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# **Civil Justice Subcommittee**

**Tuesday, March 25, 2014**

**11:30 AM**

**404 HOB**

**Will Weatherford**  
Speaker

**Larry Metz**  
Chair



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 617 Towing of Vehicles & Vessels  
**SPONSOR(S):** Transportation & Highway Safety Subcommittee; Wood  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 974

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Davy	Miller
2) Civil Justice Subcommittee		Ward <i>SW</i>	Bond <i>MB</i>
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

Current law provides certain requirements for proper posted notice before an owner or lessee of real property may have a vehicle or vessel removed from the property without the owner of the vehicle or vessel's consent. These include the location of the notice, the graphics of the notice, and the length of time the notice has been posted.

The bill creates an alternative procedure for towing vehicles and vessels from private property. It provides that the owner, lessee, or agent of the owner or lessee of real property may have a vehicle or vessel that has been parked or stored on private property for a period exceeding 10 days removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign. The 10 day period after which the owner or lessee, or agent of the owner or lessee, of the real property may have the vehicle or vessel removed without tow-away zone signage does not begin until a notice that the vehicle or vessel will be removed from the property is attached to the vehicle or vessel with adhesive material.

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

The bill provides that the act shall take effect upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### *Posting Requirements for Towing*

Currently the owner or lessee of real property may cause any vehicle or vessel parked on such property without permission to be removed by towing without liability for the cost, storage, damage or transportation associated with the towing by following the notice requirements in the statute.<sup>1</sup>

The statute provides that the owner or lessee must post a notice meeting the following requirements<sup>2</sup>:

- The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 5 feet from the public right-of-way line. If there are no curbs or access barriers, the signs must be posted not less than one sign for each 25 feet of lot frontage.
- The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not less than 4-inch high letters.
- The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.
- The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for at least 24 hours prior to the towing or removal of any vehicles or vessels.
- The local government may require permitting and inspection of these signs prior to any towing or removal of vehicles or vessels being authorized.
- A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.
- A property owner towing or removing vessels from real property must post notice consistent with the all other notice requirements that unauthorized vehicles or vessels will be towed away at the owner's expense.

##### *Exceptions to Posting Requirements*

Lawful towing or removal of any vehicle without posted notice or the consent of the registered owner may be effected when:<sup>3</sup>

- The property belongs to and is obviously a part of a single-family residence;
- When notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the owner's or operator's expense;

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<sup>1</sup> Section 715.07(2), F.S.

<sup>2</sup> Section 715.07(2)(a)5., F.S.

<sup>3</sup> Section 715.07(2)(a)5., F.S.

- The vehicle or vessel is parked in such a manner that restricts the normal operation of business;  
or
- If a vehicle or vessel parked on a public right-of way obstructs access to a private driveway.

### **Effect of Proposed Changes**

The bill provides an additional exception for towing a vehicle or vessel without the posted notice requirements. It provides that the owner, lessee, or agent of the owner or lessee of real property may have a vehicle or vessel that has been parked without permission on private property for a period exceeding 10 days removed by a towing company. The owner must provide the towing company with a signed order that the vehicle or vessel be removed without a posted tow-away zone sign. The 10-day period does not begin until a notice that the vehicle or vessel will be removed from the property is attached to the vehicle or vessel with adhesive material. The notice must:

- Be at least 8 1/2 by 11 inches in size;
- Be attached to the vehicle's windshield or, in the case of a vessel, to the registration number on the left side; and
- Clearly indicate the date posted; and clearly indicate in bold letters that the vehicle or vessel will be towed or removed 10 days from the posted date.

The bill further specifies that towing without the consent provisions of s. 715.07, F.S., applies to the designated representative of the cooperative association if the real property is a cooperative, or the designated representative of the homeowners' association if the real property is owned by a homeowners' association.

The bill makes other technical and grammatical changes to the statute.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 715.07, F.S., relating to vehicles or vessels parked on private property; towing.

Section 2 provides that the act shall take effect 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 added exemption may provide private property owners with greater ease in having abandoned vehicles towed from their properties. Owners and lessees of real property could avoid the cost of posting tow-away zone signage when a vehicle or vessel has been parked or stored on the property for more than 10 days.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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

**2. Other:**

None.

**B. RULE-MAKING AUTHORITY:**

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

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

There may be concern from the towing industry about liability incurred regarding the verifiability that the notice has in fact been attached to a vehicle for 10 days.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 18, 2014, the Transportation & Highway Safety Subcommittee adopted two amendments to HB 617 and reported the bill favorably as a committee substitute. The amendments provided:

- The 10 day period after which the owner or lessee, or agent of the owner or lessee, of the real property may have the vehicle or vessel removed without tow-away zone signage does not begin until a notice that the vehicle or vessel will be removed from the property is attached to the vehicle or vessel with adhesive material; and
- The towing without consent provisions of s. 715.07, F.S., apply to the designated representative of the cooperative association if the real property is a cooperative, or the designated representative of the homeowners' association if the real property is owned by a homeowners' association.

This analysis is drafted to the committee substitute as reported by the Transportation & Highway Safety Subcommittee.

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A bill to be entitled  
 An act relating to towing of vehicles and vessels;  
 amending s. 715.07, F.S.; providing for removal of a  
 vehicle or vessel by a cooperative association or a  
 homeowners' association; authorizing an owner or  
 lessee of real property to have a vehicle or vessel  
 removed from the property without certain signage  
 under certain circumstances; requiring a notice to be  
 attached to the vehicle or vessel and providing  
 requirements therefor; providing an effective date.

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

Section 1. Section 715.07, Florida Statutes, is amended to read:

715.07 Vehicles or vessels ~~parked on private property;~~  
 towing.-

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

(a) "Vehicle" means a ~~any~~ mobile item that ~~which~~ normally uses wheels, whether motorized or not.

(b) "Vessel" means every description of watercraft, barge, and airboat used or capable of being used as a means of transportation on water, other than a seaplane or a "documented vessel" as defined in s. 327.02(9).

(2) The owner or lessee of real property, or a ~~any~~ person authorized by the owner or lessee, which person may be the

27 designated representative of the condominium association if the  
 28 real property is a condominium, the designated representative of  
 29 the cooperative association if the real property is a  
 30 cooperative, or the designated representative of the homeowners'  
 31 association if the real property is owned by a homeowners'  
 32 association, may cause a ~~any~~ vehicle or vessel parked on such  
 33 property without her or his permission to be removed by a person  
 34 regularly engaged in the business of towing vehicles or vessels,  
 35 without liability for the costs of removal, transportation, or  
 36 storage or damages caused by such removal, transportation, or  
 37 storage, under any of the following circumstances:

38 (a) The towing or removal of a ~~any~~ vehicle or vessel from  
 39 private property without the consent of the registered owner or  
 40 other legally authorized person in control of that vehicle or  
 41 vessel is subject to strict compliance with the following  
 42 conditions and restrictions:

43 1.a. A ~~Any~~ towed or removed vehicle or vessel must be  
 44 stored at a site within a 10-mile radius of the point of removal  
 45 in a ~~any~~ county with a population of 500,000 ~~population~~ or more  
 46 ~~or,~~ and within a 15-mile radius of the point of removal in a ~~any~~  
 47 county with a population of less than 500,000 ~~population~~. That  
 48 site must be open for the purpose of redemption of vehicles from  
 49 8 a.m. to 6 p.m. on any day that the person or firm towing such  
 50 vehicle or vessel is open for towing purposes, ~~from 8:00 a.m. to~~  
 51 ~~6:00 p.m.,~~ and, when closed, shall have prominently posted a  
 52 sign indicating a telephone number where the operator of the



53 site can be reached at all times. Upon receipt of a telephoned  
 54 request to open the site to redeem a vehicle or vessel, the  
 55 operator must ~~shall~~ return to the site within 1 hour ~~or she or~~  
 56 ~~he will be in violation of this section.~~

57 b. If no towing business providing such service is located  
 58 within the area of towing limitations under ~~set forth in~~ sub-  
 59 subparagraph a., the following limitations apply: a ~~any~~ towed or  
 60 removed vehicle or vessel must be stored at a site within a 20-  
 61 mile radius of the point of removal in a ~~any~~ county with a  
 62 population of 500,000 ~~population~~ or more or, ~~and~~ within a 30-  
 63 mile radius of the point of removal in a ~~any~~ county with a  
 64 population of less than 500,000 ~~population~~.

65 2. Within 30 minutes after completion of the towing or  
 66 removal, the person or firm that towed or removed ~~towing or~~  
 67 ~~removing~~ the vehicle or vessel must ~~shall,~~ ~~within 30 minutes~~  
 68 ~~after completion of such towing or removal,~~ notify the municipal  
 69 police department or, in an unincorporated area, the sheriff,  
 70 of: the ~~such~~ towing or removal; the storage site; the time the  
 71 vehicle or vessel was towed or removed; and the make, model,  
 72 color, and license plate number of the vehicle or description  
 73 and registration number of the vessel. The person or firm ~~and~~  
 74 shall note on the trip record ~~obtain~~ the name of the person ~~at~~  
 75 ~~that department~~ to whom such information was reported ~~and note~~  
 76 ~~that name on the trip record.~~

77 3. A person in the process of towing or removing a vehicle  
 78 or vessel from the premises or parking lot in which the vehicle

79 or vessel is not lawfully parked must stop when a person seeks  
 80 the return of the vehicle or vessel. The vehicle or vessel must  
 81 be returned upon the payment of a reasonable service fee of not  
 82 more than one-half of the posted rate for the towing or removal  
 83 service as provided in subparagraph 7. ~~6.~~ The vehicle or vessel  
 84 may be towed or removed if, after a reasonable opportunity, the  
 85 owner or legally authorized person in control of the vehicle or  
 86 vessel is unable to pay the service fee. If the vehicle or  
 87 vessel is redeemed, a detailed signed receipt must be given to  
 88 the person redeeming the vehicle or vessel.

89 4. A person may not pay or accept money or other valuable  
 90 consideration for the privilege of towing or removing vehicles  
 91 or vessels from a particular location.

92 5. Except when the ~~for~~ property is appurtenant to and  
 93 obviously a part of a single-family residence or, ~~and except for~~  
 94 ~~instances~~ when notice is personally given to the owner or other  
 95 legally authorized person in control of the vehicle or vessel  
 96 that the area in which that vehicle or vessel is parked is  
 97 reserved or otherwise unavailable for unauthorized vehicles or  
 98 vessels and that the vehicle or vessel is subject to being  
 99 removed at the owner's or operator's expense, before towing or  
 100 removing a vehicle or vessel from private property without the  
 101 consent of the owner or other legally authorized person in  
 102 control of that vehicle or vessel, a ~~any~~ property owner or  
 103 lessee~~7~~ or person authorized by the property owner or lessee~~7~~  
 104 ~~prior to towing or removing any vehicle or vessel from private~~

105 ~~property without the consent of the owner or other legally~~  
 106 ~~authorized person in control of that vehicle or vessel,~~ must  
 107 post a notice subject to meeting the following requirements:

108 a. The notice must:

109 (I) Be prominently placed at each driveway access or curb  
 110 cut allowing vehicular access to the property, within 5 feet  
 111 from the public right-of-way line. If there are no curbs or  
 112 access barriers, the signs must be posted not less than one sign  
 113 for each 25 feet of lot frontage.

114 ~~(II)b.~~ ~~The notice must~~ Clearly indicate, in not less than  
 115 2-inch high, light-reflective letters on a contrasting  
 116 background, that unauthorized vehicles will be towed away at the  
 117 owner's expense. The words "tow-away zone" must be included on  
 118 the sign in not less than 4-inch high letters.

119 ~~(III)e.~~ ~~The notice must also~~ Provide the name and current  
 120 telephone number of the person or firm towing or removing ~~the~~  
 121 vehicles or vessels.

122 ~~b.d.~~ The sign structure containing the required notices  
 123 must be permanently installed with the words "tow-away zone" at  
 124 least not less than 3 feet but no and not more than 6 feet above  
 125 ground level and must be continuously maintained on the property  
 126 for at least not less than 24 hours before ~~prior to the~~ towing  
 127 or removing a vehicle or vessel ~~removal of any vehicles or~~  
 128 ~~vessels.~~

129 ~~e.~~ The local government may require permitting and  
 130 inspection of such ~~these~~ signs before ~~prior to any~~ towing or

131 removing a vehicle or vessel is ~~removal of vehicles or vessels~~  
 132 ~~being~~ authorized.

133 ~~c.f.~~ A business with 20 or fewer parking spaces satisfies  
 134 the notice requirements of this subparagraph by prominently  
 135 displaying a sign stating "Reserved Parking for Customers Only  
 136 Unauthorized Vehicles or Vessels Will be Towed Away At the  
 137 Owner's Expense" in not less than 4-inch high, light-reflective  
 138 letters on a contrasting background.

139 ~~d.g.~~ A property owner towing or removing vessels from real  
 140 property must post notice, consistent with the requirements in  
 141 sub-subparagraphs a.-c. ~~a.-f.~~, which apply to vehicles, that  
 142 unauthorized vehicles or vessels will be towed away at the  
 143 owner's expense.

144 6. Notwithstanding subparagraph 5., ~~a business owner or~~  
 145 ~~lessee may authorize the removal of a vehicle or vessel by a~~  
 146 ~~towing company~~ when a ~~the~~ vehicle or vessel is parked in ~~such~~ a  
 147 manner that restricts the normal operation of business; is and  
 148 ~~if a vehicle or vessel~~ parked on a public right-of-way in a  
 149 manner that obstructs access to a private driveway; or has been  
 150 parked or stored on private property for a period exceeding 10  
 151 days, the owner ~~or,~~ lessee, or agent of the owner or lessee, of  
 152 the real property may have the vehicle or vessel removed by a  
 153 towing company upon signing an order that the vehicle or vessel  
 154 be removed without a posted tow-away zone sign. However, the 10-  
 155 day period after which the owner or lessee, or agent of the  
 156 owner or lessee, of the real property may have the vehicle or

157 vessel removed without tow-away zone signage does not begin  
 158 until such owner, lessee, or agent attaches to the vehicle or  
 159 vessel with adhesive material a notice that the vehicle or  
 160 vessel will be towed or removed from the property. The notice  
 161 must:

162 a. In the case of a vehicle, be attached to the vehicle's  
 163 windshield.

164 b. In the case of a vessel, be attached adjacent to the  
 165 vessel registration number on the left or port side of the  
 166 vessel.

167 c. Be at least 8 1/2 inches by 11 inches in size.

168 d. Clearly indicate the date on which the notice was  
 169 posted.

170 e. Clearly indicate in bold letters that the vehicle or  
 171 vessel will be towed or removed from the real property 10 days  
 172 after the date on which the notice was posted.

173 7.6. A Any person or firm that tows or removes vehicles or  
 174 vessels and proposes to require an owner, operator, or person in  
 175 control of a vehicle or vessel to pay the costs of towing and  
 176 storage before ~~prior to~~ redemption of the vehicle or vessel must  
 177 file and keep on record with the local law enforcement agency a  
 178 complete copy of the current rates to be charged for such  
 179 services and post at the storage site an identical rate schedule  
 180 and any written contracts with property owners, lessees, or  
 181 persons in control of property which authorize such person or  
 182 firm to remove vehicles or vessels as provided in this section.

183           8.7. A ~~Any~~ person or firm towing or removing ~~any~~ vehicles  
 184 or vessels from private property without the consent of the  
 185 owner or other legally authorized person in control of the  
 186 vehicles or vessels shall, on any trucks, wreckers as defined in  
 187 s. 713.78(1)(c), or other vehicles used in the towing or  
 188 removal, have the name, address, and telephone number of the  
 189 company performing such service clearly printed in contrasting  
 190 colors on the driver and passenger sides of the vehicle. The  
 191 name shall be in at least 3-inch, permanently affixed letters,  
 192 and the address and telephone number shall be in at least 1-  
 193 inch, permanently affixed letters.

194           9.8. Vehicle entry for the purpose of removing the vehicle  
 195 or vessel shall be allowed with reasonable care on the part of  
 196 the person or firm towing the vehicle or vessel. Such person or  
 197 firm shall be liable for any damage occasioned to the vehicle or  
 198 vessel if such entry is not in accordance with the standard of  
 199 reasonable care.

200           10.9. When a vehicle or vessel has been towed or removed  
 201 pursuant to this section, it must be released to its owner or  
 202 custodian within 1 ~~one~~ hour after requested. A ~~Any~~ vehicle or  
 203 vessel owner or agent of the owner may ~~shall have the right to~~  
 204 inspect the vehicle or vessel before accepting its return. A  
 205 ~~and no~~ release or waiver of any kind which would release the  
 206 person or firm towing the vehicle or vessel from liability for  
 207 damages noted by the owner or other legally authorized person at  
 208 the time of the redemption may not be required from a ~~any~~

209 vehicle or vessel owner ~~or~~ custodian or agent of the owner or  
 210 custodian as a condition of release of the vehicle or vessel to  
 211 its owner. A detailed, signed receipt showing the legal name of  
 212 the company or person towing or removing the vehicle or vessel  
 213 must be given to the person paying towing or storage charges at  
 214 the time of payment, whether requested or not.

215 (b) The ~~These~~ requirements of this subsection are minimum  
 216 standards and do not preclude enactment of additional  
 217 regulations by a ~~any~~ municipality or county including the right  
 218 to regulate rates when vehicles or vessels are towed from  
 219 private property.

220 (3) This section does not apply to law enforcement,  
 221 firefighting, rescue squad, ambulance, or other emergency  
 222 vehicles or vessels that are marked as such or to property owned  
 223 by a ~~any~~ governmental entity.

224 (4) When a person improperly causes a vehicle or vessel to  
 225 be removed, such person shall be liable to the owner or lessee  
 226 of the vehicle or vessel for the cost of removal,  
 227 transportation, and storage; any damages resulting from the  
 228 removal, transportation, or storage of the vehicle or vessel;  
 229 attorney's fees; and court costs.

230 (5) (a) A ~~Any~~ person who violates subparagraph (2) (a) 2. or  
 231 subparagraph (2) (a) 7. ~~(2) (a) 6.~~ commits a misdemeanor of the  
 232 first degree, punishable as provided in s. 775.082 or s.  
 233 775.083.

234 (b) A ~~Any~~ person who violates subparagraph (2) (a) 1.,

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235 | subparagraph (2)(a)3., subparagraph (2)(a)4., subparagraph  
 236 | (2)(a)8. ~~(2)(a)7.~~, or subparagraph (2)(a)10. ~~(2)(a)9.~~ commits a  
 237 | felony of the third degree, punishable as provided in s.  
 238 | 775.082, s. 775.083, or s. 775.084.

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





Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Wood offered the following:

**Amendment**

Remove line 172 and insert:

6 after the date on which the notice was posted, or date received  
 7 by the proposed towing company, whichever is later.

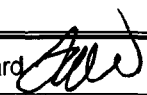
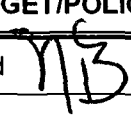
8 f. Be provided simultaneously by any means designed to  
 9 create a dated transmittal to the proposed towing company.

10 g. Provide the name and phone number of the proposed  
 11 towing company.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 781 Legal Notices  
SPONSOR(S): Powell  
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 834

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

SUMMARY ANALYSIS

The publication of legal notices in newspapers is a long established practice for giving notice to the general public of matters such as public sales, pending estates, or businesses' fictitious names, and for service of process upon absent, unknown, or unreachable parties to an action. In most civil cases, when it is required, notice must be published in a newspaper in the county where the lawsuit is filed once a week for four consecutive weeks. Current law provides that a newspaper's website must include the same legal notices that appear in print. A newspaper's legal notice webpage must be clearly titled and free of charge. The Florida Press Association maintains a statewide website for legal notices as a repository for all published notices. The bill:

- Adds that legal notices must be posted on the date that the printed newspaper notice appears in a separate web page title "Legal Advertisements;"
- Provides that each Clerk of Court may, but is not required to, provide a web link to legal notices published on a newspaper's website;
- Provides that no fee may be charged nor may registration be required for viewing or searching legal notices on the statewide site;
- Requires that a legal notice placed on the statewide website must be searchable by party or case number, be posted for 90 days, and retained for 18 months;
- Provides that in the event of a difference between the newspaper publication and the electronic publication, the newspaper publication will be controlling for purposes of determining whether legal requirements of notice have been met;
- Provides that substantive rights affecting relief from judicial sale, based upon an error or omission in a notice placed in either a newspaper or on the statewide website, are not affected; and
- Provides that the newspaper's web pages that contain legal notices must present the legal notices as the dominant and leading subject matter of those pages.

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

The bill is effective October 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The publication of legal notices in newspapers is a long established practice. Legal notices and publication in newspapers occur for a variety of cases, such as including notice of a proposed government action,<sup>1</sup> or when a plaintiff has not been able to serve a defendant.<sup>2</sup> Other examples of legal notices include registration of a fictitious name,<sup>3</sup> notice to creditors<sup>4</sup> or notice of unclaimed property<sup>5</sup> in a probate estate. In general, laws addressing constructive service of process by publication are located in ch. 49, F.S., while the laws governing how publication is effected are in ch. 50, F.S.

In civil cases requiring it, publication of a legal notice must be made in a newspaper in the county where the action is filed. All legal notices, unless otherwise specified, are published once a week for four consecutive weeks.<sup>6</sup> Foreclosure proceedings are published once a week for two weeks.<sup>7</sup> Publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language.<sup>8</sup> The newspaper must qualify or be entered to qualify as a periodical at the post office in the county where it is published, and be generally available to the public for the purpose of publication of notices.<sup>9</sup>

Legal notices must be placed on a newspaper's website on the same day the notice appears in print and the front page of a newspaper's website must have a link to the legal notices webpage.<sup>10</sup> The legal notices webpage must be searchable and free to the public.<sup>11</sup> Fees for placement of official notice and legal advertisement are set forth in the statutes.<sup>12</sup>

A newspaper is also required to place a legal notice on a statewide website maintained by the Florida Press Association.<sup>13</sup> Any error in the legal notice published on a newspaper's webpage or the statewide website is considered harmless if the printed legal notice was correct.<sup>14</sup>

The bill:

- Adds that legal notices must be posted on the date that the printed newspaper notice appears in a separate web page title "Legal Advertisements;"
- Provides that each Clerk of Court may, but is not required to, provide a web link to legal notices published on a newspaper's website;
- Provides that no fee may be charged nor may registration be required for viewing or searching legal notices on the statewide site;
- Requires the legal notice placed on the statewide website to:
  - Be accessible and searchable by party name(s) and case number;

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<sup>1</sup> See, eg., s. 45.031(2), F.S.

<sup>2</sup> Section 49.021, F.S.

<sup>3</sup> Section 865.09 (3), F.S.

<sup>4</sup> Section 733.702(1), F.S.

<sup>5</sup> Section 733.816(1)(b), F.S.

<sup>6</sup> Section 49.10(1)(a), F.S.

<sup>7</sup> Section 49.10(1)(c), F.S.

<sup>8</sup> Section 50.011, F.S.

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

<sup>10</sup> Section 50.0211(2) and (3), F.S.

<sup>11</sup> Section 50.0211(2), F.S.

<sup>12</sup> Section 50.061, F.S.

<sup>13</sup> Section 50.0211(3), F.S.

<sup>14</sup> Section 50.0211(5), F.S.

- Be posted for a period of at least 90 consecutive days following the first day of posting publication, and
- Be maintained in a searchable archive on the website for 18 months;
- Provides that in the event of a difference between the newspaper publication and the electronic publication, the newspaper publication will be controlling for purposes of determining whether legal requirements of notice have been met;
- Provides that substantive rights affecting relief from judicial sale, and based upon an error or omission in a notice placed in either a newspaper or on the statewide website, shall not be affected; and
- Provides that the newspaper's web pages that contain legal notices shall present the legal notices as the dominant and leading subject matter of those pages.

The proposed changes to s. 50.061, F.S., clarify payment language without a change in substance.

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

**B. SECTION DIRECTORY:**

Section 1 amends s. 50.0211, F.S., relating to internet website publication.

Section 2 amends s. 50.061, F.S., relating to amounts chargeable.

Section 3 provides an effective date of October 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 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 proposed changes to ss. 50.0211 and 50.061, F.S., may have a minimal fiscal impact upon the newspaper industry. The industry will be required to provide a searchable database of legal notices at no cost to the public and at no additional cost to those parties who seek the legal publications. The Florida Press Association estimates that the cost associated with making changes to their website to conform to this bill is \$3,600, but may increase. The Florida Press Association did not have an estimate

1                   A bill to be entitled  
 2           An act relating to legal notices; amending s. 50.0211,  
 3           F.S.; revising the period for which website legal  
 4           notices are required to be published; authorizes  
 5           clerks of court to provide links to legal notices web  
 6           pages; specifying that no viewing or registration fee  
 7           may be charged for viewing online legal notices  
 8           published in a newspaper; requiring that website legal  
 9           notices be archived for a specified period; requiring  
 10          that legal notices placed on the statewide website  
 11          must be accurate; amending s. 50.061, F.S.; clarifying  
 12          payment provisions; providing an effective date.

13

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

15

16           Section 1. Section 50.0211, Florida Statutes, is amended  
 17 to read:

18           50.0211 Internet website publication.-

19           (1) This section applies to legal notices that must be  
 20 published in accordance with this chapter unless otherwise  
 21 specified.

22           (2) Each legal notice must be posted ~~placed~~ on the  
 23 newspaper's website on the same day that the printed notice  
 24 appears in the newspaper, at no additional charge, in a separate  
 25 web page titled "Legal Advertisements." A link to the legal  
 26 notices web page shall be provided on the front page of the

27 newspaper's website that provides access to the legal notices  
 28 ~~without charge.~~ A clerk of court may provide a link to a  
 29 newspaper's legal notices web page but is not required to do so.  
 30 Furthermore, a clerk of court is not required to provide a link  
 31 to any newspaper that publishes legal notices if the clerk's web  
 32 page where such links are posted identifies the links as a  
 33 nonexhaustive list of links to legal notices. If there is a  
 34 specified size and placement required for a printed legal  
 35 notice, the size and placement of the notice on the newspaper's  
 36 website should optimize its online visibility in keeping with  
 37 the print requirements. The newspaper's web pages that contain  
 38 legal notices shall present the legal notices as the dominant  
 39 and leading subject matter of those pages. The newspaper's  
 40 website shall contain a search function to facilitate searching  
 41 the legal notices. A fee may not be charged, and registration  
 42 may not be required, for viewing or searching legal notices on a  
 43 newspaper's website if the legal notice was published in that  
 44 newspaper. ~~This subsection shall take effect July 1, 2013.~~

45 (3) (a) If a legal notice is published in a newspaper, the  
 46 newspaper publishing the notice shall place the notice on the  
 47 website established and maintained as an initiative of the  
 48 Florida Press Association as a repository for such notices  
 49 located at the following address: [www.floridapublicnotices.com](http://www.floridapublicnotices.com).

50 (b) A legal notice placed on the statewide website created  
 51 under this subsection must be:

- 52 1. Accessible and searchable by party name and case

53 number.

54 2. Posted for a period of at least 90 consecutive days  
 55 after the first day of posting.

56 (c) The statewide website created under this subsection  
 57 shall maintain a searchable archive of all legal notices posted  
 58 on the publicly accessible website on or after October 1, 2014,  
 59 for 18 months after the first day of posting. This searchable  
 60 archive shall be provided and accessible to the general public  
 61 without charge.

62 (4) Newspapers that publish legal notices shall, upon  
 63 request, provide e-mail notification of new legal notices when  
 64 they are printed in the newspaper and added to the newspaper's  
 65 website. Such e-mail notification shall be provided without  
 66 charge, and notification for such an e-mail registry shall be  
 67 available on the front page of the legal notices section of the  
 68 newspaper's website. ~~This subsection shall take effect July 1,~~  
 69 ~~2013.~~

70 (5) If there is a conflict or difference between a legal  
 71 notice printed in a newspaper and the version posted on the  
 72 statewide website, the version printed in the newspaper shall be  
 73 used for purposes of meeting legal requirements. However, this  
 74 subsection does not affect the right of a person to relief from  
 75 a judicial sale based upon an error or omission in a legal  
 76 notice printed in a newspaper or posted on the statewide website  
 77 ~~An error in the notice placed on the newspaper or statewide~~  
 78 ~~website shall be considered a harmless error and proper legal~~



79 ~~notice requirements shall be considered met if the notice~~  
 80 ~~published in the newspaper is correct.~~

81 Section 2. Subsections (2) and (3) of section 50.061,  
 82 Florida Statutes, are amended to read:

83 50.061 Amounts chargeable.—

84 (2) The charge for publishing each such official public  
 85 notice or legal advertisement shall be 70 cents per square inch  
 86 for the first insertion and 40 cents per square inch for each  
 87 subsequent insertion, except that government notices required to  
 88 be published more than once, the cost of which ~~whose cost~~ is  
 89 paid for by the government and not paid in advance by or allowed  
 90 to be recouped from private parties, may not be charged for the  
 91 second and successive insertions at a rate greater than 85  
 92 percent of the original rate.

93 (3) Where the regular established minimum commercial rate  
 94 per square inch of the newspaper publishing such official public  
 95 notices or legal advertisements is in excess of the rate herein  
 96 stipulated, said minimum commercial rate per square inch may be  
 97 charged for all such legal advertisements or official public  
 98 notices for each insertion, except that government notices  
 99 required to be published more than once, the cost of which ~~whose~~  
 100 ~~cost~~ is paid for by the government and not paid in advance by or  
 101 allowed to be recouped from private parties, may not be charged  
 102 for the second and successive insertions at a rate greater than  
 103 85 percent of the original rate.

104 Section 3. This act shall take effect October 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	_____	

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Powell offered the following:

**Amendment (with title amendment)**

Remove lines 25-77 and insert:

6 web page titled "Legal Notices," "Legal Advertising," or  
 7 comparable identifying language. A link to the legal notices web  
 8 page shall be provided on the front page of the newspaper's  
 9 website that provides access to the legal notices ~~without~~  
 10 ~~charge~~. If there is a specified size and placement required for  
 11 a printed legal notice, the size and placement of the notice on  
 12 the newspaper's website must ~~should~~ optimize its online  
 13 visibility in keeping with the print requirements. The  
 14 newspaper's web pages that contain legal notices must ~~shall~~  
 15 present the legal notices as the dominant and leading subject  
 16 matter of those pages. The newspaper's website must ~~shall~~  
 17 contain a search function to facilitate searching the legal



Amendment No. 1

18 notices. A fee may not be charged, and registration may not be  
19 required, for viewing or searching legal notices on a  
20 newspaper's website if the legal notice is published in a  
21 newspaper ~~This subsection shall take effect July 1, 2013.~~

22 (3) (a) If a legal notice is published in a newspaper, the  
23 newspaper publishing the notice shall place the notice on the  
24 statewide website established and maintained as an initiative of  
25 the Florida Press Association as a repository for such notices  
26 located at the following address: www.floridapublicnotices.com.

27 (b) A legal notice placed on the statewide website created  
28 under this subsection must be:

29 1. Accessible and searchable by party name and case  
30 number.

31 2. Posted for a period of at least 90 consecutive days  
32 after the first day of posting.

33 (c) The statewide website created under this subsection  
34 shall maintain a searchable archive of all legal notices posted  
35 on the publicly accessible website on or after October 1, 2014,  
36 for 18 months after the first day of posting. Such searchable  
37 archive shall be provided and accessible to the general public  
38 without charge.

39 (4) Newspapers that publish legal notices shall, upon  
40 request, provide e-mail notification of new legal notices when  
41 they are printed in the newspaper and added to the newspaper's  
42 website. Such e-mail notification shall be provided without  
43 charge, and notification for such an e-mail registry shall be

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Amendment No. 1

44 available on the front page of the legal notices section of the  
45 newspaper's website. ~~This subsection shall take effect July 1,~~  
46 ~~2013.~~

47 ~~(5) An error in the notice placed on the newspaper or~~  
48 ~~statewide~~

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

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Remove lines 3-11 and insert:

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F.S.; requiring legal notices to be posted on a newspaper's  
57 website on web pages with specified titles; prohibiting charging  
58 a fee or requiring registration for viewing online legal  
59 notices; establishing the period for which legal notices are  
60 required to be published on the statewide website; requiring  
61 that legal notices be archived on the statewide website for a  
62 specified period; deleting a provision relating to harmless  
63 error; amending s. 50.061, F.S.; clarifying

64



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1397 Florida Uniform Collaborative Law Act  
SPONSOR(S): La Rosa  
TIED BILLS: None IDEN./SIM. BILLS: SB 1190

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

SUMMARY ANALYSIS

The Uniform Law Commission (ULC) provides model statutes that are designed to be consistent from state to state. The ULC develops model statutes in many different areas of law to create uniformity in the law between jurisdictions. One such model statute is the Uniform Collaborative Law Act of 2009 (amended in 2010), which regulates the use of collaborative law, a form of alternative dispute resolution.

Collaborative law is a non-adversarial alternative dispute resolution concept that, similar to mediation, promotes problem-solving and solutions in lieu of litigation. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law is only to be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve the issues, the parties are required to retain different attorneys for litigation. The process is intended to promote full and open disclosure. The concept requires extensive confidentiality and privileges to be created by statute, while the courts must develop rules of practice and procedure to conform.

The bill creates the Florida Uniform Collaborative Law Act. The bill does not actually create a collaborative law process in Florida. Rather, it provides a framework that will become effective should the Supreme Court of Florida promulgate rules to enact a collaborative law process in Florida. The bill primarily serves to provide the necessary statutory privileges and confidentiality of communications required for the collaborative law process.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

The Uniform Law Commission (ULC) provides model statutes that are designed to be consistent from state to state. Florida's commissioners to the ULC are appointed to 4-year terms by the Governor and confirmed by the Senate.<sup>1</sup> The ULC develops model statutes in many different areas of law to create uniformity in the law between jurisdictions.

One such model statute is the Uniform Collaborative Law Act of 2009 (amended in 2010), which regulates the use of collaborative law, a form of alternative dispute resolution. According to the ULC:

At its core Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure, and, as is the case in mediation, information disclosed in a collaborative process is privileged against use in any subsequent litigation.

Collaborative Law is currently being practiced in all American jurisdictions as well as in a number of foreign countries. In the U.S., Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethic opinions. The Uniform Collaborative Law Rules/Act ("UCLR/A") is intended to create a uniform national framework for the use of Collaborative Law—one which includes important consumer protections and enforceable privilege provisions. Collaborative Law under the UCLR/A is strictly voluntary. Attorneys are not required to offer collaborative services, and parties cannot be compelled to participate.<sup>2</sup>

Seven states<sup>3</sup> plus Washington, D.C., have enacted the Uniform Collaborative Law Act, while bills are pending in six other states.<sup>4</sup>

Florida currently recognizes forms of alternative dispute resolution and is considered a leader among states in that regard.<sup>5</sup> Florida public policy favors arbitration<sup>6</sup> and "mediation and settlement of family law disputes is highly favored in Florida law."<sup>7</sup>

Collaborative law is a non-adversarial alternative dispute resolution concept similar to mediation, to promote problem-solving and solutions in lieu of litigation. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law is only to be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve

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<sup>1</sup> Section 11.249, F.S.

<sup>2</sup> Uniform Law Commission, Uniform Collaborative Law Rules/Act Short Summary. Found at [http://www.uniformlaws.org/Shared/Docs/Collaborative\\_Law/UCLA%20Short%20Summary.pdf](http://www.uniformlaws.org/Shared/Docs/Collaborative_Law/UCLA%20Short%20Summary.pdf) (last viewed March 20, 2014).

<sup>3</sup> Washington, Nevada, Utah, Texas, Hawaii, Alabama, and Ohio.

<sup>4</sup> Illinois, Massachusetts, Michigan, New Jersey, Oklahoma, and South Carolina.

<sup>5</sup> Fran L. Tetunic, *Demystifying Florida Mediator Ethics: the Good, the Bad, and the Unseemly*, 32 Nova L. Rev. 205, 244 (Fall, 2007).

<sup>6</sup> *Shotts v. OP Winter Haven, Inc.*, 86 So.3d 456 (Fla. 2011).

<sup>7</sup> *Griffith v. Griffith*, 860 So.2d 1069, 1073 (Fla. 1st DCA 2003).

the issues, the parties are required to retain different attorneys for litigation. The process is intended to promote full and open disclosure, so extensive confidentiality and privileges are created by statute, while the courts develop rules of practice and procedure.<sup>8</sup>

### **Effect of the Bill**

The bill creates s. 90.5022(1), F.S., the Florida Uniform Collaborative Law Act and s. 90.5022(2), F.S., to provide definitions. The bill does not actually create a collaborative law process in Florida. Rather, it provides a framework that will become effective should the Supreme Court of Florida promulgate rules in accordance with Section 3 of the bill. More specifically, the bill becomes effective 30 days after the Supreme Court approves and publishes Rules of Professional Conduct, governing:

- Required elements of a collaborative law participation agreement;
- The mandatory disqualification of a collaborative attorney and other attorneys in the same firm from appearing before a tribunal in a proceeding relating to the same matter as the collaborative law matter;
- Limited exemptions to mandatory disqualification to seek emergency orders in certain limited circumstances;
- A mandate for timely, full, candid, and informal disclosure of information without formal discovery; and
- Required assessment of the appropriateness of collaborative law in a given situation and disclosure of risk and benefits to the client.

and approves and publishes Family Law Rules of Procedure, governing:

- The commencement, conclusion, and termination of the collaborative law process;
- The stay of ongoing proceedings upon referral to a collaborative law process and related status reports;
- The issuance of emergency orders by a court;
- Approval of collaborative law agreements by a court; and
- Procedures for identifying and addressing violent or coercive relationships and, where appropriate, not using collaborative law in those contexts.

The Legislature may not create rules or procedures relating to litigation, as this would violate the separation of powers and the Court's exclusive right to "adopt rules for the practice and procedure in all courts . . ." <sup>9</sup> However, should the Court decide to promulgate rules consistent with this bill and the uniform act, this bill provides substantive privileges and confidentiality for parties and nonparties involved in a collaborative law process. See the Constitutional Issues section below for a more detailed discussion.

### **Confidentiality of Collaborative Law Communication**

The bill creates s. 90.5022(3), F.S., to provide that a collaborative law communication is confidential to the extent agreed upon by the parties in a signed record or as otherwise provided by law. This provision would appear to allow the parties broad authority over confidentiality of communications relating to the collaborative law process.

### **Privilege Against Disclosure for Collaborative Law Communications**

The bill creates s. 90.5022(4), F.S., to provide a privilege against disclosure for collaborative law communications, within limits provided in the bill. A collaborative law communication is not subject to

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<sup>8</sup> See the Uniform Law Commission Collaborative Law Summary website for more information at [http://www.uniformlaws.org/ActSummary.aspx?title=Collaborative Law Act](http://www.uniformlaws.org/ActSummary.aspx?title=Collaborative%20Law%20Act) (last viewed March 20, 2014).

<sup>9</sup> Art. V, s. 2, FLA. CONST.



discovery or admissible in evidence in a proceeding before a tribunal. Each party (including a party's attorney during the collaborative law process) has a privilege to refuse to disclose a collaborative law communication, and to prevent any other person from disclosing a communication. A nonparty to the collaborative law process (which is anybody other than the party or the party's attorney, in this context) may also refuse to disclose any communication or may prevent any other person from disclosing the nonparty's communication. Therefore, a party has an absolute privilege as to all communications, while the nonparty has a privilege for his or her own communications. However, evidence that would otherwise be admissible does not become inadmissible or protected from discovery solely because it may have been a communication during a collaborative law process. The privilege does not apply if the parties agree in advance in a signed record or if all parties agree in a proceeding that all or part of a collaborative law process is not privileged, as long as the parties had actual notice before the communication was made.

### Waiver and Preclusion of Privilege

The bill creates s. 90.5022(5), F.S., to provide that a privilege may be expressly waived either orally or in writing during a proceeding if all the parties agree. If a nonparty has a privilege, the nonparty must also agree to waive the privilege. However, if a person makes a disclosure or representation about a collaborative law communication that prejudices another person during a proceeding before a tribunal, that person may not assert a privilege to the extent that it is necessary for the prejudiced person to respond.

### Limits of Privilege

The bill creates s. 90.5022(6), F.S., to provide that a privilege does not apply to a collaborative law communication that is:

- Available to the public under Florida's Public Records statutes in ch. 119, F.S.;
- Made during a collaborative law session that is open to the public or required by law to be open to the public;
- A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- Intentionally used to plan or commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
- In an agreement resulting from the collaborative process if there is a record memorializing the agreement, signed by all of the parties.

A privilege does not apply to the extent that the communication is sought or offered to prove or disprove:

- A claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or
- Abuse, neglect, abandonment, or exploitation of a child or adult, unless the Florida Department of Children and Families is a party or otherwise participates in the collaborative law process.

Only the portion of the communication needed for proof or disproof may be disclosed or admitted.

There are other limited circumstances where a privilege does not apply that requires the discretion of the judge or tribunal (hereinafter, judge). A party seeking discovery or a proponent of certain evidence may show that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is either in a court proceeding involving a felony or a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or where a defense is asserted to avoid liability on the contract. Only the portion of the communication needed for evidence may be disclosed or admitted.

**B. SECTION DIRECTORY:**

Section 1 contains legislative findings and declarations.

Section 2 creates s. 90.5022, F.S., relating to collaborative law communications privilege.

Section 3 directs that the portions of the bill containing privileges is not effective until 30 days after approval and publication of rules by the Supreme Court.

Section 4 contains an effective date of July 1, 2014, except as provided in Section 3.

**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:**

Article V, s. 2 of the Florida Constitution provides the Supreme Court with rulemaking authority for practice and procedure in all courts. This bill appears to present the Court with the opportunity to make rules to carry out the purpose of the bill. The bill does not direct the Court to make rules. The privileges and confidentiality portions of the bill appear to be substantive as they create rights that do not currently exist in the law.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority, as rulemaking authority is an inherent power of the Supreme Court of Florida under art. V, s. 2 of the Florida Constitution. However, the bill does appear to "invite" the court to create rules to carry out the purpose of the bill by enacting a collaborative law process.

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

Lines 109-112 of the bill appear to allow the parties broad authority over confidentiality of communications relating to the collaborative law process. This subsection could be interpreted as to allow parties to contract privileges that would bar certain testimony from court, even where the party could currently waive the privilege.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

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A bill to be entitled  
 An act relating to the Florida Uniform Collaborative  
 Law Act; providing legislative findings and purpose;  
 creating s. 90.5022, F.S.; providing a short title;  
 providing definitions; providing for confidentiality  
 of communications made during the collaborative  
 process and related privilege against disclosure;  
 providing exceptions; providing that the effective  
 date of specified provisions are contingent upon  
 approval and publication of court rules governing  
 specified subjects; providing effective dates.

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

Section 1. The Legislature finds and declares that the  
 purpose of this act is to:

(1) Create a uniform system of practice for the  
 collaborative process in proceedings under chapter 61 and  
 chapter 742, Florida Statutes.

(2) Encourage the peaceful resolution of disputes and the  
 early settlement of pending litigation through voluntary  
 settlement procedures.

(3) Preserve the working relationship between parties to a  
 dispute through a nonadversarial method that reduces the  
 emotional and financial toll of litigation.

Section 2. Section 90.5022, Florida Statutes, is created

27 | to read:

28 |       90.5022 Collaborative law communications privilege.-

29 |       (1) SHORT TITLE.-This section may be cited as the "Florida  
 30 | Uniform Collaborative Law Act."

31 |       (2) DEFINITIONS.-As used in this section, the term:

32 |       (a) "Collaborative attorney" means an attorney who  
 33 | represents a party in a collaborative law process.

34 |       (b) "Collaborative law communication" means a statement,  
 35 | whether oral or in a record, or verbal or nonverbal, that:

36 |           1. Is made to conduct, participate in, continue, or  
 37 | reconvene a collaborative law process.

38 |           2. Occurs after the parties sign a collaborative law  
 39 | participation agreement and before the collaborative law process  
 40 | is concluded.

41 |       (c) "Collaborative law participation agreement" means an  
 42 | agreement by persons to participate in a collaborative law  
 43 | process.

44 |       (d) "Collaborative law process" means a procedure intended  
 45 | to resolve a collaborative matter without intervention by a  
 46 | tribunal in which persons:

47 |           1. Sign a collaborative law participation agreement.

48 |           2. Are represented by collaborative attorneys.

49 |       (e) "Collaborative matter" means a dispute, transaction,  
 50 | claim, problem, or issue for resolution including a dispute,  
 51 | claim, or issue in a proceeding that is described in a  
 52 | collaborative law participation agreement and arises under

53 | chapter 61 or chapter 742, including, but not limited to:

54 |     1. Marriage, divorce, dissolution, annulment, and marital

55 | property distribution.

56 |     2. Child custody, visitation, parenting plans, and

57 | parenting time.

58 |     3. Alimony, maintenance, and child support.

59 |     4. Parental relocation with a child.

60 |     5. Parentage.

61 |     6. Premarital, marital, and postmarital agreements.

62 |     (f) "Law firm" means:

63 |         1. Attorneys who practice law together in a partnership,

64 | professional corporation, sole proprietorship, limited liability

65 | company, or association; or

66 |         2. Attorneys employed in a legal services organization,

67 | the legal department of a corporation or other organization, or

68 | the legal department of a government or governmental

69 | subdivision, agency, or instrumentality.

70 |     (g) "Nonparty participant" means a person, other than a

71 | party and the party's collaborative attorney, who participates

72 | in a collaborative law process.

73 |     (h) "Party" means a person who signs a collaborative law

74 | participation agreement and whose consent is necessary to

75 | resolve a collaborative matter.

76 |     (i) "Person" means an individual; corporation; business

77 | trust; estate; trust; partnership; limited liability company;

78 | association; joint venture; public corporation; government or

79 governmental subdivision, agency, or instrumentality; or any  
 80 other legal or commercial entity.

81 (j) "Proceeding" means:

82 1. A judicial, administrative, arbitral, or other  
 83 adjudicative process before a tribunal, including related  
 84 prehearing and posthearing motions, conferences, and discovery;  
 85 or

86 2. A legislative hearing or similar process.

87 (k) "Prospective party" means a person who discusses with  
 88 a prospective collaborative attorney the possibility of signing  
 89 a collaborative law participation agreement.

90 (l) "Record" means information that is inscribed on a  
 91 tangible medium or that is stored in an electronic or other  
 92 medium and is retrievable in perceivable form.

93 (m) "Related to a collaborative matter" means involving  
 94 the same parties, transaction or occurrence, nucleus of  
 95 operative fact, dispute, claim, or issue as the collaborative  
 96 matter.

97 (n) "Sign" means, with present intent to authenticate or  
 98 adopt a record:

99 1. To execute or adopt a tangible symbol; or

100 2. To attach to or logically associate with the record an  
 101 electronic symbol, sound, or process.

102 (o) "Tribunal" means:

103 1. A court, arbitrator, administrative agency, or other  
 104 body acting in an adjudicative capacity that, after presentation

105 of evidence or legal argument, has jurisdiction to render a  
 106 decision affecting a party's interests in a matter; or

107 2. A legislative body conducting a hearing or similar  
 108 process.

109 (3) CONFIDENTIALITY OF COLLABORATIVE LAW COMMUNICATION.—A  
 110 collaborative law communication is confidential to the extent  
 111 agreed by the parties in a signed record or as provided by law  
 112 of this state other than this section.

113 (4) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW  
 114 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

115 (a) Subject to subsections (5) and (6), a collaborative  
 116 law communication is privileged under paragraph (b), is not  
 117 subject to discovery, and is not admissible in evidence.

118 (b) In a proceeding, the following privileges apply:

119 1. A party may refuse to disclose, and may prevent any  
 120 other person from disclosing, a collaborative law communication.

121 2. A nonparty participant may refuse to disclose, and may  
 122 prevent any other person from disclosing, a collaborative law  
 123 communication of the nonparty participant.

124 (c) Evidence or information that is otherwise admissible  
 125 or subject to discovery does not become inadmissible or  
 126 protected from discovery solely because of its disclosure or use  
 127 in a collaborative law process.

128 (5) WAIVER AND PRECLUSION OF PRIVILEGE.—

129 (a) A privilege under subsection (4) may be waived in a  
 130 record or orally during a proceeding if it is expressly waived



131 by all parties and, in the case of the privilege of a nonparty  
 132 participant, it is also expressly waived by the nonparty  
 133 participant.

134 (b) A person who makes a disclosure or representation  
 135 about a collaborative law communication that prejudices another  
 136 person in a proceeding may not assert a privilege under  
 137 subsection (4). This preclusion applies only to the extent  
 138 necessary for the person prejudiced to respond to the disclosure  
 139 or representation.

140 (6) LIMITS OF PRIVILEGE.-

141 (a) A privilege under subsection (4) does not apply for a  
 142 collaborative law communication that is:

143 1. Available to the public under chapter 119 or made  
 144 during a session of a collaborative law process that is open, or  
 145 is required by law to be open, to the public;

146 2. A threat or statement of a plan to inflict bodily  
 147 injury or commit a crime of violence;

148 3. Intentionally used to plan a crime, commit or attempt  
 149 to commit a crime, or conceal an ongoing crime or ongoing  
 150 criminal activity; or

151 4. In an agreement resulting from the collaborative law  
 152 process, evidenced by a record signed by all parties to the  
 153 agreement.

154 (b) The privilege under subsection (4) for a collaborative  
 155 law communication does not apply to the extent that a  
 156 communication is:

157 1. Sought or offered to prove or disprove a claim or  
 158 complaint of professional misconduct or malpractice arising from  
 159 or related to a collaborative law process; or

160 2. Sought or offered to prove or disprove abuse, neglect,  
 161 abandonment, or exploitation of a child or adult, unless the  
 162 Department of Children and Families is a party to or otherwise  
 163 participates in the process.

164 (c) A privilege under subsection (4) does not apply if a  
 165 tribunal finds, after a hearing in camera, that the party  
 166 seeking discovery or the proponent of the evidence has shown  
 167 that the evidence is not otherwise available, the need for the  
 168 evidence substantially outweighs the interest in protecting  
 169 confidentiality, and the collaborative law communication is  
 170 sought or offered in:

171 1. A court proceeding involving a felony; or

172 2. A proceeding seeking rescission or reformation of a  
 173 contract arising out of the collaborative law process or in  
 174 which a defense is asserted to avoid liability on the contract.

175 (d) If a collaborative law communication is subject to an  
 176 exception under paragraph (b) or paragraph (c), only the part of  
 177 the communication necessary for the application of the exception  
 178 may be disclosed or admitted.

179 (e) Disclosure or admission of evidence excepted from the  
 180 privilege under paragraph (b) or paragraph (c) does not make the  
 181 evidence or any other collaborative law communication  
 182 discoverable or admissible for any other purpose.

183 (f) A privilege under subsection (4) does not apply if the  
 184 parties agree in advance in a signed record, or if a record of a  
 185 proceeding reflects agreement by the parties, that all or part  
 186 of a collaborative law process is not privileged. This  
 187 subsection does not apply to a collaborative law communication  
 188 made by a person who did not receive actual notice of the  
 189 agreement before the communication was made.

190 (7) UNIFORMITY OF APPLICATION AND CONSTRUCTION.—In  
 191 applying and construing this uniform act, consideration must be  
 192 given to the need to promote uniformity of the law with respect  
 193 to its subject matter among states that enact it.

194 (8) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND  
 195 NATIONAL COMMERCE ACT.—This section modifies, limits, and  
 196 supersedes the federal Electronic Signatures in Global and  
 197 National Commerce Act, 15 U.S.C. ss. 7001 et seq. (2009), but  
 198 does not modify, limit, or supersede s. 101(c) of that act, 15  
 199 U.S.C. s. 7001(c), or authorize electronic delivery of any of  
 200 the notices described in s. 103(b) of that act, 15 U.S.C. s.  
 201 7003(b).

202 Section 3. Subsections (4), (5), and (6) of s. 90.5022,  
 203 Florida Statutes, as created by this act, establishing a  
 204 privilege for collaborative communications, shall not take  
 205 effect until 30 days after approval and publication by the  
 206 Supreme Court of:

- 207 (1) Rules of Professional Conduct, governing:  
 208 (a) Required elements of a collaborative law participation

209 agreement.

210 (b) The mandatory disqualification of a collaborative  
 211 attorney, and attorneys in the same firm, from appearing before  
 212 a tribunal to represent a party to a collaborative law process  
 213 in a proceeding related to the collaborative law matter.

214 (c) Limited exceptions to mandatory disqualification to  
 215 seek emergency orders for the protection of the health, safety,  
 216 welfare, or interest of a party until such time as a successor  
 217 attorney is available and for continued representation of  
 218 government entities, subject to certain conditions.

219 (d) A mandate for timely, full, candid, and informal  
 220 disclosure of information related to the collaborative matter  
 221 without formal discovery and prompt update of materially changed  
 222 information.

223 (e) Required assessment of the appropriateness of  
 224 collaborative law under the applicable facts and client  
 225 disclosure concerning the risks and benefits of collaborative  
 226 law, including, in particular, the effect of mandatory  
 227 disqualification.

228 (2) Family Law Rules of Procedure, governing:

229 (a) The commencement, conclusion, and termination of the  
 230 collaborative law process.

231 (b) The stay of ongoing proceedings upon referral to a  
 232 collaborative law process and related status reports.

233 (c) The issuance of emergency orders by a court.

234 (d) Approval of collaborative law agreements by a court.

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235           (e) Procedures for identifying and addressing violent or  
236 coercive relationships and, where appropriate, not using  
237 collaborative law in those contexts.

238           Section 4. Except as otherwise expressly provided in this  
239 act, 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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative La Rosa offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

6 Section 1. The Legislature finds and declares that the  
 7 purpose of this act is to:

8 (1) Create a uniform system of practice of a collaborative  
 9 law process for proceedings under chapters 61 and 742, Florida  
 10 Statutes.

11 (2) Encourage the peaceful resolution of disputes and the  
 12 early settlement of pending litigation through voluntary  
 13 settlement procedures.

14 (3) Preserve the working relationship between parties to a  
 15 dispute through a nonadversarial method that reduces the  
 16 emotional and financial toll of litigation.



Amendment No. 1

17           Section 2. Sections 44.51-44.54 may be known by the  
18 popular name the "Collaborative Law Act."

19           Section 3. Section 44.51, Florida Statutes, is created to  
20 read:

21           44.51 Purpose.—The general purpose of this part is to  
22 create a uniform system of practice for the collaborative law  
23 process in this state. It is the policy of this state to  
24 encourage the peaceful resolution of disputes and the early  
25 settlement of pending litigation through a voluntary settlement  
26 process. The collaborative law process is a unique  
27 nonadversarial process that preserves a working relationship  
28 between the parties and reduces the emotional and financial toll  
29 of litigation.

30           Section 4. Section 44.52, Florida Statutes, is created to  
31 read:

32           44.52 Definitions.—As used in this part, the term:

33           (1) "Collaborative attorney" means an attorney who  
34 represents a party in a collaborative law process.

35           (2) "Collaborative law communication" means an oral or  
36 written statement, whether in a record, verbal, or nonverbal,  
37 which:

38           (a) Is made in the conduct of or in the course of  
39 participating in, continuing, or reconvening a collaborative law  
40 process.



Amendment No. 1

41 (b) Occurs after the parties sign a collaborative law  
42 participation agreement and before the collaborative law process  
43 is concluded.

44 (3) "Collaborative law participation agreement" means an  
45 agreement by persons to participate in a collaborative law  
46 process.

47 (4) "Collaborative law process" means a process intended  
48 to resolve a collaborative matter without intervention by a  
49 tribunal in which persons sign a collaborative law participation  
50 agreement and are represented by collaborative attorneys.

51 (5) "Collaborative matter" means a dispute, transaction,  
52 claim, problem, or issue for resolution including a dispute,  
53 claim, or issue in a proceeding that is described in a  
54 collaborative law participation agreement and arises under  
55 chapter 61 or chapter 742, including, but not limited to:

56 (a) Marriage, divorce, dissolution, annulment, and marital  
57 property distribution.

58 (b) Child custody, visitation, parenting plans, and  
59 parenting time.

60 (c) Alimony, maintenance, and child support.

61 (d) Parental relocation with a child.

62 (e) Parentage.

63 (f) Premarital, marital, and postmarital agreements.

64 (6) "Law firm" means:





## Amendment No. 1

65 (a) An attorney or attorneys who practice law in a  
66 partnership, professional corporation, sole proprietorship,  
67 limited liability company, or association; or

68 (b) An attorney or attorneys employed in a legal services  
69 organization, the legal department of a corporation or other  
70 organization, or the legal department of a governmental entity,  
71 subdivision, agency, or instrumentality.

72 (7) "Nonparty participant" means a person, other than a  
73 party and the party's collaborative attorney, who participates  
74 in a collaborative law process.

75 (8) "Party" means a person who signs a collaborative law  
76 participation agreement and whose consent is necessary to  
77 resolve a collaborative matter.

78 (9) "Person" means an individual; corporation; business  
79 trust; estate; trust; partnership; limited liability company;  
80 association; joint venture; public corporation; government or  
81 governmental subdivision, agency, or instrumentality; or any  
82 other legal or commercial entity.

83 (10) "Proceeding" means a judicial, administrative,  
84 arbitral, or other adjudicative process before a tribunal,  
85 including related prehearing and posthearing motions,  
86 conferences, and discovery.

87 (11) "Prospective party" means a person who discusses with  
88 a prospective collaborative attorney the possibility of signing  
89 a collaborative law participation agreement.



Amendment No. 1

90       (12) "Record" means information that is inscribed on a  
91 tangible medium or that is stored in an electronic or other  
92 medium and is retrievable in perceivable form.

93       (13) "Related to a collaborative matter" means involving  
94 the same parties, transaction or occurrence, nucleus of  
95 operative fact, dispute, claim, or issue as the collaborative  
96 matter.

97       (14) "Sign" means, with present intent to authenticate or  
98 adopt a record:

99       (a) To execute or adopt a tangible symbol; or

100       (b) To attach to or logically associate with the record an  
101 electronic symbol, sound, or process.

102       (15) "Tribunal" means a court, arbitrator, administrative  
103 agency, or other body acting in an adjudicative capacity that,  
104 after presentation of evidence or legal argument, has  
105 jurisdiction to render a decision affecting a party's interests  
106 in a matter.

107       Section 5. Section 44.53, Florida Statutes, is created to  
108 read:

109       44.53 Beginning and concluding a collaborative law  
110 process.-

111       (1) The collaborative process commences, regardless of  
112 whether a legal proceeding is pending, when the parties enter  
113 into a collaborative participation agreement.

114       (2) A tribunal may not order a party to participate in a  
115 collaborative law process over that party's objection.

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- 116       (3) A collaborative law process is concluded by a:  
117       (a) Resolution of a collaborative matter as evidenced by a  
118 signed record;  
119       (b) Resolution of a part of the collaborative matter,  
120 evidenced by a signed record, in which the parties agree that  
121 the remaining parts of the matter will not be resolved in the  
122 process; or  
123       (c) Termination of the process.  
124       (4) A collaborative law process terminates when a party:  
125       (a) Gives notice to other parties in a record that the  
126 process is ended;  
127       (b) Begins a proceeding related to a collaborative matter  
128 without the agreement of all parties;  
129       (c) Initiates a pleading, motion, order to show cause, or  
130 request for a conference with a tribunal in a pending proceeding  
131 related to the matter;  
132       (d) Requests that the proceeding be put on the tribunal's  
133 active calendar in a pending proceeding related to the matter;  
134       (e) Takes similar action requiring notice to be sent to  
135 the parties in a pending proceeding related to the matter; or  
136       (f) Discharges a collaborative lawyer or a collaborative  
137 lawyer withdraws from further representation of a party, except  
138 as otherwise provided by subsection (7).  
139       (5) A party's collaborative lawyer shall give prompt  
140 notice to all other parties in a record of a discharge or  
141 withdrawal.

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Amendment No. 1

142 (6) A party may terminate a collaborative law process with  
143 or without cause.

144 (7) Notwithstanding the discharge or withdrawal of a  
145 collaborative lawyer, a collaborative law process continues, if  
146 not later than 30 days after the date that the notice of the  
147 discharge or withdrawal of a collaborative lawyer required by  
148 subsection (5) is sent to the parties:

149 (a) The unrepresented party engages a successor  
150 collaborative lawyer;

151 (b) The parties consent to continue the process by  
152 reaffirming the collaborative law participation agreement in a  
153 signed record;

154 (c) The agreement is amended to identify the successor  
155 collaborative lawyer in a signed record; and

156 (d) The successor collaborative lawyer confirms the  
157 lawyer's representation of a party in the collaborative in a  
158 signed record.

159 (8) A collaborative law process does not conclude if, with  
160 the consent of the parties, a party requests a tribunal to  
161 approve a resolution of the collaborative matter or any part  
162 thereof as evidenced by a signed record.

163 (9) A collaborative law participation agreement may  
164 provide additional methods of concluding a collaborative law  
165 process.

166 Section 6. Section 44.54, Florida Statutes, is created to  
167 read:

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Amendment No. 1

168 44.54 Confidentiality of a collaborative law  
169 communication.—Except as provided in this section, a  
170 collaborative law communication is confidential to the extent  
171 agreed by the parties in a signed record or as otherwise  
172 provided by law.

173 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW  
174 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

175 (a) Subject to subsections (2) and (3), a collaborative  
176 law communication is privileged as provided under paragraph (b),  
177 is not subject to discovery, and is not admissible in evidence.

178 (b) In a proceeding, the following privileges apply:

179 1. A party may refuse to disclose, and may prevent another  
180 person from disclosing, a collaborative law communication.

181 2. A nonparty participant may refuse to disclose, and may  
182 prevent any other person from disclosing, a collaborative law  
183 communication of the nonparty participant.

184 (c) Evidence or information that is otherwise admissible  
185 or subject to discovery does not become inadmissible or  
186 protected from discovery solely because of its disclosure or use  
187 in a collaborative law process.

188 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

189 (a) A privilege under subsection (1) may be waived in a  
190 record or orally during a proceeding if it is expressly waived  
191 by all parties and, in the case of the privilege of a nonparty  
192 participant, if it is also expressly waived by the nonparty  
193 participant.

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Amendment No. 1

194 (b) A person who makes a disclosure or representation  
195 about a collaborative law communication that prejudices another  
196 person in a proceeding may not assert a privilege under  
197 subsection (1). This preclusion applies only to the extent  
198 necessary for the person prejudiced to respond to the disclosure  
199 or representation.

200 (3) LIMITS OF PRIVILEGE.—

201 (a) A privilege under subsection (1) does not apply for a  
202 collaborative law communication that is:

203 1. Available to the public under chapter 119 or made  
204 during a session of a collaborative law process that is open, or  
205 is required by law to be open, to the public;

206 2. A threat or statement of a plan to inflict bodily  
207 injury or commit a crime of violence;

208 3. Intentionally used to plan a crime, commit or attempt  
209 to commit a crime, or conceal an ongoing crime or ongoing  
210 criminal activity; or

211 4. In an agreement resulting from the collaborative law  
212 process, evidenced by a record signed by all parties to the  
213 agreement.

214 (b) The privilege under subsection (1) for a collaborative  
215 law communication does not apply to the extent that a  
216 communication is:

217 1. Sought or offered to prove or disprove a claim or  
218 complaint of professional misconduct or malpractice arising from  
219 or related to a collaborative law process; or

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220 2. Sought or offered to prove or disprove abuse, neglect,  
221 abandonment, or exploitation of a child or adult, unless the  
222 Department of Children and Families is a party to or otherwise  
223 participates in the process.

224 (c) A privilege under subsection (1) does not apply if a  
225 tribunal finds, after a hearing in camera, that the party  
226 seeking discovery or the proponent of the evidence has shown  
227 that the evidence is not otherwise available, the need for the  
228 evidence substantially outweighs the interest in protecting  
229 confidentiality, and the collaborative law communication is  
230 sought or offered in:

231 1. A court proceeding involving a felony; or  
232 2. A proceeding seeking rescission or reformation of a  
233 contract arising out of the collaborative law process or in  
234 which a defense is asserted to avoid liability on the contract.

235 (d) If a collaborative law communication is subject to an  
236 exception under paragraph (b) or paragraph (c), only the part of  
237 the communication necessary for the application of the exception  
238 may be disclosed or admitted.

239 (e) Disclosure or admission of evidence excepted from the  
240 privilege under paragraph (b) or paragraph (c) does not make the  
241 evidence or any other collaborative law communication  
242 discoverable or admissible for any other purpose.

243 (f) The privilege under subsection (1) does not apply if  
244 the parties agree in advance in a signed record, or if a record  
245 of a proceeding reflects agreement by the parties, that all or

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246 part of a collaborative law process is not privileged. This  
247 subsection does not apply to a collaborative law communication  
248 made by a person who did not receive actual notice of the  
249 agreement before the communication was made.

250 Section 7. Sections 44.51-44.54, Florida Statutes, as  
251 created by this act, shall not take effect until 30 days after  
252 approval and publication by the Supreme Court of:

253 (1) Rules of Professional Conduct, governing:

254 (a) The mandatory disqualification of a collaborative  
255 attorney, and attorneys in the same firm, from appearing before  
256 a tribunal to represent a party to a collaborative law process  
257 in a proceeding related to the collaborative law matter.

258 (b) Limited exceptions to mandatory disqualification to  
259 seek emergency orders for the protection of the health, safety,  
260 welfare, or interest of a party until such time as a successor  
261 attorney is available and for continued representation of  
262 government entities, subject to certain conditions.

263 (2) Family Law Rules of Procedure, governing:

264 (a) Required elements of a collaborative law participation  
265 agreement defining the commencement, procedures, and termination  
266 of the collaborative law process.

267 (b) The stay of ongoing proceedings upon referral to a  
268 collaborative law process and related status reports.

269 Section 8. Except as otherwise expressly provided in this  
270 act, this act shall take effect July 1, 2014.

271





Amendment No. 1

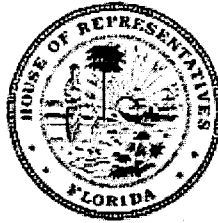
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T I T L E   A M E N D M E N T

Remove everything before the enacting clause and insert:  
An act relating to family law; creating the "Collaborative Law Act"; creating s. 44.51, F.S.; declaring the purpose of the act; creating s. 44.52, F.S.; defining terms; creating s. 44.53, F.S.; declaring that a collaborative process commences when the parties enter into a collaborative participation agreement; providing that a tribunal may not order a party to participate in a collaborative law process over the party's objection; providing conditions under which a collaborative law process is concluded; creating s. 44.54, F.S.; providing for confidentiality of communications made during the collaborative law process; providing exceptions; providing that the effective date of specified provisions are contingent upon approval and publication of court rules governing specified subjects; providing effective dates.





**STORAGE NAME:** h3519.CJS.DOCX  
**DATE:** 3/19/2014

**Florida House of Representatives  
Summary Claim Bill Report**

**Bill #:** HB 3519; Relief/Monica Cantillo Acosta & Luis Alberto Cantillo Acosta/Miami-Dade County  
**Sponsor:** Representative Santiago  
**Companion Bill:** SB 52 by Senator Legg  
**Special Master:** Tom Thomas

**Basic Information:**

**Claimants:** Monica Cantillo Acosta and Luis Alberto Cantillo Acosta  
**Respondent:** Miami-Dade County  
**Amount Requested:** \$940,000  
**Type of Claim:** Local equitable claim; result of a settlement agreement.  
**Respondent's Position:** Miami-Dade County supports the claim bill in the amount of \$940,000.  
**Collateral Sources:** None reported.  
**Attorney's/Lobbying Fees:** The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 15% of the total awarded under the bill.

**Prior Legislative History:** House Bill 1075 by Representative Steube and Senate Bill 60 by Senator Bogdanoff were filed during the 2011 Legislative Session. Neither bill was ever heard in any committee.  
  
House Bill 1485 by Representative Steube and Senate Bill 50 by Senator Bogdanoff were filed during the 2012 Legislative Session. The House Bill passed its committees

of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

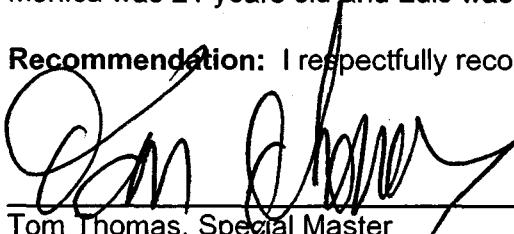
House Bill 1413 by Representative Santiago and Senate Bill 188 by Senator Legg were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

**Procedural Summary:** A civil suit was filed in the Eleventh Judicial Circuit in and for Miami-Dade County. After trial, the jury returned a verdict in favor of the plaintiffs on November 5, 2007, finding Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Nhora Acosta, and determined the damages of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta to be \$3 million each. The defendant appealed the jury verdict, however, the parties entered into a settlement agreement while the appeal was pending. The settlement calls for \$200,000 to be paid immediately in accordance with the statutory limits of liability in s. 768.28, Florida Statutes, and support for a claim bill in the amount of \$940,000.

**Facts of Case:** On November 12, 2004, at approximately 4:16 p.m. in Miami-Dade County, Nhora Acosta entered Miami-Dade County bus #04142 at a stop on S.W. 8th Street in Miami, Florida, paid the driver, and was trying to find a seat on the crowded bus. While Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver accelerated in order to avoid a collision with another vehicle. The driver then hit the brakes, causing Ms. Acosta to fall and strike her head on an interior portion of the bus. Because of the force upon which Ms. Acosta struck her head within the bus interior, she suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations. Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day.

Ms. Acosta was a 54-year-old single mother of two children, Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, who were raised exclusively by their mother. At the time of the accident, Monica was 21 years old and Luis was 16 years old.

**Recommendation:** I respectfully recommend House Bill 3519 be reported **FAVORABLY**.

  
\_\_\_\_\_  
Tom Thomas, Special Master

Date: March 21, 2014

cc: Representative Santiago, House Sponsor  
Senator Legg, Senate Sponsor

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Nhora Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m., Nhora Acosta entered Miami-Dade County bus number 04142 at a stop on S.W. 8th Street in Miami, paid the driver, and tried to find a seat on the crowded bus, and

WHEREAS, while Nhora Acosta walked toward the rear of the bus in search of a seat, the bus driver, ignoring her safety and failing to appropriately anticipate the stop-and-go traffic patterns on the busy street, accelerated so quickly that, in order to avoid a collision with another vehicle, he suddenly slammed on the brakes, and

WHEREAS, the sudden change in velocity caused Nhora Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, as a result of the fall, Nhora Acosta suffered a

26 severe closed head injury and massive brain damage, including a  
 27 right subdural hemorrhage, a left dural hemorrhage, diffused  
 28 cerebral edema, and basilar herniations, and

29 WHEREAS, Nhora Acosta was rushed to the trauma  
 30 resuscitation bay at Jackson Memorial Hospital in a comatose  
 31 state, was placed on a ventilator, underwent various procedures  
 32 to no avail, and was pronounced dead at 2:05 p.m. the next day,  
 33 and

34 WHEREAS, Nhora Acosta was a 54-year-old single mother of  
 35 two children, Monica Cantillo Acosta and Luis Alberto Cantillo  
 36 Acosta, who had been raised exclusively by their mother, and  
 37 because of her death, her children were left orphaned, and

38 WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo  
 39 Acosta loved their mother and only parent dearly and have  
 40 suffered intense mental pain due to their mother's untimely  
 41 death, and

42 WHEREAS, Monica Cantillo Acosta and Luis Alberto Cantillo  
 43 Acosta have also lost the support, love, and guidance of their  
 44 only parent, Nhora Acosta, as a result of the negligence of the  
 45 Miami-Dade bus driver, and

46 WHEREAS, on November 5, 2007, a Miami-Dade County jury  
 47 rendered a verdict and found the Miami-Dade County bus driver  
 48 100 percent negligent and responsible for the wrongful death of  
 49 Nhora Acosta, and determined the damages of Monica Cantillo  
 50 Acosta and Luis Alberto Cantillo Acosta to be \$3 million each,

51 and

52 WHEREAS, the parties have subsequently settled this matter  
 53 for \$1,140,000, and Miami-Dade County has paid the claimants  
 54 \$200,000 under the statutory limits of liability set forth in s.  
 55 768.28, Florida Statutes, NOW, THEREFORE,

56

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

58

59 Section 1. The facts stated in the preamble to this act  
 60 are found and declared to be true.

61 Section 2. Miami-Dade County is authorized and directed to  
 62 appropriate from funds of the county not otherwise appropriated  
 63 and to draw a warrant in the sum of \$470,000, payable to Monica  
 64 Cantillo Acosta, and a warrant in the sum of \$470,000, payable  
 65 to Louis Alberto Cantillo Acosta, as compensation for the  
 66 wrongful death of their mother, Nhora Acosta.

67 Section 3. The amount paid by the Miami-Dade County  
 68 pursuant to s. 768.28, Florida Statutes, and the amounts awarded  
 69 under this act are intended to provide the sole compensation for  
 70 all present and future claims arising out of the factual  
 71 situation described in this act which resulted in the death of  
 72 Nhora Acosta. The total amount paid for attorney fees, lobbying  
 73 fees, costs, and other similar expenses relating to this claim  
 74 may not exceed 25 percent of the total amount awarded under this  
 75 act.

HB 3519

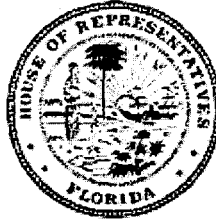
2014

76

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







**STORAGE NAME:** h3529.CJS.DOCX  
**DATE:** 3/19/2014

**Florida House of Representatives  
Summary Claim Bill Report**

**Bill #:** HB 3529; Relief/Carl Abbott/Palm Beach County School District  
**Sponsor:** Representative Raburn  
**Companion Bill:** SB 56 by Senator Legg  
**Special Master:** Tom Thomas

**Basic Information:**

**Claimants:** David Abbott, guardian of Carl Abbott

**Respondent:** Palm Beach County School Board

**Amount Requested:** \$1,900,000; to be made in payments of \$211,111.11 each fiscal year beginning in 2014 through 2021, inclusive, and \$211,111.12 in the 2022-2023 fiscal year.

**Type of Claim:** Local equitable claim; result of a settlement agreement.

**Respondent's Position:** The Palm Beach County School Board does not oppose the enactment of this claim bill.

**Collateral Sources:** None reported.

**Attorney's/Lobbying Fees:** The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

**Prior Legislative History:** House Bill 1487 by Representative Workman and Senate Bill 70 by Senator Negron were filed during the 2011 Legislative Session. The House Bill passed its only committee of reference (Civil Justice), passed the full House, but died in Messages. The Senate Bill passed its only committee of reference (Rules) but died on the Calendar.

House Bill 855 by Representative Workman and Senate Bill 54 by Senator Negron were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, passed the Senate as amended, and passed the House again, but died in Messages. The Senate Bill passed its only committee of reference (Rules), and was laid on the table in lieu of the House Bill.

House Bill 1167 by Representative Raburn and Senate Bill 22 by Senator Negron were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

**Procedural Summary:** David Abbott, the son and guardian of Carl Abbott, brought suit in 2008 claiming negligence against the School Board of Palm Beach County. The action was filed in the 15th Judicial Circuit Court, in and for Palm Beach County, Florida.

Prior to trial, the parties came to an agreement through mediation to settle the case for \$2 million, \$100,000 of which the School Board has already paid. Pursuant to the settlement agreement, the \$1.9 million balance will be paid in eight yearly installments of \$211,111.11, plus a ninth and final annual payment of \$211,111.12. These yearly payments will commence on the effective date of the claim bill, and continue for nine years, or until Mr. Abbott's death, whichever first occurs. The School Board has agreed, however, to make at least three years' worth of payments, guaranteeing a minimum payout of \$633,333.33. Out of the \$100,000 settlement proceeds he has already received, Mr. Abbott paid \$25,000 in attorney's fees and, after paying some expenses, netted \$51,905.65.

**Facts of Case:** On June 30, 2008, at about 2:00 p.m., Carl Abbott, then 68 years old, started to walk across U.S. Highway 1 at the intersection with South Anchorage Drive in North Palm Beach, Florida. Mr. Abbott was heading west from the northeast quadrant of the intersection, toward the intersection's northwest quadrant. To get to the other side of U. S. Highway 1, which runs north and south, Mr. Abbott needed to cross the highway's three northbound lanes, a median, the southbound left turn lane, and the three southbound travel lanes. Mr. Abbott remained within the marked pedestrian crosswalk.

At the time Mr. Abbott began to cross U.S. Highway 1, a school bus was idling in the eastbound left-turn lane on South Anchorage Drive, waiting for the green light. The bus driver, Generia Bedford, intended to turn left and proceed north on U.S. Highway 1. When the light changed, Ms. Bedford drove the bus eastward through the intersection and turned left, as planned, heading northward. She did not see Mr. Abbott, who was in the center northbound lane of U.S. Highway 1, until it was too late. The school bus struck Mr. Abbott and knocked him to the ground. He sustained a serious, traumatic brain injury in the accident.

Mr. Abbott received cardiopulmonary resuscitation at the scene and was rushed to St. Mary's Medical Center, where he was placed on a ventilator. A cerebral shunt was placed to decrease intracranial pressure. After two months, Mr. Abbott was discharged with the following diagnoses: traumatic brain injury, pulmonary contusions, intracranial hemorrhage, subdural hematoma, and paralysis.

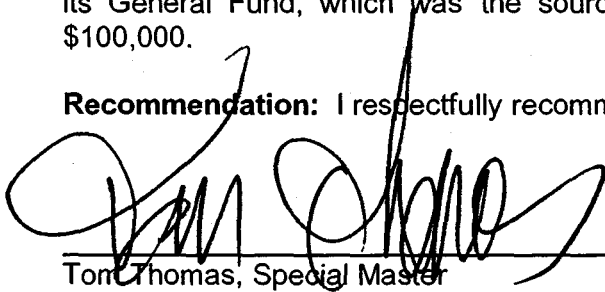
SPECIAL MASTER'S SUMMARY REPORT--

Page 3

Mr. Abbott presently resides in a nursing home. As a result of the brain injury, he is unable to talk, walk, or take care of himself. He is alert but has significant cognitive impairments. Mr. Abbott has neurogenic bladder and bowels and hence is incontinent. He cannot perform any activities of daily living and needs constant, total care. His condition is not expected to improve.

Based on the Life Care Plan prepared by Stuart B. Krost, M.D., Mr. Abbott's future medical needs, assuming a life expectancy of 78 years, are projected to cost about \$4 million, before a reduction to present value. The school Board is self-insured and will pay the balance of the agreed sum out of its General Fund, which was the source of revenue used to satisfy the initial commitment of \$100,000.

**Recommendation:** I respectfully recommend House Bill 3529 be reported **FAVORABLY**.



Tom Thomas, Special Master

Date: March 21, 2014

cc: Representative Raburn, House Sponsor  
Senator Legg, Senate Sponsor

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A bill to be entitled  
An act for the relief of Carl Abbott by the Palm Beach  
County School Board; providing for an appropriation to  
compensate Carl Abbott for injuries sustained as a  
result of the negligence of the Palm Beach County  
School District; providing a limitation on the payment  
of fees and costs; providing an effective date.

WHEREAS, on June 30, 2008, 67-year-old Carl Abbott was  
struck by a school bus driven by an employee of the Palm Beach  
County School District while Mr. Abbott was crossing the street  
in a designated crosswalk at the intersection of South Anchorage  
Drive and U.S. 1 in Palm Beach County, and

WHEREAS, as a result of the accident, Carl Abbott suffered  
a closed-head injury, traumatic brain injury, subdural hematoma,  
and subarachnoid hemorrhage, and

WHEREAS, as a result of his injuries, Carl Abbott must now  
reside in a nursing home, suffers from loss of cognitive  
function, right-sided paralysis, immobility, urinary  
incontinence, bowel incontinence, delirium, and an inability to  
speak, and must obtain nutrition through a feeding tube, and

WHEREAS, the Palm Beach County School Board unanimously  
passed a resolution in support of settling the lawsuit that was  
filed in this case, tendered payment of \$100,000 to Carl Abbott,  
in accordance with the statutory limits of liability set forth

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2014

26 in s. 768.28, Florida Statutes, and does not oppose the passage  
 27 of this claim bill in favor of Carl Abbott in the amount of \$1.9  
 28 million, as structured, NOW, THEREFORE,

29

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

31

32 Section 1. The facts stated in the preamble to this act  
 33 are found and declared to be true.

34 Section 2. The Palm Beach County School Board is  
 35 authorized and directed to appropriate from funds of the school  
 36 board not otherwise appropriated and to draw warrants in the  
 37 amount of \$211,111.11 each fiscal year beginning in 2014 through  
 38 2021, inclusive, and \$211,111.12 in the 2022-2023 fiscal year  
 39 for a total of \$1.9 million, payable to David Abbott, guardian  
 40 of Carl Abbott, as compensation for injuries and damages  
 41 sustained as a result of the negligence of an employee of the  
 42 Palm Beach County School District. The payments shall cease upon  
 43 the death of Carl Abbott if he dies before the last payment is  
 44 made. However, David Abbott, as guardian of Carl Abbott, shall  
 45 be guaranteed a minimum payment amount of \$633,333.33 if Carl  
 46 Abbott dies within 3 years after the effective date of this act.  
 47 This amount represents three annual payments and shall be  
 48 payable on the annual due dates.

49 Section 3. The amount paid by the Palm Beach County School  
 50 Board pursuant to s. 768.28, Florida Statutes, and the amount

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2014

51 awarded under this act are intended to provide the sole  
52 compensation for all present and future claims against the Palm  
53 Beach County School District arising out of the factual  
54 situation that resulted in the injuries to Carl Abbott as  
55 described in the preamble to this act. The total amount paid for  
56 attorney fees, lobbying fees, costs, and other similar expenses  
57 relating to this claim may not exceed 25 percent of the total  
58 amount awarded under this act.

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







**STORAGE NAME:** h3531.CJS.DOCX  
**DATE:** 3/19/2014

**Florida House of Representatives  
Summary Claim Bill Report**

**Bill #:** HB 3531; Relief/Ronald Miller/City of Hollywood  
**Sponsor:** Representative Gibbons  
**Companion Bill:** SB 54 by Senator Legg  
**Special Master:** Tom Thomas

**Basic Information:**

**Claimants:** Ronald Miller  
**Respondent:** City of Hollywood  
**Amount Requested:** \$100,000  
**Type of Claim:** Local equitable claim; result of a settlement agreement.  
**Respondent's Position:** Agrees that the settlement in this matter and the passage of this claim bill are appropriate.  
**Collateral Sources:** None reported.  
**Attorney's/Lobbying Fees:** The claimant's attorney provided an affidavit stating that the attorney's fees will be capped at 25% of the total claim award in accordance with s. 768.28(8), F.S., and that the lobbyist's fees, if any, will be included in the 25% fee cap.

Notwithstanding the attorney's affidavit, the bill specifically provides that the total amount paid for attorney fees, lobbying fees, costs, and similar expenses relating to the claim may not exceed 25% of the total awarded under the bill.

**Prior Legislative History:** House Bill 191 by Representative Gibson and Senate Bill 60 by Senator Rich were filed during the 2009 Legislative Session. Neither of these bills received a hearing.  
House Bill 519 by Representative Gibson and Senate Bill 44 by Senator Gelber were filed during the 2010 Legislative Session. Neither of these bills received a hearing.  
House Bill 569 by Representative Cruz and Senate Bill 64 by Senator Siplin were filed during the 2011 Legislative

Session. The House Bill passed its only committee of reference (Civil Justice) but died on the Calendar. The Senate Bill was never heard in any Committee.

House Bill 43 by Representative Jenne and Senate Bill 8 by Senator Sobel were filed during the 2012 Legislative Session. The House Bill passed its committees of reference (Civil Justice and Judiciary), passed the full House, but died in the Senate. The Senate Bill was never heard in any Committee.

House Bill 1415 by Representative Gibbons and Senate Bill 44 by Senator Sobel were filed during the 2013 Legislative Session. The House Bill passed its committees of reference (Select Committee on Claim Bills and Judiciary) but died on the House Calendar. The Senate Bill was never considered in its committees of reference.

**Procedural Summary:** In January 2005, Mr. Miller filed suit in the Circuit Court of the 17<sup>th</sup> Judicial Circuit in and for Broward County. After trial, the jury found in favor of Ronald Miller and a final judgment was entered in the amount of \$1,130,731.89, which included approximately \$75,000 for past medical bills and \$415,000 for future medical expenses, \$200,000 for past pain and suffering, and \$500,000 for future pain and suffering. A cost Judgment was entered in favor of Mr. Miller for \$17,257.82. The City of Hollywood appealed and the Fourth District Court of Appeal affirmed the judgment per curiam. The City has paid \$100,000 to Ronald Miller under the statutory limits of liability set forth in s. 768.28, F.S. The parties have now settled the matter and the City has agreed to pay Mr. Miller an additional \$100,000 to resolve this claim.

**Facts of Case:** This case arises out of a motor vehicle accident that occurred on July 30, 2002. Mr. Miller was traveling northbound in his pickup truck on North Federal Highway, just south of Sheridan Street in the City of Hollywood, Florida. At approximately 5:30 p.m., Mr. Miller entered the center lane, planning on turning left at Sherman Street, the westbound street immediately south of Sheridan Street, traveling at approximately 15 miles-per-hour. At the same time, Robert Mettler, an employee of the City of Hollywood driving a City utilities truck, was exiting a Burger King Restaurant immediately to the right (on the east side of North Federal Highway). Stopped northbound traffic on North Federal Highway parted to allow Mr. Mettler to drive across the two northbound lanes into the center lane. As Mr. Mettler entered the center lane, he turned left in order to merge onto southbound North Federal Highway where he collided head-on into Mr. Miller. Mr. Miller was wearing his seatbelt and did not seek medical treatment at the scene of the accident. Though belted, Mr. Miller later testified that he banged his knees on the dashboard of his truck as a result of the crash impact. Later that night, Mr. Miller went to the emergency room to seek medical treatment.

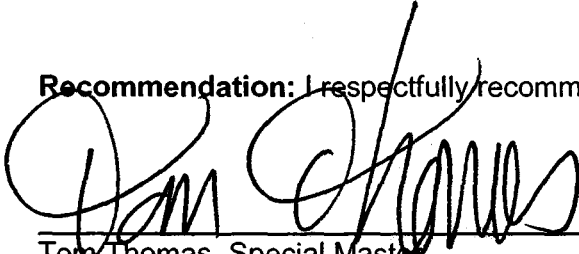
In March of 2003, Dr. Steven Wender, M.D., performed extensive knee surgery on Mr. Miller (a right knee partial medial and lateral menisectomy and tricompartmental chondroplasty, and a left knee lateral menisectomy and chondroplasty of the medial compartment and lateral compartmental and patella with synovectomy). Mr. Miller developed post-operative complications including pneumonia and deep vein thrombosis. Dr. Wender testified that Mr. Miller will need to have at least one bilateral knee replacement surgery in the future. Mr. Miller did have knee surgeries prior to the accident. The City's expert, Dr. Phillip Averbach, testified at trial that Mr. Miller did not sustain any

SPECIAL MASTER'S SUMMARY REPORT--

Page 3

permanent orthopedic or neurological injuries related to the accident. Dr. Averbach also testified that he believed at least 90 percent of Mr. Miller's current complaints and injuries were pre-existing to the accident. While there is testimony on both sides of how extensively Mr. Miller was injured as a result of the accident, the parties have agreed to settle the matter.

**Recommendation:** I respectfully recommend that House Bill 3531 be reported **FAVORABLY**.

A handwritten signature in black ink, appearing to read "Tom Thomas", written over a horizontal line.

Tom Thomas, Special Master

Date: March 21, 2014

cc: Representative Gibbons, House Sponsor  
Senator Legg, Senate Sponsor



HB 3531

2014

26 arrived at a stipulated resolution of this matter for the  
 27 payment by the City of Hollywood of an additional \$100,000 to  
 28 Ronald Miller, NOW, THEREFORE,

29

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

31

32 Section 1. The facts stated in the preamble to this act  
 33 are found and declared to be true.

34 Section 2. The City of Hollywood is authorized and  
 35 directed to appropriate from funds of the city not otherwise  
 36 appropriated and to draw a warrant, payable to Ronald Miller,  
 37 for the total amount of \$100,000 as compensation for injuries  
 38 and damages sustained as a result of the negligence of an  
 39 employee of the City of Hollywood.

40 Section 3. The amount paid by the City of Hollywood  
 41 pursuant to s. 768.28, Florida Statutes, and the amount awarded  
 42 under this act are intended to provide the sole compensation for  
 43 all present and future claims arising out of the factual  
 44 situation described in this act which resulted in injuries to  
 45 Ronald Miller. All expenses that constitute a part of Ronald  
 46 Miller's judgments described in this claim shall be paid from  
 47 the amount awarded under this act on a pro rata basis. The total  
 48 amount paid for attorney fees, lobbying fees, costs, and other  
 49 similar expenses relating to this claim may not exceed 25  
 50 percent of the amount awarded under this act.

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2014

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee  
 2 Representative Gibbons offered the following:

3

4 **Amendment**

5 Remove line 13 and insert:

6 Mettler, who was driving a city utilities truck, cut across the


7





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CJS 14-06 Arbitration  
**SPONSOR(S):** Civil Justice Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1664

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

**SUMMARY ANALYSIS**

In 2013, the legislature passed, and the governor signed, the Revised Florida Arbitration Code. That bill appears to have contained a scrivener's error that contained incorrect verbiage to describe a correct numerical cross-reference. This bill corrects the apparent scrivener's error. The bill applies retroactively to the effective date of the Revised Florida Arbitration Code, July 1, 2013.

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

In 2013, the legislature passed, and the governor signed, the Revised Florida Arbitration Code.<sup>1</sup> The Revised Arbitration Code was based on the 2000 model act and was the first major upgrade to Florida's Arbitration Code since 1957.

Arbitration is a form of alternative dispute resolution, where an arbitrator, or a panel of arbitrators, hears a case instead of a court.<sup>2</sup> Generally, the agreement provides for terms of the arbitration, but the Arbitration Code provides some default rules where the agreement is silent.<sup>3</sup> An arbitration clause is often included in contracts, and it is a well-established principle that arbitration is generally favored by the courts where agreed to by the parties.<sup>4</sup> It is the public policy of both the federal<sup>5</sup> and state<sup>6</sup> governments to favor arbitration.

Arbitration generally occurs independent of the court system., however certain aspects of arbitration may require court action. For example, a party may need to go to court to compel or stay an arbitration proceeding.<sup>7</sup> Also, after a decision is made in an arbitration to provide an award to a party to the arbitration, the award may be confirmed by the court to provide a legal effect.<sup>8</sup>

##### Effect of the Bill

Parties may generally adopt rules and procedures by contract because the procedures contained in the Revised Arbitration Code serves as a gap filler. However, certain provisions may not be waived. The provisions that may not be waived are generally procedural requirements that would fundamentally undermine the arbitration agreement. One such provision in the current statute refers to the "remedies provided under s. 682.12," F.S.<sup>9</sup> This appears to be a scrivener's error, as remedies are in s. 682.11, F.S., while 682.12, F.S., relates to the right to confirm an award. This bill amends s. 682.014(3)(f), F.S., to correct the scrivener's error by replacing "remedies" with the "right to confirmation of an award." This correction appears to be consistent with the apparent intent of the 2013 legislation and is remedial in nature.

The bill applies retroactively to July 1, 2013, which was the date that the Revised Florida Arbitration Code became a law.

#### B. SECTION DIRECTORY:

Section 1 amends s. 682.014, F.S., relating to effect of an agreement to arbitrate and nonwaivable provisions.

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<sup>1</sup> Chapter 2013-232, L.O.F.

<sup>2</sup> Black's Law Dictionary, 6<sup>th</sup> Ed., defines "arbitration" as "A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard."

<sup>3</sup> For instance, if the agreement does not provide a method for picking the arbitrator(s), the court may appoint one or more arbitrators, in accordance with s. 682.04, F.S.

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

<sup>5</sup> See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991).

<sup>6</sup> See *Jackson v. Shakespeare Foundation, Inc.*, 2013 WL 362786 (Fla. 2013).

<sup>7</sup> Section 682.03, F.S.

<sup>8</sup> Section 682.12, F.S.

<sup>9</sup> Section 682.014(3)(f), F.S.

Section 2 provides that the bill is retroactive to July 1, 2013.

Section 3 provides that the bill is effective 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:

"A statute is presumed not to have retroactive application, but the presumption is rebuttable by clear evidence that the legislature intended that the statute be applied retroactively."<sup>10</sup> The bill provides that some changes are intended to clarify existing law, are remedial in nature, and apply retroactively, making the legislative intent clear.

The Florida Constitution guarantees to all persons the right to acquire, possess and protect property. Article I, s. 9 provides that "[n]o person shall be deprived of life, liberty or property without due process of law."<sup>11</sup> "In determining whether a statute applies retroactively, we [the Supreme Court of

<sup>10</sup> *Essex Ins. Co. v. Integrated Drainage Solutions, Inc.*, 124 So.3d 947, 951 (Fla. 2d DCA 2013).

<sup>11</sup> Art. I, s. 9, FLA. CONST.

Florida] consider two factors: (1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional."<sup>12</sup>

The first prong of the test appears to clearly by met by section 2 of the bill, which contains an explicit statement of retroactivity. The second prong looks to see if a vested right is impaired.

A statute is not unconstitutionally retrospective in its operation unless it impairs a substantive, vested right. A substantive vested right is an immediate right of present enjoyment, or a present fixed right of future enjoyment. To be vested a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand.<sup>13</sup>

"Remedial statutes or statutes relating to remedies or modes of procedure, which do not create new or take away vested rights, but only operate in furtherance of the remedy or confirmation of rights already existing, do not come within the legal conception of a retrospective law, or the general rule against retrospective operation of statutes"<sup>14</sup>

Thus, a retroactive law of this type should be upheld unless a court finds that a party had a substantive, vested right to a contract provision that allowed for another party to waive an award confirmation.<sup>15</sup>

**B. RULE-MAKING AUTHORITY:**

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

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

n/a

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<sup>12</sup> 10A Fla. Jur 2d Constitutional Law §394, citing *Old Port Cove Holdings, Inc. v. Old Port Cove Condominium Ass'n One, Inc.*, 986 So.2d 1279 (Fla. 2008).

<sup>13</sup> *School Bd. Of Miami-Dade County v. Carralero*, 992 So.2d 353 (Fla. 3d DCA 2008)(internal citations omitted).

<sup>14</sup> *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

<sup>15</sup> *In re Will of Martell*, 457 So.2d 1064 (Fla. 2d DCA 1984).

1                                   A bill to be entitled  
 2           An act relating to arbitration; amending s. 682.014,  
 3           F.S.; correcting the description of a cross-reference;  
 4           providing for retroactive application; providing an  
 5           effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:

8  
 9           Section 1. Paragraph (f) of subsection (3) of section  
 10   682.014, Florida Statutes, is amended to read:

11           682.014 Effect of agreement to arbitrate; nonwaivable  
 12   provisions.—

13           (3) A party to an agreement to arbitrate or arbitration  
 14   proceeding may not waive, or the parties may not vary the effect  
 15   of, the requirements in this section or:

16           (f) The right to confirmation of an award remedies  
 17   ~~provided~~ under s. 682.12;

18           Section 2. This act shall apply retroactively to July 1,  
 19   2013.

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