the Land," and, therefore, they preempt state law. Under the federal Full Faith and Credit for Child Support Orders Act,¹⁵ "each state is required to enact the Uniform Interstate Family Support Act to improve the effectiveness of child support enforcement."¹⁶ The Full Faith and Credit for Child Support Orders Act provides for modification of child support orders issued in other states, and addresses choice of law issues in respect to orders issued in another state. It does not address orders issued by another country.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"¹⁷ and the action must pose a "great potential for disruption or embarrassment"¹⁸ to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad.

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.

¹⁵ 28 U.S.C. s. 1738B(a)(1).

¹⁶ Fla. Jur. 2d, Family Law, s. 552.

¹⁷ *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).

¹⁸ *Id.* at 435.

1 A bill to be entitled
 2 An act relating to application of foreign law in
 3 certain cases; creating s. 45.022, F.S.; providing
 4 intent; defining the term "foreign law, legal code, or
 5 system"; clarifying that the public policies expressed
 6 in the act apply to violations of a natural person's
 7 fundamental liberties, rights, and privileges
 8 guaranteed by the State Constitution or the United
 9 States Constitution; providing that the act does not
 10 apply to a corporation, partnership, or other form of
 11 business association, except when necessary to provide
 12 effective relief in proceedings under or relating to
 13 chapters 61 and 88, F.S.; specifying the public policy
 14 of this state in applying the choice of a foreign law,
 15 legal code, or system under certain circumstances in
 16 proceedings brought under or relating to chapters 61
 17 and 88, F.S., which relate to dissolution of marriage,
 18 support, time-sharing, the Uniform Child Custody
 19 Jurisdiction and Enforcement Act, and the Uniform
 20 Interstate Family Support Act; declaring that certain
 21 decisions rendered under such laws, codes, or systems
 22 are void; declaring that certain choice of venue or
 23 forum provisions in a contract are void; providing for
 24 the construction of a waiver by a natural person of
 25 the person's fundamental liberties, rights, and
 26 privileges guaranteed by the State Constitution or the
 27 United States Constitution; declaring that claims of
 28 forum non conveniens or related claims must be denied

29 under certain circumstances; providing that the act
 30 may not be construed to require or authorize any court
 31 to adjudicate, or prohibit any religious organization
 32 from adjudicating, ecclesiastical matters in violation
 33 of specified constitutional provisions or to conflict
 34 with any federal treaty or other international
 35 agreement to which the United States is a party to a
 36 specified extent; providing for severability;
 37 providing an effective date.

38

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

40

41 Section 1. Section 45.022, Florida Statutes, is created to
 42 read:

43 45.022 Application of foreign law contrary to public
 44 policy in certain cases.-

45 (1) While the Legislature fully recognizes the right to
 46 contract freely under the laws of this state, it also recognizes
 47 that this right may be reasonably and rationally circumscribed
 48 pursuant to the state's interest to protect and promote
 49 liberties, rights, and privileges granted under the State
 50 Constitution or the United States Constitution.

51 (2) As used in this section, the term "foreign law, legal
 52 code, or system" means any law, legal code, or system of a
 53 jurisdiction outside any state or territory of the United
 54 States, including, but not limited to, international
 55 organizations or tribunals, and applied by that jurisdiction's
 56 courts, administrative bodies, or other formal or informal

57 tribunals. The term does not include the common law and statute
 58 laws of England as described in s. 2.01 or any laws of the
 59 Native American tribes in this state.

60 (3) (a) This section applies only to actual or foreseeable
 61 denials of a natural person's fundamental liberties, rights, and
 62 privileges guaranteed by the State Constitution or the United
 63 States Constitution from the application of a foreign law, legal
 64 code, or system in proceedings brought under, pursuant to, or
 65 pertaining to the subject matter of chapter 61 or chapter 88.

66 (b) Except as necessary to provide effective relief in
 67 proceedings brought under, pursuant to, or pertaining to the
 68 subject matter of chapter 61 or chapter 88, this section does
 69 not apply to a corporation, partnership, or other form of
 70 business association.

71 (4) Any court, arbitration, tribunal, or administrative
 72 agency ruling or decision violates the public policy of this
 73 state and is void and unenforceable if the court, arbitration,
 74 tribunal, or administrative agency bases its ruling or decision
 75 in the matter at issue in whole or in part on any foreign law,
 76 legal code, or system that does not grant the parties affected
 77 by the ruling or decision the same fundamental liberties,
 78 rights, and privileges guaranteed by the State Constitution or
 79 the United States Constitution.

80 (5) (a) A contract or contractual provision, if severable,
 81 that provides for the choice of a foreign law, legal code, or
 82 system to govern some or all of the disputes between the parties
 83 to be adjudicated by a court of law or by an arbitration panel
 84 arising from the contract violates the public policy of this

85 state and is void and unenforceable if the foreign law, legal
 86 code, or system chosen includes or incorporates any substantive
 87 or procedural law, as applied to the dispute at issue, which
 88 would not grant the parties the same fundamental liberties,
 89 rights, and privileges guaranteed by the State Constitution or
 90 the United States Constitution.

91 (b) This subsection does not limit the right of a natural
 92 person in this state to voluntarily restrict or limit his or her
 93 fundamental liberties, rights, and privileges guaranteed by the
 94 State Constitution or the United States Constitution by contract
 95 or specific waiver consistent with constitutional principles,
 96 but the language of any such contract or other waiver must be
 97 strictly construed in favor of preserving such liberties,
 98 rights, and privileges.

99 (6) (a) A contract or contractual provision, if severable,
 100 that provides for the choice of venue or choice of forum outside
 101 a state or territory of the United States violates the public
 102 policy of this state and is void and unenforceable if the
 103 enforcement of the choice of venue or forum provision would
 104 result in a violation of any fundamental liberties, rights, and
 105 privileges guaranteed by the State Constitution or the United
 106 States Constitution.

107 (b) If a natural person who is subject to personal
 108 jurisdiction in this state seeks to maintain litigation,
 109 arbitration, agency, or similarly binding proceedings in this
 110 state and the courts of this state find that granting a claim of
 111 forum non conveniens or a related claim denies or would likely
 112 lead to the denial of any fundamental liberties, rights, and

113 privileges guaranteed by the State Constitution or the United
 114 States Constitution of the nonclaimant in the foreign forum with
 115 respect to the matter in dispute, it is the public policy of
 116 this state that the claim be denied.

117 (7) This section may not be construed to:

118 (a) Require or authorize any court to adjudicate, or
 119 prohibit any religious organization from adjudicating,
 120 ecclesiastical matters, including, but not limited to, the
 121 election, appointment, calling, discipline, dismissal, removal,
 122 or excommunication of a member, officer, official, priest, nun,
 123 monk, pastor, rabbi, imam, or member of the clergy of the
 124 religious organization, or determination or interpretation of
 125 the doctrine of the religious organization, if such adjudication
 126 or prohibition would violate s. 3, Art. I of the State
 127 Constitution or the First Amendment to the United States
 128 Constitution; or

129 (b) Conflict with any federal treaty or other
 130 international agreement to which the United States is a party to
 131 the extent that such federal treaty or international agreement
 132 preempts or is superior to state law on the matter at issue.

133 (8) If any provision of this section or its application to
 134 any natural person or circumstance is held invalid, the
 135 invalidity does not affect other provisions or applications of
 136 this section which can be given effect, and to that end the
 137 provisions of this section are severable.

138 Section 2. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Metz offered the following:

4 **Amendment**

5 Remove lines 53-55 and insert:

6 foreign country, state, or nation, or subdivision thereof,
7 outside of the United States or its territories, including, but
8 not limited to, a foreign or international organization claiming
9 status as a country, state, or nation or asserting legal
10 authority to act on behalf of one or more foreign countries,
11 states, or nations, and any other similar international
12 organization or tribunal, and applied by that jurisdiction's

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 4019 Juvenile Justice
SPONSOR(S): Criminal Justice Subcommittee; Harrell
TIED BILLS: IDEN./SIM. BILLS: SB 672

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 0 N, As CS	Cox	Cunningham
2) Judiciary Committee		Cox <i>Mac</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 945.75, F.S., requires the Department of Corrections to develop programs under which a judge may order delinquent juveniles to tour state prisons in an effort to deter the juveniles from committing future crimes. The statute requires counties to develop similar programs involving county jails. These programs are commonly known as "scared straight programs." Department of Juvenile Justice (DJJ) reports that it stands to lose two-thirds of its federal funding for each scared straight tour conducted because these tours violate the Juvenile Justice and Delinquency Prevention Act.

Section 985.105, F.S., creates a position called "youth custody officer" within DJJ. Youth custody officers, which are designated as "special risk class" members for purposes of the Florida Retirement System, are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.

DJJ reports that it eliminated youth custody officer positions in July 2010, due to budget cuts, and that the duties of youth custody officers were either distributed among existing employees or were no longer performed by DJJ.

The bill repeals s. 945.75, F.S., relating to tours of state and county correctional facilities by juveniles. The bill also repeals s. 985.105, F.S., thereby eliminating the youth custody officer position and amends s. 121.0515, F.S., to remove references to youth custody officers as a position that is designated as a special risk class member.

By repealing s. 945.75, F.S., the bill keeps DJJ in compliance with the Juvenile Justice and Delinquency Prevention Act, and eligible for federal funding.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Tours of State and County Correctional Institutions

Section 945.75, F.S., requires the Department of Corrections (DOC) to develop programs under which a judge may order juveniles who have committed delinquent acts to be allowed to tour state correctional facilities under the terms and conditions established by DOC. The statute requires counties to develop similar programs involving county jails. These tour programs are commonly referred to as "scared straight programs."¹ Scared straight programs generally involve adult inmates describing the conditions associated with jail or prison incarceration to delinquent at-risk youth in a secure setting.² The goal of these programs is to modify the behavior of the juveniles by shocking, scaring, and thus deterring them from engaging in further delinquent activity.³

The Department of Juvenile Justice (DJJ) reports that it complies with the Federal Juvenile Justice and Delinquency Prevention Act of 2002. As a result of this compliance, DJJ receives between two million and eight million dollars in federal funding.⁴ DJJ reports that it stands to lose two-thirds of its federal funding because the scared straight tours violate several portions of the Juvenile Justice and Delinquency Prevention Act.⁵

Effect of the Bill

The bill repeals s. 945.75, F.S.

Youth Custody Officers

Section 985.105, F.S., creates a position called "youth custody officer" within DJJ. Youth custody officers are responsible for taking a youth into custody if the officer has probable cause to believe that the youth has:

- Violated the conditions of probation, home detention, conditional release, or postcommitment probation; or
- Failed to appear in court after being properly noticed.⁶

Youth custody officers must meet the minimum qualifications for employment or appointment, be certified under ch. 943, F.S., and comply with the requirements for continued employment required by s. 943.135, F.S.⁷ Additionally, s. 121.0515, F.S., designates youth custody officers as "special risk class" members for purposes of the Florida Retirement System.⁸

DJJ reports that it eliminated youth custody officer positions in July 2010, due to budget cuts.⁹ The duties of youth custody officers were either distributed among existing employees or were no longer performed by DJJ.¹⁰

¹ *Scared Straight Programs*, www.dcjs.virginia.gov/juvenile/compliance (last visited on February 12, 2013); *See also Scared Straight Programs: Jail and Detention Tours*, DJJ, www.djj.state.fl.us/docs/research2/scared_straight_booklet_version (last visited on February 12, 2013).

² *Id.*

³ *Id.*

⁴ Department of Juvenile Justice, 2013 Agency Proposal. On file with Criminal Justice Subcommittee.

⁵ *Id.* Specifically, the Deinstitutionalization of Status Offenders, the Sight and Sound Separation and the Jail Removal Acts.

⁶ A youth custody officer is required to inform appropriate local law enforcement agencies of anyone taken into custody pursuant to s. 985.105, F.S. Section 985.105(3), F.S.

⁷ Section 985.105(2), F.S.

⁸ Section 121.0515, F.S., creates a "special risk class" of state employees for purposes of the Florida Retirement System that earn more retirement credit per year of service. This increased credit is in recognition that they may be unable to "enjoy the full career and retirement benefits enjoyed by other membership classes" as a result of the physically demanding and high risk functions required by their jobs.

⁹ *Supra* note 5.

Effect of Bill

The bill repeals s. 985.105, F.S., thereby eliminating the youth custody officer position, and amends s. 121.0515, F.S., to remove all references to youth custody officers as a position that is designated as a special risk class member.

B. SECTION DIRECTORY:

Section 1. Repeals s. 945.75, F.S., relating to tours of state correctional facilities for juveniles.

Section 2. Repeals s. 985.105, F.S., relating to youth custody officer.

Section 2. Amends s. 121.0515, F.S., relating to Special Risk Class.

Section 3. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

By repealing s. 945.75, F.S., the bill keeps DJJ in compliance with the Juvenile Justice and Delinquency Prevention Act, and eligible for federal funding.

2. Expenditures:

According to DJJ, youth custody officers were eliminated from DJJ's budget in 2010, and their duties were redistributed among existing employees. DJJ reports that the bill will not have any fiscal impact on the department.¹¹

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.

¹⁰ *Supra* note 5.

¹¹ *Supra* note 5.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take 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 February 12, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment repealed s. 945.75, F.S., relating to tours of state and county correctional facilities by juveniles.

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 juvenile justice; repealing s.
 3 945.75, F.S.; deleting a requirement that the
 4 Department of Corrections and counties develop
 5 programs under which a judge may order juveniles who
 6 have committed delinquent acts to tour correctional
 7 facilities; repealing s. 985.105, F.S., relating to
 8 the creation, duties, and qualifications of the youth
 9 custody officer position within the Department of
 10 Juvenile Justice; amending s. 121.0515, F.S.;
 11 conforming provisions to changes made by the act;
 12 providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Section 945.75, Florida Statutes, is repealed.

17 Section 2. Section 985.105, Florida Statutes, is repealed.

18 Section 3. Paragraphs (h) through (k) of subsection (3) of
 19 section 121.0515, Florida Statutes, are redesignated as
 20 paragraphs (g) through (j) of that subsection, respectively, and
 21 paragraphs (e) through (i) of subsection (2), present paragraphs
 22 (g) and (k) of subsection (3), paragraph (b) of subsection (5),
 23 paragraph (d) of subsection (8), and paragraph (c) of subsection
 24 (10) of that section are amended to read:

25 121.0515 Special Risk Class.—

26 (2) MEMBERSHIP.—

27 ~~(e) Effective July 1, 2001, "special risk member" includes~~
 28 ~~any member who is employed as a youth custody officer by the~~

29 ~~Department of Juvenile Justice and meets the special criteria~~
 30 ~~set forth in paragraph (3) (g).~~

31 (e)~~(f)~~ Effective October 1, 2005, through June 30, 2008,
 32 the member must be employed by a law enforcement agency or
 33 medical examiner's office in a forensic discipline and meet the
 34 special criteria set forth in paragraph (3) (g) ~~(3) (h)~~.

35 (f)~~(g)~~ Effective July 1, 2008, the member must be employed
 36 by the Department of Law Enforcement in the crime laboratory or
 37 by the Division of State Fire Marshal in the forensic laboratory
 38 and meet the special criteria set forth in paragraph (3) (h)
 39 ~~(3) (i)~~.

40 (g)~~(h)~~ Effective July 1, 2008, the member must be employed
 41 by a local government law enforcement agency or medical
 42 examiner's office and meet the special criteria set forth in
 43 paragraph (3) (i) ~~(3) (j)~~.

44 (h)~~(i)~~ Effective August 1, 2008, "special risk member"
 45 includes any member who meets the special criteria for continued
 46 membership set forth in paragraph (3) (j) ~~(3) (k)~~.

47 (3) CRITERIA.—A member, to be designated as a special risk
 48 member, must meet the following criteria:

49 ~~(g) Effective July 1, 2001, the member must be employed as~~
 50 ~~a youth custody officer and be certified, or required to be~~
 51 ~~certified, in compliance with s. 943.1395. In addition, the~~
 52 ~~member's primary duties and responsibilities must be the~~
 53 ~~supervised custody, surveillance, control, investigation,~~
 54 ~~apprehension, arrest, and counseling of assigned juveniles~~
 55 ~~within the community;~~

56 (j)~~(k)~~ The member must have already qualified for and be

57 | actively participating in special risk membership under
 58 | paragraph (a), paragraph (b), or paragraph (c), must have
 59 | suffered a qualifying injury as defined in this paragraph, must
 60 | not be receiving disability retirement benefits as provided in
 61 | s. 121.091(4), and must satisfy the requirements of this
 62 | paragraph.

63 | 1. The ability to qualify for the class of membership
 64 | defined in paragraph (2) (h) ~~(2) (i)~~ occurs when two licensed
 65 | medical physicians, one of whom is a primary treating physician
 66 | of the member, certify the existence of the physical injury and
 67 | medical condition that constitute a qualifying injury as defined
 68 | in this paragraph and that the member has reached maximum
 69 | medical improvement after August 1, 2008. The certifications
 70 | from the licensed medical physicians must include, at a minimum,
 71 | that the injury to the special risk member has resulted in a
 72 | physical loss, or loss of use, of at least two of the following:
 73 | left arm, right arm, left leg, or right leg; and:

74 | a. That this physical loss or loss of use is total and
 75 | permanent, except in the event that the loss of use is due to a
 76 | physical injury to the member's brain, in which event the loss
 77 | of use is permanent with at least 75 percent loss of motor
 78 | function with respect to each arm or leg affected.

79 | b. That this physical loss or loss of use renders the
 80 | member physically unable to perform the essential job functions
 81 | of his or her special risk position.

82 | c. That, notwithstanding this physical loss or loss of
 83 | use, the individual is able to perform the essential job
 84 | functions required by the member's new position, as provided in

85 | subparagraph 3.

86 | d. That use of artificial limbs is either not possible or
 87 | does not alter the member's ability to perform the essential job
 88 | functions of the member's position.

89 | e. That the physical loss or loss of use is a direct
 90 | result of a physical injury and not a result of any mental,
 91 | psychological, or emotional injury.

92 | 2. For the purposes of this paragraph, "qualifying injury"
 93 | means an injury sustained in the line of duty, as certified by
 94 | the member's employing agency, by a special risk member that
 95 | does not result in total and permanent disability as defined in
 96 | s. 121.091(4)(b). An injury is a qualifying injury if the injury
 97 | is a physical injury to the member's physical body resulting in
 98 | a physical loss, or loss of use, of at least two of the
 99 | following: left arm, right arm, left leg, or right leg.

100 | Notwithstanding any other provision of this section, an injury
 101 | that would otherwise qualify as a qualifying injury is not
 102 | considered a qualifying injury if and when the member ceases
 103 | employment with the employer for whom he or she was providing
 104 | special risk services on the date the injury occurred.

105 | 3. The new position, as described in sub-subparagraph
 106 | 1.c., that is required for qualification as a special risk
 107 | member under this paragraph is not required to be a position
 108 | with essential job functions that entitle an individual to
 109 | special risk membership. Whether a new position as described in
 110 | sub-subparagraph 1.c. exists and is available to the special
 111 | risk member is a decision to be made solely by the employer in
 112 | accordance with its hiring practices and applicable law.

113 4. This paragraph does not grant or create additional
 114 rights for any individual to continued employment or to be hired
 115 or rehired by his or her employer that are not already provided
 116 within the Florida Statutes, the State Constitution, the
 117 Americans with Disabilities Act, if applicable, or any other
 118 applicable state or federal law.

119 (5) REMOVAL OF SPECIAL RISK CLASS MEMBERSHIP.—

120 (b) Any member who is a special risk member on July 1,
 121 2008, and who became eligible to participate under paragraph
 122 (3) (g) ~~(3) (h)~~ but fails to meet the criteria for Special Risk
 123 Class membership established by paragraph (3) (h) ~~(3) (i)~~ or
 124 paragraph (3) (i) ~~(3) (j)~~ shall have his or her special risk
 125 designation removed and thereafter shall be a Regular Class
 126 member and earn only Regular Class membership credit. The
 127 department may review the special risk designation of members to
 128 determine whether or not those members continue to meet the
 129 criteria for Special Risk Class membership.

130 (8) SPECIAL RISK ADMINISTRATIVE SUPPORT CLASS.—

131 (d) Notwithstanding any other provision of this
 132 subsection, this subsection does not apply to any special risk
 133 member who qualifies for continued membership pursuant to
 134 paragraph (3) (j) ~~(3) (k)~~.

135 (10) CREDIT FOR UPGRADED SERVICE.—

136 (c) Any member of the Special Risk Class who has earned
 137 creditable service through June 30, 2008, in another membership
 138 class of the Florida Retirement System in a position with the
 139 Department of Law Enforcement or the Division of State Fire
 140 Marshal and became covered by the Special Risk Class as

141 described in paragraph (3) (h) ~~(3) (i)~~, or with a local government
 142 law enforcement agency or medical examiner's office and became
 143 covered by the Special Risk Class as described in paragraph
 144 (3) (i) ~~(3) (j)~~, which service is within the purview of the
 145 Special Risk Class, and is employed in such position on or after
 146 July 1, 2008, may purchase additional retirement credit to
 147 upgrade such service to Special Risk Class service, to the
 148 extent of the percentages of the member's average final
 149 compensation provided in s. 121.091(1)(a)2. The cost for such
 150 credit must be an amount representing the actuarial accrued
 151 liability for the difference in accrual value during the
 152 affected period of service. The cost shall be calculated using
 153 the discount rate and other relevant actuarial assumptions that
 154 were used to value the Florida Retirement System Pension Plan
 155 liabilities in the most recent actuarial valuation. The division
 156 shall ensure that the transfer sum is prepared using a formula
 157 and methodology certified by an enrolled actuary. The cost must
 158 be paid immediately upon notification by the division. The local
 159 government employer may purchase the upgraded service credit on
 160 behalf of the member if the member has been employed by that
 161 employer for at least 3 years.

162 Section 4. This act shall take effect July 1, 2013.