Civil Justice Subcommittee

Tuesday, March 18, 2014
9:00 AM
404 HOB

Will Weatherford
Speaker

Larry Metz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Tuesday, March 18, 2014 09:00 am

End Date and Time: Tuesday, March 18, 2014 12:00 pm

Location: Sumner Hall (404 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 379 Damages for Medical or Health Care Services by Hood
HB 829 Involuntary Examinations under the Baker Act by Campbell, Rehwinkel Vasilinda
HB 903 Application of Foreign Law in Certain Cases by Combee
HB 1135 Limitation of Civil Liability for Farmers by Rader
HB 1279 Marriage of Minors by Stafford

Consideration of the following proposed committee substitute(s):

PCS for HB 1117 -- Athletic Safety, Education, and Training

NOTICE FINALIZED on 03/14/2014 16:08 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 379 Damages for Medical or Health Care Services
SPONSOR(S): Hood, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond YTB
2) Judiciary Committee			

SUMMARY ANALYSIS

The purpose of personal injury law is to fairly compensate a person injured due to wrongful action of another. Damages may, in appropriate circumstances, be awarded to the injured person for medical expenses, lost wages, property damage, pain and suffering, and punitive damages. This bill changes how medical expenses are calculated.

Most providers of medical services offer (or are required) to discount their standard billing rates for the benefit of Medicaid, Medicare, or an insurance company. Under current law, a jury may hear and base its award on the standard billing rate. To arrive at the final compensation award, the trial judge reduces the award by applying the appropriate discount, if any. This reduction is based on the theory that the plaintiff would otherwise receive a windfall award.

In general, this bill moves the determination of the value of medical services from the trial court judge to the jury. Where the medical bill has already been paid, the jury is informed of the actual amount and the jury may not award a higher amount. Where the services have not been paid (which may apply to past damages and will always apply to future damages), the bill limits the amount recoverable to the maximum amount that is customarily accepted in payment for such services by providers in the same geographic area.

The bill also prohibits an injured party from being awarded reimbursement for a medical service that was not medically necessary.

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

The bill only applies to a cause of action that accrues after the effective date of the bill. The bill provides an effective date upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The purpose of personal injury law is to fairly compensate a person injured due to wrongful action of another. Damages may, in appropriate circumstances, be awarded to the injured person for medical expenses, lost wages, property damage, pain and suffering, and punitive damages.[1] This bill modifies the collateral source rule to change how medical expenses are calculated and awarded in personal injury lawsuits.

History of the Collateral Source Rule

At common law, the collateral source rule barred reduction of a personal injury verdict based on benefits received or payments made by collateral sources of indemnity. Further, the existence of such collateral sources was considered inadmissible at trial. As applied to damages in personal injury action, at common law an injured person was entitled to the full value of the medical services incurred regardless of whether the injured person ever paid the awarded sum to the medical provider.[2]

Section 768.76, F.S., created by the Tort Reform and Insurance Act of 1986,[3] redefined Florida's common law collateral source rule. The Act requires the court to reduce an "award by the total amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from all collateral sources; however, there shall be no reduction for collateral sources for which a subrogation or reimbursement right exists."[4] Although a verdict may be set off under the Act, the common law collateral source rule still persists and bars the admission of the existence of collateral sources of indemnity at trial.[5]

Medical Billing

In a typical case, a plaintiff may see a health care provider within the plaintiff's Health Maintenance Organization (HMO) or Preferred Provider Organization (PPO) plan. The provider often has different rates for the same procedure based on the rate that the provider negotiated with the HMO or PPO, the rate Medicaid or Medicare will pay, or the rate that a cash customer would pay. The "list price" of the procedure is rarely the price that is actually paid, much in the same way that the list price of an automobile is often higher than the actual price that is negotiated by the purchaser. The difference is that in the medical industry it is often a third-party that negotiates down the price of the procedure rather than the patient. The difference between the amount billed and the amount paid, if awarded to a plaintiff, is sometimes referred to as "phantom damages".[6]

Current Practice

In order to honor the statutory setoff for collateral sources and honor the evidentiary rule prohibiting disclosure to the jury of the collateral source payment, the general practice in Florida courts is to accept into evidence the full value of the medical services. Post-trial, the court hears evidence and reduces the

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[1] Fla. Jur 2d Damages s. 7, 122.
[2] Gordon, *Goble, Thyssenkrupp, and the Collateral Source Rule: Resolving The Ongoing Conflict*, 84 Fla.B.J. 18 (December 2010).
[3] Chapter 86-160, L.O.F.
[4] Section 768.76(1), F.S.
[5] Gordon. See also *Gormley v. GTE Prods. Corp.*, 587 So. 2d 455, 458 (Fla. 1991).
[6] *Goble v. Frohman*, 901 So.2d 830, 832 (Fla. 2005).

amount of the judgment by the statutory setoff.[7] This explanation simplifies the practice and has been perhaps changed by recent case law.

Recent case law interpretations of s. 768.76, F.S., have created confusion in the interpretation of the statute. The Supreme Court has ruled that the collateral source rule prohibits the awarding of the value of governmental or charitable medical services, but that the value of such services should be admissible to the jury for the purpose of determining the reasonable cost of medically-necessary future care.[8] If payments were made by Medicare or other governmental plan, only the amounts actually paid should be allowed into evidence.[9] If, however, payments were made by an HMO or other health insurer, the full amount of the bills should be placed into evidence and, assuming the insurer has a right of subrogation and the providers have no right to seek payments for the balances, the amount of the contractual discounts should be set off post-verdict.[10] However, a district court of appeal issued a broader ruling relating to a patient with a non-government insurance policy, reasoning that the payment of one's insurance premiums is sufficient to have the amount of the full billed cost of treatment into evidence even without the need to calculate future medical costs.[11] Another district court of appeal has specifically allowed the jury to hear evidence of the full amount of the bill where the plaintiff did not have health insurance, reasoning that the lower price as negotiated by the plaintiff was "earned in some way" by the plaintiff rather than received from a collateral source.[12]

Medically Necessary

There is a longstanding rule that allows a plaintiff to recover against the original tortfeasor as the proximate cause of an injury sustained in the treatment of said injury.[13] The original tortfeasor remains liable unless subsequent care was "highly unusual, extraordinary or bizarre."[14]

Medical necessity is not based on the opinion of an expert, but rather it is based on the necessity of the treatment from the plaintiff's perspective.[15] Thus, even if a treatment is deemed to be medically unnecessary by expert testimony, the defendant is liable for subsequent injury as a result of the unnecessary treatment if the treatment was entered into by the plaintiff in reasonable reliance on his or her doctor's advice.[16] The court explained:

> It is certainly permissible for the defense to argue that the treatment the plaintiff underwent was not caused by the accident. It is an entirely different thing for a defendant to argue that the treatment was inappropriate and unnecessary. The defendant's argument could have led the jury to believe that if the plaintiff's doctor was wrong, the plaintiff couldn't recover damages for the treatment she underwent, even if the injuries she suffered in the car accident caused her to pursue treatment and she reasonably relied on her doctor's advice.[17]

Effect of the Bill

This bill creates s. 768.755, F.S., to modify both the limitation on recovery for medical expenses and to modify the rules of evidence regarding medical expenses.

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[7] *Sheffield v. v. Superior Ins. Co.*, 800 So.2d 197, 200 (Fla. 2001).
[8] *Florida Physician's Ins. Reciprocal v. Stanley*, 452 So.2d 514 (Fla. 1984). *See also State Farm Mut. Auto. Ins. Co. v. Joerg*, 2013 WL 3107207 (Fla. 2d DCA 2013).
[9] *Thyssenkrupp Elevator Corp. v. Lasky*, 868 So.2d 547 (Fla. 4th DCA 2003).
[10] *Goble v. Frohman*, 901 So.2d 830, 832 (Fla. 2005).
[11] *Nationwide Mut. Fire Ins. Co. v. Harrell*, 53 So.3d 1084 (Fla. 1st DCA 2010).
[12] *See Durse v. Henn*, 68 So.3d 271 (Fla. 4th DCA 2011).
[13] *Stuart v. Hertz Corp.*, 351 So.2d 703 (Fla. 1977).
[14] *Davidson v. Gaillard*, 584 So.2d 71 (Fla. 1st DCA 1991).
[15] *Dungan v. Ford*, 632 So.2d 159, 163 (Fla 1st DCA 1994).
[16] *Costa v. Aberle*, 96 So.3d 959, 963 (Fla 4th DCA 2012).
[17] *Id.*

Limitations on Recovery

Where the medical service has been paid in full, the bill limits recovery of such medical expenses to the actual amount paid.

Where a medical provider claims a balance due or where a claim is for future services, the bill limits the amount recoverable in the suit to the maximum amount that is customarily accepted in payment for such services by providers in the same geographic area. The bill allows reference to Medicare and Medicaid, licensed commercial health insurers, amounts received from private individuals on a self-payment basis, and amounts that the provider received in compensation for the sale of an agreement between the provider and claimant when determining the usual and customary rate.

If Medicaid, Medicare, or a payor regulated under the Florida Insurance Code has covered the plaintiff's medical services and has given the notice of lien in the action, the bill limits the amount recoverable and admissible into evidence to that amount.

The bill requires a court to apply the collateral source rule of s. 768.76, F.S., after damages in compliance with the new provisions are awarded. This may allow the judge to modify an award that is improperly calculated by the jury. Otherwise, since this bill requires a jury to hear and account for collateral sources when calculating an award, this bill appears to make a set off under s. 768.76, F.S., unnecessary.

Medically Necessary

The bill also creates a preponderance of the evidence standard for determining if a medical service is medically necessary. If the jury determines that any medical services were not medically necessary, the bill appears to provide that a plaintiff may not recover damages for those services.

Admission of Evidence

The bill prohibits the admission into evidence of the billed amount, providing that only the total amount paid by insurance plus co-pays is admissible into evidence.

Similar to how the enactment of s. 768.76, F.S., had the effect of abrogating the damages portion of the common law collateral source rule, the bill appears to abrogate the evidentiary effect of the common law collateral source rule. In effect, this bill completes the abrogation of the common law collateral source rule in Florida.

Applicability

The bill is prospective and does not apply to causes of action that arise before the effective date of the bill. The bill applies only to personal injury or wrongful death actions and does not affect compensation paid to providers for medical or health care services.

B. SECTION DIRECTORY:

Section 1 creates s. 768.755, F.S., relating to damages recoverable for medical or health care services.

Section 2 provides a statement of applicability.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   The bill appears to abrogate the remainder of the common law collateral source rule as it relates to personal injury or wrongful death causes of action. The Florida Supreme Court upheld an earlier statute partially abrogating the collateral source rule against a challenge on equal protection grounds. The plaintiffs in that case argued that the distinction between medical practitioners and other members of the public was arbitrary and unreasonable. The court determined that the collateral source rule did not implicate a suspect class or fundamental right and thus applied a rational basis test and upheld the statute. However, in the passage of that bill, unlike this bill, the Legislature spelled out the legitimate state interests, which were discussed by the Court.[18] The Supreme Court also addressed challenges based on access to courts, separation of power, and the Court's exclusive rulemaking authority and dismissed them as being "without merit."[19] A District Court of Appeal also dismissed a claim based on due process in another case.[20]

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[18] *Pinillos v. Cedars of Lebanon Hospital Corp.*, 403 So.2d 365, 367 (Fla. 1981).
[19] *Id.* at 368.
[20] *Lower Florida Keys Hospital Dist. v. Skelton*, 404 So.2d 832 (Fla. 3rd DCA 1981).

There is a balance between enactments of the Legislature and the Florida Supreme Court on matters relating to evidence. The Legislature has enacted and continues to revise ch. 90, F.S. (the Evidence Code), and the Florida Supreme Court tends to adopt these changes as rules. The Florida Supreme Court regularly adopts amendments to the Evidence Code as rules of court when it is determined that the matter is procedural rather than substantive. If the Florida Supreme Court views the changes in this bill as an infringement upon the Court's authority over practice and procedure, however, it may refuse to adopt the changes in the bill as a rule.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority. The bill appears to require court rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to damages for medical or health care services; creating s. 768.755, F.S.; providing that damages for medical or health care services provided or to be provided to a claimant in personal injury or wrongful death are limited in certain circumstances; providing different limits depending on whether an outstanding balance is due to the provider; providing that damages are only recoverable for medically necessary services; providing a limitation if Medicaid, Medicare, or a payor regulated under the Florida Insurance Code has covered or is an insurer covering the claimant's medical or health care services and has given notice of assertion of a lien or a claim of subrogation for past medical expenses; providing for applicability of collateral sources provisions; providing for applicability; providing an effective date.

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

Section 1. Section 768.755, Florida Statutes, is created to read:

768.755 Damages recoverable for medical or health care services.—In an action to which this part applies, damages for medical or health care services provided or to be provided to a

claimant are recoverable only as specified in this section.

(1) With respect to a medical or health care service provided to the claimant for which an outstanding balance is not due to the provider, the actual amounts remitted to the provider are the maximum amounts recoverable. In such circumstances, a difference between the amounts originally billed by the provider and the actual amounts remitted to the provider are not recoverable or admissible into evidence.

(2) With respect to any medical or health care services provided to the claimant for which an outstanding balance is claimed to be due to the provider, the provider is entitled to the usual and customary charges for similar services received in the community where the services were provided based on evidence including, but not limited to, amounts accepted by providers from licensed commercial health insurers licensed under the Florida Insurance Code, Medicaid, and Medicare; amounts received from private individuals on a self-payment basis; and amounts that the provider received in compensation, if any, for the sale of an agreement between the provider and the claimant or the claimant's representative under which the medical or health care services were provided to the claimant. This subsection also applies to a lien or claim of subrogation asserted for medical or health care services in the action, except for a lien or claim of subrogation described in subsection (4).

(3) Damages for medical or health care services provided or to be provided to a claimant are recoverable only for those

services determined, by a preponderance of the evidence, to be medically necessary. A defendant is not liable for medical or health care services determined to be medically unnecessary.

(4) Notwithstanding any other provision of this section, if Medicaid, Medicare, or a payor regulated under the Florida Insurance Code has covered or is an insurer covering the claimant's medical or health care services and has given notice of assertion of a lien or a claim of subrogation for past medical expenses in the action, the amount of the lien or claim of subrogation, plus the amount of copayments or deductibles paid or payable by the claimant, is the maximum amount recoverable and admissible into evidence with respect to the covered services.

(5) After damages in compliance with this section are awarded to a claimant, the court shall apply s. 768.76 and reduce the amount of the award, as appropriate.

(6) This section applies only to actions for personal injury or wrongful death of the claimant and has no other applicability to or effect on compensation paid to providers for medical or health care services.

Section 2. This act applies to causes of action arising on or after the effective date of this act.

Section 3. 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		

Committee/Subcommittee hearing bill: Civil Justice Subcommittee

Representative Hood offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 768.755, Florida Statutes, is created to read:

768.755 Damages recoverable for cost of medical or health care services; evidence of amount of damages; applicability.—

(1) In any personal injury or wrongful death action to which this part applies, damages for the cost of medical or health care services provided to a claimant may be recovered only for medical or health care services that are determined, by a preponderance of the evidence, to be medically necessary, which may be established, subject to rebuttal by way of expert testimony, as set forth in this paragraph, based on the introduction into evidence of the claimant's medical records. A

defendant is not liable for damages arising from or related to the rendering of medical or health care services determined to be medically unnecessary, but shall be required to establish that a medical or health care service is unnecessary through expert witness testimony from a health care provider licensed and practicing in the same specialty as the health care provider who provided the service. The award of damages shall be calculated as follows:

(a) For such medical or health care services provided by a particular health care provider to the claimant which are paid for by the claimant and for which an outstanding balance is not due the provider, the actual amount remitted to the provider is the maximum amount recoverable. Any difference between the amount originally billed by the provider and the actual amount remitted to the provider is not recoverable or admissible into evidence. In an action in which there are more than one health care providers who have provided health care services to the claimant, the evidence admissible under this subsection as to a provider with no outstanding balance due may not be used as evidence regarding the reasonableness of the amounts billed by any of the other health care providers who have an outstanding balance due.

(b) For such medical or health care services provided by a particular health care provider to the claimant which are paid for by a governmental or commercial insurance payor and for which an outstanding balance is not due the provider, other than

a copay or deductible owed by the claimant, the actual amount remitted to the provider by the governmental or commercial insurance payor and any copay or deductible owed by the claimant is the maximum amount recoverable. Any difference between the amount originally billed by the provider and the actual amount remitted to the provider or due from the claimant for a copay or deductible is not recoverable or admissible into evidence. In an action in which there are more than one health care providers who have provided health care services to the claimant, the evidence admissible under this subsection as to a provider with no outstanding balance due may not be used as evidence regarding the reasonableness of the amounts billed by any of the other health care providers who have an outstanding balance due.

(c) For such medical or health care services provided to the claimant for which an outstanding balance is claimed to be due the provider, the parties may introduce into evidence:

1. The usual and customary charges of providers in the same geographic area for identical or substantially similar medical or health care services;

2. Amounts billed by the provider for the services provided to the claimant, including those amounts billed under an agreement between the provider and the claimant or the claimant's representative; and,

3. Amounts the provider received in compensation, if any, for the sale of the agreement between the provider and the

claimant or the claimant's representative under which the medical or health care services were provided to the claimant.

(2) Individual contracts between providers and licensed commercial insurers or licensed health maintenance organizations are not subject to discovery or disclosure in any action under this part, nor is such information admissible into evidence in any action to which this section applies.

(3) Notwithstanding any provision of this section to the contrary, if Medicaid, Medicare, or a payor regulated under the Florida Insurance Code has covered or is covering the cost of a claimant's medical or health care services and has given notice of assertion of a lien or subrogation claim for past medical expenses in the action, the amount of the lien or subrogation claim, in addition to the amount of any copayments or deductibles paid or payable by the claimant, is the maximum amount recoverable and admissible into evidence with respect to the covered services.

(4) This section applies only to those actions for personal injury or wrongful death to which this part applies arising on or after the effective date of this act and has no other application or effect regarding compensation paid to providers of medical or health care services. A determination as to medical necessity under this section may not be used by any person in an effort or action to recoup or recover payment made by a payor to a provider for medical or health care services or

in any malpractice, disciplinary, or regulatory action or other proceeding against the provider.

Section 2. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in s. 768.755, Florida Statutes, with the date this act becomes a law.

Section 3. This act shall take effect upon becoming a law.

T I T L E A M E N D M E N T

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to damages in negligence actions; creating s. 768.755, F.S.; providing that a claimant in certain negligence actions may recover damages for the cost of medical or health care services only if such services are medically necessary; providing a methodology to calculate an award of damages for the cost of such medical or health care services; specifying evidence that is admissible and inadmissible in determining the award of damages; requiring an alternative calculation of damages if certain insurers file a lien or subrogation claim in the action; prohibiting the use of a finding of medical necessity for certain purposes; providing applicability; providing a directive to

the Division of Law Revision and Information; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 829 Involuntary Examinations under the Baker Act
SPONSOR(S): Campbell and Rehwinkel Vasilinda
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Select Committee on Health Care Workforce Innovation	16 Y, 0 N	Guzzo	Calamas
2) Civil Justice Subcommittee		Westcott	Bond
3) Health & Human Services Committee			

SUMMARY ANALYSIS

In 1971, the legislature passed the Florida Mental Health Act (also known as "The Baker Act") to address mental health needs of individuals in the state. The Baker Act allows for voluntary and involuntary examination of an individual and establishes procedures for the court, law enforcement and the medical community that ensure the preservation of an individual's rights relating to medical services.

The Baker Act authorizes involuntary examination of an individual who appears to have a mental illness and who, because of mental illness, presents a substantial threat of harm to themselves or others. Involuntary examination may be initiated by courts, law enforcement officers, physicians, clinical psychologists, psychiatric nurses, mental health counselors, marriage and family therapists, and clinical social workers.

The bill adds advanced registered nurse practitioners and physician assistants to the list of medical professionals who may execute a certificate for involuntary examination of a person.

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

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Involuntary Examination Under the Baker 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.[1] Part I of Chapter 394, F.S., provides 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. The Department of Children and Families (DCF) administers this law through receiving facilities which provide for the examination of persons with evidence of a mental illness. Receiving facilities are designated by DCF and may be public or private facilities which provide the examination and short-term treatment of persons who meet criteria under The Baker Act.[2] Subsequent to examination at a receiving facility, a person who requires further treatment may be transported to a treatment facility. Treatment facilities designated by DCF are state hospitals (e.g., Florida State Hospital) which provide extended treatment and hospitalization beyond what is provided in a receiving facility.[3]

Current law provides that an involuntary examination may be initiated for a person if there is reason to believe the person has a mental illness and because of the illness:[4]

- The person has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for themselves that an examination is needed; and
- The person and is likely to suffer from self-neglect, substantial harm to themselves, or be a danger to themselves or others.

An involuntary examination may be initiated by a circuit court or a law enforcement officer.[5] A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination. A law enforcement officer, as defined in s. 943.10, F.S., may take a person into custody who appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.

In addition, the following professionals, when they have examined a person within the preceding 48 hours, may issue a certificate stating that the person meets the criteria for involuntary examination:[6]

- A physician licensed under ch. 458, F.S., or an osteopathic physician licensed under ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders.
- A physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility.
- A clinical psychologist, as defined in s. 490.003(7), F.S., with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.
- A psychiatric nurse licensed under part I of ch. 464, F.S., who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

[1] Section 1, ch. 71-131, L.O.F.
[2] Section 394.455(26), F.S.
[3] Section 394.455(32), F.S.
[4] Section 394.463(1), F.S.
[5] Section 394.463(2)(a), F.S.
[6] *Id.*

- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.[7]
- A clinical social worker licensed under ch. 491, F.S.[8]

In 2011, there were 150,466 involuntary examinations initiated in the state. Law enforcement initiated almost half of the involuntary exams (49.21 percent) followed by mental health professionals and physicians (48.73 percent) and then *ex parte* orders by judges (2.06 percent).[9]

Physician Assistants

Sections 458.347(7) and 459.022(7), F.S., govern the licensure of physician assistants (PAs) in Florida. PAs are licensed by the Department of Health (DOH) and are regulated by the Florida Council on Physician Assistants (Council) and either the Florida Board of Medicine (Board of Medicine) for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine (Osteopathic Board) for PAs licensed under ch. 459, F.S. Currently, there are 5,874 active licensed PAs in Florida.[10]

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship. A supervising physician may only delegate tasks and procedures to the physician assistant that are within the supervising physician's scope of practice.[11] The supervising physician is responsible and liable for any and all acts of the PA and may not supervise more than four PAs at any time.[12]

PAs are regulated through the respective physician practice acts.[13] Each of the medical practice acts has a corresponding board (i.e., the Board of Medicine and Osteopathic Board). The duty of a Board and its members is to make disciplinary decisions concerning whether a doctor or PA was practicing medicine within the confines of their practice act.[14]

To become licensed as a PA in Florida, an applicant must demonstrate to the Council:[15] passage of the National Commission on Certification of Physician Assistant exam; completion of the application; completion of a PA training program; a sworn, notarized statement of felony convictions; a sworn statement of denial or revocation of licensure in any state; letters of recommendation from physicians;[16] payment of a licensure fee; and completion of a two hour course on the prevention of medical errors, error reduction and prevention, and patient safety.[17] Licensure renewal occurs biennially.[18]

In 2008 Attorney General Bill McCollum issued an opinion stating that:

> *A physician assistant licensed pursuant to Chapter 458 or 459, F.S., may refer a patient for involuntary evaluation pursuant to section 394.463, F.S., provided that the physician assistant*

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[7] Marriage and Family Therapists use practice methods of a psychological nature to evaluate, assess, diagnose, treat and prevent emotional and mental disorders or dysfunctions. Section 491.003(8), F.S.
[8] Clinical Social Workers are required by law to have experience in providing psychotherapy and counseling. Section 491.003(3), F.S.
[9] Department of Children and Families, *Florida's Baker Act: 2013 Fact Sheet*, available at http://myflfamilies.com/service-programs/mental-health/baker-act-manual (last visited March 7, 2014).
[10] Florida Department of Health, *Medical Quality Assurance Annual Report 2012-2013*, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html (last visited March 7, 2014).
[11] Rule 64B8-30.012(1), F.A.C, and Rule 64B15-6.010(1), F.A.C.
[12] Section 458.347(3), F.S., and s. 459.022(3), F.S.
[13] Chapters 458 and 459, F.S.
[14] Section 458.347(12), F.S., and 459.022(12), F.S.
[15] Section 458.347(7), F.S., and s. 459.022(7), F.S.
[16] Rule 64B8-30.003(1), F.A.C., and Rule 64B15-6.003(1), F.A.C.
[17] Rule 64B8-30.003(3), F.A.C., and Rule 64B15-6.003(4), F.A.C.
[18] Section 458.347(7)(c), F.S. Rule 64B8-30.019, F.A.C., establishes the initial licensure and renewal fee schedule. Section 459.022(7)(b), F.S. Rule 64B15-6.013, F.A.C., establishes the initial licensure and renewal fee schedule.

has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks as are within the supervising physician's scope of practice.[19]

However, PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

Advanced Registered Nurse Practitioners (ARNPs)

Part I of ch. 464, F.S., governs the licensure and regulation of nurses in Florida. Nurses are licensed by DOH and are regulated by the Board of Nursing. Licensure requirements to practice advanced and specialized nursing include completion of education requirements,[20] demonstration of passage of a department approved examination, a clean criminal background screening, and payment of applicable fees.[21] Renewal is biennial and contingent upon completion of certain continuing medical education requirements.

A nurse who holds a license to practice advanced and specialized nursing may be certified as an ARNP under s. 464.012, F.S., if the nurse meets one or more of the following requirements:

- Completion of a post basic education program of at least one academic year that prepares nurses for advanced or specialized practice;
- Certification by a specialty board, such as a registered nurse anesthetist or nurse midwife; or
- Possession of a master's degree in a nursing clinical specialty area.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.[22] All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or a dentist.[23] ARNPs may carry out treatments as specified in statute, including:[24]

- Monitoring and altering drug therapies;
- Initiating appropriate therapies for certain conditions;
- Performing additional functions as may be determined by rule in accordance with s. 464.003(2), F.S.;[25] and
- Ordering diagnostic tests and physical and occupational therapy.

In addition to the above allowed acts, ARNPs may also perform other acts as authorized by statute and within his or her specialty.[26] Further, if it is within the ARNPs established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.[27]

There are 15,420 active, licensed ARNPs in Florida.[28]

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[19] *See*, 08-31 Fla. Op. Att'y Gen. (2008). Available at: http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf (last visited March 7, 2014).

[20] Rule 64B9-4.003, F.A.C., provides that an Advanced Nursing Program shall be at least one year long and shall include theory in the biological, behavioral, nursing and medical sciences relevant to the area of advanced practice in addition to clinical expertise with a qualified preceptor.

[21] Section 464.009, F.S., provides an alternative to licensure by examination for nurses through licensure by endorsement.

[22] Section 464.012(2), F.S.

[23] Section 464.012(3), F.S.

[24] *Id.*

[25] Section 464.003(2), F.S., defines "Advanced or Specialized Nursing Practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.

[26] Section 464.012(4), F.S.

[27] Section 464.012(4)(c)5, F.S.

[28] Florida Department of Health, *Medical Quality Assurance Annual Report 2012-2013*, available at http://www.floridahealth.gov/licensing-and-regulation/reports-and-publications/annual-reports.html (last visited March 7, 2014).

Effect of Proposed Changes

The bill amends s. 394.463, F.S., to add that a PA or an ARNP may execute a certificate stating that a person who the ARNP or PA has examined within the preceding 48 hours appears to meet the criteria for involuntary examination for mental illness.

The bill also amends s. 394.455, F.S., to add definitions of PAs and ARNPs to the terms associated with the provision of services and care under the Florida Mental Health Act.

Finally, the bill makes several necessary conforming changes due to the statutory changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.
Section 2: Amends s. 394.455, F.S., relating to definitions.
Section 3: Amends s. 394.463, F.S., relating to involuntary examination.
Section 4: Amends s. 394.495, F.S., relating to child and adolescent mental health system of care; programs and services.
Section 5: Amends s. 394.496, F.S., relating to service planning.
Section 6: Amends s. 394.9085, F.S., relating to behavioral provider liability.
Section 7: Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
Section 8: Amends s. 744.704, F.S., relating to powers and duties.
Section 9: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

No additional rule-making is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; reordering and amending s. 394.455, F.S.; providing definitions; updating references to the Department of Children and Families; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to initiate involuntary examinations under the Baker Act of persons believed to have mental illness; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.704, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455 ~~394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal

guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 2. Section 394.455, Florida Statutes, is reordered and amended to read:

394.455 Definitions.—As used in this part, ~~unless the context clearly requires otherwise,~~ the term:

(1) "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.

(2) "Advanced registered nurse practitioner" means a practitioner licensed under part I of chapter 464 who is authorized to perform the functions listed in s. 464.012(4)(c).

(3) ~~(2)~~ "Clinical psychologist" means a psychologist as defined in s. 490.003(7) with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

(4) ~~(3)~~ "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by a facility which pertains to the patient's hospitalization or treatment.

(5) ~~(4)~~ "Clinical social worker" means a person licensed as a clinical social worker under chapter 491.

(6) ~~(5)~~ "Community facility" means any community service provider contracting with the department to furnish substance abuse or mental health services under part IV of this chapter.

(7) ~~(6)~~ "Community mental health center or clinic" means a publicly funded, not-for-profit center which contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(8)~~(7)~~ "Court," unless otherwise specified, means the circuit court.

(9)~~(8)~~ "Department" means the Department of Children and Families ~~Family Services~~.

(10)~~(38)~~ "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.

(11)~~(9)~~ "Express and informed consent" means consent voluntarily given in writing, by a competent person, after sufficient explanation and disclosure of the subject matter involved to enable the person to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(12)~~(10)~~ "Facility" means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of persons who appear to have a mental illness or have been diagnosed as having a mental illness. The term ~~"Facility"~~ does not include any program or entity licensed pursuant to chapter 400 or chapter 429.

(13)~~(11)~~ "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated.

(14)~~(12)~~ "Guardian advocate" means a person appointed by a court to make decisions regarding mental health treatment on

behalf of a patient who has been found incompetent to consent to treatment pursuant to this part. The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.

(15) ~~(13)~~ "Hospital" means a facility as defined in s. 395.002 and licensed under chapter 395 and part II of chapter 408.

(16) ~~(14)~~ "Incapacitated" means that a person has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(17) ~~(15)~~ "Incompetent to consent to treatment" means that a person's judgment is so affected by his or her mental illness that the person lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical or mental health treatment.

(18) ~~(34)~~ "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s. 394.467(1) or involuntary outpatient treatment under s. 394.4655(1).

(19) ~~(35)~~ "Involuntary placement" means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.

(20) ~~(16)~~ "Law enforcement officer" means a law enforcement officer as defined in s. 943.10.

(21) ~~(36)~~ "Marriage and family therapist" means a person

licensed as a marriage and family therapist under chapter 491.

(22) ~~(37)~~ "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.

(23) ~~(17)~~ "Mental health overlay program" means a mobile service which provides an independent examination for voluntary admissions and a range of supplemental onsite services to persons with a mental illness in a residential setting such as a nursing home, assisted living facility, adult family-care home, or nonresidential setting such as an adult day care center. Independent examinations provided pursuant to this part through a mental health overlay program must only be provided under contract with the department for this service or be attached to a public receiving facility that is also a community mental health center.

(24) ~~(18)~~ "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

(25) ~~(19)~~ "Mobile crisis response service" means a nonresidential crisis service attached to a public receiving facility and available 24 hours a day, 7 days a week, through

which immediate intensive assessments and interventions, including screening for admission into a receiving facility, take place for the purpose of identifying appropriate treatment services.

(26) ~~(20)~~ "Patient" means any person who is held or accepted for mental health treatment.

(27) ~~(21)~~ "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental and nervous disorders or a physician employed by a facility operated by the United States Department of Veterans Affairs which qualifies as a receiving or treatment facility under this part.

(28) "Physician assistant" means a physician assistant licensed under chapter 458 or chapter 459 who has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks as are within the supervising physician's scope of practice.

(29) ~~(22)~~ "Private facility" means any hospital or facility operated by a for-profit or not-for-profit corporation or association that provides mental health services and is not a public facility.

(30) ~~(23)~~ "Psychiatric nurse" means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician.

(31)~~(24)~~ "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 who has primarily diagnosed and treated mental and nervous disorders for a period of not less than 3 years, inclusive of psychiatric residency.

(32)~~(25)~~ "Public facility" means any facility that has contracted with the department to provide mental health services to all persons, regardless of their ability to pay, and is receiving state funds for such purpose.

(33)~~(26)~~ "Receiving facility" means any public or private facility designated by the department to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and to provide short-term treatment. The term does not include a county jail.

(34)~~(27)~~ "Representative" means a person selected to receive notice of proceedings during the time a patient is held in or admitted to a receiving or treatment facility.

(35)~~(28)~~(a) "Restraint" means a physical device, method, or drug used to control behavior. A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to the individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control the person's behavior or to restrict his or her freedom of movement and is not part of the standard treatment regimen of a person with a diagnosed mental illness who is a client of the

department. Physically holding a person during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding when necessary for routine physical examinations and tests; or for purposes of orthopedic, surgical, or other similar medical treatment; when used to provide support for the achievement of functional body position or proper balance; or when used to protect a person from falling out of bed.

(36) ~~(29)~~ "Seclusion" means the physical segregation of a person in any fashion or involuntary isolation of a person in a room or area from which the person is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the person from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to a person's medical condition or symptoms.

(37) ~~(30)~~ "Secretary" means the Secretary of Children and Families ~~Family Services~~.

(38) ~~(33)~~ "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Families ~~Family Services~~ to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health

counselor, a physician, a psychiatric nurse as defined in subsection (30) ~~(23)~~, or a community mental health center or clinic as defined in this part.

(39) ~~(31)~~ "Transfer evaluation" means the process, as approved by the appropriate district office of the department, whereby a person who is being considered for placement in a state treatment facility is first evaluated for appropriateness of admission to the facility by a community-based public receiving facility or by a community mental health center or clinic if the public receiving facility is not a community mental health center or clinic.

(40) ~~(32)~~ "Treatment facility" means any state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization, beyond that provided for by a receiving facility, of persons who have a mental illness, including facilities of the United States Government, and any private facility designated by the department when rendering such services to a person pursuant to the provisions of this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

Section 3. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to the nearest receiving facility for involuntary examination. The order of the court shall be made a part of the patient's clinical record. No fee shall be charged for the filing of an order under this subsection. Any receiving facility accepting the patient based on this order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order shall be valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to the nearest receiving facility for examination. The officer shall execute a written report detailing the circumstances under

which the person was taken into custody, and the report shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

Section 4. Paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(3), (5), (27), (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~;

(c) A person who is under the direct supervision of a professional as defined in s. 394.455(3), (5), (27), (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491.

The department shall adopt by rule statewide standards for mental health assessments, which must be based on current relevant professional and accreditation standards.

Section 5. Subsection (6) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(6) A professional as defined in s. 394.455(3), (5), (27), (30), or (31) ~~394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 6. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "receiving facility," "addictions receiving facility," and "detoxification services," ~~"addictions receiving facility," and "receiving~~

~~facility"~~ have the same meanings as ~~those~~ provided in ss. 394.455(33), 397.311(18)(a)1., and 397.311(18)(a)4., ~~397.311(18)(a)1., and 394.455(26),~~ respectively.

Section 7. Paragraph (b) of subsection (2) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(2) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or mental health treatment facilities as defined by s. 394.455(40) ~~394.455(32)~~.

Section 8. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian shall not commit a ward to a mental health treatment facility, as defined in s. 394.455(40) ~~394.455(32)~~, without an involuntary placement proceeding as provided by law.

Section 9. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice Subcommittee

Representative Campbell offered the following:

Amendment (with title amendment)

Remove lines 292-310 and insert:

3.a. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer shall take the person named in the certificate into custody and deliver him or her to the nearest receiving facility for

involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any receiving facility accepting the patient based on this certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

b. A physician assistant or an advanced registered nurse practitioner may not execute a certificate as provided in sub-subparagraph a. unless he or she completed at least 40 clock hours of training approved by the Board of Medicine or the Board of Nursing, as appropriate, concerning the Florida Mental Health Act or mental health as part of his or her education and training program or has passed a national certification exam that includes testing on the care of patients with mental illness/mental act or has subsequently completed and passed a 40- clock-hour course, approved by the relevant board concerning the Florida Mental Health Act or mental health. If any colleges or universities already have the Florida Mental Health Act or mental health in their curriculum, they will be grandfathered. In addition, such a physician assistant or advanced registered nurse practitioner may not execute a certificate as provided in sub-subparagraph a. unless he or she biannually completes 2 hours of approved continuing education concerning the Florida Mental Health Act.

T I T L E A M E N D M E N T

Remove line 9 and insert:

persons believed to have mental illness; providing education and continuing education requirements for such physician assistants and advanced registered nurse practitioners; amending ss.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 829 (2014)

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	_____

Committee/Subcommittee hearing bill: Civil Justice Subcommittee

Representative Rehwinkel Vasilinda offered the following:

Amendment to Amendment (712325) by Representative Campbell

Remove lines 30-37 of the amendment and insert:

Act or Alzheimer's disease or related dementias as part of his or her education and training program or has subsequently completed and passed a 40-clock-hour course approved by the relevant board concerning the Florida Mental Health Act. In addition, such a physician assistant or advanced registered nurse practitioner may not execute a certificate as provided in sub-subparagraph a. unless he or she annually completes 3 hours of approved continuing education concerning the Florida Mental Health Act or Alzheimer's disease or related dementias.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 829 (2014)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice Subcommittee

Representative Rehwinkel Vasilinda offered the following:

Amendment (with title amendment)

Remove line 152 and insert:

conditions manifested only by antisocial behavior, Alzheimer's disease or related dementias, or substance

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T I T L E A M E N D M E N T

Remove line 4 and insert:

revising and providing definitions; updating references to the

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 903 Application of Foreign Law in Certain Cases
SPONSOR(S): Combee and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

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

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

The bill is limited in its application to dissolution proceedings and support enforcement under The Uniform Interstate Family Support Act. The bill provides that constitutional rights may be waived, but directs that waivers will be interpreted to protect the party waiving his or her rights.

The bill:

- Provides that any legal decision, or contract provision is void and unenforceable if it is based upon a foreign law or system that does not grant the parties the same protections guaranteed by the state and federal constitutions.
- Provides that a forum selection clause in a contract violates the public policy of this state and is unenforceable if enforcement would result in a violation of constitutional protections.
- Provides that a claim of *forum non conveniens,* must be denied if a court finds that granting the claim violates or would likely lead to a violation of any constitutional right of the non-claimant in the foreign forum.

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

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The law of a foreign jurisdiction or system may be recognized in Florida in a variety of circumstances. "A court may take judicial notice of . . . laws of foreign nations and of an organization of nations." Section 90.202, F.S. However, even if recognized, the laws of foreign nations are not necessarily enforced unless there is a reason to do so, usually by prior agreement of the parties.

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

A conflict of laws arises when parties otherwise subject to Florida's body of family law request a Florida court to enforce a marital contract or support order according to the law of another jurisdiction, or request that the case be transferred to another jurisdiction for decision. This bill addresses both types of provisions - the choice of substantive law to be applied, and the choice of forum. It also covers the non-contractual situation which might cause a court to relinquish jurisdiction, i.e., a claim of forum non conveniens.[1] The bill is limited in its application to dissolution proceedings (Chapter 61, F.S.), and support enforcement under The Uniform Interstate Family Support Act, Chapter 88, F.S.

Foreign support orders are enforced in Florida under the Uniform Interstate Family Support Act,[2] which directs that as a general rule, the law of the state issuing the order shall govern, even if enforcement is requested in Florida.[3] Likewise, Chapter 61, F.S., which governs dissolution of marriage, acknowledges the enforceability of a choice of law provision in an antenuptial agreement.[4]

If such provisions do not offend the public policy of Florida, they are enforceable, even if the law to be applied is different than Florida law.[5] Historically, Florida courts have enforced a prenuptial contract according to the law of the place where it was entered into, unless enforcement would be contrary to public policy or unconstitutional.[6] For example, in *Akileh v. Elchahal*,[7] the court enforced the parties' Islamic ante-nuptial agreement, arguably a religious arrangement, since it complied with Florida contract law, and the court found nothing in the contract unconscionable.

Florida has also enacted the "Uniform Premarital Agreement Act," which specifically states that premarital agreements, including their choice of law provisions, are enforceable. *See* s. 61.079 F.S.

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[1] "Forum non conveniens is a common law doctrine addressing the problem that arises when a local court technically has jurisdiction over a suit but the cause of action may be fairly and more conveniently litigated elsewhere." *Kinney System, Inc., v. Continental Ins. Co.*, 674 So.2d 86 (Fla. 1996). *See* also sec. 47.122, F.S.

[2] Chapter 88, F.S.

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

[4] *See* s. 61.079, F.S.

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

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

[7] 666 So.2d 246 (Fla. 2d DCA 1996).

Choice of law provisions in property settlement agreements are valid and enforceable pursuant to the Uniform Interstate Family Support Act, as codified in Ch. 88, F.S.[8]

However, despite these statutes, courts maintain that where the foreign law frustrates the public policy of this state, or is not established with specificity as a matter of fact,[9] it will not be enforced. For example, where the husband sought to enforce a Danish prenuptial agreement which left nothing to the wife in the event of divorce, the court refused "where to do so would bring harm to a Florida citizen or would frustrate an established public policy of this state."[10]

Section 61.079 F.S., provides that choice of law provisions in premarital agreements are enforceable in Florida.[11] This bill codifies current caselaw which holds generally that such agreements would not be enforced if enforcement would violate constitutional rights.

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

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

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

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

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

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

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

[10] *Gustafson v. Jensen*, 515 So.2d 1298 (Fla. 3rd DCA 1987).

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

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

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

The bill does not apply to a corporation, partnership, or other form of business association.

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

B. SECTION DIRECTORY:

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

Section 2 provides for severability of invalid provisions of the bill.

Section 3 provides that the Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs with the date the bill becomes a law.

Section 4 provides the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Federal Preemption

The doctrine of preemption limits state action in any matter where legislation on the topic exists at the federal level. Article VI of the U.S. Constitution provides that the laws and treaties of the U.S. are the "Supreme Law of the Land," and, therefore, they preempt state law. Under the federal Full Faith and Credit for Child Support Orders Act,[12] "each state is required to enact the Uniform Interstate Family Support Act to improve the effectiveness of child support enforcement."[13] The Full Faith and Credit for Child Support Orders Act provides for modification of child support orders issued in other states, and addresses choice of law issues in respect to orders issued in another state. It does not address orders issued by another country.

Dormant Federal Foreign Affairs Powers

Although not explicitly provided for in the U.S. Constitution, the Supreme Court has interpreted the U.S. Constitution to mean that the national government has exclusive power over foreign affairs. In *Zschernig v. Miller*, the Supreme Court reviewed an Oregon statute that refused to let a resident alien inherit property because the alien's home country barred U.S. residents from inheriting property. The Court held that the Oregon law as applied exceeded the limits of state power because the law interfered with the national government's exclusive power over foreign affairs. The Court also held that, to be unconstitutional, the state action must have more than "some incidental or indirect effect on foreign countries,"[14] and the action must pose a "great potential for disruption or embarrassment"[15] to the national unity of foreign policy. Such a determination would necessarily rely heavily on considerations of current political climates and foreign relations, as well as the United States' perception abroad.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[12] 28 USC sec. 1738B(a)(1)
[13] Fla. Jur. 2d, Family Law, sec. 552
[14] *Zschernig v. Miller*, 389 U.S. 429, 433 (1968).
[15] *Id.* at 435.

A bill to be entitled

An act relating to the application of foreign law in certain cases; creating s. 45.022, F.S.; providing legislative intent; defining the term "foreign law, legal code, or system"; providing for applicability; specifying the public policy of this state on the application of a foreign law, legal code, or system in proceedings brought under or relating to chapter 61 or chapter 88, F.S., which relate to dissolution of marriage, support, time-sharing, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Interstate Family Support Act; providing that certain decisions rendered under such laws, codes, or systems are void; providing that certain contracts and contract provisions are void; providing for the construction of a waiver by a natural person of the person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution; providing that claims of forum non conveniens or related claims must be denied under certain circumstances; providing that the act may not be construed to require or authorize any court to adjudicate, or prohibit any religious organization from adjudicating, ecclesiastical matters in violation of specified constitutional provisions or to conflict with any federal treaty or other international

agreement to which the United States is a party to a specified extent; providing for severability; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

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

45.022 Application of foreign law contrary to public policy in certain cases.—

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

(2) As used in this section, the term "foreign law, legal code, or system" means any law, legal code, or system of a foreign country, or a state, nation, or subdivision thereof, outside the United States or its territories, including, but not limited to, a foreign or international organization claiming the status of a country, state, or nation or asserting legal authority to act on behalf of one or more foreign countries, states, nations, or any other similar international organizations or tribunals, which is applied by that

jurisdiction's courts, administrative bodies, or other formal or informal tribunals. The term does not include the common law and statute laws of England as described in s. 2.01 or any laws of the Native American tribes in this state.

(3) This section applies:

(a) Only to actual or foreseeable denials of a natural person's fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution from the application of a foreign law, legal code, or system in actions or proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88 and filed after the effective date of this act; and

(b) To a corporation, partnership, or other form of business association only as necessary to provide effective relief in actions or proceedings brought under, pursuant to, or pertaining to the subject matter of chapter 61 or chapter 88.

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

(5) A contract, or contractual provision, if severable,

violates the public policy of this state and is void and unenforceable if:

(a) The contract or contractual provision provides for the choice of a foreign law, legal code, or system to govern some or all of the disputes arising from the contract between the parties and the foreign law, legal code, or system chosen includes or incorporates any substantive or procedural law, as applied to the dispute at issue, which would deny the parties the same fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution. This paragraph does not limit the right of a natural person in this state to voluntarily restrict or limit his or her fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution by contract or specific waiver consistent with constitutional principles, but the language of any such contract or waiver must be strictly construed in favor of preserving such liberties, rights, and privileges; or

(b) The contract or contractual provision provides for the choice of venue or choice of forum outside a state or territory of the United States and the enforcement of the choice of venue or choice of forum provision would result in a violation of any fundamental liberties, rights, and privileges guaranteed by the State Constitution or the United States Constitution.

(6) If a natural person who is subject to personal jurisdiction in this state seeks to maintain litigation,

arbitration, agency, or similarly binding proceedings in this state and the courts of this state find that granting a claim of forum non conveniens or a related claim denies or would likely lead to the denial of any fundamental liberties, rights, and privileges of the nonclaimant guaranteed by the State Constitution or the United States Constitution in the foreign forum with respect to the matter in dispute, it is the public policy of this state that the claim be denied.

(7) This section may not be construed to:

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

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

Section 2. If any provision of this act or its application to any natural person or circumstance is held invalid, the

invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

Section 3. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1117 Athletic Safety, Education, and Training
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Civil Justice Subcommittee		Cary JMC	Bond MB

SUMMARY ANALYSIS

The bill requires youth sports organizations, independent sanctioning authorities, the Florida High School Athletic Association, and state and private colleges and universities to develop, adopt, and implement policies and training programs relating to bullying and harassment. The bill also creates an unlawful employment practice for failure of a Florida-based professional sports franchise to prevent abusive conduct, which may include a $10,000 per incident fine.

The bill may have an undetermined negative fiscal impact on the state and the private sector. The bill does not appear to impact local government revenues or expenditures.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Currently, each school district in the state is required to adopt a policy prohibiting bullying and harassment.[1] Legislation enacted in 2008 required each district school board to adopt a policy prohibiting bullying and harassment in district schools.[2] Among other things, the law prohibits the bullying or harassment of any public K-12 student or employee during a public K-12 education program or activity; during a school-related or school-sponsored program or activity; on a public K-12 school bus; or through a computer, computer system, or computer network that is within the scope of a public K-12 educational institution.[3]

The terms "bullying" and "harassment" are defined in the statutes in a K-12 context. Bullying is defined as systematically and chronically inflicting physical hurt or psychological distress on one or more students, which may involve:

- Teasing;
- Social exclusion;
- Threat;
- Intimidation;
- Stalking;
- Physical violence;
- Theft;
- Sexual, religious, or racial harassment;
- Public humiliation; or
- Destruction of property.[4]

The law was recently amended to include cyberbullying in the definition of bullying.[5]

Harassment is defined as threatening, insulting, or dehumanizing gestures, use of computers, or written, verbal, or physical conduct directed against a student or school employee that causes reasonable fear of harm to person or property; substantially interferes with a student's educational performance, opportunities, or benefits; or substantially disrupts the orderly operation of a school.[6]

The law further specifies that bullying and harassment include:

- Retaliating against a student or school employee for reporting bullying or harassment;
- Reporting bullying or harassment, which reporting is not made in good faith;
- Perpetuating bullying or harassment with the intent to demean, dehumanize, embarrass, or cause physical harm to a student or school employee by incitement or coercion; use of (or providing access to) a school district's computer, computer system, or computer network; or conduct substantially similar to bullying or harassment.[7]

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[1] Section 1006.147(4), F.S.
[2] Chapter 2008-123, L.O.F.
[3] Section 1006.147(2), F.S.
[4] Section 1006.147(3)(a), F.S.
[5] Chapter 2013-87, L.O.F.
[6] Section 1006.147(3)(b), F.S.
[7] Section 1006.147(3)(d), F.S.

Effect of the Bill

Youth Sports

The bill creates s. 760.12, F.S., to promote respectful conduct in athletics using public accommodations. The bill requires an organization that is allowed to use any state, county, municipal, or school board playing field, athletic facility, or other public accommodations for the purpose of sponsored non-interscholastic athletic competition by minors must agree to substantially comply with the county school board's bullying and harassment policy.

Independent Sanctioning Authority

An independent sanctioning authority is a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team if the team includes one or more minors and is not affiliated with a private school.[8] The bill amends s. 943.0438(5), F.S., to require an independent sanctioning authority to adopt bylaws or policies that require a youth who is participating in athletic competition or who is a candidate for an athletic team to sign and return a pledge to not participate in bullying or harassment.

K-12 School Athletics

The Florida High School Athletic Association (FHSAA) is a nonprofit organization that governs athletics in Florida public schools.[9] State law requires the FHSAA to adopt bylaws, policies and guidelines.[10] The bill amends s. 1006.20(2), F.S., to require the FHSAA to adopt guidelines for the prevention of bullying and harassment in athletics. The guidelines must include a requirement that every student athlete who seeks to participate in a sport must sign a pledge that he or she will not engage in bullying or harassment while participating. However, neither an athlete nor a school will be sanctioned unless the failure to sign or obtain a form was intentional and willful.

Furthermore, the bill requires guidelines for each coach involved in interscholastic athletics to be trained on the prevention of bullying and harassment in athletics, including instruction on identifying, preventing, and responding to bullying and harassment and taking appropriate preventative action. Neither a school nor a coach will be sanctioned for failure to complete the required training unless the failure was intentional and willful. The bill also requires training of game officials in the prevention of bullying and harassment.

The bill also requires the FHSAA to implement appropriate sanctions for unsportsmanlike conduct related to bullying and harassment during games or competitions. Any sanction must include a warning prior to an ejectment, and an ejectment from the game or competition is the maximum penalty that the FSHAA may implement. Any ejectment must be reported the principal.

Intercollegiate Athletics

The bill creates s. 1006.74, F.S., to prohibit bullying or harassment of any student participating in intercollegiate athletics. Any public or nonpublic postsecondary educational institutions whose student athletes receive state student financial assistance must adopt a written policy on bullying and harassment. The policy must include rules prohibiting students from engaging in bullying or harassment. The policy also must require that each athlete sign a pledge not to engage in bullying or harassment while participating in intercollegiate athletics. No student may participate in a tryout, practice or competition until the pledge is signed. Coaches must also be trained on the prevention of bullying and harassment, including instruction on identifying, preventing, and responding to bullying and

[8] Section 943.0438(1)(b), F.S.
[9] Section 1006.20(1), F.S.
[10] Section 1006.20(2), F.S.

harassment in athletics. Coaches must be training on recognizing and preventing behaviors that lead to bullying and harassment in athletics.

This section of the bill does not create a private right of action. A student athlete who violates the policy will be referred to the disciplinary authority of the college or university. Conduct that appears to be hazing[11] must be referred to law enforcement.

Professional Athletics

The bill creates s. 760.101, F.S., to make it an unlawful employment practice for a Florida-based professional sports franchise to fail to take reasonable measures to prevent abusive conduct targeted at any player, including abusive conduct inflicted by another player. The bill does not create a private cause of action, but rather allows the Attorney General to bring a civil action seeking injunctive relief. The Attorney General may also impose a fine of $10,000, payable to the state, for each willful violation by a franchise.

B. SECTION DIRECTORY:

Section 1 creates s. 760.12, F.S., relating to promotion of respectful conduct in athletics using public accommodations.

Section 2 amends s. 943.0438, F.S., relating to athletic coaches for independent sanctioning authorities.

Section 3 amends s. 1006.20, F.S., relating to athletics in public K-12 schools.

Section 4 creates s. 1006.74, F.S., relating to bullying and harassment in intercollegiate athletics prohibited.

Section 5 creates s. 760.101, F.S., relating to unlawful employment practices in professional athletics.

Section 6 provides an effective date of July 1, 2014.

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 will likely have an undetermined, negative fiscal impact on state expenditures. The bill requires the Florida High School Athletics Association and state colleges and universities to develop, adopt, and implement policies and training programs. It is unclear what the specific fiscal impact to these organizations may entail.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

[11] Hazing is a third-degree felony and is defined by s. 1006.63, F.S.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires private entities, including youth sports organizations, independent sanctioning authorities, private colleges, and professional sports franchises, to develop, adopt, and implement policies and training programs. It is unclear what the specific fiscal impact to these organizations may entail.

D. FISCAL COMMENTS:

In addition to any fiscal impact that may affect the state government or the private sector, the bill creates a new unlawful employment practice, which could create a civil cause of action for the Attorney General to bring against a sports franchise. The bill provides that the Attorney General may enforce the provisions of the bill with a fine of $10,000 per incident.

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 may require rulemaking. The Florida High School Athletic Association and state colleges and universities are required by the bill to develop, adopt, and implement policies and training programs. This may entail rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to athletics; creating s. 760.12, F.S.; requiring specified organizations using specified facilities to comply with policies regarding bullying and harassment promulgated by the local school board; amending s. 943.0438, F.S.; requiring sanctioning authority for athletic coaches to require athletes to sign a pledge against bullying; amending s. 1006.20, F.S.; requiring the Florida High School Athletic Association to adopt specified guidelines regarding the promotion of respectful conduct in interscholastic athletics; requiring that participants in interscholastic athletics sign a pledge; requiring that interscholastic athletics coaching staff be trained in policies promoting mutual respect in athletics; requiring sanctions for bullying or harassment that occurs in games or competitions; creating s. 1006.74, F.S.; prohibiting bullying or harassment in intercollegiate athletics; requiring specified public and nonpublic postsecondary educational institutions to adopt written policies regarding the promotion of respectful conduct in intercollegiate athletics; providing requirements for such policy; requiring that participants in intercollegiate athletics sign a pledge against prohibited conduct; requiring that coaching staff

involved in intercollegiate athletics be trained on the prevention of prohibited conduct; providing that there is no private right of action; providing for reference of incidents to proper authorities; creating s. 760.101, F.S.; providing that it is an unlawful employment practice for a professional sports franchise to fail to take reasonable measures to prevent abusive conduct; providing that there is no private right of action; providing for enforcement by the Attorney General in a civil action; providing an effective date.

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

Section 1. Section 760.12, Florida Statutes, is created to read:

760.12 Promotion of respectful conduct in athletics using public accommodations.—

(1) An organization permitted to use any state, county, municipal or school board playing field, athletic facility, or other public accommodations for the purpose of sponsored non-interscholastic athletic competition by persons younger than 18 years of age must, as a condition of such use, agree to substantially comply with the policies regarding bullying and harassment developed by the school board for the county in which the playing field, athletic facility, or other public

accommodations is located.

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

(a) "Public accommodations" has the same meaning as provided in s. 760.02.

(b) "Sponsored non-interscholastic athletic competition" means an athletic competition organized and supervised by a group, league, or similar organization other than a public or private school.

Section 2. Subsection (2) of section 943.0438, Florida Statutes, is amended, and subsection (5) of said section is crated, to read:

943.0438 Athletic coaches for independent sanctioning authorities.—

(2) An independent sanctioning authority shall:

(a)1. Conduct a background screening of each current and prospective athletic coach. No person shall be authorized by the independent sanctioning authority to act as an athletic coach unless a background screening has been conducted and did not result in disqualification under paragraph (b). Background screenings shall be conducted annually for each athletic coach. For purposes of this section, a background screening shall be conducted with a search of the athletic coach's name or other identifying information against state and federal registries of sexual predators and sexual offenders, which are available to the public on Internet sites provided by:

a. The Department of Law Enforcement under s. 943.043; and

b. The Attorney General of the United States under 42 U.S.C. s. 16920.

2. For purposes of this section, a background screening conducted by a commercial consumer reporting agency in compliance with the federal Fair Credit Reporting Act using the identifying information referenced in subparagraph 1. and that includes searching that information against the sexual predator and sexual offender Internet sites listed in sub-subparagraphs 1.a. and b. shall be deemed in compliance with the requirements of this section.

(b) Disqualify any person from acting as an athletic coach if he or she is identified on a registry described in paragraph (a).

(c) Provide, within 7 business days following the background screening under paragraph (a), written notice to a person disqualified under this section advising the person of the results and of his or her disqualification.

(d) Maintain documentation of:

1. The results for each person screened under paragraph (a); and

2. The written notice of disqualification provided to each person under paragraph (c).

(5) An independent sanctioning authority shall adopt:

(a) ~~(c) Adopt~~ Guidelines to educate athletic coaches, officials, administrators, and youth athletes and their parents or guardians of the nature and risk of concussion and head

injury.

(b) ~~(f) Adopt~~ Bylaws or policies that require the parent or guardian of a youth who is participating in athletic competition or who is a candidate for an athletic team to sign and return an informed consent that explains the nature and risk of concussion and head injury, including the risk of continuing to play after concussion or head injury, each year before participating in athletic competition or engaging in any practice, tryout, workout, or other physical activity associated with the youth's candidacy for an athletic team.

(c) ~~(g) Adopt~~ Bylaws or policies that require each youth athlete who is suspected of sustaining a concussion or head injury in a practice or competition to be immediately removed from the activity. A youth athlete who has been removed from an activity may not return to practice or competition until the youth submits to the athletic coach a written medical clearance to return stating that the youth athlete no longer exhibits signs, symptoms, or behaviors consistent with a concussion or other head injury. Medical clearance must be authorized by the appropriate health care practitioner trained in the diagnosis, evaluation, and management of concussions as defined by the Sports Medicine Advisory Committee of the Florida High School Athletic Association.

(d) Bylaws or policies that require a youth who is participating in athletic competition or who is a candidate for an athletic team to sign and return a pledge to not participate

in bullying or harassment.

Section 3. Paragraph (n) is added to subsection (2) of section 1006.20, Florida Statutes, to read:

1006.20 Athletics in public K-12 schools.—

(2) ADOPTION OF BYLAWS, POLICIES, OR GUIDELINES.—

(n) The FHSAA shall adopt guidelines for the prevention of bullying and harassment in athletics. The guidelines must include:

1. A requirement that every student athlete who seeks to participate in a sport shall sign a pledge that he or she will not engage in bullying or harassment while participating in interscholastic athletics. No student athlete may participate in any tryout, practice or competition until such pledge is signed. There shall be no sanction against an athlete or school for failure to obtain a signed form unless the failure was intentional and willful.

2. Training of all coaches involved in interscholastic athletics. The training must teach the prevention of bullying and harassment in athletics. Such training must include instruction on identifying, preventing, and responding to bullying and harassment in athletics, including instruction on recognizing behaviors that lead to bullying and harassment in athletics and taking appropriate preventive action based on those observations. Training shall be required on a schedule created by the FHSAA. There shall be no sanction against a coach or school for failure to complete the required training unless

the failure was intentional and willful.

3. Training of game officials in the prevention of bullying and harassment occurring during games or competitions sanctioned by the FHSAA.

4. Implementation of appropriate sanctions for unsportsmanlike conduct related to bullying and harassment that occurs in the presence of sports officials during games or competitions. Sanctions shall provide for a warning prior to ejectment, and the maximum punishment may not exceed ejectment from the game or competition. Any ejection shall be reported to the principal of the athlete's school.

Section 4. Section 1006.74, Florida Statutes, is created to read:

1006.74 Bullying and harassment in intercollegiate athletics prohibited.—

(1) Bullying or harassment of any student participating in intercollegiate athletics is prohibited. As used in this section, the terms "bullying" and "harassment" have the same meanings as provided in s. 1006.147.

(2) Public and nonpublic postsecondary educational institutions whose students receive state student financial assistance shall, if those students participate in intercollegiate athletics, adopt a written policy on the subject of bullying and harassment in intercollegiate athletics. Such policy must:

(a) Include rules prohibiting students from engaging in

bullying or harassment in intercollegiate athletics.

(b) Require, as a condition of participation in intercollegiate athletics, that each athlete sign a pledge not to engage in bullying or harassment in the course of intercollegiate athletics. No student athlete may participate in any tryout, practice or competition until such pledge is signed.

(c) Require the training of coaching staff involved in intercollegiate athletics on the prevention of bullying and harassment in athletics. Such training must include instruction on identifying, preventing, and responding to bullying and harassment in athletics, including instruction on recognizing behaviors that lead to bullying and harassment in athletics and taking appropriate preventive action based on those observations.

(3) This section does not create a private right of action. A student who violates a policy against bullying or harassment shall be referred to the disciplinary authority of the college or university pursuant to s. 1006.62. Where appropriate, a person shall be referred to law enforcement authorities where conduct appears to be a violation of s. 1006.63.

Section 5. Section 760.101, Florida Statutes, is created to read:

760.101 Unlawful employment practices in professional athletics.—

(1) It is an unlawful employment practice for a

professional sports franchise based in Florida to fail to take reasonable measures to prevent abusive conduct targeted at any player, including abusive conduct inflicted by another player.

(2) This section does not create a private right of action. The Attorney General may bring a civil action seeking injunctive relief to enforce this section. In addition to injunctive relief, or in lieu thereof, for any employer or other person found to have willfully violated this section, the Attorney General may seek to impose a fine of $10,000 per violation, payable to the state.

Section 6. This act shall take effect July 1, 2014.

Amendment No. 1

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

Committee/Subcommittee hearing PCB: Civil Justice Subcommittee

Representative Workman offered the following:

Amendment (with title amendment)

Remove line 218 and insert:

violation, payable to the state. In a civil action brought by the Attorney General under this subsection, a professional sports franchise shall have an affirmative defense that it took reasonable measures to prevent a violation of this statute if the professional sports franchise:

(a) Adopted and enforced a written policy prohibiting abusive conduct.

(b) Required players to receive the policy and to pledge not to engage in abusive conduct toward other players.

(c) Required coaching staff to be trained in the prevention of abusive conduct. Such training must include instruction on identifying, preventing, and responding to

abusive conduct in athletics, including instruction on recognizing behaviors that lead to abusive conduct in athletics and taking appropriate preventive action based on those observations.

Section 6. Nothing in this act shall be construed or implemented to infringe upon the right of free speech under the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment to the United States Constitution, or under Article I, Section 4 of the State Constitution.

T I T L E A M E N D M E N T

Remove line 36 and insert:

the Attorney General in a civil action; providing an affirmative defense to a civil action; providing that the act may not be construed or implemented to infringe upon the right of free speech; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1135 Limitation of Civil Liability for Farmers
SPONSOR(S): Rader
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Ward	Bond
2) Agriculture & Natural Resources Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides that any farmer who allows persons to enter upon land for removing produce after the harvest is exempt from civil liability resulting from the condition of the land and the condition of the crop.

The bill removes the language which limits the farmer's exemption from liability to post-harvest removal of produce or crops. The effect is to provide the farmer with an exemption from civil liability in respect to the condition of the land or crop to any person entering upon the farmer's land for the purpose of harvesting or removing a crop.

The exemption from civil liability does not not apply if injury or death directly results from the gross negligence, intentional act, or from known dangerous conditions not disclosed by the farmer.

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

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Landowner Liability

A plaintiff who is injured on another person's land may sue the landowner in tort if the landowner breached a duty of care owed to the plaintiff and the plaintiff suffered damages as a result of the landowner's breach.[1] A landowner's duty to persons on his or her land is governed by the status of the injured person.

An invitee is a person who was invited to enter the land.[2] Florida law defines "invitation" to mean "that the visitor entering the premises has an objectively reasonable belief that he or she has been invited or is otherwise welcome on that portion of the real property where injury occurs."[3] The duties owed to most invitees are the duty to keep property in reasonably safe condition; the duty to warn of concealed dangers which are known or should be known to the property holder, and which the invitee cannot discover through the exercise of due care; and the duty to refrain from wanton negligence or willful misconduct.[4]

Farms

Persons invited to pick crops on another's land are considered to be invitees, according to the above definition. In the absence of contract, the farmer[5] owning and working the land has a duty of care to parties who are invited to u-pick farms, or who enter upon the land for cooperative farming, or other harvesting reasons.

Current law provides that any farmer who allows persons to enter upon land for removing produce after the harvest is exempt from civil liability resulting from the condition of the land and the condition of the crop.

The bill removes the language which limits the farmer's exemption from liability to post-harvest removal of produce or crops. The effect is to provide the farmer with an exemption from civil liability in respect to the condition of the land or crop to any person entering upon the farmer's land for the purpose of harvesting or removing a crop, unless the exemption applies.

The exemption from civil liability does not not apply if injury or death directly results from the gross negligence, intentional act, or from known dangerous conditions not disclosed by the farmer.

B. SECTION DIRECTORY:

Section 1 amends s. 768.137, F.S., relating to definition; limitation of civil liability for certain farmers; exception.

Section 2 provides an effective date of July 1, 2014.

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[1] 74 Am.Jur 2d Torts s. 7 (2013).
[2] *Post,* 261 So.2d at 147-48.
[3] Section 768.075(3)(a)1., F.S.
[4] *See, e.g., Dampier v. Morgan Tire & Auto, LLC*, 82 So.3d 204, 205 (Fla. 5th DCA 2012).
[5] "[T]he term 'farmer' means a person who is engaging in the growing or producing of farm produce, either part time or full time, for personal consumption or for sale and who is the owner or lessee of the land . . . " s. 768.137(1), F.S.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to limitation of civil liability for farmers; amending s. 768.137, F.S.; revising conditions under which certain farmers are exempt from civil liability; providing an effective date.

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

Section 1. Subsection (2) of section 768.137, Florida Statutes, is amended to read:

768.137 Definition; limitation of civil liability for certain farmers; exception.—

(2) Any farmer who gratuitously allows persons to enter upon her or his own land for the purpose of removing any farm produce or crops <u>is</u> ~~remaining in the fields following the harvesting thereof, shall be~~ exempt from civil liability arising out of any injury or death resulting from the nature or condition of such land or the nature, age, or condition of any such farm produce or crop.

Section 2. This act shall take effect July 1, 2014.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice Subcommittee

Representative Rader offered the following:

Amendment (with directory and title amendments)

Between lines 19 and 20, insert:

(3) The exemption from civil liability provided for in this section does ~~shall~~ not apply if injury or death directly results from the gross negligence or~~,~~ intentional act of~~, or from known dangerous conditions not disclosed by~~ the farmer.

D I R E C T O R Y A M E N D M E N T

Remove lines 9-10 and insert:

Section 1. Subsections (2) and (3) of section 768.137, Florida Statutes, are amended to read:

Amendment No. 1

T I T L E A M E N D M E N T

Remove line 5 and insert:

civil liability; revising exceptions to the exemption from civil liability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1279 Marriage of Minors
SPONSOR(S): Stafford
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1498

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary JMC	Bond MB
2) Healthy Families Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Under current law, a minor can marry if he or she is at least 16 years of age and if the parents or guardian of the minor consent in writing; if both parents are deceased; or if the minor has previously been married. In addition, a minor of any age can marry if the marriage is approved by a county court judge and the female is pregnant or has given birth.

This bill prohibits any person under the age of 16 from marrying.

This bill may have a minimal fiscal impact on state revenues. This bill does not appear to have a local government impact.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under current law, a minor may be married if he or she is at least 16 years of age if the parents or guardian of the minor consents in writing. If a minor of at least 16 years of age has been previously married, no parental consent is required. Likewise, if both parents of a minor of at least 16 years of age are deceased, no parental consent is required.[1]

A county court judge may, in his or her discretion, issue a marriage license to a minor without parental consent under two specific circumstances:

- Upon application of both parties sworn under oath that they are the parents of a child;[2] or
- When a pregnancy is verified by the written statement of a licensed physician and the minor female (or both the male and the female, if both are minors) swears under oath that she is an expectant parent.[3]

There is currently no age limitation when the minor is a parent or expectant parent.

Florida is one of many states that allow marriage below the age of 16 with certain statutory requirements, including pregnancy, parental, and/or judicial consent. Only 10 states appear to prohibit marriage under the age of 16 in all cases: Alabama, Illinois, Iowa, Michigan, Montana, Nebraska, North Dakota, Oregon, Vermont, Wisconsin. All other states appear to currently allow marriage under the age of 16 under some circumstances.[4]

In 2013, 110 marriages in Florida involved a person 16 or under. In 2012, 150 marriages involved a person 16 or under.[5]

Effect of the Bill

The bill prohibits marriage by a minor under the age of 16.

B. SECTION DIRECTORY:

Section 1 amends s. 741.0405, F.S., relating to when a marriage license may be issued to persons under 18 years.

Section 2 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a minor impact on state revenues. See Fiscal Comments section below.

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[1] Section 741.0405(1), F.S.
[2] Section 741.0405(2), F.S.
[3] Section 741.0405(3), F.S.
[4] *See* the Cornell University Marriage Laws database at http://www.law.cornell.edu/wex/table_marriage (last viewed March 13, 2013).
[5] Email from the Bureau of Vital Statistics (on file with Civil Justice Subcommittee).

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a minor impact on local government revenues. See Fiscal Comments section below.

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:

A marriage license costs $93.50, $32 of which goes to the county clerk of courts,[6] $25 of which goes to General Revenue,[7] $4 of which goes to the state Department of Health,[8] $25 of which goes to a domestic violence trust fund,[9] and $7.50 of which goes to a displaced homemaker trust fund.[10] If the couple takes a premarital preparation course, the fee is reduced by $32.50, so that the state does not collect $25 into General Revenue or $7.50 for the displaced homemaker trust fund.[11]

It is possible that persons affected by this bill may wait to attain the age of 16 and then still marry. If all persons who previously wished to marry before age 16 then declined to marry later, the fiscal impact would be:

The Department of Health maintains marriage statistics at the Bureau of Vital Statistics. In 2013, 110 marriages in Florida involved a person 16 or under. In 2012, 150 marriages involved a person 16 or under.[12] Had the bill been enacted prior to 2012, if none of the licenses' cost were reduced by taking the premarital preparation course, this would have resulted in a reduction of $2750 in general revenue collections in 2013 and $3750 in general revenue collections in 2012 and a reduction of $825 and $1125 into the displaced homemaker trust fund. Likewise, the bill would have resulted in reduced collections of $3520 and $4800 statewide by the various clerks of court, $440 and $600 by the Department of Health, and $2750 and $3750 less deposited into the domestic violence trust fund.

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.

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[6] Sections 28.24(23) and 741.01(1), F.S.
[7] Section 741.01(4), F.S.
[8] Section 741.02, F.S.
[9] Section 741.01(2), F.S.
[10] Section 741.01(3), F.S.
[11] Section 741.01(5), F.S.
[12] Email from the Bureau of Vital Statistics (on file with Civil Justice Subcommittee).

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to marriage of minors; amending s. 741.0405, F.S.; deleting provisions that allow the issuance of marriage licenses to minors under 16 years of age in certain circumstances; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2), (3), and (4) of section 741.0405, Florida Statutes, are amended to read:

741.0405 When marriage license may be issued to persons under 18 years.—

(2) The county court judge of any county in the state may, in the exercise of his or her discretion, issue a license to marry to a ~~any~~ male or female under the age of 18 years, but at least 16 years of age, upon application of both parties sworn under oath that they are the parents of a child.

(3) When the fact of pregnancy is verified by the written statement of a licensed physician, the county court judge of any county in the state may, in his or her discretion, issue a license to marry:

(a) To a ~~any~~ male or female under the age of 18 years, but at least 16 years of age, upon application of both parties sworn under oath that they are the expectant parents of a child; or

(b) To a ~~any~~ female under the age of 18 years, but at least 16 years of age, and male over the age of 18 years upon the female's application sworn under oath that she is an expectant parent.

(4) No license to marry shall be granted to a ~~any~~ person under the age of 16 years, with or without the consent of the parents~~, except as provided in subsections (2) and (3)~~.

Section 2. This act shall take effect July 1, 2014.