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# **Judiciary Committee**

**March 28, 2013**

**10:30 AM**

**404 HOB**

**Meeting Packet**

**Will Weatherford  
Speaker**

**Dennis Baxley  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Thursday, March 28, 2013 10:30 am  
**End Date and Time:** Thursday, March 28, 2013 12:30 pm  
**Location:** 404 HOB  
**Duration:** 2.00 hrs

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

HB 87 Mortgage Foreclosures by Passidomo  
CS/HB 361 Public Meetings/Criminal Justice Commissions by Criminal Justice Subcommittee, Kerner  
CS/CS/HB 405 Garnishment by Insurance & Banking Subcommittee, Civil Justice Subcommittee, Spano, Grant  
CS/CS/HB 457 Collection of Worthless Payment Instruments by Business & Professional Regulation Subcommittee, Civil Justice Subcommittee, Magar  
HM 545 Right to Keep and Bear Arms by Combee  
CS/HB 607 Canned or Perishable Food Distributed Free of Charge by Civil Justice Subcommittee, Rogers  
HB 727 Liens on Personal Property in Self-Service Storage Facilities & Self-Contained Storage Units by Caldwell  
HB 757 Mandatory Reports of Child Abuse by Hood  
CS/HB 775 Jurisdiction of the Courts by Civil Justice Subcommittee, Santiago  
CS/HB 903 Adverse Possession by Civil Justice Subcommittee, Davis, Waldman  
CS/HB 995 Conveyances of Real Property by Civil Justice Subcommittee, Broxson  
CS/HB 1355 Purchase of Firearms by Mentally Ill Persons by Criminal Justice Subcommittee, Watson, B.

**NOTICE FINALIZED on 03/26/2013 16:20 by Jones.Missy**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 87 Mortgage Foreclosures  
**SPONSOR(S):** Passidomo and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 1666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 3 N	Cary	Bond
2) Justice Appropriations Subcommittee	9 Y, 2 N	McAuliffe	Jones Darity
3) Judiciary Committee		Cary JMC	Havlicak RN

### SUMMARY ANALYSIS

The foreclosure crisis has impacted Florida's economy and negatively affected the judicial branch in terms of both funding and caseload. Foreclosing on a mortgage in Florida is a lengthy process. The average time between the first foreclosure filing and bank repossession is 853 days while the national average is 414 days.

Current law provides for an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.

As to foreclosure of real property, the bill:

- Reduces the statute of limitations for deficiency judgments on a foreclosure action from five years to one year and limits the recoverable amount of the deficiency in some cases.
- Requires the plaintiff in a foreclosure action to provide information to the court upon filing of the case regarding a lost, destroyed or stolen promissory note.
- Provides finality of a mortgage foreclosure judgment for certain purchasers of a property at a foreclosure sale while allowing for monetary damages.
- Amends the expedited foreclosure process to allow any lienholder, instead of just the mortgagee, to use the procedures; reduces the number of hearings from 2 to 1; and prohibits service by publication when using the expedited process unless the property is abandoned.
- Allows any party to request a case management conference to expedite the lawsuit.
- Defines adequate protections where there is a lost, destroyed or stolen note.

The bill applies to existing mortgages and to pending cases.

This bill may result in a short term increase in the workload of the courts and an increase in revenues from filing fees. See fiscal comments section.

The bill provides an effective date of upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

The foreclosure crisis has greatly impacted the economy of the state of Florida. It has also negatively affected the judicial branch in terms of both funding and caseload. Florida has the largest share of foreclosure inventory of any state in the nation, with 305,766 properties in some stage of foreclosure or bank-owned as of the end of 2012.<sup>1</sup> Seven of the top 10 highest foreclosure markets in the nation are in Florida, with Palm-Bay-Melbourne-Titusville having the highest rate of foreclosure of any metro area in the nation.<sup>2</sup>

Foreclosing on a mortgage in Florida is an unusually long process. Florida trails only New York and New Jersey in terms of the length of time between the first foreclosure filing and bank repossession, at 853 days. The national average is less than half that, at 414 days.<sup>3</sup>

The state court system is struggling with a backlog of foreclosure cases. In 2005, before the housing market crash, there were only 57,106 foreclosure filings statewide. By 2009, the number of filings exploded to 399,118. Courts did not have the resources to quickly and efficiently deal with this litigation explosion. Due to constitutional and statutory requirements to provide speedy trials to criminal defendants, civil filings take the brunt of any caseload backlog.<sup>4</sup> There had been a significant decline in filings in fiscal year 2010-11 due to problems with title and the robo-signing situation<sup>5</sup>, with only 155,380 filings, compared to 338,281 in 2009-10 and a peak of 403,473 in 2008-09, but filings have begun to increase as those issues are worked out by mortgage servicers, with 186,651 filings in 2011-12 and more expected this year.<sup>6</sup>

Furthermore, the caseload backlog is not spread evenly across the state. While the statewide average is 11.02% of residential loans in foreclosure, certain areas, particularly those located in South Florida, have a much greater percentage of loans in foreclosure than other circuits. For instance, Miami-Dade has 15.56% of loans in foreclosure compared to only 5.26% in Sumter County.<sup>7</sup>

##### Foreclosure Procedure

The foreclosure procedure is governed by statutory process and the Florida Rules of Civil Procedure. It is initiated by the lender or servicer, known as a mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an 'acceleration clause,' which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction. The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

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<sup>1</sup> RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Florida Office of the State Courts Administrator, *Summary Reporting System (SRS)*, August 19, 2011.

<sup>5</sup> Susan Miller, *RealtyTrac: Robo-signing Scandal Cuts into 2010 Foreclosures*, South Florida Business Journal, January 13, 2011. <http://www.bizjournals.com/southflorida/news/2011/01/13/realtytrac-robo-signing-scandal-cuts.html> (last viewed February 1, 2013).

<sup>6</sup> RealtyTrac, 4th quarter data, presented to the Civil Justice Subcommittee by the Legislature's Office of Demographics and Research on January 24, 2013.

<sup>7</sup> *Id.*

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint<sup>8</sup>, which must allege that the plaintiff is the present owner and holder of the note and mortgage<sup>9</sup>, contain a copy of the note and mortgage<sup>10</sup>, and allege a statement of default<sup>11</sup>, along with a filing fee<sup>12</sup> and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.<sup>13</sup>
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.<sup>14</sup>
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.<sup>15</sup>
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.<sup>16</sup>
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.<sup>17</sup>
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.<sup>18</sup>
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.<sup>19</sup>
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least five days prior to the sale.<sup>20</sup>
- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.<sup>21</sup>
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.<sup>22</sup>
- After 10 days, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure<sup>23</sup>, and the court may, in its discretion, enter a deficiency decree in the amount of the fair market value of the security received and the amount of the debt.<sup>24</sup>

### Alternative Foreclosure Procedure

Section 702.10, F.S., creates an alternative procedure that is designed to speed up the foreclosure process in uncontested cases or cases where there is no legitimate defense. The following is a brief outline of this alternative foreclosure process:

<sup>8</sup> Rule 1.944, Fla. R. Civ. P.

<sup>9</sup> *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

<sup>10</sup> Rule 1.130(a), Fla. R. Civ. P.

<sup>11</sup> *Siahpoosh v. Nor Props.*, 666 So.2d 988, 989 (Fla. 4th DCA 1996).

<sup>12</sup> The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(d), F.S.

<sup>13</sup> Section 48.23, F.S.

<sup>14</sup> Rule 1.070(j), Fla. R. Civ. P. See also chs. 48 and 49, F.S.

<sup>15</sup> Rule 1.040(a)(1), Fla. R. Civ. P.

<sup>16</sup> Rule 1.1510(a), Fla. R. Civ. P.

<sup>17</sup> Section 45.031, F.S.

<sup>18</sup> Section 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.

<sup>19</sup> Section 45.031(1)(a), F.S.

<sup>20</sup> Section 45.031, F.S.

<sup>21</sup> Section 45.031(8), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 45.031, F.S.

<sup>24</sup> Section 702.06, F.S.

- After a complaint has been filed, the plaintiff may request an order to show cause for the entry of final judgment and the court must immediately review the complaint.<sup>25</sup>
- If the court finds that the complaint is verified, and alleges a proper cause of action, the court must issue an order directing the defending the show cause why a final judgment should not be entered.<sup>26</sup>
- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication, and no later than 60 days after the date of service.<sup>27</sup>
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.<sup>28</sup>
- The court need not hold a hearing for determination of reasonable attorney fees if the requested fees do not exceed 3% of the principal owed on the note at the time of filing.<sup>29</sup>
- The court may enter a final judgment if the defendant has waived the right to be heard or has not shown cause why a final judgment should not be entered.<sup>30</sup>

Additionally, if the property is not residential real estate, the plaintiff may request a court order directing the defendant to show cause why an order to make payments during the pendency of the proceedings or an order to vacate the premises should not be entered.<sup>31</sup>

- The order must set a date and time for the hearing, not sooner than 20 days after the service of the order, or 30 days if service is obtained by publication.<sup>32</sup>
- The defendant can file defenses by a motion or by sworn or verified answer or appear at the hearing, which prevents entry of a final judgment.<sup>33</sup>
- The court may enter an order requiring payment or an order to vacate if the defendant has waived the right to be heard.<sup>34</sup>
- If the court finds that the defendant has not waived the right to be heard, after reviewing affidavits and evidence, the court can determine if the plaintiff is likely to prevail in the foreclosure action, and enter an order requiring the defendant to make the payments or provide another remedy.<sup>35</sup>
- The court order must be stayed pending final adjudication of the claims if the defendant posts bond with the court in the amount equal to the unpaid balance of the mortgage.<sup>36</sup>

## Effect of the Bill

### Alternative Foreclosure Procedure

The bill amends s. 702.10, F.S., the alternative foreclosure procedure, as follows:

- Any lienholder, not just the mortgagee, may initiate the procedure.
- Upon filing, the court must immediately review the request and the court filing in chambers without a hearing.

<sup>25</sup> Section 702.10(1), F.S.

<sup>26</sup> *Id.* While this appears to create a right to the order to show cause, many courts interpret this subsection to require an initial hearing.

<sup>27</sup> Section 702.10(1)(a), F.S.

<sup>28</sup> Section 702.10(1)(b), F.S.

<sup>29</sup> Section 702.10(1)(c), F.S.

<sup>30</sup> Section 702.10(1)(d), F.S.

<sup>31</sup> Section 702.10(2), F.S.

<sup>32</sup> Section 702.10(2)(a), F.S.

<sup>33</sup> Section 702.10(2)(b), F.S.

<sup>34</sup> Section 702.10(2)(c), F.S.

<sup>35</sup> Section 702.10(2)(d), F.S.

<sup>36</sup> *Id.*

- If the court finds that the complaint is verified, complies with s. 702.015, F.S., and alleges a cause of action, the court must promptly issue an order to show cause why a final judgment should not be entered.
- The date for the hearing may not occur sooner than the later of 20 days after service of the order or 45 days after the service of the initial complaint, or no sooner than 30 days after the first publication if service is obtained by publication.
- The order to show cause must state that if a defendant files defenses, the hearing time will be used to hear and consider the defendant's motion and arguments. The order must state that the court may enter an order of final judgment of foreclosure at the hearing, and if such a determination is made, the court must enter a final judgment ordering the clerk of the court to conduct a foreclosure sale.
- If the court finds that all defendants have waived the right to be heard, the court may enter a final judgment of foreclosure without the need for further hearing if the plaintiff is entitled to a final judgment and upon filing of the original note or satisfaction of the conditions for establishing a lost note or upon a showing that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument.
- The bill includes legislative intent that the alternative procedure may run simultaneously with other court procedures.

The bill provides new provisions relating to court orders requiring the defendant to show cause why an order to make payments during the pendency of the foreclosure proceedings or an order to vacate the premises should not be entered:

- The court may order the defendant to make payments or to vacate the property in addition to any other relief that the court may order.
- A residential property is subject to this relief unless it is an owner-occupied residence. However the bill provides a rebuttable presumption that a homestead property is an owner-occupied residential property.

The bill also requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity with s. 702.10, F.S.

#### Adequate Protections for Lost, Destroyed, or Stolen Notes in a Mortgage Foreclosure

The bill creates s. 702.11, F.S., providing reasonable means of providing adequate protection under s. 673.3091, F.S., which is the statutory provision relating to the enforcement of a lost, destroyed or stolen instrument. As it relates to a mortgage foreclosure, adequate protection would include:

- A written indemnification agreement by a person reasonably believe to be sufficiently solvent to honor such an obligation;
- A surety bond;
- A letter of credit issued by a financial institution;
- A deposit of cash collateral with the clerk of the court; or
- Such other security as the court may deem appropriate under the circumstances.

Any security given must be on terms and in amounts set by the court and must run through the applicable statute of limitations for enforcement of the note. The security also must indemnify the maker of the note against any loss or damage that might occur by reason of a claim by another person to enforce the note. Recovery of damages and costs and attorney fees may be sought against the person who wrongly claims to be the holder of a lost, stolen, or destroyed note or against the adequate protections described above. The actual holder of the note need not pursue recovery against the maker of the note or any guarantor.



## Deficiency Judgments

Under current law, a lender has 5 years from the foreclosure sale to file a deficiency action.<sup>37</sup> This bill amends s. 95.11, F.S., to provide a one-year statute of limitations for an action to enforce a claim of a deficiency related to a note secured by a mortgage against residential property that is a one-family to four-family dwelling unit. The limitations period begins on the 11th day after a foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

This bill amends s. 702.06, F.S., to limit a deficiency decree to the difference between the judgment amount, or in the case of a short sale, the outstanding debt, and the fair market value of the property on the date of sale. This appears to codify the current practice of the courts when rendering a deficiency judgment.<sup>38</sup> The bill also eliminates the common law recovery of such a deficiency when the court in the foreclosure action grants or denies a claim for a deficiency judgment. This provision appears to simplify the language of the current law without providing a substantive change in the law.<sup>39</sup>

## Lost, Destroyed or Stolen Notes

The bill creates s. 702.015, F.S., to provide that every complaint in a foreclosure proceeding on residential real property designed principally for one to four families must contain affirmative allegations expressly made by the plaintiff that the plaintiff is the holder of the original note or must allege with specificity the factual basis by which the plaintiff is a person entitled to enforce the note. If the plaintiff is not the holder of the note, the complaint must describe the authority of the plaintiff and identify the document that grants the plaintiff the authority to file the complaint on behalf of the holder of the note.

The plaintiff must file either the original promissory note or certification that the plaintiff is in physical possession of the original note, unless it is lost, destroyed or stolen. In such a case, the complaint must contain an affidavit that details a clear chain of all assignments or endorsements of the promissory note, set forth facts showing the plaintiff is entitled to enforce the note, and include exhibits providing evidence of the acquisition, ownership and possession of the note. The bill requires adequate protection to the plaintiff under the Uniform Commercial Code (UCC).<sup>40</sup>

## Finality of Mortgage Foreclosure Judgment

The bill creates s. 702.036, F.S., to provide for finality of mortgage foreclosure judgments. This provision protects bona fide purchasers of a property at a foreclosure sale and ensures the validity of the title where a party seeks to set aside, invalidate, or challenge the validity of a final judgment or to establish or reestablish a lien. Under current law, an innocent purchaser could be at risk of losing a property he or she purchased in good faith. Under this bill, as long as the party seeking relief was properly served, final judgment was entered, and the appeals periods have run as to the final judgment with no appeals having been filed, and the purchaser was not affiliated with the foreclosing lender or owner, the party may recover monetary damages, but may not disturb the title, thus protecting the innocent purchaser and providing security in title. The bill does not limit the right to other forms of relief that do not adversely affect the ownership of title.

After foreclosure of a mortgage based on a lost, destroyed or stolen note, a person who was not a party to the foreclosure action but claims to be the actual holder of the note has no claim against the property

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<sup>37</sup> Section 95.11(2), F.S.

<sup>38</sup> See *Trustees of Central States Southeast and Southwest Areas, Pension Fund v. Indico Corp.*, 401 So.2d 904 (Fla 1<sup>st</sup> DCA 1981).

<sup>39</sup> See *Cragin v. Ocean & Lake Realty Co.*, 101 So. 795 (Fla. 1931).

<sup>40</sup> Section 673.3091, F.S., contains the provision relating to the enforcement of lost, destroyed, or stolen instruments. This provision was adopted as part of the Uniform Commercial Code (UCC). The UCC comments on the provision, as reported by Florida Statutes Annotated, indicate that adequate protection is a "flexible concept," and "the type of adequate protection that is reasonable in the circumstances may depend on the degree of certainty about the facts in the case."

after it is conveyed to a bona fide purchaser for valuable consideration who is not affiliated with the foreclosing lender or owner. However, the actual holder may pursue recovery from any adequate protection as required by the UCC.<sup>41</sup> The actual holder may also pursue damages from the party who wrongfully claimed to be the owner or holder of the promissory note, from the maker of the note, or any other person against whom the actual holder may have a claim.

**B. SECTION DIRECTORY:**

Section 1 amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2 provides dates of application for section 1 of the bill.

Section 3 creates s. 702.015, F.S., relating to elements of complaint; lost, destroyed or stolen note affidavit.

Section 4 creates s. 702.036, F.S., relating to finality of mortgage foreclosure judgment.

Section 5 amends s. 702.06, F.S., relating to deficiency decree; common-law suit to recover deficiency.

Section 6 amends s. 702.10, F.S., relating to order to show cause; entry of final judgment of foreclosure; payment during foreclosure.

Section 7 creates s. 702.11, F.S., relating to adequate protections for lost, destroyed, or stolen notes in mortgage foreclosure.

Section 8 provides legislative findings that some of the provisions of the bill are remedial in nature while others apply to causes of action pending on the effective date of the act.

Section 9 provides an effective date of upon becoming a law.

**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:

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.

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<sup>41</sup> *Id.*

**D. FISCAL COMMENTS:**

The Office of State Court Administrator (OSCA) has indicated that they anticipate a short-term increase in court workload due to provisions of the bill which allow additional lienholders to seek show cause orders under the modified foreclosure procedures and due to the provisions of the bill which shorten the statute of limitations for bringing actions to enforce claims of deficiency. OSCA indicates that there is insufficient data to establish the extent of the increased workload. OSCA indicates that the expedited foreclosure process may result in a reduction in court workload over the long-term.

OSCA also indicates that the spike in filings due to a shortened statute of limitations for bringing actions to enforce claims of efficiency may result in an increase in 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 appear to create a need for rulemaking. The bill requests that the Supreme Court amend the Rules of Civil Procedure to provide for expedited foreclosure proceedings and related forms in conformity to s. 702.10, F.S.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to mortgage foreclosures; amending s.  
 3           95.11, F.S.; revising the limitations period for  
 4           commencing an action to enforce a claim of a  
 5           deficiency judgment after a foreclosure action;  
 6           providing for applicability to existing causes of  
 7           action; creating s. 702.015, F.S.; providing  
 8           legislative intent; specifying required contents of a  
 9           complaint seeking to foreclose on certain types of  
 10          residential properties with respect to the authority  
 11          of the plaintiff to foreclose on the note and the  
 12          location of the note; authorizing sanctions against  
 13          plaintiffs who fail to comply with complaint  
 14          requirements; providing for nonapplicability to  
 15          proceedings involving timeshare interests; creating s.  
 16          702.036, F.S.; requiring a court to treat a collateral  
 17          attack on a final judgment of foreclosure on a  
 18          mortgage as a claim for monetary damages under certain  
 19          circumstances; prohibiting such court from granting  
 20          certain relief affecting title to the foreclosed  
 21          property; providing for construction relating to the  
 22          rights of certain persons to seek specified types of  
 23          relief or pursue claims against the foreclosed  
 24          property under certain circumstances; amending s.  
 25          702.06, F.S.; limiting the amount of a deficiency  
 26          judgment; amending s. 702.10, F.S.; revising the class  
 27          of persons authorized to move for expedited  
 28          foreclosure to include lienholders; defining the term

29 "lienholder"; providing requirements and procedures  
 30 with respect to an order directed to defendants to  
 31 show cause why a final judgment of foreclosure should  
 32 not be entered; providing that certain failures by a  
 33 defendant to make certain filings or to make certain  
 34 appearances may have specified legal consequences;  
 35 requiring the court to enter a final judgment of  
 36 foreclosure and order a foreclosure sale under certain  
 37 circumstances; revising a restriction on a mortgagee  
 38 to request a court to order a mortgagor defendant to  
 39 make payments or to vacate the premises during an  
 40 action to foreclose on residential real estate to  
 41 provide that the restriction applies to all but owner-  
 42 occupied residential property; providing a presumption  
 43 regarding owner-occupied residential property;  
 44 requesting the Supreme Court to adopt rules and forms  
 45 for use in expedited foreclosure proceedings; creating  
 46 s. 702.11, F.S.; providing requirements for reasonable  
 47 means of providing adequate protection under s.  
 48 673.3091, F.S., in mortgage foreclosures of certain  
 49 residential properties; providing for liability of  
 50 persons who wrongly claim to be holders of or entitled  
 51 to enforce a lost, stolen, or destroyed note and cause  
 52 the mortgage secured thereby to be foreclosed in  
 53 certain circumstances; providing for construction and  
 54 applicability; providing an effective date.

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

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Section 1. Paragraph (b) of subsection (2) of section 95.11, Florida Statutes, is amended, and paragraph (h) is added to subsection (5) of that section, to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(2) WITHIN FIVE YEARS.—

(b) A legal or equitable action on a contract, obligation, or liability founded on a written instrument, except for an action to enforce a claim against a payment bond, which shall be governed by the applicable provisions of paragraph (5)(e), s. 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an action for a deficiency judgment governed by paragraph (5)(h).

(5) WITHIN ONE YEAR.—

(h) An action to enforce a claim of a deficiency related to a note secured by a mortgage against a residential property that is a one-family to four-family dwelling unit. The limitations period shall commence on the 11th day after the foreclosure sale or the day after the mortgagee accepts a deed in lieu of foreclosure.

Section 2. The amendments made by this act to s. 95.11, Florida Statutes, apply to any action commenced on or after July 1, 2013, regardless of when the cause of action accrued, except that any action that would not have been barred under s. 95.11(2)(b), Florida Statutes, before the amendments made by this act may be commenced no later than 5 years after the action accrued but in no event later than July 1, 2014, and if the

85 action is not commenced by that date, it is barred by the  
 86 amendments made by this act.

87 Section 3. Section 702.015, Florida Statutes, is created  
 88 to read:

89 702.015 Elements of complaint; lost, destroyed, or stolen  
 90 note affidavit.—

91 (1) The Legislature intends that this section expedite the  
 92 foreclosure process by ensuring initial disclosure of a  
 93 plaintiff's status and the facts supporting that status, thereby  
 94 ensuring the availability of documents necessary to the  
 95 prosecution of the case.

96 (2) A complaint that seeks to foreclose a mortgage or  
 97 other lien on residential real property, including individual  
 98 units of condominiums and cooperatives, designed principally for  
 99 occupation by from one to four families which secures a  
 100 promissory note must:

101 (a) Contain affirmative allegations expressly made by the  
 102 plaintiff at the time the proceeding is commenced that the  
 103 plaintiff is the holder of the original note secured by the  
 104 mortgage; or

105 (b) Allege with specificity the factual basis by which the  
 106 plaintiff is a person entitled to enforce the note under s.  
 107 673.3011.

108 (3) If a party has been delegated the authority to  
 109 institute a mortgage foreclosure action on behalf of the holder  
 110 of the note, the complaint shall describe the authority of the  
 111 plaintiff and identify, with specificity, the document that  
 112 grants the plaintiff the authority to act on behalf of the

113 holder of the note. This subsection is intended to require  
 114 initial disclosure of status and pertinent facts and not to  
 115 modify law regarding standing or real parties in interest.

116 (4) If the plaintiff is in physical possession of the  
 117 original promissory note, the plaintiff must file with the  
 118 court, contemporaneously with and as a condition precedent to  
 119 the filing of the complaint for foreclosure, certification,  
 120 under penalty of perjury, that the plaintiff is in physical  
 121 possession of the original promissory note. The certification  
 122 must set forth the physical location of the note, the name and  
 123 title of the individual giving the certification, the name of  
 124 the person who personally verified such physical possession, and  
 125 the time and date on which the possession was verified. Correct  
 126 copies of the note and all allonges to the note must be attached  
 127 to the certification. The original note and the allonges must be  
 128 filed with the court before the entry of any judgment of  
 129 foreclosure or judgment on the note.

130 (5) If the plaintiff seeks to enforce a lost, destroyed,  
 131 or stolen instrument, an affidavit executed under penalty of  
 132 perjury must be attached to the complaint. The affidavit must:

133 (a) Detail a clear chain of all endorsements or  
 134 assignments of the promissory note that is the subject of the  
 135 action.

136 (b) Set forth facts showing that the plaintiff is entitled  
 137 to enforce a lost, destroyed, or stolen instrument pursuant to  
 138 s. 673.3091. Adequate protection as required under s.  
 139 673.3091(2) shall be provided before the entry of final  
 140 judgment.



141 (c) Include as exhibits to the affidavit such copies of  
 142 the note and the allonges to the note, audit reports showing  
 143 physical receipt of the original note, or other evidence of the  
 144 acquisition, ownership, and possession of the note as may be  
 145 available to the plaintiff.

146 (6) The court may sanction the plaintiff for failure to  
 147 comply with this section.

148 (7) This section does not apply to any foreclosure  
 149 proceeding involving timeshare interests under part III of  
 150 chapter 721.

151 Section 4. Section 702.036, Florida Statutes, is created  
 152 to read:

153 702.036 Finality of mortgage foreclosure judgment.-

154 (1)(a) In any action or proceeding in which a party seeks  
 155 to set aside, invalidate, or challenge the validity of a final  
 156 judgment of foreclosure of a mortgage or to establish or  
 157 reestablish a lien or encumbrance on the property in abrogation  
 158 of the final judgment of foreclosure of a mortgage, the court  
 159 shall treat such request solely as a claim for monetary damages  
 160 and may not grant relief that adversely affects the quality or  
 161 character of the title to the property, if:

162 1. The party seeking relief from the final judgment of  
 163 foreclosure of the mortgage was properly served in the  
 164 foreclosure lawsuit as provided in chapter 48 or chapter 49.

165 2. The final judgment of foreclosure of the mortgage was  
 166 entered as to the property.

167 3. All applicable appeals periods have run as to the final  
 168 judgment of foreclosure of the mortgage with no appeals having

169 been taken or any appeals having been finally resolved.

170 4. The property has been acquired for value, by a person  
 171 not affiliated with the foreclosing lender or the foreclosed  
 172 owner, at a time in which no lis pendens regarding the suit to  
 173 set aside, invalidate, or challenge the foreclosure appears in  
 174 the official records of the county where the property was  
 175 located.

176 (b) This subsection does not limit the right to pursue any  
 177 other relief to which a person may be entitled, including, but  
 178 not limited to, compensatory damages, punitive damages,  
 179 statutory damages, consequential damages, injunctive relief, or  
 180 fees and costs, which does not adversely affect the ownership of  
 181 the title to the property as vested in the unaffiliated  
 182 purchaser for value.

183 (2) For purposes of this section, the following, without  
 184 limitation, shall be considered persons affiliated with the  
 185 foreclosing lender:

186 (a) The foreclosing lender or any loan servicer for the  
 187 loan being foreclosed;

188 (b) Any past or present owner or holder of the loan being  
 189 foreclosed;

190 (c) Any maintenance company, holding company, foreclosure  
 191 services company, or law firm under contract to any entity  
 192 listed in paragraph (a), paragraph (b), or this paragraph, with  
 193 regard to the loan being foreclosed; or

194 (d) Any parent entity, subsidiary, or other person who  
 195 directly, or indirectly through one or more intermediaries,  
 196 controls or is controlled by, or is under common control with,

197 any entity listed in paragraph (a), paragraph (b), or paragraph  
 198 (c).

199 (3) After foreclosure of a mortgage based upon the  
 200 enforcement of a lost, destroyed, or stolen note, a person who  
 201 is not a party to the underlying foreclosure action but who  
 202 claims to be the actual holder of the promissory note secured by  
 203 the foreclosed mortgage has no claim against the foreclosed  
 204 property after it is conveyed for valuable consideration to a  
 205 person not affiliated with the foreclosing lender or the  
 206 foreclosed owner. This section does not preclude the actual  
 207 holder of the note from pursuing recovery from any adequate  
 208 protection given pursuant to s. 673.3091 or from the party who  
 209 wrongfully claimed to be the owner or holder of the promissory  
 210 note under s. 702.11(2) or otherwise, from the maker of the  
 211 note, or from any other person against whom it may have a claim  
 212 relating to the note.

213 Section 5. Section 702.06, Florida Statutes, is amended to  
 214 read:

215 702.06 Deficiency decree; common-law suit to recover  
 216 deficiency.—In all suits for the foreclosure of mortgages  
 217 heretofore or hereafter executed the entry of a deficiency  
 218 decree for any portion of a deficiency, should one exist, may  
 219 not exceed the difference between the judgment amount, or in the  
 220 case of a short sale, the outstanding debt, and the fair market  
 221 value of the property on the date of sale. ~~shall be within the~~  
 222 ~~sound judicial discretion of the court, but~~ The complainant  
 223 shall also have the right to sue at common law to recover such  
 224 deficiency, unless the court in the foreclosure action has

225 ~~granted or denied a claim for a deficiency judgment provided no~~  
 226 ~~suit at law to recover such deficiency shall be maintained~~  
 227 ~~against the original mortgagor in cases where the mortgage is~~  
 228 ~~for the purchase price of the property involved and where the~~  
 229 ~~original mortgagee becomes the purchaser thereof at foreclosure~~  
 230 ~~sale and also is granted a deficiency decree against the~~  
 231 ~~original mortgagor.~~

232 Section 6. Section 702.10, Florida Statutes, is amended to  
 233 read:

234 702.10 Order to show cause; entry of final judgment of  
 235 foreclosure; payment during foreclosure.—

236 (1) A lienholder ~~After a complaint in a foreclosure~~  
 237 ~~proceeding has been filed, the mortgagee may request an order to~~  
 238 ~~show cause for the entry of final judgment in a foreclosure~~  
 239 ~~action. For purposes of this section, the term "lienholder"~~  
 240 ~~includes the plaintiff and a defendant to the action who holds a~~  
 241 ~~lien encumbering the property or a defendant who, by virtue of~~  
 242 ~~its status as a condominium association, cooperative~~  
 243 ~~association, or homeowners' association, may file a lien against~~  
 244 ~~the real property subject to foreclosure. Upon filing, and the~~  
 245 ~~court shall immediately review the request and the court file in~~  
 246 ~~chambers and without a hearing complaint.~~ If, upon examination  
 247 of the court file ~~complaint~~, the court finds that the complaint  
 248 is verified, complies with s. 702.015, and alleges a cause of  
 249 action to foreclose on real property, the court shall promptly  
 250 issue an order directed to the other parties named in the action  
 251 ~~defendant~~ to show cause why a final judgment of foreclosure  
 252 should not be entered.

253 (a) The order shall:

254 1. Set the date and time for a hearing ~~on the order~~ to  
 255 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~  
 256 ~~set~~ sooner than the later of 20 days after ~~the~~ service of the  
 257 order to show cause or 45 days after service of the initial  
 258 complaint. When service is obtained by publication, the date for  
 259 the hearing may not be set sooner than 30 days after the first  
 260 publication. ~~The hearing must be held within 60 days after the~~  
 261 ~~date of service. Failure to hold the hearing within such time~~  
 262 ~~does not affect the validity of the order to show cause or the~~  
 263 ~~jurisdiction of the court to issue subsequent orders.~~

264 2. Direct the time within which service of the order to  
 265 show cause and the complaint must be made upon the defendant.

266 3. State that the filing of defenses by a motion,  
 267 responsive pleading, affidavits, or other papers ~~or by a~~  
 268 ~~verified or sworn answer at or~~ before the hearing to show cause  
 269 may constitute ~~constitutes~~ cause for the court not to enter ~~the~~  
 270 ~~attached~~ final judgment.

271 4. State that a ~~the~~ defendant has the right to file  
 272 affidavits or other papers before ~~at~~ the time of the hearing to  
 273 show cause and may appear personally or by way of an attorney at  
 274 the hearing.

275 5. State that, if a ~~the~~ defendant files defenses by a  
 276 motion, a verified or sworn answer, affidavits, or other papers  
 277 or appears personally or by way of an attorney at the time of  
 278 the hearing, the hearing time will ~~may~~ be used to hear and  
 279 consider the defendant's motion, answer, affidavits, other  
 280 papers, and other evidence and argument as may be presented by

281 the defendant or the defendant's attorney. The order shall also  
 282 state that the court may enter an order of final judgment of  
 283 foreclosure at the hearing and order the clerk of the court to  
 284 conduct a foreclosure sale.

285 6. State that, if a ~~the~~ defendant fails to appear at the  
 286 hearing to show cause or fails to file defenses by a motion or  
 287 by a verified or sworn answer or files an answer not contesting  
 288 the foreclosure, such ~~the~~ defendant may be considered to have  
 289 waived the right to a hearing, and in such case, the court may  
 290 enter a default against such defendant and, if appropriate, a  
 291 final judgment of foreclosure ordering the clerk of the court to  
 292 conduct a foreclosure sale.

293 7. State that if the mortgage provides for reasonable  
 294 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
 295 fees do not exceed 3 percent of the principal amount owed at the  
 296 time of filing the complaint, it is unnecessary for the court to  
 297 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
 298 to be reasonable.

299 8. Attach the form of the proposed final judgment of  
 300 foreclosure which the movant requests the court to will enter,  
 301 ~~if the defendant waives the right to be heard at the hearing on~~  
 302 ~~the order to show cause. The form may contain blanks for the~~  
 303 court to enter the amounts due.

304 9. Require the party seeking final judgment ~~mortgagee~~ to  
 305 serve a copy of the order to show cause on the other parties ~~the~~  
 306 ~~mortgagor~~ in the following manner:

307 a. If a party ~~the mortgagor~~ has been served pursuant to  
 308 chapter 48 with the complaint and original process, or the other

309 party is the plaintiff in the action, service of the order to  
 310 show cause on that party ~~order~~ may be made in the manner  
 311 provided in the Florida Rules of Civil Procedure.

312 b. If a defendant ~~the mortgager~~ has not been served  
 313 pursuant to chapter 48 with the complaint and original process,  
 314 the order to show cause, together with the summons and a copy of  
 315 the complaint, shall be served on the party ~~mortgager~~ in the  
 316 same manner as provided by law for original process.

317  
 318 Any final judgment of foreclosure entered under this subsection  
 319 is for in rem relief only. ~~Nothing in~~ This subsection does not  
 320 ~~shall~~ preclude the entry of a deficiency judgment where  
 321 otherwise allowed by law. The Legislature intends that this  
 322 alternative procedure may run simultaneously with other court  
 323 procedures.

324 (b) The right to be heard at the hearing to show cause is  
 325 waived if a ~~the~~ defendant, after being served as provided by law  
 326 with an order to show cause, engages in conduct that clearly  
 327 shows that the defendant has relinquished the right to be heard  
 328 on that order. The defendant's failure to file defenses by a  
 329 motion or by a sworn or verified answer, affidavits, or other  
 330 papers or to appear personally or by way of an attorney at the  
 331 hearing duly scheduled on the order to show cause presumptively  
 332 constitutes conduct that clearly shows that the defendant has  
 333 relinquished the right to be heard. If a defendant files  
 334 defenses by a motion, or by a verified or sworn answer,  
 335 affidavits, or other papers or presents evidence at or before  
 336 the hearing, which would be sufficient to preclude the entry of

337 a summary judgment, such action constitutes cause and precludes  
 338 the entry of a final judgment at the hearing to show cause.

339 (c) In a mortgage foreclosure proceeding, when a final  
 340 ~~default~~ judgment of foreclosure has been entered against the  
 341 mortgagor and the note or mortgage provides for the award of  
 342 reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
 343 court to hold a hearing or adjudge the requested attorney  
 344 ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
 345 percent of the principal amount owed on the note or mortgage at  
 346 the time of filing, even if the note or mortgage does not  
 347 specify the percentage of the original amount that would be paid  
 348 as liquidated damages.

349 (d) If the court finds that all defendants have ~~the~~  
 350 ~~defendant has~~ waived the right to be heard as provided in  
 351 paragraph (b), the court shall promptly enter a final judgment  
 352 of foreclosure without the need for further hearing if the  
 353 plaintiff has shown entitlement to a final judgment and upon the  
 354 filing with the court of the original note, satisfaction of the  
 355 conditions for establishment of a lost note, or upon a showing  
 356 to the court that the obligation to be foreclosed is not  
 357 evidenced by a promissory note or other negotiable instrument.  
 358 If the court finds that a ~~the~~ defendant has not waived the right  
 359 to be heard on the order to show cause, the court shall ~~then~~  
 360 determine whether there is cause not to enter a final judgment  
 361 of foreclosure. If the court finds that the defendant has not  
 362 shown cause, the court shall promptly enter a judgment of  
 363 foreclosure. If the time allotted for the hearing is  
 364 insufficient, the court may announce at the hearing a date and



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365 time for the continued hearing. Only the parties who appear,  
 366 individually or through an attorney, at the initial hearing must  
 367 be notified of the date and time of the continued hearing.

368 (2) Except as provided in paragraph (i), as part of any ~~In~~  
 369 ~~an~~ action for foreclosure, and in addition to any other relief  
 370 that the court may award ~~other than residential real estate,~~ the  
 371 plaintiff ~~the mortgagee~~ may request that the court enter an  
 372 order directing the mortgagor defendant to show cause why an  
 373 order to make payments during the pendency of the foreclosure  
 374 proceedings or an order to vacate the premises should not be  
 375 entered.

376 (a) The order shall:

377 1. Set the date and time for hearing on the order to show  
 378 cause. However, the date for the hearing may ~~shall~~ not be set  
 379 sooner than 20 days after the service of the order. If ~~Where~~  
 380 service is obtained by publication, the date for the hearing may  
 381 ~~shall~~ not be set sooner than 30 days after the first  
 382 publication.

383 2. Direct the time within which service of the order to  
 384 show cause and the complaint shall be made upon each ~~the~~  
 385 defendant.

386 3. State that a ~~the~~ defendant has the right to file  
 387 affidavits or other papers at the time of the hearing and may  
 388 appear personally or by way of an attorney at the hearing.

389 4. State that, if a ~~the~~ defendant fails to appear at the  
 390 hearing to show cause and fails to file defenses by a motion or  
 391 by a verified or sworn answer, the defendant is ~~may be~~ deemed to  
 392 have waived the right to a hearing and in such case the court

393 may enter an order to make payment or vacate the premises.

394 5. Require the movant ~~mortgagee~~ to serve a copy of the  
 395 order to show cause on the defendant ~~mortgager~~ in the following  
 396 manner:

397 a. If a defendant ~~the mortgager~~ has been served with the  
 398 complaint and original process, service of the order may be made  
 399 in the manner provided in the Florida Rules of Civil Procedure.

400 b. If a defendant ~~the mortgager~~ has not been served with  
 401 the complaint and original process, the order to show cause,  
 402 together with the summons and a copy of the complaint, shall be  
 403 served on the defendant ~~mortgager~~ in the same manner as provided  
 404 by law for original process.

405 (b) The right of a defendant to be heard at the hearing to  
 406 show cause is waived if the defendant, after being served as  
 407 provided by law with an order to show cause, engages in conduct  
 408 that clearly shows that the defendant has relinquished the right  
 409 to be heard on that order. A ~~The~~ defendant's failure to file  
 410 defenses by a motion or by a sworn or verified answer or to  
 411 appear at the hearing duly scheduled on the order to show cause  
 412 presumptively constitutes conduct that clearly shows that the  
 413 defendant has relinquished the right to be heard.

414 (c) If the court finds that a ~~the~~ defendant has waived the  
 415 right to be heard as provided in paragraph (b), the court may  
 416 promptly enter an order requiring payment in the amount provided  
 417 in paragraph (f) or an order to vacate.

418 (d) If the court finds that the mortgagor has not waived  
 419 the right to be heard on the order to show cause, the court  
 420 shall, at the hearing on the order to show cause, consider the

421 affidavits and other showings made by the parties appearing and  
 422 make a determination of the probable validity of the underlying  
 423 claim alleged against the mortgagor and the mortgagor's  
 424 defenses. If the court determines that the plaintiff mortgagee  
 425 is likely to prevail in the foreclosure action, the court shall  
 426 enter an order requiring the mortgagor to make the payment  
 427 described in paragraph (e) to the plaintiff mortgagee and  
 428 provide for a remedy as described in paragraph (f). However, the  
 429 order shall be stayed pending final adjudication of the claims  
 430 of the parties if the mortgagor files with the court a written  
 431 undertaking executed by a surety approved by the court in an  
 432 amount equal to the unpaid balance of the lien being foreclosed  
 433 ~~the mortgage on the property~~, including all principal, interest,  
 434 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~  
 435 ~~mortgagee~~.

436 (e) If ~~In the event~~ the court enters an order requiring  
 437 the mortgagor to make payments to the plaintiff mortgagee,  
 438 payments shall be payable at such intervals and in such amounts  
 439 provided for in the mortgage instrument before acceleration or  
 440 maturity. The obligation to make payments pursuant to any order  
 441 entered under this subsection shall commence from the date of  
 442 the motion filed under this section ~~hereunder~~. The order shall  
 443 be served upon the mortgagor no later than 20 days before the  
 444 date specified for the first payment. The order may permit, but  
 445 may shall not require, the plaintiff mortgagee to take all  
 446 appropriate steps to secure the premises during the pendency of  
 447 the foreclosure action.

448 (f) If ~~In the event~~ the court enters an order requiring

449 payments, the order shall also provide that the plaintiff is  
 450 ~~mortgagee shall be~~ entitled to possession of the premises upon  
 451 the failure of the mortgagor to make the payment required in the  
 452 order unless at the hearing on the order to show cause the court  
 453 finds good cause to order some other method of enforcement of  
 454 its order.

455 (g) All amounts paid pursuant to this section shall be  
 456 credited against the mortgage obligation in accordance with the  
 457 terms of the loan documents; ~~provided, however, that any~~  
 458 payments made under this section do shall not constitute a cure  
 459 of any default or a waiver or any other defense to the mortgage  
 460 foreclosure action.

461 (h) Upon the filing of an affidavit with the clerk that  
 462 the premises have not been vacated pursuant to the court order,  
 463 the clerk shall issue to the sheriff a writ for possession which  
 464 shall be governed by ~~the provisions of~~ s. 83.62.

465 (i) This subsection does not apply to foreclosure of an  
 466 owner-occupied residence. For purposes of this paragraph, there  
 467 is a rebuttable presumption that a residential property for  
 468 which a homestead exemption for taxation was granted according  
 469 to the certified rolls of the latest assessment by the county  
 470 property appraiser, before the filing of the foreclosure action,  
 471 is an owner-occupied residential property.

472 (3) The Supreme Court is requested to amend the Florida  
 473 Rules of Civil Procedure to provide for expedited foreclosure  
 474 proceedings in conformity with this section and is requested to  
 475 develop and publish forms for use under this section.

476 Section 7. Section 702.11, Florida Statutes, is created to

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477 read:

478 702.11 Adequate protections for lost, destroyed, or stolen  
 479 notes in mortgage foreclosure.-

480 (1) In connection with a mortgage foreclosure, the  
 481 following constitute reasonable means of providing adequate  
 482 protection under s. 673.3091 if so found by the court:

483 (a) A written indemnification agreement by a person  
 484 reasonably believed sufficiently solvent to honor such an  
 485 obligation;

486 (b) A surety bond;

487 (c) A letter of credit issued by a financial institution;

488 (d) A deposit of cash collateral with the clerk of the  
 489 court; or

490 (e) Such other security as the court may deem appropriate  
 491 under the circumstances.

492  
 493 Any security given shall be on terms and in amounts set by the  
 494 court, for a time period through the running of the statute of  
 495 limitations for enforcement of the underlying note, and  
 496 conditioned to indemnify and hold harmless the maker of the note  
 497 against any loss or damage, including principal, interest, and  
 498 attorney fees and costs, that might occur by reason of a claim  
 499 by another person to enforce the note.

500 (2) Any person who wrongly claims to be the holder of or  
 501 pursuant to s. 673.3011 to be entitled to enforce a lost,  
 502 stolen, or destroyed note and causes the mortgage secured  
 503 thereby to be foreclosed is liable to the actual holder of the  
 504 note, without limitation to any adequate protections given, for

505 actual damages suffered together with attorney fees and costs of  
 506 the actual holder of the note in enforcing rights under this  
 507 subsection. In addition, the actual holder of the note may  
 508 pursue recovery directly against any adequate protections given.

509 (a) The actual holder of the note is not required to  
 510 pursue recovery against the maker of the note or any guarantor  
 511 thereof as a condition precedent to pursuing remedies under this  
 512 section.

513 (b) This section does not limit or restrict the ability of  
 514 the actual holder of the note to pursue any other claims or  
 515 remedies it may have against the maker, the person who wrongly  
 516 claimed to be the holder, or any person who facilitated or  
 517 participated in the claim to the note or enforcement thereof.

518 Section 8. The Legislature finds that this act is remedial  
 519 in nature and applies to all mortgages encumbering real property  
 520 and all promissory notes secured by a mortgage, whether executed  
 521 before, on, or after the effective date of this act. In  
 522 addition, the Legislature finds that s. 702.015, Florida  
 523 Statutes, as created by this act, applies to cases filed on or  
 524 after July 1, 2013; however, the amendments to s. 702.10,  
 525 Florida Statutes, and the creation of s. 702.11, Florida  
 526 Statutes, by this act, apply to causes of action pending on the  
 527 effective date of this act.

528 Section 9. 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		

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Passidomo offered the following:

**Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (b) of subsection (2) of section  
 7 95.11, Florida Statutes, is amended, and paragraph (h) is added  
 8 to subsection (5) of that section, to read:

9 95.11 Limitations other than for the recovery of real  
 10 property.—Actions other than for recovery of real property shall  
 11 be commenced as follows:

12 (2) WITHIN FIVE YEARS.—

13 (b) A legal or equitable action on a contract, obligation,  
 14 or liability founded on a written instrument, except for an  
 15 action to enforce a claim against a payment bond, which shall be  
 16 governed by the applicable provisions of paragraph (5)(e), s.  
 17 255.05(10), s. 337.18(1), or s. 713.23(1)(e), and except for an  
 18 action for a deficiency judgment governed by paragraph (5)(h).

19 (5) WITHIN ONE YEAR.—



Amendment No. 1

20       (h) An action to enforce a claim of a deficiency related  
21 to a note secured by a mortgage against a residential property  
22 that is a one-family to four-family dwelling unit. The  
23 limitations period shall commence on the day after the  
24 certificate is issued by the clerk of court or the day after the  
25 mortgagee accepts a deed in lieu of foreclosure.

26       Section 2. The amendments made by this act to s. 95.11,  
27 Florida Statutes, apply to any action commenced on or after July  
28 1, 2013, regardless of when the cause of action accrued.  
29 However, any action that would not have been barred under s.  
30 95.11(2)(b), Florida Statutes, before the effective date of this  
31 act must be commenced within 5 years after the action accrued or  
32 by July 1, 2014, whichever occurs first.

33       Section 3. Subsection (39) of section 121.021, Florida  
34 Statutes, is amended to read:

35       121.021 Definitions.—The following words and phrases as  
36 used in this chapter have the respective meanings set forth  
37 unless a different meaning is plainly required by the context:

38       (39)(a) "Termination" occurs, except as provided in  
39 paragraph (b), when a member ceases all employment relationships  
40 with participating employers, however:

41       1. For retirements effective before July 1, 2010, if a  
42 member is employed by any such employer within the next calendar  
43 month, termination shall be deemed not to have occurred. A leave  
44 of absence constitutes a continuation of the employment  
45 relationship, except that a leave of absence without pay due to  
46 disability may constitute termination if such member makes  
47 application for and is approved for disability retirement in





Amendment No. 1

48 accordance with s. 121.091(4). The department or state board may  
49 require other evidence of termination as it deems necessary.

50 2. For retirements effective on or after July 1, 2010, if  
51 a member is employed by any such employer within the next 6  
52 calendar months, termination shall be deemed not to have  
53 occurred. A leave of absence constitutes a continuation of the  
54 employment relationship, except that a leave of absence without  
55 pay due to disability may constitute termination if such member  
56 makes application for and is approved for disability retirement  
57 in accordance with s. 121.091(4). The department or state board  
58 may require other evidence of termination as it deems necessary.

59 (b) "Termination" for a member electing to participate in  
60 the Deferred Retirement Option Program occurs when the program  
61 participant ceases all employment relationships with  
62 participating employers in accordance with s. 121.091(13),  
63 however:

64 1. For termination dates occurring before July 1, 2010, if  
65 the member is employed by any such employer within the next  
66 calendar month, termination will be deemed not to have occurred,  
67 except as provided in s. 121.091(13)(b)4.c. A leave of absence  
68 shall constitute a continuation of the employment relationship.

69 2. For termination dates occurring on or after July 1,  
70 2010, if the member becomes employed by any such employer within  
71 the next 6 calendar months, termination will be deemed not to  
72 have occurred, except as provided in s. 121.091(13)(b)4.c. A  
73 leave of absence constitutes a continuation of the employment  
74 relationship.



Amendment No. 1

75 (c) Effective July 1, 2011, "termination" for a member  
76 receiving a refund of employee contributions occurs when a  
77 member ceases all employment relationships with participating  
78 employers for 3 calendar months. A leave of absence constitutes  
79 a continuation of the employment relationship.

80 (d) Effective July 1, 2013, through June 30, 2016,  
81 "termination" for a retired justice or judge who reached the  
82 later of his or her normal retirement age or age when vested at  
83 retirement and subsequently returns to temporary employment as a  
84 judge in any court, as assigned by the Chief Justice of the  
85 Supreme Court in accordance with s. 2, Art. V of the State  
86 Constitution, occurs when the justice or judge has terminated  
87 all employment relationships with employers under the Florida  
88 Retirement System for at least 1 calendar month prior to  
89 reemployment as a senior judge.

90 Section 4. Subsection (9) of section 121.091, Florida  
91 Statutes, is amended to read:

92 121.091 Benefits payable under the system.—Benefits may  
93 not be paid under this section unless the member has terminated  
94 employment as provided in s. 121.021(39)(a) or begun  
95 participation in the Deferred Retirement Option Program as  
96 provided in subsection (13), and a proper application has been  
97 filed in the manner prescribed by the department. The department  
98 may cancel an application for retirement benefits when the  
99 member or beneficiary fails to timely provide the information  
100 and documents required by this chapter and the department's  
101 rules. The department shall adopt rules establishing procedures  
102 for application for retirement benefits and for the cancellation



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103 of such application when the required information or documents  
104 are not received.

105 (9) EMPLOYMENT AFTER RETIREMENT; LIMITATION.—

106 (a) Any person who is retired under this chapter, except  
107 under the disability retirement provisions of subsection (4),  
108 may be employed by an employer that does not participate in a  
109 state-administered retirement system and receive compensation  
110 from that employment without limiting or restricting in any way  
111 the retirement benefits payable to that person.

112 (b) Any person whose retirement is effective before July  
113 1, 2010, or whose participation in the Deferred Retirement  
114 Option Program terminates before July 1, 2010, except under the  
115 disability retirement provisions of subsection (4) or as  
116 provided in s. 121.053, may be reemployed by an employer that  
117 participates in a state-administered retirement system and  
118 receive retirement benefits and compensation from that employer,  
119 except that the person may not be reemployed by an employer  
120 participating in the Florida Retirement System before meeting  
121 the definition of termination in s. 121.021 and may not receive  
122 both a salary from the employer and retirement benefits for 12  
123 calendar months immediately subsequent to the date of  
124 retirement. However, a DROP participant shall continue  
125 employment and receive a salary during the period of  
126 participation in the Deferred Retirement Option Program, as  
127 provided in subsection (13).

128 1. A retiree who violates such reemployment limitation  
129 before completion of the 12-month limitation period must give  
130 timely notice of this fact in writing to the employer and to the



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131 Division of Retirement or the state board and shall have his or  
132 her retirement benefits suspended for the months employed or the  
133 balance of the 12-month limitation period as required in sub-  
134 subparagraphs b. and c. A retiree employed in violation of this  
135 paragraph and an employer who employs or appoints such person  
136 are jointly and severally liable for reimbursement to the  
137 retirement trust fund, including the Florida Retirement System  
138 Trust Fund and the Public Employee Optional Retirement Program  
139 Trust Fund, from which the benefits were paid. The employer must  
140 have a written statement from the retiree that he or she is not  
141 retired from a state-administered retirement system. Retirement  
142 benefits shall remain suspended until repayment has been made.  
143 Benefits suspended beyond the reemployment limitation shall  
144 apply toward repayment of benefits received in violation of the  
145 reemployment limitation.

146 a. A district school board may reemploy a retiree as a  
147 substitute or hourly teacher, education paraprofessional,  
148 transportation assistant, bus driver, or food service worker on  
149 a noncontractual basis after he or she has been retired for 1  
150 calendar month. A district school board may reemploy a retiree  
151 as instructional personnel, as defined in s. 1012.01(2)(a), on  
152 an annual contractual basis after he or she has been retired for  
153 1 calendar month. Any member who is reemployed within 1 calendar  
154 month after retirement shall void his or her application for  
155 retirement benefits. District school boards reemploying such  
156 teachers, education paraprofessionals, transportation  
157 assistants, bus drivers, or food service workers are subject to  
158 the retirement contribution required by subparagraph 2.



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159           b. A community college board of trustees may reemploy a  
160 retiree as an adjunct instructor or as a participant in a phased  
161 retirement program within the Florida Community College System,  
162 after he or she has been retired for 1 calendar month. A member  
163 who is reemployed within 1 calendar month after retirement shall  
164 void his or her application for retirement benefits. Boards of  
165 trustees reemploying such instructors are subject to the  
166 retirement contribution required in subparagraph 2. A retiree  
167 may be reemployed as an adjunct instructor for no more than 780  
168 hours during the first 12 months of retirement. A retiree  
169 reemployed for more than 780 hours during the first 12 months of  
170 retirement must give timely notice in writing to the employer  
171 and to the Division of Retirement or the state board of the date  
172 he or she will exceed the limitation. The division shall suspend  
173 his or her retirement benefits for the remainder of the 12  
174 months of retirement. Any retiree employed in violation of this  
175 sub-subparagraph and any employer who employs or appoints such  
176 person without notifying the division to suspend retirement  
177 benefits are jointly and severally liable for any benefits paid  
178 during the reemployment limitation period. The employer must  
179 have a written statement from the retiree that he or she is not  
180 retired from a state-administered retirement system. Any  
181 retirement benefits received by the retiree while reemployed in  
182 excess of 780 hours during the first 12 months of retirement  
183 must be repaid to the Florida Retirement System Trust Fund, and  
184 retirement benefits shall remain suspended until repayment is  
185 made. Benefits suspended beyond the end of the retiree's first



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186 12 months of retirement shall apply toward repayment of benefits  
187 received in violation of the 780-hour reemployment limitation.

188 c. The State University System may reemploy a retiree as  
189 an adjunct faculty member or as a participant in a phased  
190 retirement program within the State University System after the  
191 retiree has been retired for 1 calendar month. A member who is  
192 reemployed within 1 calendar month after retirement shall void  
193 his or her application for retirement benefits. The State  
194 University System is subject to the retired contribution  
195 required in subparagraph 2., as appropriate. A retiree may be  
196 reemployed as an adjunct faculty member or a participant in a  
197 phased retirement program for no more than 780 hours during the  
198 first 12 months of his or her retirement. A retiree reemployed  
199 for more than 780 hours during the first 12 months of retirement  
200 must give timely notice in writing to the employer and to the  
201 Division of Retirement or the state board of the date he or she  
202 will exceed the limitation. The division shall suspend his or  
203 her retirement benefits for the remainder of the 12 months. Any  
204 retiree employed in violation of this sub-subparagraph and any  
205 employer who employs or appoints such person without notifying  
206 the division to suspend retirement benefits are jointly and  
207 severally liable for any benefits paid during the reemployment  
208 limitation period. The employer must have a written statement  
209 from the retiree that he or she is not retired from a state-  
210 administered retirement system. Any retirement benefits received  
211 by the retiree while reemployed in excess of 780 hours during  
212 the first 12 months of retirement must be repaid to the Florida  
213 Retirement System Trust Fund, and retirement benefits shall



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214 remain suspended until repayment is made. Benefits suspended  
215 beyond the end of the retiree's first 12 months of retirement  
216 shall apply toward repayment of benefits received in violation  
217 of the 780-hour reemployment limitation.

218 d. The Board of Trustees of the Florida School for the  
219 Deaf and the Blind may reemploy a retiree as a substitute  
220 teacher, substitute residential instructor, or substitute nurse  
221 on a noncontractual basis after he or she has been retired for 1  
222 calendar month. Any member who is reemployed within 1 calendar  
223 month after retirement shall void his or her application for  
224 retirement benefits. The Board of Trustees of the Florida School  
225 for the Deaf and the Blind reemploying such teachers,  
226 residential instructors, or nurses is subject to the retirement  
227 contribution required by subparagraph 2.

228 e. A developmental research school may reemploy a retiree  
229 as a substitute or hourly teacher or an education  
230 paraprofessional as defined in s. 1012.01(2) on a noncontractual  
231 basis after he or she has been retired for 1 calendar month. A  
232 developmental research school may reemploy a retiree as  
233 instructional personnel, as defined in s. 1012.01(2)(a), on an  
234 annual contractual basis after he or she has been retired for 1  
235 calendar month after retirement. Any member who is reemployed  
236 within 1 calendar month voids his or her application for  
237 retirement benefits. A developmental research school that  
238 reemploys retired teachers and education paraprofessionals is  
239 subject to the retirement contribution required by subparagraph  
240 2.



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241 f. A charter school may reemploy a retiree as a substitute  
242 or hourly teacher on a noncontractual basis after he or she has  
243 been retired for 1 calendar month. A charter school may reemploy  
244 a retired member as instructional personnel, as defined in s.  
245 1012.01(2)(a), on an annual contractual basis after he or she  
246 has been retired for 1 calendar month after retirement. Any  
247 member who is reemployed within 1 calendar month voids his or  
248 her application for retirement benefits. A charter school that  
249 reemploys such teachers is subject to the retirement  
250 contribution required by subparagraph 2.

251 2. The employment of a retiree or DROP participant of a  
252 state-administered retirement system does not affect the average  
253 final compensation or years of creditable service of the retiree  
254 or DROP participant. Before July 1, 1991, upon employment of any  
255 person, other than an elected officer as provided in s. 121.053,  
256 who is retired under a state-administered retirement program,  
257 the employer shall pay retirement contributions in an amount  
258 equal to the unfunded actuarial liability portion of the  
259 employer contribution which would be required for regular  
260 members of the Florida Retirement System. Effective July 1,  
261 1991, contributions shall be made as provided in s. 121.122 for  
262 retirees who have renewed membership or, as provided in  
263 subsection (13), for DROP participants.

264 3. Any person who is holding an elective public office  
265 which is covered by the Florida Retirement System and who is  
266 concurrently employed in nonelected covered employment may elect  
267 to retire while continuing employment in the elective public  
268 office if he or she terminates his or her nonelected covered





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269 employment. Such person shall receive his or her retirement  
270 benefits in addition to the compensation of the elective office  
271 without regard to the time limitations otherwise provided in  
272 this subsection. A person who seeks to exercise the provisions  
273 of this subparagraph as they existed before May 3, 1984, may not  
274 be deemed to be retired under those provisions, unless such  
275 person is eligible to retire under this subparagraph, as amended  
276 by chapter 84-11, Laws of Florida.

277 (c) Any person whose retirement is effective on or after  
278 July 1, 2010, or whose participation in the Deferred Retirement  
279 Option Program terminates on or after July 1, 2010, who is  
280 retired under this chapter, except under the disability  
281 retirement provisions of subsection (4) or as provided in s.  
282 121.053, may be reemployed by an employer that participates in a  
283 state-administered retirement system and receive retirement  
284 benefits and compensation from that employer. However, a person  
285 may not be reemployed by an employer participating in the  
286 Florida Retirement System before meeting the definition of  
287 termination in s. 121.021 and may not receive both a salary from  
288 the employer and retirement benefits for 6 calendar months after  
289 meeting the definition of termination, except as provided in  
290 paragraph (f). However, a DROP participant shall continue  
291 employment and receive a salary during the period of  
292 participation in the Deferred Retirement Option Program, as  
293 provided in subsection (13).

294 1. The reemployed retiree may not renew membership in the  
295 Florida Retirement System.



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296           2. The employer shall pay retirement contributions in an  
297 amount equal to the unfunded actuarial liability portion of the  
298 employer contribution that would be required for active members  
299 of the Florida Retirement System in addition to the  
300 contributions required by s. 121.76.

301           3. A retiree initially reemployed in violation of this  
302 paragraph and an employer that employs or appoints such person  
303 are jointly and severally liable for reimbursement of any  
304 retirement benefits paid to the retirement trust fund from which  
305 the benefits were paid, including the Florida Retirement System  
306 Trust Fund and the Public Employee Optional Retirement Program  
307 Trust Fund, as appropriate. The employer must have a written  
308 statement from the employee that he or she is not retired from a  
309 state-administered retirement system. Retirement benefits shall  
310 remain suspended until repayment is made. Benefits suspended  
311 beyond the end of the retiree's 6-month reemployment limitation  
312 period shall apply toward the repayment of benefits received in  
313 violation of this paragraph.

314           (d) Except as provided in paragraph (f), this subsection  
315 applies to retirees, as defined in s. 121.4501(2), of the  
316 Florida Retirement System Investment Plan, subject to the  
317 following conditions:

318           1. A retiree may not be reemployed with an employer  
319 participating in the Florida Retirement System until such person  
320 has been retired for 6 calendar months.

321           2. A retiree employed in violation of this subsection and  
322 an employer that employs or appoints such person are jointly and  
323 severally liable for reimbursement of any benefits paid to the



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324 retirement trust fund from which the benefits were paid. The  
325 employer must have a written statement from the retiree that he  
326 or she is not retired from a state-administered retirement  
327 system.

328 (e) The limitations of this subsection apply to  
329 reemployment in any capacity irrespective of the category of  
330 funds from which the person is compensated except as provided in  
331 paragraph (f).

332 (f) Effective July 1, 2013, through June 30, 2016, a  
333 retired justice or retired judge who has reached the later of  
334 his or her normal retirement age or the age when vested, who has  
335 terminated all employment with employers participating under the  
336 Florida Retirement System for at least 1 calendar month, and who  
337 subsequently returns to temporary employment as a senior judge  
338 in any court, as assigned by the Chief Justice of the Supreme  
339 Court in accordance with s. 2, Art. V of the State Constitution,  
340 is not subject to paragraph (c), paragraph (d), or paragraph (e)  
341 while reemployed as a senior judge.

342 Section 5. Paragraph (a) of subsection (1) of section  
343 121.591, Florida Statutes, is amended to read:

344 121.591 Payment of benefits.—Benefits may not be paid  
345 under the Florida Retirement System Investment Plan unless the  
346 member has terminated employment as provided in s.  
347 121.021(39)(a) or is deceased and a proper application has been  
348 filed as prescribed by the state board or the department.  
349 Benefits, including employee contributions, are not payable  
350 under the investment plan for employee hardships, unforeseeable  
351 emergencies, loans, medical expenses, educational expenses,



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352 purchase of a principal residence, payments necessary to prevent  
353 eviction or foreclosure on an employee's principal residence, or  
354 any other reason except a requested distribution for retirement,  
355 a mandatory de minimis distribution authorized by the  
356 administrator, or a required minimum distribution provided  
357 pursuant to the Internal Revenue Code. The state board or  
358 department, as appropriate, may cancel an application for  
359 retirement benefits if the member or beneficiary fails to timely  
360 provide the information and documents required by this chapter  
361 and the rules of the state board and department. In accordance  
362 with their respective responsibilities, the state board and the  
363 department shall adopt rules establishing procedures for  
364 application for retirement benefits and for the cancellation of  
365 such application if the required information or documents are  
366 not received. The state board and the department, as  
367 appropriate, are authorized to cash out a de minimis account of  
368 a member who has been terminated from Florida Retirement System  
369 covered employment for a minimum of 6 calendar months. A de  
370 minimis account is an account containing employer and employee  
371 contributions and accumulated earnings of not more than \$5,000  
372 made under the provisions of this chapter. Such cash-out must be  
373 a complete lump-sum liquidation of the account balance, subject  
374 to the provisions of the Internal Revenue Code, or a lump-sum  
375 direct rollover distribution paid directly to the custodian of  
376 an eligible retirement plan, as defined by the Internal Revenue  
377 Code, on behalf of the member. Any nonvested accumulations and  
378 associated service credit, including amounts transferred to the  
379 suspense account of the Florida Retirement System Investment



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380 Plan Trust Fund authorized under s. 121.4501(6), shall be  
381 forfeited upon payment of any vested benefit to a member or  
382 beneficiary, except for de minimis distributions or minimum  
383 required distributions as provided under this section. If any  
384 financial instrument issued for the payment of retirement  
385 benefits under this section is not presented for payment within  
386 180 days after the last day of the month in which it was  
387 originally issued, the third-party administrator or other duly  
388 authorized agent of the state board shall cancel the instrument  
389 and credit the amount of the instrument to the suspense account  
390 of the Florida Retirement System Investment Plan Trust Fund  
391 authorized under s. 121.4501(6). Any amounts transferred to the  
392 suspense account are payable upon a proper application, not to  
393 include earnings thereon, as provided in this section, within 10  
394 years after the last day of the month in which the instrument  
395 was originally issued, after which time such amounts and any  
396 earnings attributable to employer contributions shall be  
397 forfeited. Any forfeited amounts are assets of the trust fund  
398 and are not subject to chapter 717.

399 (1) NORMAL BENEFITS.—Under the investment plan:

400 (a) Benefits in the form of vested accumulations as  
401 described in s. 121.4501(6) are payable under this subsection in  
402 accordance with the following terms and conditions:

403 1. Benefits are payable only to a member, an alternate  
404 payee of a qualified domestic relations order, or a beneficiary.

405 2. Benefits shall be paid by the third-party administrator  
406 or designated approved providers in accordance with the law, the  
407 contracts, and any applicable board rule or policy.



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408 3. The member must be terminated from all employment with  
409 all Florida Retirement System employers, as provided in s.  
410 121.021(39).

411 4. Benefit payments may not be made until the member has  
412 been terminated for 3 calendar months, except that the state  
413 board may authorize by rule for the distribution of up to 10  
414 percent of the member's account after being terminated for 1  
415 calendar month if the member has reached the normal retirement  
416 date as defined in s. 121.021. Effective July 1, 2013, through  
417 June 30, 2016, a retired justice or retired judge who returns to  
418 temporary employment as a senior judge in any court pursuant to  
419 s. 2, Art. V of the State Constitution and meets the definition  
420 of termination in s. 121.021(39)(d) may continue to receive a  
421 distribution of his or her account as provided under this  
422 paragraph after providing proof of assignment as a senior judge.

423 5. If a member or former member of the Florida Retirement  
424 System receives an invalid distribution, such person must either  
425 repay the full amount within 90 days after receipt of final  
426 notification by the state board or the third-party administrator  
427 that the distribution was invalid, or, in lieu of repayment, the  
428 member must terminate employment from all participating  
429 employers. If such person fails to repay the full invalid  
430 distribution within 90 days after receipt of final notification,  
431 the person may be deemed retired from the investment plan by the  
432 state board and is subject to s. 121.122. If such person is  
433 deemed retired, any joint and several liability set out in s.  
434 121.091(9)(d)2. is void, and the state board, the department, or  
435 the employing agency is not liable for gains on payroll



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436 contributions that have not been deposited to the person's  
437 account in the investment plan, pending resolution of the  
438 invalid distribution. The member or former member who has been  
439 deemed retired or who has been determined by the state board to  
440 have taken an invalid distribution may appeal the agency  
441 decision through the complaint process as provided under s.  
442 121.4501(9)(g)3. As used in this subparagraph, the term "invalid  
443 distribution" means any distribution from an account in the  
444 investment plan which is taken in violation of this section, s.  
445 121.091(9), or s. 121.4501.

446 Section 6. Section 702.015, Florida Statutes, is created  
447 to read:

448 702.015 Elements of complaint; lost, destroyed, or stolen  
449 note affidavit.-

450 (1) The Legislature intends that this section expedite the  
451 foreclosure process by ensuring initial disclosure of a  
452 plaintiff's status and the facts supporting that status, thereby  
453 ensuring the availability of documents necessary to the  
454 prosecution of the case.

455 (2) A complaint that seeks to foreclose a mortgage or  
456 other lien on residential real property, including individual  
457 units of condominiums and cooperatives, designed principally for  
458 occupation by from one to four families which secures a  
459 promissory note must:

460 (a) Contain affirmative allegations expressly made by the  
461 plaintiff at the time the proceeding is commenced that the  
462 plaintiff is the holder of the original note secured by the  
463 mortgage; or



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464 (b) Allege with specificity the factual basis by which the  
465 plaintiff is a person entitled to enforce the note under s.  
466 673.3011.

467 (3) If a plaintiff has been delegated the authority to  
468 institute a mortgage foreclosure action on behalf of the person  
469 entitled to enforce the note, the complaint shall describe the  
470 authority of the plaintiff and identify, with specificity, the  
471 document that grants the plaintiff the authority to act on  
472 behalf of the person entitled to enforce the note. This  
473 subsection is intended to require initial disclosure of status  
474 and pertinent facts and not to modify law regarding standing or  
475 real parties in interest. The term "original note" or "original  
476 promissory note" means the signed or executed promissory note  
477 rather than a copy thereof. The term includes any renewal,  
478 replacement, consolidation, or amended and restated note or  
479 instrument given in renewal, replacement, or substitution for a  
480 previous promissory note. The term also includes a transferrable  
481 record, as defined by the Uniform Electronic Transaction Act in  
482 s. 668.50(16).

483 (4) If the plaintiff is in possession of the original  
484 promissory note, the plaintiff must file under penalty of  
485 perjury a certification with the court, contemporaneously with  
486 the filing of the complaint for foreclosure, that the plaintiff  
487 is in possession of the original promissory note. The  
488 certification must set forth the location of the note, the name  
489 and title of the individual giving the certification, the name  
490 of the person who personally verified such possession, and the  
491 time and date on which the possession was verified. Correct





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492 copies of the note and all allonges to the note must be attached  
493 to the certification. The original note and the allonges must be  
494 filed with the court before the entry of any judgment of  
495 foreclosure or judgment on the note.

496 (5) If the plaintiff seeks to enforce a lost, destroyed,  
497 or stolen instrument, an affidavit executed under penalty of  
498 perjury must be attached to the complaint. The affidavit must:

499 (a) Detail a clear chain of all endorsements, transfers,  
500 or assignments of the promissory note that is the subject of the  
501 action.

502 (b) Set forth facts showing that the plaintiff is entitled  
503 to enforce a lost, destroyed, or stolen instrument pursuant to  
504 s. 673.3091. Adequate protection as required under s.  
505 673.3091(2) shall be provided before the entry of final  
506 judgment.

507 (c) Include as exhibits to the affidavit such copies of  
508 the note and the allonges to the note, audit reports showing  
509 receipt of the original note, or other evidence of the  
510 acquisition, ownership, and possession of the note as may be  
511 available to the plaintiff.

512 (6) The court may sanction the plaintiff for failure to  
513 comply with this section.

514 (7) This section does not apply to any foreclosure  
515 proceeding involving timeshare interests under part III of  
516 chapter 721.

517 Section 7. Section 702.036, Florida Statutes, is created  
518 to read:

519 702.036 Finality of mortgage foreclosure judgment.-



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520 (1) (a) In any action or proceeding in which a party seeks  
521 to set aside, invalidate, or challenge the validity of a final  
522 judgment of foreclosure of a mortgage or to establish or  
523 reestablish a lien or encumbrance on the property in abrogation  
524 of the final judgment of foreclosure of a mortgage, the court  
525 shall treat such request solely as a claim for monetary damages  
526 and may not grant relief that adversely affects the quality or  
527 character of the title to the property, if:

528 1. The party seeking relief from the final judgment of  
529 foreclosure of the mortgage was properly served in the  
530 foreclosure lawsuit as provided in chapter 48 or chapter 49.

531 2. The final judgment of foreclosure of the mortgage was  
532 entered as to the property.

533 3. All applicable appeals periods have run as to the final  
534 judgment of foreclosure of the mortgage with no appeals having  
535 been taken or any appeals having been finally resolved.

536 4. The property has been acquired for value, by a person  
537 not affiliated with the foreclosing lender or the foreclosed  
538 owner, at a time in which no lis pendens regarding the suit to  
539 set aside, invalidate, or challenge the foreclosure appears in  
540 the official records of the county where the property was  
541 located.

542 (b) This subsection does not limit the right to pursue any  
543 other relief to which a person may be entitled, including, but  
544 not limited to, compensatory damages, punitive damages,  
545 statutory damages, consequential damages, injunctive relief, or  
546 fees and costs, which does not adversely affect the ownership of



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547 the title to the property as vested in the unaffiliated  
548 purchaser for value.

549 (2) For purposes of this section, the following, without  
550 limitation, shall be considered persons affiliated with the  
551 foreclosing lender:

552 (a) The foreclosing lender or any loan servicer for the  
553 loan being foreclosed;

554 (b) Any past or present owner or holder of the loan being  
555 foreclosed;

556 (c) Any maintenance company, holding company, foreclosure  
557 services company, or law firm under contract to any entity  
558 listed in paragraph (a), paragraph (b), or this paragraph, with  
559 regard to the loan being foreclosed; or

560 (d) Any parent entity, subsidiary, or other person who  
561 directly, or indirectly through one or more intermediaries,  
562 controls or is controlled by, or is under common control with,  
563 any entity listed in paragraph (a), paragraph (b), or paragraph  
564 (c).

565 (3) After foreclosure of a mortgage based upon the  
566 enforcement of a lost, destroyed, or stolen note, a person who  
567 is not a party to the underlying foreclosure action but who  
568 claims to be the person entitled to enforce the promissory note  
569 secured by the foreclosed mortgage has no claim against the  
570 foreclosed property after it is conveyed for valuable  
571 consideration to a person not affiliated with the foreclosing  
572 lender or the foreclosed owner. This section does not preclude  
573 the person entitled to enforce the promissory note from pursuing  
574 recovery from any adequate protection given pursuant to s.



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575 673.3091 or from the party who wrongfully claimed to be the  
576 person entitled to enforce the promissory note under s.  
577 702.11(2) or otherwise, from the maker of the note, or from any  
578 other person against whom it may have a claim relating to the  
579 note.

580 Section 8. Section 702.06, Florida Statutes, is amended to  
581 read:

582 702.06 Deficiency decree; common-law suit to recover  
583 deficiency.—In all suits for the foreclosure of mortgages  
584 heretofore or hereafter executed the entry of a deficiency  
585 decree for any portion of a deficiency, should one exist, shall  
586 be within the sound discretion of the court; however, in the  
587 case of an owner-occupied residential property, the amount of  
588 the deficiency may not exceed the difference between the  
589 judgment amount, or in the case of a short sale, the outstanding  
590 debt, and the fair market value of the property on the date of  
591 sale. For purposes of this section, there is a rebuttable  
592 presumption that a residential property for which a homestead  
593 exemption for taxation was granted according to the certified  
594 rolls of the latest assessment by the county property appraiser,  
595 before the filing of the foreclosure action, is an owner-  
596 occupied residential property. ~~shall be within the sound~~  
597 ~~judicial discretion of the court, but~~ The complainant shall also  
598 have the right to sue at common law to recover such deficiency,  
599 ~~unless the court in the foreclosure action has granted or denied~~  
600 ~~a claim for a deficiency judgment provided no suit at law to~~  
601 ~~recover such deficiency shall be maintained against the original~~  
602 ~~mortgagor in cases where the mortgage is for the purchase price~~



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603 ~~of the property involved and where the original mortgagee~~  
604 ~~becomes the purchaser thereof at foreclosure sale and also is~~  
605 ~~granted a deficiency decree against the original mortgagor.~~

606 Section 9. Section 702.10, Florida Statutes, is amended to  
607 read:

608 702.10 Order to show cause; entry of final judgment of  
609 foreclosure; payment during foreclosure.-

610 (1) A lienholder ~~After a complaint in a foreclosure~~  
611 ~~proceeding has been filed, the mortgagee may request an order to~~  
612 ~~show cause for the entry of final judgment in a foreclosure~~  
613 ~~action. For purposes of this section, the term "lienholder"~~  
614 ~~includes the plaintiff and a defendant to the action who holds a~~  
615 ~~lien encumbering the property or a defendant who, by virtue of~~  
616 ~~its status as a condominium association, cooperative~~  
617 ~~association, or homeowners' association, may file a lien against~~  
618 ~~the real property subject to foreclosure. Upon filing, and the~~  
619 ~~court shall immediately review the request and the court file in~~  
620 ~~chambers and without a hearing ~~complaint~~.~~ If, upon examination  
621 of the ~~court file ~~complaint~~~~, the court finds that the complaint  
622 is verified, complies with s. 702.015, and alleges a cause of  
623 action to foreclose on real property, the court shall promptly  
624 issue an order directed to the other parties named in the action  
625 ~~defendant~~ to show cause why a final judgment of foreclosure  
626 should not be entered.

627 (a) The order shall:

628 1. Set the date and time for a hearing ~~on the order~~ to  
629 show cause. ~~However,~~ The date for the hearing may not occur ~~be~~  
630 ~~set~~ sooner than the later of 20 days after ~~the~~ service of the



Amendment No. 1

631 | order to show cause or 45 days after service of the initial  
632 | complaint. When service is obtained by publication, the date for  
633 | the hearing may not be set sooner than 30 days after the first  
634 | publication. ~~The hearing must be held within 60 days after the~~  
635 | ~~date of service. Failure to hold the hearing within such time~~  
636 | ~~does not affect the validity of the order to show cause or the~~  
637 | ~~jurisdiction of the court to issue subsequent orders.~~

638 |         2. Direct the time within which service of the order to  
639 | show cause and the complaint must be made upon the defendant.

640 |         3. State that the filing of defenses by a motion,  
641 | responsive pleading, affidavits, or other papers ~~or by a~~  
642 | ~~verified or sworn answer at or before the hearing to show cause~~  
643 | that raises a genuine issue of material fact which would  
644 | preclude the entry of summary judgment or otherwise constitutes  
645 | a legal defense to foreclosure shall constitute ~~constitutes~~  
646 | cause for the court not to enter ~~the attached~~ final judgment.

647 |         4. State that a ~~the~~ defendant has the right to file  
648 | affidavits or other papers before ~~at~~ the time of the hearing to  
649 | show cause and may appear personally or by way of an attorney at  
650 | the hearing.

651 |         5. State that, if a ~~the~~ defendant files defenses by a  
652 | motion, a verified or sworn answer, affidavits, or other papers  
653 | or appears personally or by way of an attorney at the time of  
654 | the hearing, the hearing time will ~~may~~ be used to hear and  
655 | consider whether the defendant's motion, answer, affidavits,  
656 | other papers, and other evidence and argument as may be  
657 | presented by the defendant or the defendant's attorney raise a  
658 | genuine issue of material fact which would preclude the entry of



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659 summary judgment or otherwise constitute a legal defense to  
660 foreclosure. The order shall also state that the court may enter  
661 an order of final judgment of foreclosure at the hearing and  
662 order the clerk of the court to conduct a foreclosure sale.

663 6. State that, if a ~~the~~ defendant fails to appear at the  
664 hearing to show cause or fails to file defenses by a motion or  
665 by a verified or sworn answer or files an answer not contesting  
666 the foreclosure, such ~~the~~ defendant may be considered to have  
667 waived the right to a hearing, and in such case, the court may  
668 enter a default against such defendant and, if appropriate, a  
669 final judgment of foreclosure ordering the clerk of the court to  
670 conduct a foreclosure sale.

671 7. State that if the mortgage provides for reasonable  
672 attorney ~~attorney's~~ fees and the requested attorney ~~attorney's~~  
673 fees do not exceed 3 percent of the principal amount owed at the  
674 time of filing the complaint, it is unnecessary for the court to  
675 hold a hearing or adjudge the requested attorney ~~attorney's~~ fees  
676 to be reasonable.

677 8. Attach the form of the proposed final judgment of  
678 foreclosure which the movant requests the court to will enter,  
679 ~~if the defendant waives the right to be heard at the hearing on~~  
680 the order to show cause.

681 9. Require the party seeking final judgment ~~mortgagee~~ to  
682 serve a copy of the order to show cause on the other parties ~~the~~  
683 ~~mortgagor~~ in the following manner:

684 a. If a party ~~the mortgagor~~ has been served pursuant to  
685 chapter 48 with the complaint and original process, or the other  
686 party is the plaintiff in the action, service of the order to



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687 show cause on that party order may be made in the manner  
688 provided in the Florida Rules of Civil Procedure.

689 b. If a defendant ~~the mortgager~~ has not been served  
690 pursuant to chapter 48 with the complaint and original process,  
691 the order to show cause, together with the summons and a copy of  
692 the complaint, shall be served on the party mortgager in the  
693 same manner as provided by law for original process.

694  
695 Any final judgment of foreclosure entered under this subsection  
696 is for in rem relief only. ~~Nothing in~~ This subsection does not  
697 ~~shall~~ preclude the entry of a deficiency judgment where  
698 otherwise allowed by law. The Legislature intends that this  
699 alternative procedure may run simultaneously with other court  
700 procedures.

701 (b) The right to be heard at the hearing to show cause is  
702 waived if a ~~the~~ defendant, after being served as provided by law  
703 with an order to show cause, engages in conduct that clearly  
704 shows that the defendant has relinquished the right to be heard  
705 on that order. The defendant's failure to file defenses by a  
706 motion or by a sworn or verified answer, affidavits, or other  
707 papers or to appear personally or by way of an attorney at the  
708 hearing duly scheduled on the order to show cause presumptively  
709 constitutes conduct that clearly shows that the defendant has  
710 relinquished the right to be heard. If a defendant files  
711 defenses by a motion, ~~or by a verified or sworn answer,~~  
712 affidavits, or other papers or presents evidence at or before  
713 the hearing which raise a genuine issue of material fact which  
714 would preclude entry of summary judgment or otherwise constitute





Amendment No. 1

715 | a legal defense to foreclosure, such action constitutes cause  
716 | and precludes the entry of a final judgment at the hearing to  
717 | show cause.

718 | (c) In a mortgage foreclosure proceeding, when a final  
719 | ~~default~~ judgment of foreclosure has been entered against the  
720 | mortgagor and the note or mortgage provides for the award of  
721 | reasonable attorney ~~attorney's~~ fees, it is unnecessary for the  
722 | court to hold a hearing or adjudge the requested attorney  
723 | ~~attorney's~~ fees to be reasonable if the fees do not exceed 3  
724 | percent of the principal amount owed on the note or mortgage at  
725 | the time of filing, even if the note or mortgage does not  
726 | specify the percentage of the original amount that would be paid  
727 | as liquidated damages.

728 | (d) If the court finds that all defendants have the  
729 | ~~defendant has~~ waived the right to be heard as provided in  
730 | paragraph (b), the court shall promptly enter a final judgment  
731 | of foreclosure without the need for further hearing if the  
732 | plaintiff has shown entitlement to a final judgment and upon the  
733 | filing with the court of the original note, satisfaction of the  
734 | conditions for establishment of a lost note, or upon a showing  
735 | to the court that the obligation to be foreclosed is not  
736 | evidenced by a promissory note or other negotiable instrument.  
737 | If the court finds that a ~~the~~ defendant has not waived the right  
738 | to be heard on the order to show cause, the court shall ~~then~~  
739 | determine whether there is cause not to enter a final judgment  
740 | of foreclosure. If the court finds that the defendant has not  
741 | shown cause, the court shall promptly enter a judgment of  
742 | foreclosure. If the time allotted for the hearing is



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743 insufficient, the court may announce at the hearing a date and  
744 time for the continued hearing. Only the parties who appear,  
745 individually or through an attorney, at the initial hearing must  
746 be notified of the date and time of the continued hearing.

747 (2) Except as provided in paragraph (i), as part of any ~~in~~  
748 an action for foreclosure, and in addition to any other relief  
749 that the court may award other than residential real estate, the  
750 plaintiff ~~the mortgagee~~ may request that the court enter an  
751 order directing the mortgagor defendant to show cause why an  
752 order to make payments during the pendency of the foreclosure  
753 proceedings or an order to vacate the premises should not be  
754 entered.

755 (a) The order shall:

756 1. Set the date and time for hearing on the order to show  
757 cause. However, the date for the hearing may ~~shall~~ not be set  
758 sooner than 20 days after the service of the order. If ~~where~~  
759 service is obtained by publication, the date for the hearing may  
760 ~~shall~~ not be set sooner than 30 days after the first  
761 publication.

762 2. Direct the time within which service of the order to  
763 show cause and the complaint shall be made upon each ~~the~~  
764 defendant.

765 3. State that a ~~the~~ defendant has the right to file  
766 affidavits or other papers at the time of the hearing and may  
767 appear personally or by way of an attorney at the hearing.

768 4. State that, if a ~~the~~ defendant fails to appear at the  
769 hearing to show cause and fails to file defenses by a motion or  
770 by a verified or sworn answer, the defendant is ~~may be~~ deemed to



Amendment No. 1

771 have waived the right to a hearing and in such case the court  
772 may enter an order to make payment or vacate the premises.

773 5. Require the movant ~~mortgagee~~ to serve a copy of the  
774 order to show cause on the defendant ~~mortgager~~ in the following  
775 manner:

776 a. If a defendant ~~the mortgager~~ has been served with the  
777 complaint and original process, service of the order may be made  
778 in the manner provided in the Florida Rules of Civil Procedure.

779 b. If a defendant ~~the mortgager~~ has not been served with  
780 the complaint and original process, the order to show cause,  
781 together with the summons and a copy of the complaint, shall be  
782 served on the defendant ~~mortgager~~ in the same manner as provided  
783 by law for original process.

784 (b) The right of a defendant to be heard at the hearing to  
785 show cause is waived if the defendant, after being served as  
786 provided by law with an order to show cause, engages in conduct  
787 that clearly shows that the defendant has relinquished the right  
788 to be heard on that order. A ~~The~~ defendant's failure to file  
789 defenses by a motion or by a sworn or verified answer or to  
790 appear at the hearing duly scheduled on the order to show cause  
791 presumptively constitutes conduct that clearly shows that the  
792 defendant has relinquished the right to be heard.

793 (c) If the court finds that a ~~the~~ defendant has waived the  
794 right to be heard as provided in paragraph (b), the court may  
795 promptly enter an order requiring payment in the amount provided  
796 in paragraph (f) or an order to vacate.

797 (d) If the court finds that the mortgager has not waived  
798 the right to be heard on the order to show cause, the court



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799 shall, at the hearing on the order to show cause, consider the  
800 affidavits and other showings made by the parties appearing and  
801 make a determination of the probable validity of the underlying  
802 claim alleged against the mortgagor and the mortgagor's  
803 defenses. If the court determines that the plaintiff mortgagee  
804 is likely to prevail in the foreclosure action, the court shall  
805 enter an order requiring the mortgagor to make the payment  
806 described in paragraph (e) to the plaintiff mortgagee and  
807 provide for a remedy as described in paragraph (f). However, the  
808 order shall be stayed pending final adjudication of the claims  
809 of the parties if the mortgagor files with the court a written  
810 undertaking executed by a surety approved by the court in an  
811 amount equal to the unpaid balance of the lien being foreclosed  
812 ~~the mortgage on the property~~, including all principal, interest,  
813 unpaid taxes, and insurance premiums paid by the plaintiff ~~the~~  
814 ~~mortgagee~~.

815 (e) If ~~In the event~~ the court enters an order requiring  
816 the mortgagor to make payments to the plaintiff mortgagee,  
817 payments shall be payable at such intervals and in such amounts  
818 provided for in the mortgage instrument before acceleration or  
819 maturity. The obligation to make payments pursuant to any order  
820 entered under this subsection shall commence from the date of  
821 the motion filed under this section hereunder. The order shall  
822 be served upon the mortgagor no later than 20 days before the  
823 date specified for the first payment. The order may permit, but  
824 may shall not require, the plaintiff mortgagee to take all  
825 appropriate steps to secure the premises during the pendency of  
826 the foreclosure action.



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827 (f) ~~If In the event~~ the court enters an order requiring  
828 payments, the order shall also provide that the plaintiff is  
829 ~~mortgagee shall be~~ entitled to possession of the premises upon  
830 the failure of the mortgagor to make the payment required in the  
831 order unless at the hearing on the order to show cause the court  
832 finds good cause to order some other method of enforcement of  
833 its order.

834 (g) All amounts paid pursuant to this section shall be  
835 credited against the mortgage obligation in accordance with the  
836 terms of the loan documents; ~~it provided, however, that any~~  
837 payments made under this section do shall not constitute a cure  
838 of any default or a waiver or any other defense to the mortgage  
839 foreclosure action.

840 (h) Upon the filing of an affidavit with the clerk that  
841 the premises have not been vacated pursuant to the court order,  
842 the clerk shall issue to the sheriff a writ for possession which  
843 shall be governed by ~~the provisions of~~ s. 83.62.

844 (i) This subsection does not apply to foreclosure of an  
845 owner-occupied residence. For purposes of this paragraph, there  
846 is a rebuttable presumption that a residential property for  
847 which a homestead exemption for taxation was granted according  
848 to the certified rolls of the latest assessment by the county  
849 property appraiser, before the filing of the foreclosure action,  
850 is an owner-occupied residential property.

851 Section 10. Section 702.11, Florida Statutes, is created  
852 to read:

853 702.11 Adequate protections for lost, destroyed, or stolen  
854 notes in mortgage foreclosure.-



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855 (1) In connection with a mortgage foreclosure, the  
856 following constitute reasonable means of providing adequate  
857 protection under s. 673.3091, if so found by the court:

858 (a) A written indemnification agreement by a person  
859 reasonably believed sufficiently solvent to honor such an  
860 obligation;

861 (b) A surety bond;

862 (c) A letter of credit issued by a financial institution;

863 (d) A deposit of cash collateral with the clerk of the  
864 court; or

865 (e) Such other security as the court may deem appropriate  
866 under the circumstances.

867

868 Any security given shall be on terms and in amounts set by the  
869 court, for a time period through the running of the statute of  
870 limitations for enforcement of the underlying note, and  
871 conditioned to indemnify and hold harmless the maker of the note  
872 against any loss or damage, including principal, interest, and  
873 attorney fees and costs, that might occur by reason of a claim  
874 by another person to enforce the note.

875 (2) Any person who wrongly claims to be the holder of or  
876 pursuant to s. 673.3011 to be entitled to enforce a lost,  
877 stolen, or destroyed note and causes the mortgage secured  
878 thereby to be foreclosed is liable to the actual holder of the  
879 note, without limitation to any adequate protections given, for  
880 actual damages suffered together with attorney fees and costs of  
881 the actual holder of the note in enforcing rights under this



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882 subsection. In addition, the actual holder of the note may  
883 pursue recovery directly against any adequate protections given.

884 (a) The actual holder of the note is not required to  
885 pursue recovery against the maker of the note or any guarantor  
886 thereof as a condition precedent to pursuing remedies under this  
887 section.

888 (b) This section does not limit or restrict the ability of  
889 the actual holder of the note to pursue any other claims or  
890 remedies it may have against the maker, the person who wrongly  
891 claimed to be the holder, or any person who facilitated or  
892 participated in the claim to the note or enforcement thereof.

893 Section 11. The Legislature finds that this act is  
894 remedial in nature and applies to all mortgages encumbering real  
895 property and all promissory notes secured by a mortgage, whether  
896 executed before, on, or after the effective date of this act. In  
897 addition, the Legislature finds that s. 702.015, Florida  
898 Statutes, as created by this act, applies to cases filed on or  
899 after July 1, 2013; however, the amendments to s. 702.10,  
900 Florida Statutes, and the creation of s. 702.11, Florida  
901 Statutes, by this act, apply to causes of action pending on the  
902 effective date of this act.

903 Section 12. (1) Effective July 1, 2013, in order to fund  
904 the benefit changes provided in this act, the required employer  
905 contribution rates for members of the Florida Retirement System  
906 established in s. 121.71(4), Florida Statutes, must be adjusted  
907 as follows:

908 (a) Elected Officers' Class for Justices and Judges shall  
909 be increased by 0.45 percentage points; and



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910 (b) Deferred Retirement Option Program shall be increased  
911 by 0.01 percentage points.

912 (2) Effective July 1, 2013, in order to fund the benefit  
913 changes provided in this act, the required employer contribution  
914 rates for the unfunded actuarial liability of the Florida  
915 Retirement System established in s. 121.71(5), Florida Statutes,  
916 for the Elected Officers' Class for Justices and Judges shall be  
917 increased by 0.91 percentage points.

918 (3) The adjustments provided in subsections (1) and (2)  
919 shall be in addition to all other changes to such contribution  
920 rates which may be enacted into law to take effect on July 1,  
921 2013, and July 1, 2014. The Division of Law Revision and  
922 Information is requested to adjust accordingly the contribution  
923 rates provided in s. 121.71, Florida Statutes.

924 Section 13. (1) The Legislature finds that a proper and  
925 legitimate state purpose is served if employees and retirees of  
926 the state and its political subdivisions, and the dependents,  
927 survivors, and beneficiaries of such employees and retirees, are  
928 extended the basic protections afforded by governmental  
929 retirement systems which provide fair and adequate benefits and  
930 which are managed, administered, and funded in an actuarially  
931 sound manner as required by s. 14, Article X of the State  
932 Constitution and part VII of chapter 112, Florida Statutes.  
933 Therefore, the Legislature determines and declares that this act  
934 fulfills an important state interest.

935 (2) The Legislature further finds that the assignment of  
936 former justices and judges to temporary employment as a judge in  
937 any court, by the Chief Justice of the Supreme Court in





Amendment No. 1

938 accordance with s. 2, Art. V of the State Constitution, assists  
939 the State Courts System in managing caseloads and providing  
940 individuals and businesses with access to courts. In particular,  
941 these assignments are critically important in assisting with the  
942 disposition of the current backlog in foreclosure cases in this  
943 state. Therefore, the Legislature further determines and  
944 declares that this act fulfills an important state interest by  
945 facilitating the ability of justices and judges who retire under  
946 the Florida Retirement System to return to temporary employment  
947 as a judge in a timely manner.

948       Section 14. The Supreme Court is requested to amend the  
949 Florida Rules of Civil Procedures to provide expedited  
950 foreclosure proceedings in conformity with this act and is  
951 requested to develop and publish forms for use in such expedited  
952 proceedings.

953       Section 15. Sections 3 through 5, 12, and 13 of this act  
954 shall take effect only if the Legislature appropriates during  
955 the 2013 Legislative Session the sum of at least \$1.6 million  
956 from the General Revenue Fund on a recurring basis to the  
957 judicial branch in order to fund the increased employer  
958 contributions associated with the costs of the retirement  
959 benefits granted in this act and the Governor does not veto the  
960 appropriation.

961       Section 16. This act shall take effect upon becoming a  
962 law.

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Amendment No. 1

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**T I T L E   A M E N D M E N T**

Remove everything before the enacting clause and insert:  
An act relating to mortgage foreclosures; amending s. 95.11, F.S.; revising the limitations period for commencing an action to enforce a claim of a deficiency judgment after a foreclosure action; providing for applicability to existing causes of action; providing that the amendments made by this act to s. 95.11, F.S., apply to any action commenced on or after July 1, 2013; amending s. 121.021, F.S.; defining terms; providing for the applicability of the term "termination"; amending s. 121.091, F.S.; providing that between two specified dates, a retired justice or retired judge is not subject to certain limitations otherwise applicable to retired employees; amending s. 121.591, F.S.; providing that, between two specified dates, a retired justice or retired judge who returns to temporary employment as a senior judge in any court may continue to receive a distribution of his or her retirement account after providing proof of termination from his or her regularly established position; creating s. 702.015, F.S.; providing legislative intent; specifying required contents of a complaint seeking to foreclose on certain types of residential properties with respect to the authority of the plaintiff to foreclose on the note and the location of the note; authorizing sanctions against plaintiffs who fail to comply with complaint requirements; providing for non-applicability to proceedings involving timeshare interests; creating s. 702.036, F.S.;



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994 requiring a court to treat a collateral attack on a final  
995 judgment of foreclosure on a mortgage as a claim for monetary  
996 damages under certain circumstances; prohibiting such court from  
997 granting certain relief affecting title to the foreclosed  
998 property; providing for construction relating to the rights of  
999 certain persons to seek specified types of relief or pursue  
1000 claims against the foreclosed property under certain  
1001 circumstances; amending s. 702.06, F.S.; limiting the amount of  
1002 a deficiency judgment; amending s. 702.10, F.S.; revising the  
1003 class of persons authorized to move for expedited foreclosure to  
1004 include lienholders; defining the term "lienholder"; providing  
1005 requirements and procedures with respect to an order directed to  
1006 defendants to show cause why a final judgment of foreclosure  
1007 should not be entered; providing that certain failures by a  
1008 defendant to make certain filings or to make certain appearances  
1009 may have specified legal consequences; requiring the court to  
1010 enter a final judgment of foreclosure and order a foreclosure  
1011 sale under certain circumstances; revising a restriction on a  
1012 mortgagee to request a court to order a mortgagor defendant to  
1013 make payments or to vacate the premises during an action to  
1014 foreclose on residential real estate to provide that the  
1015 restriction applies to all but owner-occupied residential  
1016 property; providing a presumption regarding owner-occupied  
1017 residential property; creating s. 702.11, F.S.; providing  
1018 requirements for reasonable means of providing adequate  
1019 protection under s. 673.3091, F.S., in mortgage foreclosures of  
1020 certain residential properties; providing for liability of  
1021 persons who wrongly claim to be holders of or entitled to



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1022 enforce a lost, stolen, or destroyed note and cause the mortgage  
1023 secured thereby to be foreclosed in certain circumstances;  
1024 providing for construction and applicability; declaring that the  
1025 act is remedial in nature and applies to all mortgages  
1026 encumbering real property and all promissory notes secured by a  
1027 mortgage, whether executed before, on, or after the effective  
1028 date of this act; requiring that employer contribution rates be  
1029 adjusted; providing a directive to the Division of Law Revision  
1030 and Information; providing legislature findings; requesting the  
1031 Florida Supreme Court to adopt rules and forms to expedite  
1032 foreclosure proceedings; providing that certain specified  
1033 provisions of the act take effect only if the Legislature  
1034 appropriates a certain amount on a recurring basis to the  
1035 judicial system and if the Governor does not veto the  
1036 appropriation; providing that certain sections of the act stand  
1037 repealed on a stated date; providing an effective date.



Amendment No. 1a

COMMITTEE/SUBCOMMITTEE ACTION

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

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1 Committee/Subcommittee hearing bill: Judiciary Committee  
 2 Representative Spano offered the following:

**Amendment to Amendment (388491) by Representative Passidomo**

3  
 4  
 5  
 6 Remove line 631 of the amendment and insert:  
 7 order to show cause or 18 months after service of the initial



Amendment No. 1b

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 Spano offered the following:

3

4 **Amendment to Amendment (388491) by Representative Passidomo**

5

6 Remove lines 711-715 of the amendment and insert:  
 7 defenses by a motion, ~~or by~~ a verified or sworn answer,  
 8 affidavits, or other papers or presents evidence at or before  
 9 the hearing, such action constitutes cause



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 361 Public Meetings/Criminal Justice Commissions  
**SPONSOR(S):** Criminal Justice Subcommittee; Kerner  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Cox	Cunningham
2) Government Operations Subcommittee	13 Y, 0 N	Stramski	Williamson
3) Judiciary Committee		Cox <i>lee</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

Both the Florida Constitution and Florida Statutes require all meetings of any public body of the executive branch or local government at which official acts are to be taken or at which public business of such body is to be discussed to be open and noticed to the public.

Currently, two counties in Florida have established "criminal justice commissions," each of which is comprised of members of both the public and private sector. The commissions discuss a multitude of issues relating to local criminal justice practices, policies, and program developments, including issues related to jail population and overcrowding, tracking crimes in the community, and matters of general policing.

Criminal justice commissions are currently subject to public meetings requirements. Therefore, discussions that occur among two or more members of the commission, which involve matters that are being considered or may foreseeably come before the commission, must be properly noticed and should be conducted as an open meeting.

The bill exempts duly constituted criminal justice commissions from public meeting requirements. This exemption is limited to any portion of a meeting of commission members where the members discuss active criminal intelligence or active criminal investigative information which is currently being considered, or may foreseeably come before the commission.

The bill repeals the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

**Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage.**



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Public Meetings Laws**

###### State Constitution: Open Meetings

Article I, s. 24(b) of the State Constitution sets forth the state's public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Article I, s. 24(c) of the State Constitution authorizes the Legislature to provide exemptions from the open meeting requirements upon a two-thirds vote of both legislative chambers, in a bill that specifies the public necessity giving rise to the exemption.

###### Government in the Sunshine Law

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the "Government in the Sunshine Law" or "Sunshine Law," further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.<sup>1</sup> The board or commission must provide reasonable notice of all public meetings.<sup>2</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public's access to the facility.<sup>3</sup> Minutes of a public meeting must be promptly recorded and be open to public inspection.<sup>4</sup>

The Open Government Sunset Review Act<sup>5</sup> provides that a public meeting exemption may be created or maintained only if it serves an identifiable public purpose and the "[l]egislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>6</sup> However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protects trade or business secrets.<sup>7</sup>

##### **Criminal Justice Commissions**

Currently, two counties in Florida have established "criminal justice commissions."<sup>8</sup> Membership of these commissions is comprised of members of both the public<sup>9</sup> and private sectors. These members

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<sup>1</sup> Section 286.011(1), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 286.011(6), F.S.

<sup>4</sup> Section 286.011(2), F.S.

<sup>5</sup> Section 119.15, F.S.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

collaborate to improve the criminal justice system in their community.<sup>10</sup> The commissions discuss and make recommendations to the boards of county commissioners on a multitude of issues relating to local criminal justice practices, policies, and program developments.<sup>11</sup> Other issues discussed at commission meetings include jail population and overcrowding, tracking crimes in the community, and matters of general policing.<sup>12</sup>

Because a criminal justice commission is an appointed commission that is not specifically exempted, they are currently covered under the Sunshine Law. Therefore, any meetings of a commission are subject to the Sunshine Law. Consequently, discussions that occur among members of a commission, such as the sheriff, public defender, or state attorney, which involve matters that may foreseeably come before or are currently being considered by the commission, must be properly noticed and should be conducted as an open meeting in accordance with the Sunshine Law.<sup>13</sup> Discussions among public officials on issues that do not require action by the commission do not violate the Sunshine Law.<sup>14</sup>

### **Effect of the Bill**

The bill creates a public meeting exemption for “that portion of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission” from public meeting requirements. However, at any meeting in which such matters are being discussed, the bill requires the commission members to publicly disclose the fact that such matters will be discussed.

The bill defines a “duly constituted criminal justice commission” as an advisory commission created by municipal or county ordinance whose membership is comprised of private and public sector persons and whose purpose is to examine local criminal justice issues.

The bill also provides the following definitions by reference to s. 119.011, F.S.:

- “Criminal intelligence information” means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- “Criminal investigative information” means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.<sup>15</sup>

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<sup>8</sup> In 2004, the Board of County Commissioners of Sarasota County passed Resolution number 2004-251, creating the Sarasota County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee). In 1988, Palm Beach County enacted Ordinance No. 88-16, creating the Palm Beach County Criminal Justice Commission. (On file with the Criminal Justice Subcommittee).

<sup>9</sup> *Id.* Public sector members include: the chief judge of the respective county; the county sheriff; members of the board of county commission; the state attorney; the public defender; the clerk of the circuit court; a representative from the police chief’s association; a representative from the Bureau of Alcohol, Tobacco, and Firearms; the police chief; a representative from Florida Department of Law Enforcement; and a representative from Florida Department of Corrections.

<sup>10</sup> About the Criminal Justice Commission, <http://www.pbcgov.org/criminaljustice/aboutcjc/> (last visited on March 14, 2013).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Attorney General Opinion 93-41.

<sup>14</sup> *Id.*

<sup>15</sup> “Criminal intelligence information” and “criminal investigative information” does not include:

- The time, date, location, and nature of a reported crime.
- The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
- The time, date, and location of the incident and of the arrest.
- The crime charged.
- Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1), F.S., until released at trial if it is found that the release of such information would:
  - Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and

- “Active” has the following meanings:
  - Criminal intelligence information is considered “active” as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
  - Criminal investigative information is considered “active” as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
  - In addition, criminal intelligence and criminal investigative information is considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases that are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

The bill provides for the repeal of the exemption on October 2, 2018, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.<sup>16</sup>

**B. SECTION DIRECTORY:**

Section 1 creates an unnumbered section of law relating to criminal justice commissions and provides a public meeting exemption.

Section 2 provides a public necessity statement.

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

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

1. Revenues:

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

2. Expenditures:

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

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

None.

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○ Impair the ability of a state attorney to locate or prosecute a codefendant.

• Information and indictments except as provided in s. 905.26, F.S.

<sup>16</sup> Article 1, Sec. 24(c), FLA. CONST.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other: Sunshine Law Exemption

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public meeting exemption; thus, it requires a two-thirds vote for final passage. Article I, Section 24(c) of the Florida Constitution, also provides that a general law providing for a public meeting exemption "shall state with specificity the public necessity justifying the exemption." It could be argued that the bill's public necessity statement does not articulate with specificity a public necessity that is "sufficiently compelling to override the strong public policy of open government."<sup>17</sup>

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 strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removes the public records exemption;
- Narrows the public meetings exemption to "that portion of a meeting of a duly constituted criminal justice commission in which members of the commission discuss active criminal intelligence information or active criminal investigative information;" and
- Defines the terms "duly constituted criminal justice commission," "active," "criminal intelligence information," and "criminal investigative information."

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

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A bill to be entitled  
 An act relating to public meetings; providing  
 definitions; providing an exemption from public  
 meeting requirements for that portion of a meeting of  
 a duly constituted criminal justice commission at  
 which members of the commission discuss active  
 criminal intelligence information or active criminal  
 investigative information currently being considered  
 by, or which may foreseeably come before, the  
 commission; providing for future review and repeal of  
 the exemption under the Open Government Sunset Review  
 Act; providing a statement of public necessity;  
 providing an effective date.

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

Section 1. Criminal justice commissions; public meetings exemption.-

(1) As used in this section, the term:

(a) "Duly constituted criminal justice commission" means an advisory commission created by municipal or county ordinance whose membership is comprised of individuals from the private sector and the public sector and whose purpose is to examine local criminal justice issues.

(b) "Active" has the same meaning as provided in s. 119.011, Florida Statutes.

(c) "Criminal intelligence information" has the same meaning as provided in s. 119.011, Florida Statutes.

29 (d) "Criminal investigative information" has the same  
 30 meaning as provided in s. 119.011, Florida Statutes.

31 (2) That portion of a meeting of a duly constituted  
 32 criminal justice commission at which members of the commission  
 33 discuss active criminal intelligence information or active  
 34 criminal investigative information that is currently being  
 35 considered by, or which may foreseeably come before, the  
 36 commission is exempt from s. 286.011, Florida Statutes, and s.  
 37 24(b), Art. I of the State Constitution, provided that at any  
 38 public meeting of the criminal justice commission at which such  
 39 matter is being considered, the commission members publicly  
 40 disclose the fact that the matter has been discussed.

41 (3) This section is subject to the Open Government Sunset  
 42 Review Act in accordance with s. 119.15, Florida Statutes, and  
 43 shall stand repealed on October 2, 2018, unless reviewed and  
 44 saved from repeal through reenactment by the Legislature.

45 Section 2. It is the finding of the Legislature that it is  
 46 a public necessity that the portion of a meeting of a duly  
 47 constituted criminal justice commission at which members of the  
 48 commission discuss active criminal intelligence information or  
 49 active criminal investigative information currently being  
 50 considered by, or which may foreseeably come before, the  
 51 criminal justice commission be made exempt from public meeting  
 52 requirements. If the meetings at which exempt information is  
 53 discussed were open to the public, the purpose of the exemption  
 54 from public records requirements found in chapter 119, Florida  
 55 Statutes, would be defeated. The members of a criminal justice  
 56 commission must be able to hear and discuss exempt information

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57 | freely in order to make sound recommendations regarding  
58 | strategies and activities that are best suited to protect the  
59 | welfare of the people of this state. The ability to conduct  
60 | meetings at which members can freely discuss and fully  
61 | understand the details of active criminal intelligence  
62 | information and active criminal investigative information is  
63 | critical to the ability of a criminal justice commission to  
64 | operate effectively.

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





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 405 Claims of Exemption from Garnishment  
**SPONSOR(S):** Insurance & Banking Subcommittee; Civil Justice Subcommittee; Spano and Grant  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 592

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Bauer	Cooper
3) Judiciary Committee		Cary <i>JM ✓</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

Garnishment is a creditor's means to collect a monetary judgment through seizure of the debtor's property held by a third party. Current law provides that certain property is exempt from creditor claims.

If a debtor claims that garnished property is exempt and should not be transferred from the third party to the creditor, the creditor has 3 business days to respond if the claim of exemption is delivered by hand or 8 business days to respond if the claim of exemption is mailed. If there is no timely response, the garnishment fails and the debtor keeps the property. The bill increases the number of business days for a plaintiff to respond from 3 to 8 for a hand delivered claim and from 8 to 14 for a mailed claim of exemption.

Current law requires forms applicable to garnishment to be delivered directly to parties, which is contrary to normal legal practice. This bill allows for delivery to a party's attorney.

While current law requires the debtor to certify under oath and penalty of perjury to the facts underlying the claim of exemption, the statutory form does not include the oath. This bill corrects the statutory form for use by a debtor.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

When a litigant obtains a judgment against another litigant, it can sometimes be difficult to collect the judgment. Garnishment is a method to do so, created by statute and unknown to common law.<sup>1</sup> The party to whom the judgment is owed is known as the "creditor" or "judgment creditor," while the party against whom the judgment will be garnished is known as the "garnishee" or the "debtor".<sup>2</sup>

Garnishment is a statutory remedy, controlled by ch. 77, F.S., and ch. 222, F.S. Section 222.12, F.S., was originally passed into law in 1875,<sup>3</sup> while s. 77.041, F.S., was originally passed into law in 2000.<sup>4</sup> A writ of garnishment is generally filed after a judgment has been entered against the debtor.<sup>5</sup> However, there is a procedure for issuance of a garnishment prior to judgment<sup>6</sup> in cases other than a tort action.<sup>7</sup> For a debtor without assets to satisfy the judgment, the creditor may file a continuing writ of garnishment against salary or wages.<sup>8</sup> A garnishment may also be filed against any tangible or intangible personal property of the defendant.<sup>9</sup>

As in other forms of remedies available to a creditor, there are limits on collection. State constitutional and statutory law, as well as federal law (such as the Bankruptcy Code), provide that certain property of a debtor is exempt from creditor claims. Exemptions include, usually with qualification, but are not limited to:

- Homestead real property;<sup>10</sup>
- Personal property to the value of \$1000;<sup>11</sup>
- Head of family wages;<sup>12</sup>
- Firefighters' pensions;<sup>13</sup>
- Medical savings account;<sup>14</sup>
- Motor vehicles;<sup>15</sup>
- Pension benefits;<sup>16</sup>
- Veterans' benefits;<sup>17</sup> and
- Workers' compensation payments.<sup>18</sup>

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<sup>1</sup> *Robinson v. Robinson*, 18 So.2d 29, 31 (Fla. 1944).

<sup>2</sup> While it may be easier to think of the creditor as the plaintiff in the lawsuit and the debtor as the defendant, there are circumstances where the defendant wins the case and receives a judgment against the plaintiff. Accordingly, it is more accurate to refer to creditor and debtor.

<sup>3</sup> Section 2, ch. 2065, L.O.F. (1875).

<sup>4</sup> Section 22, ch. 2000-258, L.O.F.

<sup>5</sup> Section 77.03, F.S.

<sup>6</sup> Section 77.031, F.S.

<sup>7</sup> Section 77.02, F.S.

<sup>8</sup> Section 77.0305, F.S.

<sup>9</sup> Section 77.01, F.S.

<sup>10</sup> Fla. Const., Art. 10, Sec. 4.

<sup>11</sup> *Id.*

<sup>12</sup> Section 222.11, F.S.

<sup>13</sup> Section 175.241, F.S.

<sup>14</sup> Section 222.22, F.S.

<sup>15</sup> Section 222.25, F.S.

<sup>16</sup> Section 222.21, F.S.

<sup>17</sup> Section 744.626, F.S.

<sup>18</sup> Section 61.14, F.S.

Section 77.041, F.S., provides a form for the notice that the clerk of the court must furnish to an individual debtor upon the creditor's application for a writ of garnishment. The notice informs the debtor that he or she may have certain assets that are exempt from garnishment. The exemptions are not automatic and must be timely and affirmatively asserted by the debtor. If the debtor fails to timely claim an exemption, the creditor is entitled to a default judgment (and is entitled to the property garnished).<sup>19</sup>

The clerk is also required to furnish the debtor with a statutory form for a claim of exemption. The statutory form lists some common exemptions that the defendant may check, along with a request for a hearing and a signature line for the debtor.<sup>20</sup> While s. 222.12, F.S., requires that a claim of exemption be filed under oath, the statutory form as s. 77.041(1), F.S., does not contain the legal language necessary to effectuate a sworn statement.

Section 77.041(2), F.S., provides that, if a claim of exemption is timely filed by the debtor, the creditor has 3 business days to file an objection to the claim of exemption if the defendant hand delivers the form and 8 business days if the defendant mails the form. Section 222.12, F.S., however, provides that the creditor's objection must be filed within 2 business days. If the creditor does not timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.<sup>21</sup>

Upon the filing by a debtor of a claim of exemption, and the timely filing of an objection by the creditor, a hearing will be held as soon as practicable to determine the validity of the exemptions claimed.<sup>22</sup>

It is unclear why there are conflicting statutes regarding claims of exemption. The passage of s. 77.041, F.S., may have been intended to replace s. 222.12, F.S., but the courts have not interpreted it that way.<sup>23</sup> A trial court decision dissolved a writ of garnishment because the plaintiff's answers to the defendant's claims of exemption were not sufficient under s. 77.041(3), F.S., to "contest" the claims because the plaintiff's answers were general denials, rather than specifically contesting each claim. The appellate court reversed, claiming that the trial court erred by narrowly focusing on the word "contest" in s. 77.041(3), F.S., and that the procedure in s. 77.041, F.S., supplements, rather than replaces s. 222.12, F.S.<sup>24</sup>

### **Effects of the Bill**

This bill amends s. 77.041, F.S., to extend the time that a creditor or creditor's attorney has to file an objection to a defendant's exemption request to 8 business days for a hand-delivered form and 14 business days for a mailed form.

The bill allows delivery of documents to the plaintiff's or defendant's attorney, rather than requiring delivery to the plaintiff or defendant himself or herself.

The bill also modifies the statutory form to include certification under oath and penalty of perjury that the debtor mailed the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

The bill provides for the requirement for a sworn claim of exemption in s. 77.041, F.S., and repeals s. 222.12, F.S., the 1875 statute relating to proceedings for exemption.

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<sup>19</sup> Section 77.081, F.S.

<sup>20</sup> Section 77.041, F.S.

<sup>21</sup> *Id.*

<sup>22</sup> Section 77.041(3), F.S.

<sup>23</sup> *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So.2d 1276 (Fla. 4<sup>th</sup> DCA 2006).

<sup>24</sup> *Id.*

**B. SECTION DIRECTORY:**

Section 1 amends s. 77.041, F.S., relating to notice to individual defendant for claim of exemption from garnishment and the procedures for a hearing.

Section 2 repeals s. 222.12, F.S., relating to proceedings for exemption.

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

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

1. Revenues:

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

2. Expenditures:

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

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 20, 2013, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The first amendment provides for hand delivery in the form to apply for an exemption from garnishment. The second amendment provides a requirement that the defendant's claim for an exemption be sworn. The third amendment allows a plaintiff to "answer" a defendant's claim rather than to "contest" the claim.

On March 19, 2013, the Insurance and Banking Subcommittee considered and adopted one amendment. The amendment inserted "or the plaintiff's attorney" throughout the committee substitute to clarify that a creditor's attorney may file an answer to a debtor's claim of exemption, on behalf the creditor. The Insurance and Banking Subcommittee reported the bill favorably as a committee substitute. This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to garnishment; amending s. 77.041,  
 3           F.S.; revising the "Notice to Defendant" provided by  
 4           the clerk of court in a garnishment proceeding;  
 5           providing that a defendant in a garnishment proceeding  
 6           may provide notice of a garnishment exemption and  
 7           request for hearing to the plaintiff's or the  
 8           garnishee's attorney; extending the time allowed for  
 9           the plaintiff or the plaintiff's attorney to respond  
 10          to the defendant's claim of exemption and request for  
 11          hearing; providing response procedures of the clerk of  
 12          court and the plaintiff's attorney when the  
 13          plaintiff's attorney is served with a notice of  
 14          garnishment exemption and request for hearing;  
 15          requiring the defendant to certify under oath and  
 16          penalty of perjury that he or she provided notice of  
 17          the garnishment exemption claim and request for  
 18          hearing to the plaintiff and the garnishee, or the  
 19          plaintiff's and garnishee's attorneys, in order to  
 20          obtain a hearing; repealing s. 222.12, F.S., relating  
 21          to proceedings for exemption; providing an effective  
 22          date.

23  
 24   Be It Enacted by the Legislature of the State of Florida:

25  
 26           Section 1. Subsections (1) and (3) of section 77.041,  
 27   Florida Statutes, are amended to read:  
 28           77.041 Notice to individual defendant for claim of

29 exemption from garnishment; procedure for hearing.—

30 (1) Upon application for a writ of garnishment by a  
 31 plaintiff, if the defendant is an individual, the clerk of the  
 32 court shall attach to the writ the following "Notice to  
 33 Defendant":

34 NOTICE TO DEFENDANT OF RIGHT AGAINST  
 35 GARNISHMENT OF WAGES, MONEY,  
 36 AND OTHER PROPERTY

37 The Writ of Garnishment delivered to you with this Notice  
 38 means that wages, money, and other property belonging to you  
 39 have been garnished to pay a court judgment against you.  
 40 HOWEVER, YOU MAY BE ABLE TO KEEP OR RECOVER YOUR WAGES, MONEY,  
 41 OR PROPERTY. READ THIS NOTICE CAREFULLY.

42 State and federal laws provide that certain wages, money,  
 43 and property, even if deposited in a bank, savings and loan, or  
 44 credit union, may not be taken to pay certain types of court  
 45 judgments. Such wages, money, and property are exempt from  
 46 garnishment. The major exemptions are listed below on the form  
 47 for Claim of Exemption and Request for Hearing. This list does  
 48 not include all possible exemptions. You should consult a lawyer  
 49 for specific advice.

50 IF AN EXEMPTION FROM GARNISHMENT APPLIES TO YOU AND YOU WANT TO  
 51 KEEP YOUR WAGES, MONEY, AND OTHER PROPERTY FROM BEING GARNISHED,  
 52 OR TO GET BACK ANYTHING ALREADY TAKEN, YOU MUST COMPLETE A FORM  
 53 FOR CLAIM OF EXEMPTION AND REQUEST FOR HEARING AS SET FORTH  
 54 BELOW AND HAVE THE FORM NOTARIZED. IF YOU HAVE A VALID  
 55 EXEMPTION, YOU MUST FILE THE FORM WITH THE CLERK'S OFFICE WITHIN  
 56 20 DAYS AFTER THE DATE YOU RECEIVE THIS NOTICE OR YOU MAY LOSE

57 | IMPORTANT RIGHTS. YOU MUST ALSO MAIL OR DELIVER A COPY OF THIS  
 58 | FORM TO THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND THE  
 59 | GARNISHEE OR THE GARNISHEE'S ATTORNEY AT THE ADDRESSES LISTED ON  
 60 | THE WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU TO  
 61 | COMPLETE A CERTIFICATION THAT YOU MAILED OR DELIVERED COPIES TO  
 62 | THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND GARNISHEE OR THE  
 63 | GARNISHEE'S ATTORNEY.

64 |         If you request a hearing, it will be held as soon as  
 65 | possible after your request is received by the court. The  
 66 | plaintiff or the plaintiff's attorney must file any objection  
 67 | within 8 ~~3~~ business days if you hand delivered to the plaintiff  
 68 | or the plaintiff's attorney a copy of the form for Claim of  
 69 | Exemption and Request for Hearing or, alternatively, 14 ~~8~~  
 70 | business days if you mailed a copy of the form for claim and  
 71 | request to the plaintiff or the plaintiff's attorney. If the  
 72 | plaintiff or the plaintiff's attorney files an objection to your  
 73 | Claim of Exemption and Request for Hearing, the clerk will  
 74 | notify you and the other parties of the time and date of the  
 75 | hearing. You may attend the hearing with or without an attorney.  
 76 | If the plaintiff or the plaintiff's attorney fails to file an  
 77 | objection, no hearing is required, the writ of garnishment will  
 78 | be dissolved, and your wages, money, or property will be  
 79 | released.

80 | IF YOU HAVE A VALID EXEMPTION, YOU SHOULD FILE THE FORM FOR  
 81 | CLAIM OF EXEMPTION IMMEDIATELY TO KEEP YOUR WAGES, MONEY, OR  
 82 | PROPERTY FROM BEING APPLIED TO THE COURT JUDGMENT. THE CLERK  
 83 | CANNOT GIVE YOU LEGAL ADVICE. IF YOU NEED LEGAL ASSISTANCE, YOU  
 84 | SHOULD SEE A LAWYER. IF YOU CANNOT AFFORD A PRIVATE LAWYER,



85 LEGAL SERVICES MAY BE AVAILABLE. CONTACT YOUR LOCAL BAR  
 86 ASSOCIATION OR ASK THE CLERK'S OFFICE ABOUT ANY LEGAL SERVICES  
 87 PROGRAM IN YOUR AREA.

88 CLAIM OF EXEMPTION AND  
 89 REQUEST FOR HEARING

90 I claim exemptions from garnishment under the following  
 91 categories as checked:

92  
 93 ..... 1. Head of family wages. (~~You must~~ Check  
either a. or b. below if applicable.)

..... a. I provide more than one-half of the  
 support for a child or other dependent and  
 have net earnings of \$750 or less per week.

94 ..... b. I provide more than one-half of the  
 support for a child or other dependent, have  
 net earnings of more than \$750 per week, but  
 have not agreed in writing to have my wages  
 garnished.

95 ..... 2. Social Security benefits.

96 ..... 3. Supplemental Security Income benefits.

97 ..... 4. Public assistance (welfare).

98 ..... 5. Workers' Compensation.

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- ..... 6. Reemployment assistance or unemployment compensation.
- ..... 7. Veterans' benefits.
- ..... 8. Retirement or profit-sharing benefits or pension money.
- ..... 9. Life insurance benefits or cash surrender value of a life insurance policy or proceeds of annuity contract.
- ..... 10. Disability income benefits.
- ..... 11. Prepaid College Trust Fund or Medical Savings Account.
- ..... 12. Other exemptions as provided by law.  
.....(explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

Address: .....

Telephone number:.....

I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this CLAIM OF EXEMPTION AND REQUEST FOR HEARING has been furnished by (circle one) hand delivery or United States Mail on

114 (insert date) , to: (insert names and addresses of  
115 Plaintiff or Plaintiff's attorney and of Garnishee or  
116 Garnishee's attorney to whom this document was furnished) .  
117

118 I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the  
119 statements made in this request are true to the best of my  
120 knowledge and belief.

121 .....

122 Defendant's signature

123 Date.....

124 STATE OF FLORIDA

125 COUNTY OF

126 Sworn and subscribed to before me this ..... day of ...(month  
127 and year)..., by ...(name of person making statement)...

128 Notary Public/Deputy Clerk

129 Personally Known .....OR Produced Identification....

130 Type of Identification Produced.....

131 (3) Upon the filing by a defendant of a sworn claim of  
132 exemption and request for hearing, a hearing will be held as  
133 soon as is practicable to determine the validity of the claimed  
134 exemptions. If the plaintiff or the plaintiff's attorney does  
135 not file a sworn written statement that answers ~~contests~~ the  
136 defendant's claim of exemption within 8 ~~3~~ business days after  
137 hand delivering the claim and request or, alternatively, 14 ~~8~~  
138 business days, if the claim and request were served by mail, no  
139 hearing is required and the clerk must automatically dissolve  
140 the writ and notify the parties of the dissolution by mail.

141 Section 2. Section 222.12, Florida Statutes, is repealed.

142

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 457 Collection of Worthless Payment Instruments

**SPONSOR(S):** Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Magar

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 550

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	11 Y, 0 N, As CS	Collins	Luczynski
3) Judiciary Committee		Cary <i>JMC</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

Before the recipient of a worthless check, draft or order of payment may sue the maker, the recipient must send a demand letter giving the maker 30 days to pay the check plus the statutory fee. If unpaid after 30 days, the recipient may sue for 3 times the amount of the check plus fees, costs and attorney fees.

This bill provides the payee with the alternative to collect the bad check plus the statutory fee and the bank fees incurred without sending a demand letter. The demand letter would still be required before filing suit. The bill also updates the statute to incorporate debit card transactions and electronic fund transfers.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

While the Florida Rules of Civil Procedure, as promulgated by the Florida Supreme Court, generally dictate the steps that litigants must follow in civil and criminal actions, the Legislature may pass substantive laws that a litigant must follow before getting into court. One such law requires a recipient (payee) of a check, draft, or order to send a demand letter and wait 30 days before filing suit against the maker of an instrument that is either refused by the drawee for lack of funds, credit or account, or which was made with the intent to defraud (hereinafter "bad check").

The payee may also assess a service charge to the maker or drawer of the bad check.<sup>1</sup> The service charge is the greater of 5% of the face value of the bad check or \$25 for a bad check with a face value of \$50 or less, \$30 for a bad check with a face value greater than \$50 but not exceeding \$300, or \$40 for a bad check with a face value exceeding \$300.<sup>2</sup> The maker or drawer is also liable for interest and bank fees.<sup>3</sup>

Prior to filing a lawsuit, current law requires the payee to provide the maker or drawer an opportunity to cure. The payee must send the maker or drawer a demand of payment (hereinafter "demand letter") by certified or registered mail or by first-class mail if the payee provides an affidavit of service. In order to avoid the suit, upon receipt of the demand letter the maker or drawer must, within 30 days, pay to the payee the full amount of the bad check and the service charge described above.<sup>4</sup>

If the maker or drawer does not tender the face value of the bad check plus the service charge to the payee within 30 days, the payee may file suit. The maker or drawer has another opportunity to avoid a judgment by tendering payment to the payee prior to the court hearing equal to the sum of the face value of the bad check plus the service charge described above, court costs, incurred bank fees, attorney fees and collection costs.<sup>5</sup> If the suit goes to judgment, the court may award that sum plus 3 times the face value of the bad check.<sup>6</sup>

##### **Effect of the Bill**

The bill amends s. 68.065, F.S., to provide an alternative to allow recovery without the filing of a civil action. If payment is refused by the drawee or if the maker or drawer stops payment on the check with the intent to defraud, the payee may collect bank fees actually incurred in the transaction by the payee in addition to a service charge that is the greater of 5% of the face value of the bad check or \$25 for a bad check with a face value of \$50 or less, \$30 for a bad check with a face value greater than \$50 but not exceeding \$300, or \$40 for a bad check with a face value exceeding \$300.

The bill does not change the requirement in current law to send a demand letter in order to recover treble damages plus the service charge described above, court costs, incurred bank fees, attorney fees and collection costs.

The bill also updates the civil laws on bad checks by creating the definition of "payment instrument" and including in the definition a debit card order or electronic funds transfer.

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<sup>1</sup> Section 68.065(2), F.S.

<sup>2</sup> Section 832.08(5), F.S.

<sup>3</sup> Section 68.065(2), F.S.

<sup>4</sup> Section 68.065(3), F.S.

<sup>5</sup> Section 68.065(5), F.S.

<sup>6</sup> Section 68.065(1), F.S.

**B. SECTION DIRECTORY:**

**Section 1:** amends s. 68.065, F.S., relating to actions to collect worthless checks, drafts, or orders of payment.

**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 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:**

None.



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

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed a requirement to post conspicuous notice in lieu of mailed notice;
- Added a debit card order or electronic funds transfer to the list of financial instruments to which the civil bad check law applies; and
- Specified that the service charge for a bad check may be billed and collected without notice.

At the March 20, 2013, meeting of the Business & Professional Regulation Subcommittee, one amendment was proposed and adopted. The bill was reported favorably as a Committee Substitute.

The amendment:

- Clarifies that a demand letter is required in order to bring a civil action; and
- Clarifies that a demand letter is not required when pursuing any out-of-court remedies.

The analysis is drafted to the Committee Substitute as passed by the Business & Professional Regulation Subcommittee.

1 A bill to be entitled  
 2 An act relating to the collection of worthless payment  
 3 instruments; amending s. 68.065, F.S.; defining the  
 4 term "payment instrument"; applying certain provisions  
 5 relating to civil actions brought to collect  
 6 dishonored checks, drafts, and orders of payment to  
 7 specified types of payment instruments to permit the  
 8 award of triple damages, court costs, and reasonable  
 9 attorney fees, the imposition of service charges, and  
 10 requirements for written demands for payment that must  
 11 be delivered before commencement of collection  
 12 actions; authorizing the payee of a dishonored payment  
 13 instrument to recover bank fees and a service charge  
 14 without filing a civil action; conforming provisions  
 15 to changes made by the act; providing an effective  
 16 date.

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

19  
 20 Section 1. Section 68.065, Florida Statutes, is amended to  
 21 read:

22 68.065 Actions to collect worthless ~~checks, drafts, or~~  
 23 ~~orders of payment instruments; attorney attorney's~~ fees and  
 24 collection costs.-

25 (1) As used in this section, the term "payment instrument"  
 26 or "instrument" means a check, draft, order of payment, debit  
 27 card order, or electronic funds transfer.

28 (2) In lieu of a service charge authorized under

29 subsection (3), s. 832.062(4)(a), or s. 832.07, the payee of a  
 30 payment instrument, the payment of which is refused by the  
 31 drawee because of lack of funds, lack of credit, or lack of an  
 32 account, or where the maker or drawer stops payment on the  
 33 instrument with intent to defraud, may lawfully collect bank  
 34 fees actually incurred by the payee in the course of tendering  
 35 the payment, plus a service charge of \$25 if the face value does  
 36 not exceed \$50; \$30 if the face value exceeds \$50 but does not  
 37 exceed \$300; \$40 if the face value exceeds \$300; or 5 percent of  
 38 the face value of the payment instrument, whichever is greater.  
 39 The right to damages under this subsection may be claimed  
 40 without the filing of a civil action.

41 (3)(a)(1) In any civil action brought for the purpose of  
 42 collecting a ~~check, draft, or order of payment instrument~~, the  
 43 payment of which is ~~was~~ refused by the drawee because of ~~the~~  
 44 lack of funds, lack of credit, or lack of an account, or where  
 45 the maker or drawer stops payment on the instrument ~~check,~~  
 46 ~~draft, or order of payment~~ with intent to defraud, and where the  
 47 maker or drawer fails to pay the amount owing, in cash, to the  
 48 payee within 30 days after ~~following~~ a written demand therefor,  
 49 as provided in subsection (4) ~~(3)~~, the maker or drawer is ~~shall~~  
 50 ~~be~~ liable to the payee, in addition to the amount owing upon  
 51 such payment instrument ~~check, draft, or order~~, for damages of  
 52 triple the amount so owing. However, in no case shall the  
 53 liability for damages be less than \$50. The maker or drawer is  
 54 ~~shall~~ also be liable for any court costs and reasonable attorney  
 55 fees incurred by the payee in taking the action. Criminal  
 56 sanctions, as provided in s. 832.07, may be applicable.

57        (b) ~~(2)~~ The payee may also charge the maker or drawer of  
 58 the ~~check, draft, or order of payment~~ instrument a service  
 59 charge not to exceed the service fees authorized under s.  
 60 832.08(5) or 5 percent of the face amount of the instrument,  
 61 whichever is greater, when making written demand for payment. In  
 62 the event that a judgment or decree is rendered, interest at the  
 63 rate and in the manner described in s. 55.03 may be added toward  
 64 the total amount due. Any bank fees incurred by the payee may be  
 65 charged to the maker or drawer of the ~~check, draft, or order of~~  
 66 payment instrument.

67        (4) ~~(3)~~ Before recovery under subsection (3) ~~this section~~  
 68 may be claimed, a written demand must be delivered by certified  
 69 or registered mail, evidenced by return receipt, or by first-  
 70 class mail, evidenced by an affidavit of service of mail, to the  
 71 maker or drawer of the ~~check, draft, or order of payment~~  
 72 instrument to the address on the ~~check or other~~ instrument, to  
 73 the address given by the drawer at the time the instrument was  
 74 issued, or to the drawer's last known address. The form of such  
 75 notice shall be substantially as follows:

76        "You are hereby notified that a check, draft, order of  
 77 payment, debit card order, or electronic funds transfer numbered  
 78 .... in the face amount of \$.... issued by you on ... (date) ...,  
 79 drawn upon ... (name of bank) ..., and payable to ...., has been  
 80 dishonored. Pursuant to Florida law, you have 30 days from  
 81 receipt of this notice to tender payment in cash of the full  
 82 amount of the dishonored payment instrument, check plus a  
 83 service charge of \$25~~7~~ if the face value does not exceed \$50,  
 84 \$30~~7~~ if the face value exceeds \$50 but does not exceed \$300,

85 \$40~~7~~ if the face value exceeds \$300, or 5 percent of the face  
 86 amount of the dishonored instrument ~~check~~, whichever is greater,  
 87 the total amount due being \$.... and .... cents. Unless this  
 88 amount is paid in full within the 30-day period, the holder of  
 89 the dishonored payment ~~check or~~ instrument may file a civil  
 90 action against you for three times the amount of the dishonored  
 91 instrument ~~check~~, but in no case less than \$50, in addition to  
 92 the payment of the dishonored instrument ~~check~~ plus any court  
 93 costs, reasonable attorney fees, and any bank fees incurred by  
 94 the payee in taking the action."

95 (5)~~(4)~~ A subsequent person receiving a payment instrument  
 96 ~~check, draft, or order,~~ from the original payee or a successor  
 97 endorsee has the same rights that the original payee has against  
 98 the maker of the instrument, if provided such subsequent person  
 99 gives notice in a substantially similar form to that provided in  
 100 subsection (4) above. A subsequent person providing such notice  
 101 is ~~shall be~~ immune from civil liability for the giving of such  
 102 notice and for proceeding under the forms of such notice, so  
 103 long as the maker of the instrument has the same defenses  
 104 against the subsequent person as against the original payee.  
 105 However, the remedies available under this section may be  
 106 exercised only by one party in interest.

107 (6)~~(5)~~ After ~~Subsequent to the~~ commencement of the action  
 108 but before ~~prior to~~ the hearing, the maker or drawer may tender  
 109 to the payee, as satisfaction of the claim, an amount of money  
 110 equal to the sum of the payment instrument ~~check~~, the service  
 111 charge, court costs, and incurred bank fees. Other provisions  
 112 notwithstanding, the maker or drawer is liable to the payee for

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113 | all attorney fees and collection costs incurred by payee as a  
 114 | result of the payee's claim.

115 |        ~~(7)(6)~~ If the court or jury determines that the failure of  
 116 | the maker or drawer to satisfy the dishonored payment instrument  
 117 | ~~check~~ was due to economic hardship, the court or jury has the  
 118 | discretion to waive all or part of the statutory damages.

119 |        Section 2. This act shall take effect July 1, 2013.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 545 Right to Keep and Bear Arms  
SPONSOR(S): Combee and others  
TIED BILLS: None IDEN./SIM. BILLS: None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	10 Y, 3 N	Baker	Rojas
2) Judiciary Committee		<i>JK</i> Keegan	Havlicak <i>RN</i>

SUMMARY ANALYSIS

The memorial expresses the sense of the Florida Legislature that the United States President's Proposal to constrain the people's access to arms violates the U.S. Constitution. The memorial also expresses the Legislature's intent to lawfully overturn federal firearm control measures that violate the U.S. Constitution.

The Second Amendment protects the individual right to possess for lawful purposes a firearm in common use. That right applies to state regulation as well. The U.S. Supreme Court has found exceptions to that constitutional right, such as longstanding prohibitions on the possession of firearms by the mentally ill.

The President's Proposal was issued in January 2013 and urges Congress to not only reinstate the prohibition on military-style weapons and on certain-sized magazines, but also to increase the scope of those prior constrictions. In February 2013, the President asked Congress to pass these general proposals in his State of the Union Address.

The memorial has no fiscal impact.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

###### A. *The Second Amendment*

The Second Amendment to the U.S. Constitution states a “well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

##### General Protections

The U.S. Supreme Court (Court) has declared the Second Amendment provides the constitutional right of an individual to keep and bear arms.<sup>1</sup> The Second Amendment applies to the states by operation of the Fourteenth Amendment.<sup>2</sup> The introductory clause of the Second Amendment does not limit the right to keep and bear arms.<sup>3</sup>

The Court has looked at the provisions of a challenged regulation working together as a whole in order to determine whether that regulation indeed constrains individual rights protected by the Second Amendment. For instance, a law that outlawed the registration of handguns while also outlawing the possession of unregistered firearms was a de facto prohibition on handguns, thereby violating the Second Amendment.<sup>4</sup> Requiring a handgun to be disassembled or trigger-locked also violated the Second Amendment by requiring that weapon to be kept inoperable.<sup>5</sup> The Court emphasized that these bans on handguns would fail any level of heightened constitutional scrutiny; therefore, it did not choose which type of scrutiny (strict or intermediate) was necessary to apply.<sup>6</sup>

##### Qualifications

In *District of Columbia v. Heller*, the Court decided, among other things, there is no Second Amendment protection for “those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.”<sup>7</sup> The weapons protected by the Second Amendment are those in common use for lawful purposes, such as self-defense.<sup>8</sup> For example, because in the United States handguns were a common weapon for home defense, a prohibition on the possession of handguns violated the Second Amendment.<sup>9</sup>

##### Exceptions

*Heller* noted there are presumptively lawful firearm regulations the Second Amendment does not prohibit.<sup>10</sup> The Court then proceeded to give an *open-ended* list of examples of such regulations to which the presumption of lawfulness attaches:

- 1) “longstanding prohibitions on the possession of firearms *by felons and the mentally ill*, or

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<sup>1</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>2</sup> *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

<sup>3</sup> *See Heller*, 128 S. Ct. at 2789-90 (the introductory clause is used to resolve any ambiguities, if they exist, after reading the operative clause, and was in use in many state constitutions at the founding era).

<sup>4</sup> *Id.* at 2789-90.

<sup>5</sup> *Id.* at 2817-19.

<sup>6</sup> *Id.* at 2817-18.

<sup>7</sup> *Id.* at 2816 (choosing to narrow the limitation on the Second Amendment expressed by a prior U.S. Supreme Court decision).

<sup>8</sup> *Id.* at 2815 (finding that militia-type weapons at the revolutionary period were the same type as used in self-defense).

<sup>9</sup> *Id.* at 2817-19.

<sup>10</sup> *Id.* at 2816.

- 2) laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or
- 3) laws imposing conditions and qualifications on the *commercial* sale of arms.”<sup>11</sup>

The Court did not specifically mention the degree of difficulty by which these presumptions could be overcome, nor whether these were rebuttable or conclusive presumptions.

After *Heller*, the Court was asked to decide whether a federal prohibition on firearm possession by a person convicted of a domestic violence misdemeanor required proof of a domestic relationship.<sup>12</sup> The Court did not invalidate that statute but did not address the issue of the Second Amendment either.<sup>13</sup> However, one U.S. Circuit Court of Appeals has applied intermediate scrutiny (a lower degree of scrutiny than applied to many fundamental rights) to a prohibition on firearm possession by a person subject to a domestic violence injunction.<sup>14</sup> Another U.S. Circuit Court of Appeals has found that a prohibition on the possession of military-style firearms and large-capacity magazines passes intermediate scrutiny.<sup>15</sup>

### B. The Tenth Amendment

The Tenth Amendment to the United States Constitution delegates to the states any powers not provided to the federal government. Specifically, the amendment provides, “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”<sup>16</sup>

### C. The U.S. President’s recent proposal for federal regulation of firearms

On January 16, 2013, the President released a statement proposing changes to federal law and the regulation of firearms (Proposal).<sup>17</sup> That Proposal was based on recommendations from the Vice President.<sup>18</sup> Those recommendations leaned toward executive action rather than congressional legislation.<sup>19</sup> On January 26, 2013, the President announced certain executive actions he would take regarding firearms (Announcement).<sup>20</sup>

At the State of the Union Address on February 12, 2013, the President called on Congress to vote on firearm control as envisioned by the Proposal. Among other regulatory and spending requests,<sup>21</sup> the Proposal listed two broad prongs of firearm regulation:

- 1) magazine size, ammunition, and military-style firearms, and
- 2) constraints on sales.

<sup>11</sup> *Id.* at 2816-17 (numerals and emphasis added).

<sup>12</sup> *United States v. Hayes*, 555 U.S. 415 (2009).

<sup>13</sup> *Id.*

<sup>14</sup> *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010).

<sup>15</sup> *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (case is currently at federal District Court after being remanded by the Circuit Court; discovery deadline has been set for May 2013).

<sup>16</sup> U.S. CONST. amend. X.

<sup>17</sup> “Now is the Time: The President’s plan to protect our children and our communities by reducing gun violence,” The White House, available at <http://www.whitehouse.gov/issues/preventing-gun-violence#what-we-can-do> (click “Download the full text of the President’s Plan”) (last visited March 25, 2013) (hereinafter the “Presidential Proposal”).

<sup>18</sup> Kevin Liptak, “Details of Biden gun package emerge,” CNN, Jan. 15, 2013, available at

<http://politicalticker.blogs.cnn.com/2013/01/15/details-of-biden-gun-package-emerge/> (last visited March 25, 2013).

<sup>19</sup> *See id.* (reporting that Vice President’s recommendations found a high-capacity magazine law may pass House, while assault weapon ban would not).

<sup>20</sup> “Now is the Time”, *supra* n. 14 (click “See the Executive Actions President Obama Announced”) (last visited March 25, 2013) (hereinafter “Announcement”).

<sup>21</sup> The portions of the proposal calling for spending include millions of dollars for research; increased police presence on streets; encouragement for firearm manufacturers to create new constraints on weapons; hiring school resource officers, psychologists, and counselors; and implementation of emergency management plans and behavior management plans. The other regulatory categories of the Proposal included schools and mental health services.

## 1. Magazine size, ammunition, and military-style firearms

The Proposal urges Congress to “reinstate and strengthen the prohibition on assault weapons.”<sup>22</sup> According to this language, the President not only seeks to recreate the same ban that existed from 1994 to 2004<sup>23</sup>, but also wants Congress to enact an even more stringent law. In particular, the Proposal implores Congress to prevent cosmetic modifications of semiautomatic rifles that the President alleges were a circumvention of the 1994 assault weapon ban.<sup>24</sup> The Proposal does not specify which modifications allegedly circumvented that now-repealed law.

The 1994 assault weapons ban prohibited the manufacture, transfer and possession of a “semiautomatic assault weapon,” including A-K technology weapons, UZI, AR-15, TEC-9, and “copies or duplicates of the [prohibited] firearms.”<sup>25</sup>

The Proposal also urges Congress to “reinstate the prohibition on magazines holding more than 10 rounds.”<sup>26</sup> The 1994 federal law prohibited ammunition feeding devices of more than 10 rounds.<sup>27</sup> The Proposal goes on to urge Congress to ban the possession and transfer of armor-piercing ammunition among persons who are not members of law enforcement or the military.<sup>28</sup>

## 2. Constraints on Sales

The Proposal urges Congress to change the National Criminal Background Check System under the Brady Act.<sup>29</sup> Accordingly, the President urges Congress to require background searches for *all* firearm purchasers, unless a transaction occurred between family members or was a temporary transfer for sporting purposes.<sup>30</sup> The Proposal urges Congress to prevent unlicensed persons from selling weapons to those who may not otherwise be able to make a lawful purchase because of failing a background search, i.e., “straw purchasers.”<sup>31</sup>

### *Ban on importation of relic arms*

The Proposal requests Congress to permit the executive branch to restrict the definition of importable relic weapons by excluding semiautomatic military rifles therefrom.<sup>32</sup>

### *Executive action*

The Proposal implies the implementation of certain executive action. The President has stated that he intends to take executive action.<sup>33</sup> Notwithstanding the Health Insurance Portability and Accountability Act (HIPAA), states may disclose a person’s mental health information when a background search is conducted.<sup>34</sup> To this end, the Proposal, without providing specifics, requests to spend \$70 million on states in the next two fiscal years to encourage them to make relevant disclosures.

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<sup>22</sup> Presidential Proposal at 5, *supra* n. 17.

<sup>23</sup> Pub. L. 103-322, §§ 110102-110104 (HR 3355) (Violent Crime Control and Law Enforcement Act of 1994); once codified at 18 U.S.C. §§ 921-22 (1994).

<sup>24</sup> Presidential Proposal at 5, *supra* n. 17.

<sup>25</sup> Pub. L. 103-322, § 110102 (1994).

<sup>26</sup> Presidential Proposal at 5, *supra* n. 17.

<sup>27</sup> Pub. L. 103-322, § 110102 (1994).

<sup>28</sup> Presidential Proposal at 6, *supra* n. 17.

<sup>29</sup> *Id.* at 3; see 18 U.S.C. § 921, *et. seq.*

<sup>30</sup> Presidential Proposal at 3, *supra* n. 17.

<sup>31</sup> *Id.* at 6.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> *Id.* at 4.

<sup>34</sup> Announcement at 2, *supra* n. 20.

Further, the President has stated that he intends to direct federal agencies to review federal firearm laws and recommend changes to Congress and the executive branch as to how those laws can be used to “ensure dangerous people aren’t slipping through the cracks.”<sup>35</sup>

The President intends to issue a memorandum requiring all federal law enforcement to trace firearms recovered by a criminal investigation.<sup>36</sup> He also intends to recommend regulations that would create a law enforcement database for the purpose of conducting a broader background search before returning a recovered weapon to its owner.<sup>37</sup>

*D. The State of Florida’s authority to resist federal measures relating to firearms*

The lack of details provided as to how the Proposal intends to strengthen the 1994 federal ban on military-style weapons raises the potential for the federal government to adopt a measure that may violate the Second Amendment. Since the U.S. Supreme Court (Court) had not yet clarified the meaning of the Second Amendment at the time the 1994 ban existed, it is possible the Court may determine that strict scrutiny is the necessary level of scrutiny to apply to government measures that raise Second Amendment issues, and thereby invalidate laws constricting the possession of certain firearms and magazines, such as those urged in the Proposal.

The proposed federal action may be unconstitutional under the Tenth Amendment to the U.S. Constitution to the extent that a federal measure may impose an obligation on state officers to execute federal law.<sup>38</sup> Such was the case with the Brady Handgun Violence Prevention Act that required *state* officials to implement federal law by searching the background of prospective buyers and handling documents submitted by dealers.<sup>39</sup>

**Effect of Proposed Changes**

This memorial expresses the Florida Legislature’s position to the United States Congress and President regarding the President’s proposals on firearm constraints. The memorial expresses the Legislature’s sense that those proposals to restrict the availability of arms to law-abiding citizens violate the United States Constitution.

The memorial also notifies Congress and the President that the Florida Legislature intends to lawfully exercise its authority to resist and overturn any federal gun control that violates the U.S. Constitution.

**B. SECTION DIRECTORY:**

N/A

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

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

1. Revenues:

None.

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<sup>35</sup> *Id.* at 5.

<sup>36</sup> *Id.* at 6.

<sup>37</sup> *Id.* at 6-7.

<sup>38</sup> *See Printz v. United States*, 521 U.S. 989 (1997).

<sup>39</sup> *Id.*; *but see Raich v. Gonzales*, 500 F.3d 850 (9th Cir. 2007) (holding the Tenth Amendment did not apply when Congress properly exercised its Commerce power and did not commandeer state officials when implementing the federal law).

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.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

N/A

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS / COMMITTEE SUBSTITUTE CHANGES**

N/A

HM 545

2013

House Memorial

A memorial to the United States Congress and the President of the United States, urging Congress and the President to protect the constitutional right of the people to keep and bear arms.

WHEREAS, the Second Amendment to the Unites States Constitution and Section 8, Article I of the State Constitution protect an individual's right to keep and bear arms, and

WHEREAS, the Supreme Court of the United States has found that the Second Amendment protects the right of individuals to possess any bearable arms commonly used for lawful purposes, and

WHEREAS, the President of the United States has made clear his intent to urge Congress to pass legislation that would restrict the lawful acquisition and possession of firearms and ban many firearms commonly used for self-defense, hunting, competition, and target shooting, and

WHEREAS, the Supreme Court of the United States has recognized that the principles of separate sovereignty, as embodied in the Tenth Amendment to the Unites States Constitution, prohibit the Federal Government from requiring the state or its officers to take part in any federal gun control scheme, and

WHEREAS, it is the duty of the Legislature to exercise all of its lawful authority and power to protect the right of the people of this state to keep and bear arms, NOW, THEREFORE,

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

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29

30 That it is the sense of the Legislature that the proposals  
31 of the President of the United States to restrict the arms  
32 available to law-abiding citizens violate the United States  
33 Constitution and that the Legislature, on behalf of the  
34 government and citizens of the state, hereby notifies the  
35 Congress and the President that it intends to lawfully use all  
36 of its authority and power to resist or overturn any federal gun  
37 control measure that violates the right of the people of this  
38 state to keep and bear arms.

39 BE IT FURTHER RESOLVED that copies of this memorial be  
40 dispatched to the President of the United States, to the  
41 President of the United States Senate, to the Speaker of the  
42 United States House of Representatives, and to each member of  
43 the Florida delegation to the United States Congress.





### HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 607 Canned or Perishable Food Distributed Free of Charge  
**SPONSOR(S):** Civil Justice Subcommittee; Rogers and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) K-12 Subcommittee	11 Y, 0 N	Beagle	Ahearn
3) Judiciary Committee		Ward <i>JW</i>	Havlicak <i>RH</i>

#### SUMMARY ANALYSIS

The bill adds public schools to the list of defined donors protected from civil and criminal liability if they donate food to charitable organizations under the terms set forth in the statute.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Under current law, a donor of food apparently fit for human consumption may donate it without liability to a charity.<sup>1</sup> The statute defines a "donor," a "gleaner," "canned food," and "perishable food." The term "donor" includes grocery stores and any place where food is regularly prepared for sale. There are a number of restrictions in the current statute that must be in place for the protection to apply, including a lack of recklessness or gross negligence, and the good faith of the donor. Public schools are not included in the list of donors protected by the law.

Public schools in Florida participate in school lunch and breakfast programs subsidized by the federal government. Pursuant to additions to 42 U.S.C. 1758(l)(1) in 2011, "[e]ach school and local educational agency participating in the school lunch program under this chapter may donate any food not consumed under such program to eligible local food banks or charitable organizations."

##### **Effect of Proposed Changes**

The bill adds public schools to the list of defined donors which are protected from civil and criminal liability when they donate food to charitable organizations under the terms set forth in the statute.

#### B. SECTION DIRECTORY:

Section 1 amends s. 768.136, F.S., regarding liability for canned or perishable food distributed free of charge.

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 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.

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<sup>1</sup> Section 768.136, F.S.  
STORAGE NAME: h0607d.JDC.DOCX  
DATE: 3/26/2013

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:

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

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 6, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a provision which added that a public school may donate food with the same protections and provisions if the school meets its school board standards for food handling and transport and the donation is approved by the school principal. 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 canned or perishable food  
 3           distributed free of charge; amending s. 768.136, F.S.;  
 4           limiting the liability of public schools with respect  
 5           to the donation of canned or perishable food to  
 6           charitable or nonprofit organizations; revising a  
 7           definition; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Paragraph (a) of subsection (1) of section  
 12   768.136, Florida Statutes, is amended to read:

13           768.136 Liability for canned or perishable food  
 14   distributed free of charge.—

15           (1) As used in this section:

16           (a) "Donor" means a person, business, organization, or  
 17   institution, including a public school, which owns, rents,  
 18   leases, or operates:

19           1. Any building, vehicle, place, or structure, or any room  
 20   or division in a building, vehicle, place, or structure, that is  
 21   maintained and operated as a place where food is regularly  
 22   prepared, served, or sold for immediate consumption on or in the  
 23   vicinity of the premises; or to be called for or taken out by  
 24   customers; or to be delivered to factories, construction camps,  
 25   airlines, locations where catered events are being held, and  
 26   other similar locations for consumption at any place;

27           2. Any public location with vending machines dispensing  
 28   prepared meals; or

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29 |           3. Any retail grocery store.

30 |           Section 2. This act shall take effect July 1, 2013.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 727 Liens on Personal Property in Self-Service Storage Facilities & Self-Contained Storage Units
SPONSOR(S): Caldwell
TIED BILLS: None IDEN./SIM. BILLS: SB 1174

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Civil Justice Subcommittee, 10 Y, 2 N, Cary, Bond. Row 2: 2) Judiciary Committee, Cary, Havlicak (with handwritten initials JMC and RN).

SUMMARY ANALYSIS

The Self-storage Facility Act allows a facility owner to sell personal property in a storage facility if the tenant fails to pay rent. The facility owner is required to give notice of the intent to sell the property to the tenant before selling the property and is required to give notice to the tenant if the sale of the property results in more money than is necessary to pay the rent due. Notice must be delivered to the tenant or mailed by certified mail. After the time provided in the notice expires, the facility owner must publish an advertisement of the sale in a newspaper of general circulation prior to the sale or disposition of the contents of the unit. If there is no newspaper of general circulation in the region, then the Act allows the owner to post the advertisement in at least three conspicuous places in the neighborhood.

The bill provides an alternative method of publishing advertisement of the sale by posting on an Internet website for two consecutive weeks. The bill eliminates the option of posting in three conspicuous places, so that if there is no newspaper of general circulation in the area, the facility owner would have to post the advertisement on a website.

This bill also limits the amount that can be recovered in an action against the facility to the limit of the value of property that may be stored, as set forth in the rental agreement. This provision appears to be a restatement of current law.

The bill also allows an owner to have a car towed if there is no prior lienholder and limits liability for the unit owner after the tow truck removes the vehicle.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the "Act"). The Act provides remedies for the owner of a self-storage facility<sup>1</sup> or a self-contained storage unit<sup>2</sup> in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant's access to his or her property if the tenant is more than five days delinquent in paying rent.<sup>3</sup>

The Act provides that the owner of a self-storage facility or self-contained storage unit has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges in relation to the personal property and for expenses necessary to preserve or dispose of the property.<sup>4</sup> The facility owner's lien is enforced as follows:

- The tenant is notified by written notice<sup>5</sup> delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If mailed, the notice given is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.
- After the expiration of the time given in the notice, an advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.<sup>6</sup>

In the event of a sale, the facility owner may satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.<sup>7</sup>

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.<sup>8</sup>

The notice required by s. 83.806, F.S., must be sent by certified mail to the tenant's last known address.<sup>9</sup> The last known address means the address provided by the tenant in the latest rental

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<sup>1</sup> "Self-service storage facility" is defined by s. 83.803(1), F.S., as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.

<sup>2</sup> "Self-contained storage unit" is defined by s. 83.803(2), F.S., as any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

<sup>3</sup> Section 83.8055, F.S.

<sup>4</sup> Section 83.805, F.S.

<sup>5</sup> The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

<sup>6</sup> Section 83.806, F.S.

<sup>7</sup> Section 83.806(8), F.S.

<sup>8</sup> *Id.*



agreement or an address provided by the tenant by hand delivery, first-class mail, or e-mail in a subsequent written notice of a change of address.<sup>10</sup> Certified mail provides verification of proof of delivery by requiring the recipient's signature for delivery.<sup>11</sup>

After the expiration of the time provided by the notice, if the owner has not come current on the payments, the facility owner may advertise for a sale of the property. Currently, the sale must be advertised once a week for two consecutive weeks in a newspaper of general circulation in the area.<sup>12</sup> The advertisement must include a brief and general description of the proper believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.<sup>13</sup> If there is no newspaper of general circulation in the area of the facility, then the advertisement may be posted in the neighborhood where the facility is located in at least 3 conspicuous places for at least ten days before the sale or disposition may be conducted.<sup>14</sup>

If the tenant does not satisfy the lien and pay the owner's reasonable expenses, the facility owner may resume possession of the premises and sell the property.<sup>15</sup> The owner may satisfy the lien from the proceeds of the sale, to the extent that the owner's lien is not inferior to another lien on any of the property.<sup>16</sup> The balance from the sale, if any, must be held by the facility owner to be delivered to other lienholders, or if there are none, to the tenant upon request.<sup>17</sup> After two years, the owner may keep the proceeds from the sale if he has provided notice to other lienholders and they have not made a claim on the amount of the lien.<sup>18</sup>

### **Effect of the Bill**

The bill amends s. 83.806(4), F.S., to allow the facility owner to advertise the sale or disposition of the contents of the unit by posting the sale for 2 consecutive weeks on any Internet website that is accessible to the public. The bill eliminates the alternative method of advertising a sale by posting the advertisement in three conspicuous locations in the neighborhood. This would require the owner of a facility in an area with no newspaper of general circulation to post the advertisement on the Internet.

The bill creates s. 83.806(9), F.S., to limit the amount that can be recovered in an action against the facility to the limit of the value of property that may be stored, as set forth in the rental agreement. This limits the liability of the facility to the amount stated in the contract if the contents of the unit are damaged or stolen and the facility has breached its duty. This provision appears to be a restatement of current law.<sup>19</sup>

The bill creates s. 83.806(10), F.S., to limit the liability of the facility if the contents of the unit include a vehicle that does not have a prior lienholder. In such a case, the facility owner may have the vehicle towed, and the owner would not have liability for damage to the vehicle after it is towed away. The bill does not allow a facility owner to have a vehicle towed if there is a prior lienholder. Presumably, the owner would need to contact the lienholder for repossession.

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<sup>9</sup> Section 83.806(1), F.S.

<sup>10</sup> Section 83.803(6), F.S.

<sup>11</sup> See <https://www.usps.com/send/insurance-and-extra-services.htm> (last visited March 18, 2013).

<sup>12</sup> Section 83.806(4), F.S.

<sup>13</sup> Section 83.806(4)(a), F.S.

<sup>14</sup> Section 83.806(4)(b), F.S.

<sup>15</sup> Section 83.806(6), F.S.

<sup>16</sup> Section 83.806(8), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> See *Muns v. Shurgard Income Properties Fund 16-Limited Partnership*, 682 So.2d 166 (Fla. 4<sup>th</sup> DCA 1996).

**B. SECTION DIRECTORY:**

Section 1 amends s. 83.806, F.S., relating to enforcement of a lien.

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 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 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:**

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1                   A bill to be entitled  
 2           An act relating to liens on personal property in self-  
 3           service storage facilities and self-contained storage  
 4           units; amending s. 83.806, F.S.; revising notice  
 5           requirements for enforcement of liens by the owner of  
 6           the self-service storage facility or self-contained  
 7           storage unit; specifying a limit on the value of  
 8           property stored in the tenant's storage unit;  
 9           authorizing the towing of a vehicle in a storage unit  
 10          under certain circumstances; limiting the liability of  
 11          the owner of a self-service storage facility or self-  
 12          contained storage unit after a vehicle is towed from  
 13          such facility or unit; providing an effective date.

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

16  
 17           Section 1. Subsection (4) of section 83.806, Florida  
 18   Statutes, is amended, and subsections (9) and (10) are added to  
 19   that section, to read:

20           83.806 Enforcement of lien.—An owner's lien as provided in  
 21   s. 83.805 may be satisfied as follows:

22           (4) After the expiration of the time given in the notice,  
 23   an advertisement of the sale or other disposition shall be  
 24   published once a week for 2 consecutive weeks in a newspaper of  
 25   general circulation in the area where the self-service storage  
 26   facility or self-contained storage unit is located or posted for  
 27   2 consecutive weeks on an Internet website accessible to the  
 28   public. Inasmuch as any sale may involve property of more than

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29 one tenant, a single advertisement may be used to dispose of  
 30 property at any one sale.

31 ~~(a)~~ The advertisement shall include:

32 (a)1. A brief and general description of what is believed  
 33 to constitute the personal property contained in the storage  
 34 unit, as provided in paragraph (2)(b).

35 (b)2. The address of the self-service storage facility or  
 36 the address where the self-contained storage unit is located and  
 37 the name of the tenant.

38 (c)3. The time, place, and manner of the sale or other  
 39 disposition. The sale or other disposition shall take place not  
 40 sooner than 15 days after the first publication.

41 ~~(b) If there is no newspaper of general circulation in the~~  
 42 ~~area where the self-service storage facility or self-contained~~  
 43 ~~storage unit is located, the advertisement shall be posted at~~  
 44 ~~least 10 days before the date of the sale or other disposition~~  
 45 ~~in not fewer than three conspicuous places in the neighborhood~~  
 46 ~~where the self-service storage facility or self-contained~~  
 47 ~~storage unit is located.~~

48 (9) If the rental agreement contains a limit on the value  
 49 of property stored in the tenant's storage unit, the limit is  
 50 deemed to be the maximum value of the property stored in that  
 51 unit.

52 (10) If the personal property is a vehicle and the  
 53 vehicle's title is deemed to have no prior lienholder, the owner  
 54 of the self-service storage facility or self-contained storage  
 55 unit may have the vehicle towed. An owner of a self-service  
 56 storage facility or self-contained storage unit is not liable

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57 for the vehicle or any damages to the vehicle after the wrecker,  
58 tow truck, or car carrier removes the vehicle.

59 Section 2. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 757 Mandatory Reports of Child Abuse  
**SPONSOR(S):** Hood and others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1162

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Cox	Cunningham
2) Healthy Families Subcommittee	12 Y, 0 N	McElroy	Schoolfield
3) Judiciary Committee		Cox <i>lae</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

During the 2012 Legislative Session, House Bill 1355 passed, which amended s. 39.201, F.S., to add additional reporting requirements relating to child abuse. HB 1355, in part, required any person who knows, or has reasonable cause to suspect that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare to report such knowledge or suspicion to the Central Abuse Hotline (Hotline) maintained by the Department of Children Families (DCF). The Hotline is required to immediately electronically transfer such reports or calls to the appropriate county sheriff's office. The bill did not create any exceptions to the newly-created reporting requirement.

Shortly after the bill became effective, Hotline staff and law enforcement agencies recognized a redundancy in the newly-created reporting requirements. In instances where a law enforcement officer was the entity who initially identified that a child was being abused by someone other than a parent, etc., such officer was required to report his or her knowledge to the Hotline, who was then required to immediately report such information back to the law enforcement agency.

The bill amends s. 39.201, F.S., to create the following two exceptions to the above-described reporting requirement:

- An officer or employee of a law enforcement agency is not required to provide notice to the Hotline when the incident under investigation by the agency was originally reported to law enforcement by the Hotline through the electronic transfer of the report or call; and
- The Hotline is not required to electronically transfer calls and reports to the county sheriff's office if the incident of alleged abuse was originally reported to the Hotline by the county sheriff's office or another law enforcement agency.

DCF reports that the bill will have a negligible fiscal impact, if any.

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



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Prior to 2012, s. 39.201, F.S., required any person who knew, or had reasonable cause to suspect any of the following to report such knowledge or suspicion to the Central Abuse Hotline (Hotline) maintained by the Department of Children Families (DCF):

- That a child was abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare;<sup>1</sup> or
- That a child was in need of supervision and care and had no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

Upon receipt of such reports, the Hotline was required to conduct an investigation.<sup>2</sup>

The statute provided for the following two exceptions to the reporting requirements:

- A professional who is hired by DCF for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment;<sup>3</sup> and
- An officer or employee of the judicial branch is not required to again provide notice of child abuse, abandonment, or neglect when there is reasonable cause to believe the information is already known to DCF.<sup>4</sup>

During the 2012 Legislative Session, House Bill 1355 passed, which amended s. 39.201, F.S., to add additional reporting requirements.<sup>5</sup> The bill, in part, requires any person who knows, or has reasonable cause to suspect that a child is abused by an adult other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare to report such knowledge or suspicion to the Hotline. The Hotline is required to immediately electronically transfer such reports or calls to the appropriate county sheriff's office.<sup>6</sup> The bill did not create any exceptions to the new reporting requirement.

Shortly after the bill became effective, Hotline staff and law enforcement agencies recognized a redundancy in the newly-created reporting requirements.<sup>7</sup> In instances where a law enforcement officer was the entity who initially identified that a child was being abused by someone other than a parent, etc., such officer was required to report his or her knowledge to the Hotline, who was then required to immediately report such information back to the law enforcement agency.<sup>8</sup>

#### *Effect of the Bill*

The bill amends s. 39.201, F.S., creating the following two exceptions to the requirement that any person who knows, or has reasonable cause to suspect that a child is abused by an adult other than a

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<sup>1</sup>Section 39.01(47), F.S., states "other person responsible for a child's welfare" includes employees of any school, day care center, residential home, facility, institution, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. The definition exempts law enforcement officers; employees of municipal or county detention facilities; and employees of the Department of Corrections acting in an official capacity, except as otherwise provided in the subsection.

<sup>2</sup>Section 39.201(2)(a), F.S. (2011).

<sup>3</sup>Section 39.201(1)(e), F.S.

<sup>4</sup>Section 39.201(1)(f), F.S., applies when the child is currently being investigated by DCF, there is an existing dependency case, or the matter has previously been reported to the department; and only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

<sup>5</sup>Chapter 2012-155, L.O.F.

<sup>6</sup>Section 39.201(2)(b), F.S. (2012).

<sup>7</sup>*Staff Analysis and Economic Impact*, Department of Children and Families. (On file with the Criminal Justice Subcommittee staff).

<sup>8</sup>*Id.*

parent, legal custodian, caregiver, or other person responsible for the child's welfare report such knowledge or suspicion to the Hotline:

- An officer or employee of a law enforcement agency is not required to provide notice to the Hotline when the incident under investigation by the agency was originally reported to law enforcement by the Hotline through the electronic transfer of the report or call; and
- The Hotline is not required to electronically transfer calls and reports to the county sheriff's office if the incident of alleged abuse was originally reported to the Hotline by the county sheriff's office or another law enforcement agency.

These exceptions only apply when the information related to the alleged child abuse was provided to the officer or employee of a law enforcement agency or the Hotline employee in the course of such officer or employee's official duties.

**B. SECTION DIRECTORY:**

Section 1. Amends 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

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:

DCF reports that the bill will have a negligible fiscal impact on DCF, if any.<sup>9</sup>

**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 amends s. 39.201, F.S., to eliminate redundant reporting requirements inadvertently created in 2012. The bill's exceptions will eliminate this redundancy, which should result in a reduced workload on local law enforcement agencies.

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

None.

**D. FISCAL COMMENTS:**

None.

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<sup>9</sup> *Id.*

### **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**

None.

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A bill to be entitled  
 An act relating to mandatory reports of child abuse;  
 amending s. 39.201, F.S.; limiting the duty of an  
 officer or employee of a law enforcement agency to  
 provide notice to the Department of Children and  
 Families of reasonable cause to suspect child abuse  
 under certain circumstances; limiting the duty of the  
 Central Abuse Hotline to electronically transfer  
 certain calls and reports to the county sheriff's  
 office under certain circumstances; providing  
 applicability; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (1) of  
 section 39.201, Florida Statutes, to read:

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

(1)

(h) An officer or employee of a law enforcement agency is  
 not required to provide notice to the department of reasonable  
 cause to suspect child abuse by an adult other than a parent,  
 legal custodian, caregiver, or other person responsible for the  
 child's welfare when the incident under investigation by the law  
 enforcement agency was reported to law enforcement by the  
 Central Abuse Hotline through the electronic transfer of the  
 report or call. The department's Central Abuse Hotline is not  
 required to electronically transfer calls and reports received

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29 | pursuant to paragraph (2)(b) to the county sheriff's office if  
30 | the matter was initially reported to the department by the  
31 | county sheriff's office or another law enforcement agency. This  
32 | paragraph applies only when the information related to the  
33 | alleged child abuse has been provided to the officer or employee  
34 | of a law enforcement agency or Central Abuse Hotline employee in  
35 | the course of carrying out his or her official duties.

36 |       Section 2. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 775 Jurisdiction of the Courts  
**SPONSOR(S):** Civil Justice Subcommittee; Santiago  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee		Ward <i>AW</i>	Havlicak <i>RN</i>

### SUMMARY ANALYSIS

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment and a state's long-arm statute. The bill revises Florida's long-arm, choice-of-law, and forum-selection statutes, as well as provisions of the Enforcement of Foreign Judgment Act and the International Commercial Arbitration Act to:

- Provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with Florida's choice-of-law statute.
- Amend the Enforcement of Foreign Judgment Act, regarding the definition of "foreign judgment," to specify that the statute also applies to a court order or judgment from a United States territory (i.e. Puerto Rico), not merely to a court order or judgment from one of the 50 states.
- Correct cross references in the International Commercial Arbitration Act to conform with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Commercial Arbitration.
- Provide that initiating arbitration or the making of a written contract agreeing to arbitrate in this state constitutes consent for the courts of this state to assert personal jurisdiction over the parties in any action arising out of or in connection with the arbitration and any resulting order or award.

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

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Jurisdiction

###### *Personal Jurisdiction*

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment.<sup>1</sup> The test for determining whether a court is able to assert personal jurisdiction over a nonresident is whether the nonresident has "minimum contacts" in the forum so that the commencement of a proceeding against said individual will not "offend traditional notions of fair play and substantial justice."<sup>2</sup> The principal inquiry is whether the nonresident's conduct and connection with the forum state would lead him or her to believe that they could "reasonably anticipate being haled into court."<sup>3</sup>

###### *Florida's Long-Arm Statute*

The second limitation on a court's ability to assert personal jurisdiction is derived from a state's long-arm statute. Such statutes can be drafted broadly<sup>4</sup> to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow for a court to assume personal jurisdiction in a particular case. Florida's statute falls in the latter category.

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

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

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

###### *Important Court Rulings*

In *Jetbroadband WV, LC v. Mastec North America, Inc.*, the court held that by promulgating ss. 685.101 and 685.102, F.S., the legislature created a separate jurisdictional basis for asserting personal jurisdiction over a nonresident that was outside the ambit of the long-arm statute.<sup>7</sup> In that case, the

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

<sup>2</sup> *International Shoe*, 326 U.S. at 316.

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

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

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

<sup>6</sup> *Jetbroadband WV, LLC v. Mastec North America, Inc.*, 13 So.3d 159, 161 (Fla. 3rd DCA 2009).

<sup>7</sup> *Id.*



court declared that the nonresident defendant was subject to the jurisdiction of Florida's courts by virtue of the forum-selection clause that designated Florida as the appropriate venue to commence an action or proceeding regarding a dispute arising from the parties' agreement.<sup>8</sup>

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

#### *Florida's Choice-of-Law Statute*

The choice-of-law statute provides that a court may enforce a contract where Florida law is designated as the governing law in the agreement and the transaction is valued at no less than \$250,000.<sup>12</sup> The statute further provides that such contracts will be enforced if: "1) the contract bears a substantial or reasonable relation to Florida, or 2) at least one of the parties is either a resident or citizen of Florida (if a person), or is incorporated or organized under the laws of Florida or maintains a place of business in Florida (if a business)."<sup>13</sup>

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

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

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

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

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

#### *Florida's Forum-Selection Statute*

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

Regarding enforceability, the United States Supreme Court has held that such clauses should be upheld, unless it can be shown that its enforcement would be unreasonable or unjust, or that the clause

<sup>8</sup> *Id.* at 162-63.

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

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

<sup>11</sup> *Jetbroadband WV, LLC v. MasTec North America, Inc.*, 13 So.3d 159 (Fla. 3d DCA 2009), citing ss. 685.101 and 685.102, F.S..

<sup>12</sup> *Id.*

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

was invalid as a result of fraud or overreaching.<sup>14</sup> The Court has also held that the minimum contacts standard is met if a forum-selection clause exists that is “freely negotiated and is not unreasonable and unjust.”<sup>15</sup>

#### *Effect of Bill Regarding Personal Jurisdiction*

The bill amends s. 48.193, F.S., to provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with the choice-of-law statute, s. 685.102, F.S.<sup>16</sup> As a result, a court may exercise personal jurisdiction in a case involving nonresidents if they enter into a contract where the parties agree to designate Florida law as governing the contract and contractually agree to submit to personal jurisdiction in this state.

Additionally, s. 684.0049, F.S., is created to provide that initiating arbitration in Florida or the making of a written contract agreeing to arbitrate in this state constitutes consent for the courts of this state to assert personal jurisdiction over the parties in any action arising out of or in connection with the arbitration and any resulting order or award. This provision previously existed in statute and was removed upon the enactment of the United Nations Commission on International Trade Law (UNCITRAL) Model Law.<sup>17</sup>

#### **Recognition of Foreign Judgments**

Article IV, clause 1 of the United States Constitution provides that “full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. . . .”<sup>18</sup> Accordingly, the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., provides that a foreign judgment from a sister jurisdiction may be enforced in Florida upon being recorded in the office of the clerk of the circuit court of any county.<sup>19</sup> Current law limits this to only apply to a judgment or order from “any other state.”

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

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

The bill amends s. 55.502, F.S., to add that a judgment from any territory or commonwealth of the United States is also a foreign judgment recognizable under Florida law just like a judgment from another state is recognized.

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

<sup>15</sup> *Burger King*, 471 U.S. at 473 n. 14.

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

<sup>17</sup> See s. 684.30, F.S. (2009).

<sup>18</sup> U.S. Const. art. IV, cl. 1.

<sup>19</sup> Section 55.503, F.S. (2011).

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

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

## **Florida International Commercial Arbitration Act**

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

Chapter 684, F.S., in accordance with the UNCITRAL Model Law applies to any international commercial arbitration subject to an agreement between the United States and any other country. Currently, two of the statutes contain clerical errors relating to cross-references. The bill amends ss. 684.0002, 684.0003, 684.0019 and 684.0026, F.S., to correct cross-references to conform the Florida International Commercial Arbitration Act to the UNCITRAL Model Law.

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

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

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

Section 3 amends s. 684.0002, F.S., relating to scope of application of arbitration law.

Section 4 amends s. 684.0003, F.S., relating to definitions and rules of interpretation.

Section 5 amends s. 684.0019, F.S., relating to conditions for granting interim measures.

Section 6 amends s. 684.0026, F.S., relating to recognition and enforcement.

Section 7 creates s. 684.0049, F.S., relating to consent to jurisdiction.

Section 8 provides an effective date of July 1, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

The bill does not appear to have any 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:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.

1                   A bill to be entitled  
 2           An act relating to the jurisdiction of the courts;  
 3           amending s. 48.193, F.S.; providing that a person  
 4           submits to the jurisdiction of the courts of this  
 5           state by entering into a contract that specifies that  
 6           the law of this state governs the contract and that  
 7           the person agrees to submit to the jurisdiction of the  
 8           courts of this state; amending s. 55.502, F.S.;  
 9           revising the definition of the term "foreign judgment"  
 10          for purposes of the Florida Enforcement of Foreign  
 11          Judgments Act; amending s. 684.0002, F.S.; clarifying  
 12          the circumstances under which an arbitration is  
 13          international; amending s. 684.0003, F.S.; correcting  
 14          a cross-reference; amending s. 684.0019, F.S.;  
 15          limiting the application of certain provisions to  
 16          instances in which an arbitral tribunal orders a party  
 17          to preserve evidence that may be relevant and material  
 18          to the resolution of a dispute; amending s. 684.0026,  
 19          F.S.; correcting a cross-reference in the Florida  
 20          International Commercial Arbitration Act; creating s.  
 21          684.0049, F.S.; providing that the initiation of  
 22          arbitration in this state, or the making of a written  
 23          agreement to arbitrate which provides for arbitration  
 24          in this state, constitutes a consent to exercise in  
 25          personam jurisdiction by the courts of this state;  
 26          providing an effective date.

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

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Section 1. Subsection (1) of section 48.193, Florida Statutes, is amended to read:  
48.193 Acts subjecting person to jurisdiction of courts of state.—

(1) A ~~Any~~ person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from ~~the doing of~~ any of the following acts:

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state.

(c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.

(d) Contracting to insure a ~~any~~ person, property, or risk located within this state at the time of contracting.

(e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing

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57 | an action for dissolution of marriage.

58 |       (f) Causing injury to persons or property within this  
59 | state arising out of an act or omission by the defendant outside  
60 | this state, if, at or about the time of the injury, either:

61 |       1. The defendant was engaged in solicitation or service  
62 | activities within this state; or

63 |       2. Products, materials, or things processed, serviced, or  
64 | manufactured by the defendant anywhere were used or consumed  
65 | within this state in the ordinary course of commerce, trade, or  
66 | use.

67 |       (g) Breaching a contract in this state by failing to  
68 | perform acts required by the contract to be performed in this  
69 | state.

70 |       (h) With respect to a proceeding for paternity, engaging  
71 | in the act of sexual intercourse within this state with respect  
72 | to which a child may have been conceived.

73 |       (i) Entering into a contract that complies with s.  
74 | 685.102.

75 |       Section 2. Subsection (1) of section 55.502, Florida  
76 | Statutes, is amended to read:

77 |       55.502 Construction of act.—

78 |       (1) As used in ss. 55.501-55.509, the term "foreign  
79 | judgment" means a ~~any~~ judgment, decree, or order of a court of  
80 | any other state, territory, or commonwealth of the United States  
81 | or of the United States if such judgment, decree, or order is  
82 | entitled to full faith and credit in this state.

83 |       Section 3. Subsection (3) of section 684.0002, Florida  
84 | Statutes, is amended to read:

85 684.0002 Scope of application.—

86 (3) An arbitration is international if:

87 (a) The parties to an arbitration agreement have, at the  
88 time of the conclusion of that agreement, their places of  
89 business in different countries; or

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

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

94 2. Any place where a substantial part of the obligations  
95 of the commercial relationship are to be performed or the place  
96 with which the subject matter of the dispute is most closely  
97 connected; or

98 (c) The parties have expressly agreed that the subject  
99 matter of the arbitration agreement relates to more than one  
100 country.

101 Section 4. Subsection (2) of section 684.0003, Florida  
102 Statutes, is amended to read:

103 684.0003 Definitions and rules of interpretation.—

104 (2) A provision of this chapter, except s. 684.0039 ~~s.~~  
105 ~~684.0038~~, which leaves the parties free to determine a certain  
106 issue, includes the right of the parties to authorize a third  
107 party, including an institution, to make that determination.

108 Section 5. Section 684.0019, Florida Statutes, is amended  
109 to read:

110 684.0019 Conditions for granting interim measures.—

111 (1) The party requesting an interim measure under s.  
112 684.0018 shall ~~must~~ satisfy the arbitral tribunal that:



113 (a) Harm not adequately reparable by an award of damages  
 114 is likely to result if the measure is not ordered, and such harm  
 115 substantially outweighs the harm that is likely to result to the  
 116 party against whom the measure is directed if the measure is  
 117 granted; and

118 (b) A reasonable possibility exists that the requesting  
 119 party will succeed on the merits of the claim. The determination  
 120 on this possibility does not affect the discretion of the  
 121 arbitral tribunal in making any subsequent determination.

122 (2) With regard to a request for an interim measure under  
 123 s. 684.0018(4) ~~s. 684.0018~~, the requirements in subsection (1)  
 124 apply only to the extent the arbitral tribunal considers  
 125 appropriate.

126 Section 6. Section 684.0026, Florida Statutes, is amended  
 127 to read:

128 684.0026 Recognition and enforcement.—

129 (1) An interim measure issued by an arbitral tribunal must  
 130 ~~shall~~ be recognized as binding and, unless otherwise provided by  
 131 the arbitral tribunal, enforced upon application to the  
 132 competent court, irrespective of the country in which it was  
 133 issued, subject to s. 684.0027 ~~s. 684.0019(1)~~.

134 (2) The party who is seeking or has obtained recognition  
 135 or enforcement of an interim measure shall promptly inform the  
 136 court of the termination, suspension, or modification of the  
 137 interim measure.

138 (3) The court where recognition or enforcement is sought  
 139 may, if it considers it proper, order the requesting party to  
 140 provide appropriate security if the arbitral tribunal has not

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141 already made a determination with respect to security or if such  
 142 a decision is necessary to protect the rights of third parties.

143 Section 7. Section 684.0049, Florida Statutes, is created  
 144 to read:

145 684.0049 Consent to jurisdiction.—The initiation of  
 146 arbitration in this state, or the making of a written contract,  
 147 agreement, or undertaking to arbitrate which provides for  
 148 arbitration in this state, constitutes a consent to exercise in  
 149 personam jurisdiction by the courts of this state in any action  
 150 arising out of or in connection with the arbitration and any  
 151 resulting order or award.

152 Section 8. This act shall take effect July 1, 2013.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 903 Adverse Possession
SPONSOR(S): Civil Justice Subcommittee; Davis; Waldman and others
TIED BILLS: None IDEN./SIM. BILLS: SB 1166

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Civil Justice Subcommittee, Finance & Tax Subcommittee, and Judiciary Committee with associated analysts and staff members.

SUMMARY ANALYSIS

Adverse possession is a method of acquiring title to real property by possession of such property for a statutorily defined period of time. It may be accomplished by possession with color of title (some evidence in a recorded, but faulty, document that the occupant owns the property), or without color of title (without having a deed or other recorded document).

This bill adds a number of requirements related to adverse possession without color of title. The bill requires that a person who files a return for taxes with the intent of claiming the property by adverse possession must:

- Wait for all taxes and liens on the property to accrue for two years.
• Have actual and continued control of the property.
• Maintain or improve the exterior of any structures on the land.
• Pay all mortgages and liens on the property.
• Not apply for adverse possession for more than one property in the state at the same time.
• Not enter any structure on the land until the end of the adverse possession period.
• Maintain the property without entering any of the structures.

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

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Adverse possession is a method of acquiring title to real property by possession of such land for a statutorily defined period of time. There are several means by which adverse possession of real property can lead to title to real property.

To acquire title by adverse possession without color of title (without having a deed or other recorded document), s. 95.18, F.S., provides that a claimant must:

- Show open, continuous, and hostile possession;
- Pay all taxes due for a period of seven years;
- File a return of the land for taxes with the county property appraiser;
- Protect the property by an enclosure or cultivate it; and
- Maintain and occupy the land.

The property appraiser must also notify the owner of record of the filing of the return for adverse possession.<sup>1</sup>

#### Origins of Adverse Possession

The doctrine of adverse possession “dates back at least to sixteenth century England and has been an element of [U.S.] law since the country's founding.”<sup>2</sup> The first adverse possession statute appeared in the United States in North Carolina in 1715.<sup>3</sup>

Adverse possession is defined as “[a] method of acquisition of title to real property by possession for a statutory period under certain conditions.”<sup>4</sup> Generally, an adverse possessor must establish five elements in relationship to possession of the property. The possession must be:

- Open;
- Continuous for the statutory period;
- For the entirety of the area;
- Adverse to the true owner's interests; and
- Notorious.<sup>5</sup>

In most jurisdictions, state statutory law prescribes the limitations period – the period within which the record owner must act to preserve his or her interests in the property – while the state's body of common law governs the nature of use and possession necessary to trigger the running of the statutory time period.<sup>6</sup> As legal scholars have noted, “[a]dverse possession decisions are inherently fact-specific.”<sup>7</sup> Therefore, an adverse possessor must establish “multiple elements whose tests are elastic and provide the trier of fact with flexibility and discretion.”<sup>8</sup>

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<sup>1</sup> Section 95.18(3), F.S.

<sup>2</sup> Alexandra B. Klass, Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession, 77 U. COLO. L. REV. 283, 286 (Spring 2006).

<sup>3</sup> Brian Gardiner, Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws, 8 IND. INT'L & COMP. L. REV. 119, 129 (1997).

<sup>4</sup> *Id.* at 122 (quoting BLACK'S LAW DICTIONARY 53 (6th ed. 1990)).

<sup>5</sup> *Id.*

<sup>6</sup> Klass, *supra* note 1, at 287.

<sup>7</sup> Geoffrey P. Anderson and David M. Pittinos, Adverse Possession After House Bill 1148, 37 COLO. LAW 73, 74 (Nov. 2008).

<sup>8</sup> *Id.*

## Adverse Possession in Florida

In Florida, there are two ways to acquire land by adverse possession, both of which are prescribed by statute.<sup>9</sup> First, an individual adversely occupying property may claim property under color of title if he or she can demonstrate that the claim to title is derived from a recorded written document and that he or she has been in possession of the property for at least seven years.<sup>10</sup> It is irrelevant whether the recorded document is legally valid, fraudulent, or faulty. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.<sup>11</sup>

Alternatively, in the event a person occupies land continuously without color of title – i.e., without any legal document to support a claim for title – the person may seek title to the property by filing a return with the county property appraiser's office within one year of entry onto the property and paying all property taxes and any assessed liens during the possession of the property for seven consecutive years, so long as the person adhered to the statutory guidelines for proper adverse possession.<sup>12</sup> Similar to claims made with color of title, the adverse possessor may demonstrate possession of the property by showing that that he or she made a return of intent to claim the property with the property appraiser<sup>13</sup> and either:

- Protected the property by a substantial enclosure (typically a fence);
- Cultivated or improved the property; or
- Occupied and maintained the property.<sup>14</sup>

Courts have noted that “[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession.”<sup>15</sup> Adverse possession is not favored, and all doubts relating to the adverse possession claim must be resolved in favor of the property owner of record.<sup>16</sup> The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.<sup>17</sup> Therefore, the adverse possession “claim cannot be ‘established by loose, uncertain testimony which necessitates resort to mere conjecture.’”<sup>18</sup>

## Abuse of the Adverse Possession Process

As a result of foreclosures, a glut of vacant homes has increased the propensity of 'squatters' who attempt to gain ownership through adverse possession by illegally occupying homes that have been foreclosed. There have also been instances where these foreclosed home were rented to unsuspecting tenants.

<sup>9</sup> *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So. 2d 1231, 1234 (Fla. 1st DCA 2007). In addition to adverse possession, a party may gain use of adversely possessed property by acquiring a prescriptive easement upon a showing of 20 years of adverse use.

<sup>10</sup> Section 95.16, F.S. See also *Bonifay v. Dickson*, 459 So. 2d 1089 (Fla. 1st DCA 1984). The Florida Legislature, by acts now embodied in statute, reduced the period of limitations as to adverse possession to 7 years but left at 20 years the period for acquisition of easements by prescription. *Crigger v. Florida Power Corp.*, 436 So. 2d 937, 945 (Fla. 5th DCA 1983).

<sup>11</sup> Section 95.16, F.S.

<sup>12</sup> Section 95.18(1), F.S. The 1939 Legislature added to what is now s. 95.18(1), F.S., a provision which required that an adverse possessor without color of title must file a tax return and pay the annual taxes on the property during the term of possession. Chapter 19254, s. 1, Laws of Fla. (1939). A 1974 amendment to the statute eliminated the requirement that taxes be paid annually. Chapter 74-382, s. 1, Laws of Fla.

<sup>13</sup> Section 95.18(3), F.S.

<sup>14</sup> Section 95.18(2), F.S.

<sup>15</sup> *Candler Holdings Ltd. I*, 947 So. 2d at 1234.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (citing *Bailey v. Hagler*, 575 So. 2d 679, 681 (Fla. 1st DCA 1991)).

<sup>18</sup> *Id.* (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).

## Changes and Effect of Bill

This bill amends s. 95.18, F.S., to:

- Change the term "occupant" to "adverse possessor."
- Require that the adverse possessor have actual and continued "control" of the property.
  - Under the current law, an adverse possessor only has to 'occupy' the property. This change mandates that an adverse possessor actually control, through maintenance or improvement of the exterior of any structure or the land, the property in order to be eligible to gain title. This change attempts to prevent individuals from adversely possessing property while not actively *controlling* such property; in order to acquire title, the adverse possessor would essentially have to tend to the land. For example, a neighbor that tends to a deceased neighbor's yard, garden, home, etc., when the deceased has no legal heirs, may be deemed to be in control and therefore, eligible to be an adverse possessor. The change would probably prevent a claimant from simply placing personal property on the real property and claiming that he or she 'occupies' the real property.
- Provide that the adverse possessor manifest control by actual maintenance or improvement of the exterior of any structures on the land.
  - This addition helps define, and set the standard for, "control." It appears that it will help ensure that an adverse possessor is actually in control of the property and not just making a claim of the property while not having actual dominion of it.
- Add that the adverse possessor must pay all mortgages and liens on the property.
- Add that taxes must have accrued without payment for at least two years prior to application for the claim.
  - This additional requirement appears to help ensure that the property being adversely possessed is abandoned or not under control or the dominion of the true owner. It also provides protection to true owners who have neglected paying for taxes for only one year.
- Provide that a person may not apply for adverse possession for more than one property in the state at the same time.
  - This restriction, in conjunction with several others, would probably prohibit an 'entrepreneurial' adverse possessor from attempting to adversely possess multiple properties throughout the state that are actually owned (e.g., owned by banks and other lenders) and not abandoned.
- Provide that the adverse possessor may not enter any structure on the land until the end of the adverse possession period and after a deed has been issued to the possessor.
  - This addition appears to help prevent squatters from making adverse possession claims. Squatters will probably not be able to exert continuous possession of the property for seven years if they are prohibited from entering any structure on the property.
- Add to the elements necessary for adverse possession that the property has been "maintained without entering any of the structures."
  - This addition appears to help prevent squatters from making adverse possession claims. Squatters will probably not be able to exert continuous possession of the property for seven years if they are prohibited from entering any structure on the property.

### B. SECTION DIRECTORY:

Section 1 amends s. 95.18, F.S., regarding actions for adverse possession without color of title.

Section 2 provides for an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

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

#### 2. Expenditures:

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

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

#### 2. Expenditures:

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

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

The bill does not appear to have any 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 calls for changes to form DR 452, "Return of real Property in Attempt to Establish Adverse Possession without Color of Title." It appears that the Department of Revenue has sufficient existing rulemaking authority,

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill limits adverse possession by a person to one property (Line 34) at a time, but does not define that term. It is possible that a legitimate adverse possession claim could affect more than one property at a time (for instance, contiguous lots or adjacent lots that are in two separate plats).



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

On March 13, 2013, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment removes lines 57 through 62 of the bill, which required written permission from the owner of the property as a condition of adverse possession, and the second amendment removed a portion of line 39 of the bill, which made reference to the issuance of a deed upon completion of the adverse possession requirements. 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 adverse possession; amending s.  
 3           95.18, F.S.; revising terminology; requiring certain  
 4           conditions to be met before real property is legally  
 5           adversely possessed without color of title; providing  
 6           an effective date.

7  
 8   Be It Enacted by the Legislature of the State of Florida:

9  
 10           Section 1. Subsections (1), (2), and (3) of section 95.18,  
 11   Florida Statutes, are amended to read:

12           95.18 Real property actions; adverse possession without  
 13   color of title.—

14           (1) When the adverse possessor ~~occupant~~ has, or those  
 15   under whom the adverse possessor ~~occupant~~ claims have, been in  
 16   actual continued control ~~occupation~~ of real property for 7 years  
 17   under a claim of title exclusive of any other right, but not  
 18   founded on a written instrument, judgment, or decree, the  
 19   property, when actually controlled through maintenance or  
 20   improvement of the exterior of any structure or the land,  
 21   ~~occupied~~ is held adversely if the person claiming adverse  
 22   possession made a return, as required under subsection (3), of  
 23   the property by proper legal description to the property  
 24   appraiser of the county where it is located within 1 year after  
 25   entering into possession and has subsequently paid, subject to  
 26   s. 197.3335, all taxes and matured installments of special  
 27   improvement liens levied against the property by the state,  
 28   county, and municipality, as well as all mortgages and liens

29 upon the property. All municipal, county, and state taxes must  
 30 have accrued against the property, without payment, for at least  
 31 2 years. A person or entity may not apply for adverse possession  
 32 for more than one property in this state at the same time. The  
 33 adverse possessor, or those persons under whom the possessor  
 34 claims a possessory right, may not enter any structure on the  
 35 possessed property until the end of the adverse possession  
 36 period.

37 (2) For the purpose of this section, property is deemed to  
 38 be possessed if the property has been:

- 39 (a) Protected by substantial enclosure;
- 40 (b) Cultivated or improved in a usual manner; or
- 41 (c) Maintained without entering any of the structures  
 42 ~~Occupied and maintained.~~

43 (3) A person claiming adverse possession under this  
 44 section must make a return of the property by providing to the  
 45 property appraiser a uniform return on a form provided by the  
 46 Department of Revenue. The return must include all of the  
 47 following:

- 48 (a) The name and address of the person claiming adverse  
 49 possession.
- 50 (b) The date that the person claiming adverse possession  
 51 entered into controlled possession of the property.
- 52 (c) A full and complete legal description of the property  
 53 that is subject to the adverse possession claim.
- 54 (d) A notarized attestation clause that states:

55 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE  
 56 FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND

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57 CORRECT.

58 (e) A description of the use of the property by the person  
59 claiming adverse possession.

60 (f) A receipt to be completed by the property appraiser.

61

62 The property appraiser shall refuse to accept a return if it  
63 does not comply with this subsection. The executive director of  
64 the Department of Revenue is authorized, and all conditions are  
65 deemed met, to adopt emergency rules under ss. 120.536(1) and  
66 120.54(4) for the purpose of implementing this subsection. The  
67 emergency rules shall remain in effect for 6 months after  
68 adoption and may be renewed during the pendency of procedures to  
69 adopt rules addressing the subject of the emergency rules.

70 Section 2. This act shall take effect July 1, 2013.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 995 Conveyances of Real Property  
**SPONSOR(S):** Civil Justice Subcommittee; Broxson  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 736

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Ward	Bond
2) Judiciary Committee		Ward <i>SW</i>	Havlicak <i>RN</i>

**SUMMARY ANALYSIS**

Currently the statutory requirements for the conveyance of real estate in Florida require that deeds and wills conveying real estate be signed in the presence of two witnesses. When a power of attorney, which has its own execution requirements of two witnesses, is used to transfer real estate, it is recorded with the deed.

Wills and deeds must be witnessed and sometimes notarized to effectively transfer property. These instruments may have some technical defect that escapes notice, such as a missing witness or notary seal, rendering the transfer arguably ineffective. Florida law currently provides that such technical defects in deeds and wills may be cured by the mere passage of time on the rationale that a failure to raise any objection means the the transfer is legitimate, and the technical defects are immaterial. While these curative provisions exist for deeds and wills, there is no analogous provision to cure the power of attorney with execution defects over time.

A 5-year limitations period currently acts to cure defective deeds or wills that are missing required seals or signatures of witnesses. The bill expands the scope of the statute to cure defects in any instrument, including a power of attorney, when it is used in connection with the transfer of title to real property. The bill limits the curative effect to the purposes of the transfer and thus does not cure all recorded powers of attorney.

The also bill provides a savings clause to allow any person who is adversely affected by the bill's changes to bring a claim within the specified period of time to protect his or her interest.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

In general, s. 689.01, F.S., provides the statutory requirements for the conveyance of real estate in Florida. It provides that deeds and wills conveying real estate must be signed in the presence of two witnesses. In some instances, if an instrument such as a deed or will is not acknowledged or defectively acknowledged or is missing a required witness, the defective instrument may be cured over time.<sup>1</sup>

Sometimes a power of attorney is used to convey real estate, and if so, the power of attorney is recorded with the deed, forming a part of the chain of title. Powers of attorney must be signed in the presence of two witnesses and a notary.<sup>2</sup>

The Legislature may cure defective deeds or wills that have technical deficiencies by enacting curative statutes.<sup>3</sup> The Florida Legislature has enacted a number of these.<sup>4</sup> Curative statutes make the process of owning and conveying real property easier.<sup>5</sup> "By a curative statute the Legislature has the power to ratify, validate and confirm any act or proceeding which it could have authorized in the first place."<sup>6</sup>

Section 95.231, F.S., cures the defects of missing witnesses and defective acknowledgements in deeds or wills conveying a fee simple interest<sup>7</sup> in real estate.

The purpose of such statute is to "cure" or clear an existing title to real estate or an interest in it, of formal irregularities, that is, of clouds, doubts and suspicions against the title resulting from technical defects in the form or execution of deeds and wills executed by the person owning the property by limiting the time within which such defects can be asserted to a stated time as measured from some event, such as their recording.<sup>8</sup>

A person claiming an interest in the affected property has 20 years from the recording of the deed or the probate of the will to assert any claim to the property against the claimants under the deed or will.<sup>9</sup> Easements, powers of attorney, restrictions, and declarations which are very common instruments do not have the benefit of s. 95.231, F.S.<sup>10</sup>

##### **Effect of Proposed Changes**

In addition to deeds and wills, the bill expands the scope of s. 95.231(1), F.S., to include "an instrument required" in the conveyance of real estate in Florida and a power of attorney accompanying and used

<sup>1</sup> See 1 FLA. JUR. 2D Acknowledgments s. 23 (2013).

<sup>2</sup> Section 709.2105, F.S.

<sup>3</sup> *Dover Drainage District v. Pancoast*, 102 Fla. 267, 135 So. 518 (1931).

<sup>4</sup> See 19 FLA. JUR. 2D Deeds s. 21 (2013). See also ss. 694.01, F.S., *et seq.* and 1 FLA. JUR. 2D Acknowledgments s. 23 (2013).

<sup>5</sup> See 19 FLA. PRAC. Florida Real Estate s. 5:14 (2012 ed.).

<sup>6</sup> *Coon v. Board of Public Instruction of Okaloosa County*, 203 So.2d 497, 498 (Fla. 1967).

<sup>7</sup> An absolute or fee simple estate is one in which the owner is entitled to the entire property with the unconditional power of disposition during his life." Henry P. Trawick Jr., *Trawick's Florida Practice and Procedure*, s. 9:2 (2009 ed.)

<sup>8</sup> *Holland v. Hattaway*, 438 So.2d 456, 462 (Fla. 5th DCA 1983). The stated time in the statute is 5 years for curing defects in acknowledgements, and 20 years acts as an absolute bar to contesting the document. Section 95.231, F.S.

<sup>9</sup> Section 95.231(2), F.S.

<sup>10</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, White Paper: In Support of Amending Section 95.231, F.S. (2013) (on file with the House Civil Justice Subcommittee).

for such instrument. A power of attorney cured by the bill is valid only for the purpose of effectuating the instrument with which it is recorded. In other words, the bill only cures powers of attorney conveying real estate, not general powers of attorney, which may or may not be recorded in the public records.<sup>11</sup>

A person claiming an interest in property other than a fee simple interest which was defectively conveyed before October 1, 2013, must file a claim or defense of that interest in court before October 1, 2014, to have the validity of the instrument determined under existing law. Otherwise, the 5-year limitations period governing such claims and defenses will apply.

The bill takes effect October 1, 2013.

**B. SECTION DIRECTORY:**

Section 1 amends s. 95.231, F.S., regarding limitations where deed or will on record.

Section 2 provides for applicability.

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:

See Fiscal Comments.

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

1. Revenues:

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

2. Expenditures:

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

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

Because the bill cures defects in the execution of instruments other than deeds or wills, individuals engaged in real estate transactions may save legal fees and other associated costs to cure technical defects of missing witnesses and defective acknowledgements in instruments conveying real property.<sup>12</sup>

**D. FISCAL COMMENTS:**

The Office of the State Courts Administrator completed a judicial impact statement for the bill and found that the bill may result in a possible, though likely insubstantial, near-term increase in court workload based on civil filings before the October 1, 2014, deadline for matters to be determined under current

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<sup>11</sup> See s. 28.222, F.S.

<sup>12</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, supra note 10.



law. The fiscal impact of the bill cannot be accurately determined due to the unavailability of data needed to quantify the near-term impact on judicial workload.<sup>13</sup>

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

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

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

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

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

None.

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

On March 18, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment corrected cross-references in Section 2 of the bill without changing the effect of the bill. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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<sup>13</sup> Office of the State Courts Administrator, 2013 Judicial Impact Statement, SB 736 (Feb. 28, 2013) (on file with the Senate Committee on Judiciary).

1                   A bill to be entitled  
 2           An act relating to conveyances of real property;  
 3           amending s. 95.231, F.S.; providing that a specified  
 4           period after the recording of certain instruments from  
 5           which it appears that the person owning real property  
 6           attempted to convey, affect, or devise the property,  
 7           the instrument shall be held to have its purported  
 8           effect; providing that a power of attorney validated  
 9           under this provision is only valid for the purpose of  
 10          effectuating the instrument with which it was  
 11          recorded; providing a period for making a claim or  
 12          defense in court to determine the validity of an  
 13          instrument that may be affected by the amendments made  
 14          by this act; providing an effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Subsection (1) of section 95.231, Florida  
 19   Statutes, is amended to read:

20           95.231 Limitations where deed or will on record.-

21           (1) Five years after the recording of an instrument  
 22   required to be executed in accordance with s. 689.01, 5 years  
 23   after the recording of a power of attorney accompanying and used  
 24   for an instrument required to be executed in accordance with s.  
 25   689.01, or 5 years after ~~a deed or~~ the probate of a will  
 26   purporting to convey real property, from which it appears that  
 27   the person owning the property attempted to convey, affect, or  
 28   devise it, the instrument, power of attorney, ~~deed~~ or will shall

29 | be held to have its purported effect ~~authorize the conveyance or~~  
 30 | ~~devise of, or to convey, affect, or devise, the fee simple title~~  
 31 | ~~to the real property, or any interest in it,~~ of the person  
 32 | signing the instrument, as if there had been no lack of seal or  
 33 | seals, witness or witnesses, defect in acknowledgment or  
 34 | relinquishment of dower, in the absence of fraud, adverse  
 35 | possession, or pending litigation. The instrument shall be  
 36 | admissible in evidence. A power of attorney validated under this  
 37 | subsection is only valid for the purpose of effectuating the  
 38 | instrument with which it was recorded.

39 |       Section 2. A person claiming an interest in real property  
 40 | affected by the amendments to s. 95.231, Florida Statutes, in  
 41 | this act has until October 1, 2014, to file a claim or defense  
 42 | in court to determine the validity of an instrument that may be  
 43 | affected by the amendments. If a claim or defense is filed  
 44 | before October 1, 2014, the validity of the instrument shall be  
 45 | determined without regard to such amendments.

46 |       Section 3. This act shall take effect October 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1355 Purchase of Firearms by Mentally Ill Persons  
**SPONSOR(S):** Criminal Justice Subcommittee; Watson, B.  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cunningham	Cunningham
2) Judiciary Committee		Cunningham	Havlicak <i>RH</i>

### SUMMARY ANALYSIS

Section 790.065, FS., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms to persons who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court. The term "committed to a mental institution" is currently defined as:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.

A person who is taken to a receiving facility pursuant to the Baker Act must be examined by a physician and, within 72 hours, may be released (unless charged with a crime) for voluntary outpatient or inpatient treatment. Because the definition of "committed to a mental institution" does not include persons who have *voluntarily* admitted themselves to a mental institution, such persons are not precluded from purchasing a firearm.

The bill amends the definition of "committed to a mental institution" to include persons who have had an involuntary examination under the Baker Act and who have voluntarily admitted themselves for outpatient or inpatient treatment so long as the below requirements are satisfied:

- The examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed;
- Before agreeing to voluntary treatment, the person received written notice of the examining physician's finding and certification, and written notice that as a result of such finding, the person may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledged such notice in writing; and
- A judge or a magistrate reviewed the record classifying the person as an imminent danger to himself or herself or others, and approved the record for submittal to the Florida Department of Law Enforcement.

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

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida's Mental Health Act**

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs in the state.<sup>1</sup> Codified in Part I of Chapter 394, F.S., the Baker Act provides the authority and process for the voluntary and involuntary examination of persons with evidence of a mental illness and the subsequent inpatient or outpatient placement of individuals for treatment.

Section 394.463, F.S., provides that a person may be taken to a receiving facility for involuntary examination if there is reason to believe that the person has a mental illness and because of his or her mental illness:

- The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination, or the person is unable to determine for himself or herself whether examination is necessary; and
  - Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or
  - There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

A patient must be examined by a physician or clinical psychologist at a receiving facility without unnecessary delay.<sup>2</sup> In no case may a patient be held in a receiving facility for involuntary examination longer than 72 hours.<sup>3</sup> Within the 72-hour period, one of the following actions must be taken, based on the individual needs of the patient:

- The patient must be released, unless he or she is charged with a crime, in which case the patient must be returned to the custody of a law enforcement officer;
- The patient must be released (unless charged with a crime) for voluntary outpatient treatment;
- The patient (unless charged with a crime) must be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient must be admitted as a voluntary patient; or
- A petition for involuntary placement must be filed in the circuit court when outpatient or inpatient treatment is deemed necessary.<sup>4</sup>

##### **Florida Firearms Law**

In accordance with the federal Brady Handgun Violence Prevention Act,<sup>5</sup> Florida law requires federal firearms licensees<sup>6</sup> (FFLs) to request background checks on individuals attempting to purchase a firearm. To comply with this requirement, FFLs in Florida contact the Florida Department of Law Enforcement's (FDLE) Firearms Purchase Program (FPP).

---

<sup>1</sup> Chapter 71-131, L.O.F.

<sup>2</sup> Section 394.463(2)(f), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 394.463(2)(i), F.S.

<sup>5</sup> Pub. L. No. 103-159 (1993).

<sup>6</sup> 18 U.S.C. 923 sets forth the requirements necessary to obtain a federal firearms license. The Federal Firearms Licensing Center, a branch within the Bureau of Alcohol, Tobacco, Firearms and Explosives, is responsible for licensing firearms manufacturers, importers, collectors, and dealers, and implementing related legislation.

Created in 1989, the FPP operates 7 days a week, 363 days a year and is designed to provide FFLs immediate responses to background check inquiries.<sup>7</sup> Pursuant to s. 790.065, F.S., FFLs must contact the FPP using a toll-free number to request a criminal history check on potential purchasers prior to selling or transferring a firearm. Upon receiving such request, the FPP immediately reviews the potential purchaser's criminal history record to determine whether the sale or transfer of a firearm would violate state or federal law, and provides a response to the FFL.<sup>8</sup>

Section 790.065, F.S., prohibits licensed importers, manufacturers, and dealers from selling or delivering firearms<sup>9</sup> to those who have been "adjudicated mentally defective" or who have been "committed to a mental institution" by a court.<sup>10</sup> Florida defines "adjudicated mentally defective" as:

A determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.<sup>11</sup>

The term "committed to a mental institution" is defined as:

Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467, involuntary outpatient placement as defined in s. 394.4655, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution.<sup>12</sup>

To help ensure that the above-described persons are not able to purchase a firearm, FDLE created the Mental Competency (MECOM) database. Codified in s. 790.065(2)(a), F.S., the MECOM database is an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions. The statute requires clerks to submit court records of adjudications of mental defectiveness and commitments to mental institutions to FDLE within one month of the adjudication or commitment.<sup>13</sup> These records are then uploaded into the MECOM database,<sup>14</sup> and are accessed by the FPP as part of the screening of potential firearm purchasers.<sup>15</sup> According to FDLE, there are currently more than 90,000 mental health records in the MECOM database.

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<sup>7</sup> Section 790.065, F.S.

<sup>8</sup> *Id.*

<sup>9</sup> "Firearm" is defined in s. 790.001(6), F.S., as "any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term 'firearm' does not include an antique firearm unless the antique firearm is used in the commission of a crime."

<sup>10</sup> Section 790.065(1) and (2)(a)4., F.S.

<sup>11</sup> Section 790.065(2)(a)4.a., F.S.

<sup>12</sup> Section 790.065(2)(a)4.b., F.S.

<sup>13</sup> Section 790.065(2)(a)4.c., F.S.

<sup>14</sup> FDLE also uploads the records into the National Instant Criminal Background Check System (NICS).

<sup>15</sup> FDLE is authorized to disclose the data to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. FDLE is also authorized to disclose any collected data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license. Section 790.065(2)(a)4.f., F.S.

As noted above, a person who is taken to a receiving facility pursuant to the Baker Act must be examined by a physician and, within 72 hours, may be released (unless charged with a crime) for voluntary outpatient or inpatient treatment. Because the definition of "committed to a mental institution" does not include persons who have *voluntarily* admitted themselves to a mental institution, such persons are not precluded from purchasing a firearm.

### **Effect of the Bill**

The bill amends the definition of "committed to a mental institution" in s. 790.065(2)(a)4.b., F.S., to include persons who have had an involuntary examination under the Baker Act and who have voluntarily admitted themselves for outpatient or inpatient treatment so long as the below requirements are satisfied:

- The examining physician found that the person is an imminent danger to himself or herself or others;
- The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(i)4, F.S.;
- Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06, F.S., and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, the doctor will file a petition in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. I understand that by agreeing to voluntary treatment in this situation, I may be prohibited from buying firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

- A judge or a magistrate has reviewed the record classifying the person as an imminent danger to himself or herself or others, and approved the record for submittal to the department.

Within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgement must be filed with the clerk of the court for the county in which the involuntary examination under s. 394.463, F.S., occurred. The clerk must present the record to a judge or magistrate within 24 hours after receipt. The judge or magistrate is required to review the record and, if he or she determines that the record support the classifying of the person as an imminent danger to themselves or others, to approve the record for submittal to FDLE. If approved for submittal, the record must be submitted to FDLE within 24 hours.

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

Section 1. Amends s. 790.065, F.S., relating to sale and delivery of firearms.

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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 943.03(4), F.S., requires FDLE to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the provisions of law conferring powers or duties upon it. 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

On March 19, 2013, the Criminal Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment makes formatting changes to better structure the definition amended by the bill.

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 purchase of firearms by  
 3           mentally ill persons; amending s. 790.065, F.S.;  
 4           providing conditions under which a person who has been  
 5           voluntarily admitted to a mental institution for  
 6           treatment and has undergone an involuntary examination  
 7           under the Baker Act may be prohibited from purchasing  
 8           a firearm; providing requirements for the examining  
 9           physician; providing for judicial review of certain  
 10          findings; providing specified notice requirements;  
 11          providing form and contents of notice; providing  
 12          requirements with respect to the filing of specified  
 13          records with the court and presentation of such  
 14          records to a judge or magistrate; providing lawful  
 15          authority of a judge or magistrate to review specified  
 16          records and submit such records to the Department of  
 17          Law Enforcement; providing a timeframe for submission  
 18          of records to the department upon approval of a record  
 19          by a judge or magistrate; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23           Section 1. Paragraph (a) of subsection (2) of section  
 24           790.065, Florida Statutes, is amended to read:

25           790.065 Sale and delivery of firearms.—

26           (2) Upon receipt of a request for a criminal history  
 27           record check, the Department of Law Enforcement shall, during  
 28           the licensee's call or by return call, forthwith:

29 (a) Review any records available to determine if the  
 30 potential buyer or transferee:

31 1. Has been convicted of a felony and is prohibited from  
 32 receipt or possession of a firearm pursuant to s. 790.23;

33 2. Has been convicted of a misdemeanor crime of domestic  
 34 violence, and therefore is prohibited from purchasing a firearm;

35 3. Has had adjudication of guilt withheld or imposition of  
 36 sentence suspended on any felony or misdemeanor crime of  
 37 domestic violence unless 3 years have elapsed since probation or  
 38 any other conditions set by the court have been fulfilled or  
 39 expunction has occurred; or

40 4. Has been adjudicated mentally defective or has been  
 41 committed to a mental institution by a court and as a result is  
 42 prohibited by federal law from purchasing a firearm.

43 a. As used in this subparagraph, "adjudicated mentally  
 44 defective" means a determination by a court that a person, as a  
 45 result of marked subnormal intelligence, or mental illness,  
 46 incompetency, condition, or disease, is a danger to himself or  
 47 herself or to others or lacks the mental capacity to contract or  
 48 manage his or her own affairs. The phrase includes a judicial  
 49 finding of incapacity under s. 744.331(6)(a), an acquittal by  
 50 reason of insanity of a person charged with a criminal offense,  
 51 and a judicial finding that a criminal defendant is not  
 52 competent to stand trial.

53 b. As used in this subparagraph, "committed to a mental  
 54 institution" means:

55 (I) Involuntary commitment, commitment for mental  
 56 defectiveness or mental illness, and commitment for substance

57 abuse. The phrase includes involuntary inpatient placement as  
 58 defined in s. 394.467, involuntary outpatient placement as  
 59 defined in s. 394.4655, involuntary assessment and stabilization  
 60 under s. 397.6818, and involuntary substance abuse treatment  
 61 under s. 397.6957, but does not include a person in a mental  
 62 institution for observation or discharged from a mental  
 63 institution based upon the initial review by the physician or a  
 64 voluntary admission to a mental institution; ~~or-~~

65 (II) Notwithstanding sub-sub-subparagraph (I), voluntary  
 66 admission to a mental institution for outpatient or inpatient  
 67 treatment of a person who had an involuntary examination under  
 68 s. 394.463, where each of the following conditions have been  
 69 met:

70 (A) The examining physician found that the person is an  
 71 imminent danger to himself or herself or others.

72 (B) The examining physician certified that if the person  
 73 did not agree to voluntary treatment, a petition for involuntary  
 74 outpatient or inpatient treatment would have been filed under s.  
 75 394.463(2)(i)4.

76 (C) Before agreeing to voluntary treatment, the person  
 77 received written notice of that finding and certification, and  
 78 written notice that as a result of such finding, he or she may  
 79 be prohibited from purchasing a firearm, and may not be eligible  
 80 to apply for or retain a concealed weapon or firearms license  
 81 under s. 790.06 and the person acknowledged such notice in  
 82 writing, in substantially the following form:

83  
 84 "I understand that the doctor who examined me believes

85 I am a danger to myself or to others. I understand  
86 that if I do not agree to voluntary treatment, the  
87 doctor will file a petition in court to require me to  
88 receive involuntary treatment. I understand that if  
89 that petition is filed, I have the right to contest  
90 it. I understand that by agreeing to voluntary  
91 treatment in this situation, I may be prohibited from  
92 buying firearms and from applying for or retaining a  
93 concealed weapons or firearms license until I apply  
94 for and receive relief from that restriction under  
95 Florida law."

96  
97 (D) A judge or a magistrate has, pursuant to sub-sub-  
98 subparagraph c.(II), reviewed the record of the finding,  
99 certification, notice, and written acknowledgement classifying  
100 the person as an imminent danger to himself or herself or  
101 others, and approved such record for submittal to the  
102 department.

103 c. In order to check for these conditions, the department  
104 shall compile and maintain an automated database of persons who  
105 are prohibited from purchasing a firearm based on court records  
106 of adjudications of mental defectiveness or commitments to  
107 mental institutions.

108 (I) Except as provided in sub-sub-subparagraph (II),  
109 clerks of court shall submit these records to the department  
110 within 1 month after the rendition of the adjudication or  
111 commitment. Reports shall be submitted in an automated format.  
112 The reports must, at a minimum, include the name, along with any

113 known alias or former name, the sex, and the date of birth of  
114 the subject.

115 (II) For persons committed to a mental institution  
116 pursuant to sub-sub-subparagraph b.(II), within 24 hours after  
117 the person's agreement to voluntary admission, a record of the  
118 finding, certification, notice, and written acknowledgement must  
119 be filed with the clerk of the court for the county in which the  
120 involuntary examination under s. 394.463 occurred. The clerk  
121 must present the records to a judge or magistrate within 24  
122 hours after receipt of the records. A judge or magistrate is  
123 required and has the lawful authority to review the records and,  
124 if the judge or magistrate determines that the record supports  
125 the classifying of the person as an imminent danger to himself  
126 or herself or others, to approve the record for submittal to the  
127 department. If a judge or magistrate approves the submittal of  
128 the record to the department, the record must be submitted to  
129 the department within 24 hours.

130 d. A person who has been adjudicated mentally defective or  
131 committed to a mental institution, as those terms are defined in  
132 this paragraph, may petition the circuit court that made the  
133 adjudication or commitment, or the court that approved the  
134 record for submittal to the department pursuant to sub-sub-  
135 subparagraph c.(II), for relief from the firearm disabilities  
136 imposed by such adjudication or commitment. A copy of the  
137 petition shall be served on the state attorney for the county in  
138 which the person was adjudicated or committed. The state  
139 attorney may object to and present evidence relevant to the  
140 relief sought by the petition. The hearing on the petition may

141 | be open or closed as the petitioner may choose. The petitioner  
 142 | may present evidence and subpoena witnesses to appear at the  
 143 | hearing on the petition. The petitioner may confront and cross-  
 144 | examine witnesses called by the state attorney. A record of the  
 145 | hearing shall be made by a certified court reporter or by court-  
 146 | approved electronic means. The court shall make written findings  
 147 | of fact and conclusions of law on the issues before it and issue  
 148 | a final order. The court shall grant the relief requested in the  
 149 | petition if the court finds, based on the evidence presented  
 150 | with respect to the petitioner's reputation, the petitioner's  
 151 | mental health record and, if applicable, criminal history  
 152 | record, the circumstances surrounding the firearm disability,  
 153 | and any other evidence in the record, that the petitioner will  
 154 | not be likely to act in a manner that is dangerous to public  
 155 | safety and that granting the relief would not be contrary to the  
 156 | public interest. If the final order denies relief, the  
 157 | petitioner may not petition again for relief from firearm  
 158 | disabilities until 1 year after the date of the final order. The  
 159 | petitioner may seek judicial review of a final order denying  
 160 | relief in the district court of appeal having jurisdiction over  
 161 | the court that issued the order. The review shall be conducted  
 162 | de novo. Relief from a firearm disability granted under this  
 163 | sub-subparagraph has no effect on the loss of civil rights,  
 164 | including firearm rights, for any reason other than the  
 165 | particular adjudication of mental defectiveness or commitment to  
 166 | a mental institution from which relief is granted.

167 |       e. Upon receipt of proper notice of relief from firearm  
 168 | disabilities granted under sub-subparagraph d., the department

169 shall delete any mental health record of the person granted  
170 relief from the automated database of persons who are prohibited  
171 from purchasing a firearm based on court records of  
172 adjudications of mental defectiveness or commitments to mental  
173 institutions.

174 f. The department is authorized to disclose data ~~the~~  
175 collected pursuant to this subparagraph ~~data~~ to agencies of the  
176 Federal Government and other states for use exclusively in  
177 determining the lawfulness of a firearm sale or transfer. The  
178 department is also authorized to disclose this ~~any~~ ~~collected~~  
179 ~~data~~ to the Department of Agriculture and Consumer Services for  
180 purposes of determining eligibility for issuance of a concealed  
181 weapons or concealed firearms license and for determining  
182 whether a basis exists for revoking or suspending a previously  
183 issued license pursuant to s. 790.06(10). When a potential buyer  
184 or transferee appeals a nonapproval based on these records, the  
185 clerks of court and mental institutions shall, upon request by  
186 the department, provide information to help determine whether  
187 the potential buyer or transferee is the same person as the  
188 subject of the record. Photographs and any other data that could  
189 confirm or negate identity must be made available to the  
190 department for such purposes, notwithstanding any other  
191 provision of state law to the contrary. Any such information  
192 that is made confidential or exempt from disclosure by law shall  
193 retain such confidential or exempt status when transferred to  
194 the department.

195 Section 2. 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 Watson, B. offered the following:

**Amendment (with title amendment)**

5 Remove lines 40-135 and insert:

6 4. Has been adjudicated mentally defective or has been  
 7 committed to a mental institution by a court or as provided in  
 8 sub-sub-subparagraph b.(II), and as a result is prohibited by  
 9 state or federal law from purchasing a firearm.

10 a. As used in this subparagraph, "adjudicated mentally  
 11 defective" means a determination by a court that a person, as a  
 12 result of marked subnormal intelligence, or mental illness,  
 13 incompetency, condition, or disease, is a danger to himself or  
 14 herself or to others or lacks the mental capacity to contract or  
 15 manage his or her own affairs. The phrase includes a judicial  
 16 finding of incapacity under s. 744.331(6)(a), an acquittal by  
 17 reason of insanity of a person charged with a criminal offense,  
 18 and a judicial finding that a criminal defendant is not  
 19 competent to stand trial.



Amendment No. 1

20 b. As used in this subparagraph, "committed to a mental  
21 institution" means:

22 (I) Involuntary commitment, commitment for mental  
23 defectiveness or mental illness, and commitment for substance  
24 abuse. The phrase includes involuntary inpatient placement as  
25 defined in s. 394.467, involuntary outpatient placement as  
26 defined in s. 394.4655, involuntary assessment and stabilization  
27 under s. 397.6818, and involuntary substance abuse treatment  
28 under s. 397.6957, but does not include a person in a mental  
29 institution for observation or discharged from a mental  
30 institution based upon the initial review by the physician or a  
31 voluntary admission to a mental institution; or-

32 (II) Notwithstanding sub-sub-subparagraph (I), voluntary  
33 admission to a mental institution for outpatient or inpatient  
34 treatment of a person who had an involuntary examination under  
35 s. 394.463, where each of the following conditions have been  
36 met:

37 (A) An examining physician found that the person is an  
38 imminent danger to himself or herself or others.

39 (B) The examining physician certified that if the person  
40 did not agree to voluntary treatment, a petition for involuntary  
41 outpatient or inpatient treatment would have been filed under s.  
42 394.463(2)(i)4., or the examining physician certified that a  
43 petition was filed and the person subsequently agreed to  
44 voluntary treatment prior to a court hearing on the petition.

45 (C) Before agreeing to voluntary treatment, the person  
46 received written notice of that finding and certification, and  
47 written notice that as a result of such finding, he or she may



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48 be prohibited from purchasing a firearm, and may not be eligible  
49 to apply for or retain a concealed weapon or firearms license  
50 under s. 790.06 and the person acknowledged such notice in  
51 writing, in substantially the following form:

52  
53 "I understand that the doctor who examined me believes  
54 I am a danger to myself or to others. I understand  
55 that if I do not agree to voluntary treatment, a  
56 petition will be filed in court to require me to  
57 receive involuntary treatment. I understand that if  
58 that petition is filed, I have the right to contest  
59 it. In the event a petition has been filed, I  
60 understand that I can subsequently agree to voluntary  
61 treatment prior to a court hearing. I understand that  
62 by agreeing to voluntary treatment in either of these  
63 situations, I may be prohibited from buying firearms  
64 and from applying for or retaining a concealed weapons  
65 or firearms license until I apply for and receive  
66 relief from that restriction under Florida law."

67  
68 (D) A judge or a magistrate has, pursuant to sub-sub-  
69 subparagraph c.(II), reviewed the record of the finding,  
70 certification, notice, and written acknowledgement classifying  
71 the person as an imminent danger to himself or herself or  
72 others, and ordered that such record be submitted to the  
73 department.

74 c. In order to check for these conditions, the department  
75 shall compile and maintain an automated database of persons who



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76 are prohibited from purchasing a firearm based on court records  
77 of adjudications of mental defectiveness or commitments to  
78 mental institutions.

79 (I) Except as provided in sub-sub-subparagraph (II),  
80 clerks of court shall submit these records to the department  
81 within 1 month after the rendition of the adjudication or  
82 commitment. Reports shall be submitted in an automated format.  
83 The reports must, at a minimum, include the name, along with any  
84 known alias or former name, the sex, and the date of birth of  
85 the subject.

86 (II) For persons committed to a mental institution  
87 pursuant to sub-sub-subparagraph b.(II), within 24 hours after  
88 the person's agreement to voluntary admission, a record of the  
89 finding, certification, notice, and written acknowledgement must  
90 be filed by the administrator of the receiving or treatment  
91 facility, as defined in s. 394.455, with the clerk of the court  
92 for the county in which the involuntary examination under s.  
93 394.463 occurred. No fee shall be charged for the filing under  
94 this sub-sub-subparagraph. The clerk must present the records to  
95 a judge or magistrate within 24 hours after receipt of the  
96 records. A judge or magistrate is required and has the lawful  
97 authority to review the records ex parte and, if the judge or  
98 magistrate determines that the record supports the classifying  
99 of the person as an imminent danger to himself or herself or  
100 others, to order that the record be submitted to the department.  
101 If a judge or magistrate orders the submittal of the record to  
102 the department, the record must be submitted to the department  
103 within 24 hours.



Amendment No. 1

104 d. A person who has been adjudicated mentally defective or  
105 committed to a mental institution, as those terms are defined in  
106 this paragraph, may petition the circuit court that made the  
107 adjudication or commitment, or the court that ordered that the  
108 record be submitted to the department pursuant to sub-sub-  
109 subparagraph c.(II), for relief from the firearm disabilities  
110  
111

112 -----

113 **T I T L E A M E N D M E N T**

114 Remove lines 16-18 and insert:  
115 records and order such records be submitted to the Department of  
116 Law Enforcement; providing a timeframe for submission of records  
117 to the department upon order  
118