Civil Justice Subcommittee

Wednesday, March 5, 2014

12:00 PM

404 HOB

Will Weatherford
Speaker

Larry Metz
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Wednesday, March 05, 2014 12:00 pm

End Date and Time: Wednesday, March 05, 2014 03:00 pm

Location: Sumner Hall (404 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 203 Unaccompanied Youth by Raulerson

HB 755 Family Law by Steube

Consideration of the following proposed committee substitute(s):

PCS for HB 429 -- Hearsay

PCS for HB 569 -- Nursing Home Litigation

PCS for HB 807 -- Residential Properties

NOTICE FINALIZED on 03/03/2014 16:07 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 203 Unaccompanied Youth
SPONSOR(S): Raulerson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 260

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Aziz PA	Bond YTB
2) Health & Human Services Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In general, a minor may not consent to his or her own routine medical and dental care. The law requires that a parent or guardian consent to treatment. There have been reports that some homeless youth have problems receiving medical and dental care because of their inability to give legal consent and the absence of a parent or guardian to give consent.

This bill provides that a homeless youth, age 16 or over, who is also an unaccompanied youth, may consent to medical treatment, including, dental, psychological, substance abuse, and other medical care by a licensed facility on behalf of himself or herself, or his or her child.

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

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Homelessness in Florida

Florida has the third largest homeless population in the nation, with roughly 45,000 people facing homelessness daily.[1] During the 2011-12 school year, 63,685 school-aged children were identified as homeless at one point during the school year.[2]

Homeless Children and Youths

According to the National Alliance to End Homelessness, the prevalence of youth homelessness is difficult to measure; however, researchers estimate that perhaps 1.6 million youth, aged 13-17, are homeless in the U.S.[3] While the reasons for youth homelessness vary by individual, the primary causes appear to be a family breakdown or a systems failure of mainstream programs like child welfare, juvenile corrections, and mental health programs.[4] Between 20,000 and 25,000 youth ages 16 and older transition from foster care to legal emancipation, or "age out" of the system annually with few resources and multiple challenges.[5] As a result, former foster care youth are disproportionately represented in the homeless population. Twenty-five percent of former foster youth nationwide report that they have been homeless at least one night within two-and-a-half to four years after exiting foster care.[6]

Federal law defines "homeless children and youths" as follows:

> (a) Individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302 (a)(1) of this title); and
>
> (b) Includes—
>
> (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
>
> (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302 (a)(1) of this title);
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> (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

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[1] Council on Homelessness Annual Report 2013. Florida Department of Children and Families. http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf (last visited February 26, 2014).
[2] *Id.*
[3] The Heterogeneity of Homeless Youth in America, National Alliance to End Homelessness, September 2011.
[4] Fundamental Issues to Prevent and End Youth Homelessness, Youth Homelessness Series, Brief No. 1, National Alliance to End Homelessness, May 2006.
[5] *Id.*
[6] *Id.*

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (1) through (iii).[7]

The term, "unaccompanied youth," is defined in federal law to mean a youth not in the physical custody of a parent or guardian.[8] Unaccompanied homeless youth, because of their disability of nonage and finances, face particular challenges in seeking routine health care. They disproportionately suffer higher rates of mental illness, substance abuse, pregnancy and sexually transmitted diseases.[9] While current law allows minors to consent to care for pregnancy and sexually transmitted diseases[10], nothing allows unaccompanied homeless youth to consent to general health and dental care.

Disabilities of Nonage

Disability of nonage refers to a minor's lack of legal ability to enter into binding contracts.[11] However, minors who meet certain conditions can be granted the same rights as an adult. This process is known in current law as "having the disabilities of nonage removed."[12] In the case of a minor who has had the court remove the disabilities of nonage, a court would authorize the minor to perform all acts that a person could do if he or she was 18 years of age or older.[13]

Under current law, a minor may receive emergency medical care without parental consent.[14] A minor may consent to services relating to pregnancy[15], treatment of sexually transmitted diseases[16], and substance abuse.[17] The question of consent to general medical and dental care on behalf of a homeless unaccompanied minor, or the child of such a minor, has not been addressed by Florida law.

The bill creates an exception to the disabilities of nonage by providing that an unaccompanied homeless youth may consent to general, routine health and dental care. In order to qualify under the bill, an unaccompanied homeless youth must be certified as homeless by a school district homeless liaison, a director of emergency shelter program, or a director of a runaway or homeless youth basic center.

School District Homeless Liaison

The Florida Department of Education has established a "school district homeless liaison" for each of the 67 counties.[18] The duties of the liaison include:[19]

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[7] 42 U.S.C. s. 11434a.
[8] *Id.*
[9] Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J.L. Society 455, 504 (2012).
[10] *See* ss. 381.0051, 743.065, and 384.30, F.S.
[11] 25 Fla. Jur 2d Family Law § 240.
[12] *See* ss. 743.01 (marriage), 743.015 (petition by guardian or guardian ad litem), and 743.067 (petition by unaccompanied youth), F.S.
[13] Section 743.015, F.S.
[14] Section 743.064, F.S.
[15] Section 743.065, F.S. However, such care will not affect the requirements of the Parental Notice of Abortion Act. *Id.* Minors may also receive maternal health and contraceptive information and services of a nonsurgical nature. Section 381.0051(4), F.S. Furthermore, an unwed minor mother may consent to the performance of medical or surgical care or services for her child. Section 743.065, F.S.
[16] Section 384.30, F.S.
[17] Section 397.601(4)(a), F.S.
[18] Florida Department of Education, District Liaison List, http://search.fldoe.org/default.asp?cx=012683245092260330905%3Aalo4lmikgz4&cof=FORID%3A11&q=school+district+homeless+liaison (last visited February 26, 2014).
[19] *Id.*

- Assisting homeless children and youth who do not have immunizations or medical records to obtain necessary immunizations or medical records.
- Helping unaccompanied youth choose and enroll in a school, after considering the youths' wishes, and provide youth with notice of their right to appeal an enrollment decision that is contrary to their wishes.
- Ensuring that unaccompanied youth are enrolled in school immediately pending the resolution of any dispute that may arise over school enrollment or placement.
- Collaborating and coordinating with State Coordinators for Homeless Education and community and school personnel responsible for the provision of education and related services to children and youth who are homeless.

Emergency Shelter Program funded by U.S. Department of Housing and Urban Development

The Emergency Shelter Program is funded by the Department of Housing and Urban Development and is designed as the first step in the Continuum of Care. The Emergency Shelter Grants Program provides funds for emergency shelters — immediate alternatives to the street — and transitional housing that helps individuals reach independent living. States use grant funds to rehabilitate and operate these facilities, provide essential social services, and prevent homelessness.[20] The providers of service must document that any youth served meets the federal definition of a homeless person.[21]

Runway or Homeless Basic Youth Centers and Transitional Living Programs funded by U.S. Health and Human Services

The Basic Youth Center Program works to establish or strengthen community-based programs that meet the immediate needs of runaway and homeless youth and their families.[22] The programs provide youth up to age 18 with emergency shelter, food, clothing, counseling and referrals for health care.[23] Whether consent is required to that health care has remained an open question, however.

Basic centers seek to reunite young people with their families, whenever possible, or to locate appropriate alternative placements.[24] The providers of service must maintain individual case files on the youth in the program.[25]

The Transitional Living Programs supports projects that provide long-term residential services to homeless youth.[26] The Program accepts youth ages 16-21. The services offered are designed to help homeless youth make a successful transition to self-sufficient living.[27] Transitional living programs are required to provide youth with stable, safe living accommodations, and services that help them develop the skills necessary to become independent.[28] Living accommodations may include host-family homes, group homes, maternity group homes, or supervised apartments owned by the program or rented in the

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[20] U.S. Department of Housing and Homeless Development, Homelessness Resource Exchange, http://www.hudhre.info/index.cfm?do=viewEsgProgram (last visited February 26, 2014).
[21] U.S. Department of Housing and Homeless Development, Emergency Shelter Grant Desk Guide, Program Requirements and Responsibilities, https://www.onecpd.info/resource/829/emergency-shelter-grants-program-desk-guide/ (last visited February 26, 2014).
[22] U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Basic Center Program, http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm (last visited February 26, 2014).
[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] U.S. Department of Health and Human Services, Administration for Children and Families, Fact Sheet Transitional Program, http://www.acf.hhs.gov/programs/fysb/content/youthdivision/programs/bcpfactsheet.htm (last visited February 26, 2014).
[27] *Id.*
[28] *Id.*

community.[29] The providers of services must maintain individual case files on the youth in the program.[30]

Effect of the Bill

The bill provides that an unaccompanied youth who is homeless may consent to medical treatment for himself or herself. Such youth may also consent to medical care for his or her own child that he or she has custody of. To qualify, the youth must be certified as homeless and unaccompanied by a school district homeless liaison, a director of emergency shelter program, or a director of a runaway or homeless youth basic center. The bill also provides that it does not affect the requirements of the "Parental Notice of Abortion Act."[31]

B. SECTION DIRECTORY:

Section 1 amends s. 743.067, F.S. relating to unaccompanied youth.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill 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 revenues.

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:

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[29] *Id.*
[30] *Id.*
[31] Section 390.01114, F.S.

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:

Utilizing the term "unaccompanied youth" in the title may be confusing since the term is only part of a definition of the minors affected by this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to unaccompanied youth; amending s. 743.067, F.S.; authorizing certain unaccompanied youths to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment for themselves and for their children in certain circumstances; providing that such consent does not affect the requirements of the Parental Notice of Abortion Act; providing an effective date.

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

Section 1. Section 743.067, Florida Statutes, is amended to read:

743.067 Unaccompanied youths.—

(1) An unaccompanied youth, as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, as defined in s. 382.002, and who is 16 years of age or older may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397, for:

1. Himself or herself; or

2. His or her child, if the unaccompanied youth is unmarried, is the parent of the child, and has actual custody of the child.

(2) This section does not affect the requirements of s. 390.01114.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Raulerson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 743.067, Florida Statutes, is amended to read:

743.067 Unaccompanied homeless youths.—

(1) For purposes of this section, an "unaccompanied homeless youth" is an individual~~, as defined in 42 U.S.C. s. 11434a, who is also a certified homeless youth, as defined in s. 382.002, and~~ who is 16 years of age or older and is:

(a) Found by a school district's liaison for homeless children and youths to be an unaccompanied homeless youth eligible for services pursuant to the McKinney-Vento Homeless Assistance Act, 42 U.S.C. ss. 11431-11435; or

(b) Believed to qualify as an unaccompanied homeless youth, as that term is defined in the McKinney-Vento Homeless Assistance Act, by:

1. The director of an emergency shelter program funded by the United States Department of Housing and Urban Development, or the director's designee;

2. The director of a runaway or homeless youth basic center or transitional living program funded by the United States Department of Health and Human Services, or the director's designee;

3. A clinical social worker licensed under chapter 491; or

4. A circuit court.

(2) A minor who qualifies as an unaccompanied homeless youth shall be issued a written certificate documenting his or her status by the appropriate individual as provided in subsection (1). The certificate shall be issued on the official letterhead stationery of the person making the determination and shall include the date of the finding, a citation to this section, and the signature of the individual making the finding. A health care provider may accept the written certificate as proof of the minor's status as an unaccompanied homeless youth and may keep a copy of the certificate in the youth's medical file.

(3) An unaccompanied homeless youth may:

(a) Petition the circuit court to have the disabilities of nonage removed under s. 743.015. The youth shall qualify as a

person not required to prepay costs and fees as provided in s. 57.081. The court shall advance the cause on the calendar.

(b) Consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, including preventative care and care by a facility licensed under chapter 394, chapter 395, or chapter 397 and any forensic medical examination for the purpose of investigating any felony offense under chapter 784, chapter 787, chapter 794, chapter 800, or chapter 827, for:

1. Himself or herself; or

2. His or her child, if the unaccompanied homeless youth is unmarried, is the parent of the child, and has actual custody of the child.

(4) This section does not affect the requirements of s. 390.01114.

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

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 unaccompanied homeless youth; amending s. 743.067, F.S.; defining the term "unaccompanied homeless youth"; providing for a certification; authorizing certain unaccompanied homeless youths to consent to medical, dental, psychological, substance abuse, and surgical diagnosis and treatment, and

forensic medical examinations for themselves and for their children in certain circumstances; providing that such consent does not affect the requirements of the Parental Notice of Abortion Act; providing an effective date.

PCS for HB 429

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 429 Hearsay
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 764

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

SUMMARY ANALYSIS

The Florida Evidence Code governs the admissibility of evidence a court may consider during the course of a hearing or trial. Hearsay, a statement made out of court offered to prove the truth of the matter asserted, is generally inadmissible in court. There are, however, numerous exceptions to the hearsay rule whereby hearsay may be admissible.

The bill creates a hearsay exception for a statement that describes a domestic violence incident and is made to enable law enforcement to respond to an on-going emergency.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

"The purpose of the rules of evidence is to elicit and establish the truth."[1] One general rule of evidence is known as "hearsay." Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."[2] Hearsay evidence is inadmissible unless an exception applies and the evidence is otherwise admissible. "Hearsay"[3] is a statement,[4] other than one made by the declarant[5] while testifying at trial or a hearing,[6] offered in evidence to prove the truth of the matter asserted.[7]

For example, a victim of domestic violence calls the police. When a police officer arrives, the victim tells the officer that "Avery hit me." If the officer then testifies for the state at trial that he heard the victim say "Avery hit me," the officer's testimony would be hearsay because "Avery hit me" is:

- A statement;
- Made outside of the court proceeding; and
- Offered to prove the truth of what it asserts (i.e., that Avery hit the victim).[8]

Current law provides that hearsay statements are not admissible at trial unless a statutory exception applies.[9] The reasoning behind excluding hearsay statements is that they are considered unreliable as probative evidence. There are many reasons for this unreliability, including: the statement is not made under oath; jurors cannot observe the demeanor of the declarant and judge the witness' credibility; and there is no opportunity to cross-examine the declarant and thereby test his or her credibility.[10]

The bill creates a hearsay exception that applies to statement that describes a domestic violence incident and is made to enable law enforcement to respond to an on-going emergency.

B. SECTION DIRECTORY:

Section 1 amends s. 90.803, F.S., relating to hearsay exceptions.

Section 2 provides that the bill becomes effective upon becoming law.

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[1] 23 Fla. Jur 2d Evidence and Witnesses s. 7, citing *Amos v. Gunn*, 94 So. 615 (Fla. 1922).
[2] Section 90.801, F.S.
[3] Section 90.801, F.S.
[4] A "statement" is either an oral or written assertion or nonverbal conduct of a person if it is intended by the person as an assertion. Section 90.801(1)(a), F.S. For example, the act of pointing to a suspect in a lineup in order to identify her is a "statement." *See* Fed. R. Evid. 801 Advisory Committee Note.
[5] The "declarant" is the person who made the statement. Section 90.801(1)(b), F.S.
[6] Often referred to simply as an "out-of-court statement."
[7] Section 90.801(1)(c), F.S. For example, testimony that the witness heard the declarant state "I saw the light turn red" is *not* hearsay if introduced to prove the declarant was conscious at the time she made the statement. It *would* be hearsay if offered to prove the light was in fact red.
[8] *Rodriguez v. State*, 9 So.3d 745, 745-46 (Fla. 2d DCA 2009).
[9] Section 90.802, F.S.
[10] *Lyles v. State*, 412 So.2d 458, 459 (Fla. 2d DCA 1982); *see also* Charles W. Ehrhardt, *Florida Evidence*, s. 801.1, 770 (2008 ed.).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   The Confrontation Clause of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . ."[11] The Florida Constitution also contains a Confrontation Clause[12], which the Florida Supreme Court has held should be interpreted in the same manner as its federal counterpart.[13]

   The United States' Supreme Court has held that the Confrontation Clause can only be invoked to exclude statements that are considered "testimonial" in nature.[14] The court clarified when a statement would be testimonial when it said:

   > [S]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the

[11] U.S. CONST. AMEND. 6.
[12] FLA. CONST. art. I, s. 16.
[13] *Perez v. State*, 536 So.2d 206, 209 (Fla. 1988).
[14] *Crawford v. Washington*, 541 U.S. 36 (2005).

> primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.[15]

The court in that case focused on the fact that the statements made to a 911 operator were made regarding what was presently happening, and not describing a prior incident.[16] The Court reasoned that the statements in that case were made to allow law enforcement to respond to an on-going emergency, which rendered the statement to be non-testimonial in nature. The court also noted the difficulty of prosecuting domestic violence cases:

> This particular type of crime is notoriously susceptible to intimidation or coercion of the victim to ensure that she does not testify at trial. When this occurs, the Confrontation Clause gives the criminal a windfall.[17]

However, if a prior statement is admitted under this bill, it perhaps cannot be the sole basis for a conviction. The Florida Supreme Court has ruled that a prior inconsistent statement cannot be the sole substantive evidence for a conviction.[18] The rationale likely applies to any inconsistent statement that may be admitted under this bill. Under this rationale, the evidence of the prior statement could be used as some evidence, but could not be the sole source of evidence used to convict an individual.

B. RULE-MAKING AUTHORITY:

Article V, s. 2(a) of the Florida Constitution provides that the Florida Supreme Court is responsible for adopting rules of practice and procedure in all state courts.[19] The case law interpreting Art. V, s. 2 focuses on the distinction between "substantive" and "procedural" legislation. Legislation concerning matters of substantive law are "within the legislature's domain" and do not violate Art. V, s. 2.[20] On the other hand, legislation concerning matters of practice and procedure, are within the Court's "exclusive authority to regulate."[21] However, "the court has refused to invalidate procedural provisions that are 'intimately related to' or 'intertwined with' substantive statutory provisions."[22] Evidence law is considered by the court to be procedural, although the court usually accedes to changes in the statutory evidence laws.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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[15] *Davis v. Washington*, 547 U.S. 813, 822 (2006).
[16] *Id.*
[17] *Id.* at 832-33.
[18] *State v. Moore*, 485 So.2d 1279 (Fla. 1986).
[19] Art. V, s. 2(a), Fla. Const.
[20] *Haven Fed. Sav. & Loan Ass'n v. Kirian*, 579 So.2d 730, 732 (Fla. 1991).
[21] *Id.*
[22] *In re Commitment of Cartwright*, 870 So.2d 152, 158 (Fla. 2d DCA 2004) (citing *Caple v. Tuttle's Design-Build, Inc.*, 753 So. 2d 49, 53-54 (Fla. 2000)).

A bill to be entitled

An act relating to hearsay; amending s. 90.803, F.S.; providing that certain statements regarding an act of domestic violence are an exception to the hearsay rule and thus admissible at a court hearing or trial; providing an effective date.

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

Section 1. Subsection (25) is added to section 90.803, Florida Statutes, to read:

90.803 Hearsay exceptions; availability of declarant immaterial.—The provision of s. 90.802 to the contrary notwithstanding, the following are not inadmissible as evidence, even though the declarant is available as a witness:

(25) DOMESTIC VIOLENCE.—A statement describing any act of domestic violence, as such is defined in s. 741.28, that was made to enable law enforcement assistance to meet an ongoing emergency.

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

PCS for HB 569

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 569 Nursing Home Litigation
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 670

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

SUMMARY ANALYSIS

Current law creates a statutory cause of action for a nursing home resident alleging negligence to sue the nursing home facility and others. The bill:

- Limits the class of persons who may be sued in the initial pleading for negligence or a violation of a nursing home resident's rights to only the nursing home licensee and its management or consulting company, managing employees, and direct caregivers, whether employees or contracted. A passive investor is shielded from liability. Definitions are provided for these individuals or entities;
- Provides that the statutory cause of action is the exclusive remedy against a nursing home licensee, its management or consulting company, managing employees, and direct caregivers alleging direct or vicarious liability for the recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights;
- Provides that a claimant who believes any other person was negligent and thus liable to the resident must get court permission to add such parties to the action as defendants;
- Specifies when a claimant must elect either survival damages or wrongful death damages;
- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed;
- Requires payment of a judgment within 60 days, unless agreed otherwise, or the nursing home is subject to licensure sanction by the Agency for Health Care Administration (AHCA or Agency); and
- Revises provisions relating to the release of a nursing home resident's records.

This bill appears to have an unknown recurring fiscal impact on the state court system and upon the Agency for Health Care Administration. The bill does not appear to have a fiscal impact on local governments.

The bill provides that it takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A nursing home is a facility that provides "24-hour nursing care, personal care, or custodial care for three or more persons . . . who by reason of illness, physical infirmity, or advanced age require [nursing] services" outside of a hospital.[1] Florida nursing homes are regulated under Part II of ch. 400, F.S. The Agency for Health Care Administration (AHCA) is charged with the responsibility of developing rules related to the operation of nursing homes.

Section 400.022, F.S., sets forth various legal rights of nursing home residents. Included in those rights is the right to receive "adequate and appropriate health care and protective and support services." Section 400.023, F.S., provides that any resident whose rights are violated by a nursing home has a cause of action against the nursing home.[2] Sections 400.023-.0238, F.S., create a comprehensive framework for litigation and recovery against a nursing home, including provisions for presuit notice, mediation, availability of records, and punitive damages.

Named Defendants in Nursing Home Cases

Section 400.023, F.S., provides that "any resident whose rights as specified in this part are violated shall have a cause of action." It does not limit who can be named as a defendant in the lawsuit.

This bill provides that only the nursing home licensee, the licensee's management or consulting company, the licensee's managing employees, or a direct caregiver employee may be sued for a violation of a nursing home resident's rights. The bill further provides that a "passive investor is not liable" for a violation of a resident's rights.

The bill creates the following definitions regarding these positions:

- "Licensee" means an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency, and that is legally responsible for all aspects of the operation of the nursing home facility.

- "Management or consulting company" means an individual or entity who contracts with, or receives a fee from a licensee to provide any of the following services for a nursing home facility:
    - Hiring or firing of the administrator or director of nursing;
    - Controlling or having control over the staffing levels at the facility;
    - Having control over the budget of the facility; or
    - Implementing and enforcing the policies and procedures of the facility.

- "Passive investor" means an individual or entity that does not participate in the decisionmaking or operations of a facility.

The bill further provides, regarding named defendants, that before a person other than the licensee, the licensee's management or consulting company, the licensee's managing employees, or a direct

[1] Section 400.021(7), F.S.

[2] The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death. *See* s. 400.023(1), F.S.

caregiver employee can be named as a defendant in a lawsuit alleging violation of a resident's rights, the court or arbitration panel must find that there is sufficient evidence that the individual or entity owed a duty of reasonable care to the resident and the individual or entity breached that duty; and the breach of that duty is a legal cause of loss, injury, or damage to or death of the resident. If the court or arbitration panel makes this finding, and if in a proposed amended pleading it is asserted that such cause of action arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the proposed amendment relates back to the original pleading.[3]

Election of Remedy

Where a violation of rights resulted in the death of a resident, current law requires the resident's estate to elect either survival damages under s. 46.021, F.S., or wrongful death damages under s. 768.21, F.S. Current law is unclear as to when the resident's estate must make the election.[4]

The bill provides that the election of remedies must be made after the verdict and before the judgment is entered.

Causes of Action in Nursing Home Cases

Section 400.023, F.S., provides that "any resident whose rights as specified in this part are violated shall have a cause of action." The statute is cumulative to other types of lawsuits, that is, an aggrieved resident may sue under the statute and may sue under some other legal theory if appropriate.

In general, a statute creating a remedy is considered cumulative to all other remedies. A remedy created by statute may only supplant other statutory and common law remedies if the statute specifically states that it is an exclusive remedy.[5] Section 400.023, F.S., is not an exclusive remedy statute.[6]

This bill amends s. 400.023, F.S., to provide that the provisions of ss. 400.023-.0238, F.S., are the exclusive remedy against a licensee or management company for a cause of action for recovery of personal injury or death of a nursing home resident arising out of negligence or a violation of a resident's statutory rights.

Punitive Damages - Preliminary Finding

Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."[7] Punitive damages are generally limited to three times the amount of compensatory damages or $1 million, whichever is greater.[8] Damages can exceed $1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.[9] If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.[10]

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[3] An amended pleading that relates back is considered to have been filed when the original lawsuit was filed for purposes of determining compliance with the statute of limitations.
[4] *In re Estate of Trollinger*, 9 So.3d 667 (Fla. 2d DCA 2009).
[5] *St. Angelo v. Healthcare and Retirement Corp. of America*, 824 So.2d 997, 999 (Fla. 4th DCA 2002).
[6] *Id.* at 1000.
[7] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).
[8] *See* s. 400.0238(1)(a), F.S.
[9] *See* s. 400.0238(1)(b), F.S.
[10] *See* s. 400.0238(1)(c), F.S.

Current law at s. 400.0237, F.S., allows a claim for punitive damages in a suit alleging a violation of the rights of a nursing home resident. A claimant may not allege a claim in the initial complaint, but must make a reasonable showing that shows a reasonable basis for recovery. A court discussed how a claimant may make a proffer to assert a punitive damages claim:

> [A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.[11,12]

The bill provides that a claimant may not bring a claim for punitive damages unless admissible evidence submitted by the parties provides a reasonable basis for the recovery of punitive damages. The bill thus appears to require the court to conduct an evidentiary hearing rather than accept a simple proffer. The court must determine whether there is sufficient admissible evidence to ensure that there is a reasonable basis to believe that the claimant can demonstrate at trial, by clear and convincing evidence, that the recovery of punitive damages is warranted under a claim for direct or vicarious liability.

Punitive Damages - Against Wrongdoer

Section 400.0237(2), F.S., provides that a defendant in a lawsuit alleging a violation of a nursing home resident's rights may only be liable for punitive damages upon a finding that the defendant personally committed intentional misconduct or committed gross negligence. "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage. "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

The bill amends s. 400.0237(2), F.S., to require a showing that the defendant "actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant." The intentional misconduct must have been committed by that defendant.

Punitive Damages - Vicarious Liability

A punitive damages claim is sometimes brought under a theory of vicarious liability. Vicarious liability is the "imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons."[13] Vicarious liability applies to both general liability and liability for punitive damages, and commonly applies to situations where an employer is held responsible for the acts of an employee.

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[11] *Estate of Despain v. Avante Group, Inc.*, 900 So. 2d 637, 642 (Fla. 5th DCA)(internal citations omitted).
[12] The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation, but the language on proffering in that statute is the same as that in current law.
[13] Black's Law Dictionary, Sixth Edition, at 1566.

The bill amends s. 400.0237(3), F.S., the section on vicarious liability for punitive damages law related to a claim for violation of rights of a nursing home resident, to remove two paragraphs that define direct liability for punitive damages.[14]

Judgments against a Nursing Home

Current law does not specifically address the situation where a nursing home fails to pay an adverse final judgment after being found to have violated a resident's rights.

The bill provides that when an adverse judgment that arises from a court award, arbitration award, or settlement agreement relating to a claim of negligence or violation of a resident's rights against a licensee is final, the licensee must pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days, unless otherwise mutually agreed to in writing by the parties. If the licensee does not do so, the Agency may suspend the nursing home's license, deny a license renewal application, or deny a change of ownership application.

The bill outlines the procedures the Agency must follow upon notification of the existence of an unsatisfied judgment or settlement. The Agency must notify the licensee that within 30 days after receipt of the notification the licensee is subject to disciplinary action unless it provides the Agency with proof of compliance with one of five conditions pertaining to the judgment or settlement. The five conditions are:

- The judgment or settlement has been paid;
- A mutually agreed upon payment plan exists;
- A notice of appeal has been timely filed;
- A court order staying execution of the final judgment exists; or
- The court or arbitration panel that is overseeing the action documents that the licensee is seeking indemnification from an insurance carrier or other party that may be required to pay the award.

If the licensee fails to provide proof of one of the five conditions within the 30 days, the Agency must issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the Agency is in the process of suspending the facility's license. Following or during the period of suspension, a controlling interest in that facility may not seek licensure for the facility at issue. Additionally, if the judgment results from a trial or arbitration, the Agency may not approve a change of ownership until one of the five conditions is met with respect to the judgment.

Release of a Resident's Records

This bill substantially rewords current law regarding release of a resident's records to comply with the federal Health Insurance Portability and Accountability Act[15] (HIPAA) and to provide for release of a resident's medical records.

Upon receipt of a written request that complies with HIPAA or this section of law, a nursing home must provide to a competent resident or to a resident's representative who is authorized to make requests for the resident's records copies of medical records and records concerning the care and treatment of the resident performed by the facility. However, progress notes and consultation report sections of a psychiatric nature may not be released.

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[14] The two removed paragraphs are: "(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;" and "(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant."

[15] Pub. L. 104-191

The bill requires the nursing home to provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident. Current law requires a nursing home to release requested records pertaining to a current resident within 7 working days after receipt of a written request and within 10 working days after receipt of a written request pertaining to a former resident.

The bill identifies to whom and under what circumstances medical records relating to a deceased resident may be released. The list is presented in the order of priority, as follows:

- A court appointed personal representative, executor, administrator, or temporary administrator of the deceased resident's estate, upon submission of a copy of the court order;
- If a judicial appointment has not been made, a person designated in the deceased resident's legally valid will to act as his or her representative, upon submission of a copy of the will; or
- If a judicial appointment or person designated by will is not available, the following individuals may request the medical records upon submission of a letter from the person's attorney verifying the relationship to the deceased resident:
    - A surviving spouse;
    - A surviving child of the resident if there is no spouse; or
    - A parent of the resident if there is no spouse or child.

The bill authorizes a nursing home to refuse to release records to the resident if it would be detrimental to the physical or mental health of the resident. However, the nursing home must provide the records to another medical provider designated by the resident.

A nursing home is granted immunity from criminal or civil laws and is not civilly liable to the resident or other persons for any damages resulting from release of the medical records if the nursing home relies on this section of law and releases the records in good faith. The Agency may not cite a nursing home through the survey process for noncompliance with the requirements of this section of law.

The bill restates current law[16] with respect to the fees a nursing home may charge for copies of the records and allowing an authorized person to examine original records on site. The fees may not exceed $1 per page for the first 25 pages and 25 cents for each additional page. As in current law, the bill provides that a nursing home is not required to provide copies of requested records more frequently than once per month, except that copies of physician reports must be released as often as necessary to allow the effective monitoring of the resident's condition.

Effective Date

The portions of the bill regarding payment of a judgment and access to nursing home records take effect upon becoming a law. The remaining portions of the bill, related to liability of a nursing home, are effective upon becoming law but only apply to causes of action that accrue on or after that date.

B. SECTION DIRECTORY:

Section 1 amends s. 400.023, F.S., relating to civil enforcement.

Section 2 amends s. 400.0237, F.S., relating to punitive damages; pleading; burden of proof.

Section 3 creates s. 400.024, F.S., relating to failure to satisfy a judgment or settlement agreement.

Section 4 amends s. 400.145, F.S., relating to records of care and treatment of resident; copies to be furnished.

[16] *See* s. 400.145, F.S.

Section 5 creates an unnumbered section of law to apply the amendments to ss. 400.023 and 400.0237, F.S., to causes of action accruing on or after the effective date of this act. provides that the bill takes effect upon becoming law.

Section 6 provides that the bill 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 Agency for Health Care Administration may incur administrative and legal costs as it assumes responsibility to notify nursing homes that have not satisfied adverse final judgments or entered into definite terms of a settlement agreement. The Agency may incur administrative and legal costs in enforcing any unpaid judgments by pursuing emergency suspensions and final suspension of nursing home licenses if the statutory conditions are not met. An Agency analysis has not been received yet so the cost is indeterminate at this time.

   There may be additional costs to the court system due to the additional hearings required by the bill. "Increased judicial time and court workload may be anticipated should proposed language be adopted requiring the courts conduct additional evidentiary hearings. Specifically, new language under ss. 400.023(2) and 400.023(1)(b), F.S., respectively requires the courts to determine whether to permit actions against persons or entities other than a nursing home licensee, a management company employed by the licensee, or a direct caregiver employee and whether sufficient evidence exists to support claims for recovery of punitive damages." "The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantifiably establish the increase in judicial time and court workload as discussed in Section III, Anticipated Judicial or Court Workload Impact. . . ."[17]

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 a direct impact on the private sector.

D. FISCAL COMMENTS:

None.

[17] Office of State Courts Administrator, 2014 Judicial Impact Statement regarding SB 670, dated February 10, 2014, on file with the House or Representatives, Civil Justice Subcommittee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The state constitution provides that the "courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay." In *Kluger v. White,* 281 So.2d (Fla. 1973), the Florida Supreme Court held that:

> [w]here a right of access to the courts for redress for a particular injury has been provided...the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.[18]

This bill limits lawsuits against passive investors of a nursing home and provides that the remedies of ss. 400.023-.0238, F.S., are exclusive remedies, thereby foreclosing use of other remedies. Because injured parties would still have a remedy, it is possible that these limits do not implicate the Access to Courts provision. On the other hand, because these limits may limit tort remedies, the courts may review these limits under *Kluger* to determine whether the statutory remedies are a "reasonable alternative."

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

[18] *Kluger v. White,* 281 So.2d 1, 4 (Fla. 1973).

A bill to be entitled

An act relating to nursing home litigation; amending s. 400.023, F.S.; specifying that a cause of action for negligence or violation of residents' rights alleging direct or vicarious liability for the injury or death of nursing home resident may be brought against a licensee, its management or consulting company, its managing employees, and any direct caregiver employees; providing that a cause of action may not be asserted against other individuals or entities except under certain circumstances; revising related judicial procedures; defining terms; amending s. 400.0237, F.S.; providing that a claim for punitive damages may not be brought unless there is a showing of evidence that provides a reasonable basis for recovery of such damages when certain criteria are applied; requiring the court to conduct a hearing to determine whether there is sufficient evidence to demonstrate that the recovery of punitive damages is warranted; requiring the trier of fact to find that a specific person or corporate defendant participated in or engaged in conduct that constituted gross negligence and contributed to the damages or injury suffered by the claimant before a defendant may be held liable for punitive damages; requiring an officer, director, or manager of the employer,

corporation, or legal entity to condone, ratify, or consent to certain specified conduct before holding such person or entity vicariously liable for punitive damages; creating s. 400.024, F.S.; authorizing the Agency for Health Care Administration to suspend the license of a nursing home facility that fails to pay a judgment or settlement agreement; providing exceptions; providing agency procedures for suspension; prohibiting certain parties from applying for a license for an affected facility; amending s. 400.145, F.S.; revising procedures for obtaining the records of a resident; specifying which records may be obtained and who may obtain them; providing immunity from liability to a facility that provides such records in good faith; providing that the agency may not cite a facility that does not meet these records requirements; providing applicability; providing an effective date.

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

Section 1. Section 400.023, Florida Statutes, is amended to read:

400.023 Civil enforcement.—

(1) An exclusive cause of action for negligence or a violation of residents' ~~Any resident whose~~ rights as specified

under ~~in~~ this part which alleges direct or vicarious liability for the personal injury or death of a nursing home resident arising from such negligence or violation of rights and which seeks damages for such injury or death may be brought against the licensee, the licensee's management or consulting company, the licensee's managing employees, and any direct caregivers, whether employees or contractors ~~are violated shall have a cause of action~~. A passive investor is not liable under this section. An action against any other individual or entity may be brought only pursuant to subsection (3).

(a) The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of a deceased resident regardless of the cause of death.

(b) If the action alleges a claim for the resident's rights or for negligence that caused the death of the resident, the claimant shall, after the verdict, but before the judgment is entered, ~~be required to~~ elect ~~either~~ survival damages pursuant to s. 46.021 or wrongful death damages pursuant to s. 768.21. If the action alleges a claim for the resident's rights or for negligence that did not cause the death of the resident, the personal representative of the estate may recover damages for the negligence that caused injury to the resident.

(c) The action may be brought in any court of competent jurisdiction to enforce such rights and to recover actual and

punitive damages for the ~~any~~ violation of the rights of a resident or for negligence.

(d) A ~~Any~~ resident who prevails in seeking injunctive relief or ~~a claim for~~ an administrative remedy is entitled to recover the costs of the action, and a reasonable attorney ~~attorney's~~ fee assessed against the defendant of up to ~~not to exceed~~ $25,000. Fees shall be awarded solely for the injunctive or administrative relief and not for any claim or action for damages whether such claim or action is brought ~~together~~ with a request for an injunction or administrative relief or as a separate action, except as provided under s. 768.79 or the Florida Rules of Civil Procedure. ~~Sections 400.023-400.0238 provide the exclusive remedy for a cause of action for recovery of damages for the personal injury or death of a nursing home resident arising out of negligence or a violation of rights specified in s. 400.022.~~

(e) This section does not preclude theories of recovery not arising out of negligence or s. 400.022 which are available to a resident or to the agency. ~~The provisions of~~ Chapter 766 does ~~do~~ not apply to a ~~any~~ cause of action brought under ss. 400.023-400.0238.

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

(a) "Licensee" means an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the agency, and that is legally responsible for all

aspects of the operation of the nursing home facility.

(b) "Management or consulting company" means an individual or entity who contracts with, or receives a fee from a licensee to provide any of the following services for a nursing home facility:

1. Hiring or firing of the administrator or director of nursing;

2. Controlling or having control over the staffing levels at the facility;

3. Having control over the budget of the facility; or

4. Implementing and enforcing the policies and procedures of the facility.

(c) "Passive investor" means an individual or entity that does not participate in the decisionmaking or operations of a facility.

(3) A cause of action may not be asserted against an individual or entity, other than the licensee, the licensee's management or consulting company, the licensee's managing employees, and any direct caregivers, whether employees or contractors, unless, after a motion for leave to amend hearing, the court or an arbitration panel determines that there is sufficient evidence in the record or proffered by the claimant to establish a reasonable showing that:

(a) The individual or entity owed a duty of reasonable care to the resident and the individual or entity breached that duty; and

(b) The breach of that duty is a legal cause of loss, injury, or damage to or death of the resident.

For purposes of this subsection, if, in a proposed amended pleading, it is asserted that such cause of action arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the proposed amendment relates back to the original pleading.

(4) ~~(2)~~ In a ~~any~~ claim brought pursuant to this part alleging a violation of residents' ~~resident's~~ rights or negligence causing injury to or the death of a resident, the claimant has ~~shall have~~ the burden of proving, by a preponderance of the evidence, that:

(a) The defendant owed a duty to the resident;

(b) The defendant breached the duty to the resident;

(c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and

(d) The resident sustained loss, injury, death, or damage as a result of the breach.

~~Nothing in~~ This part does not ~~shall be interpreted to~~ create strict liability. A violation of the rights set forth in s. 400.022, ~~or~~ in any other standard or guidelines specified in this part, or in any applicable administrative standard or guidelines of this state or a federal regulatory agency is ~~shall be~~ evidence of negligence but is ~~shall~~ not ~~be~~ considered

negligence per se.

(5) ~~(3)~~ In a ~~any~~ claim brought pursuant to this section, a licensee, individual ~~person~~, or entity has ~~shall have~~ a duty to exercise reasonable care. Reasonable care is that degree of care which a reasonably careful licensee, individual ~~person~~, or entity would use under like circumstances.

(6) ~~(4)~~ In a ~~any~~ claim for a residents' ~~resident's~~ rights violation or negligence by a nurse licensed under part I of chapter 464, such nurse has ~~shall have~~ the duty to exercise care consistent with the prevailing professional standard of care for a nurse. The prevailing professional standard of care for a nurse is ~~shall be~~ that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses.

(7) ~~(5)~~ A licensee is ~~shall~~ not ~~be~~ liable for the medical negligence of a ~~any~~ physician rendering care or treatment to the resident except for the administrative services of a medical director as required under ~~in~~ this part. ~~Nothing in~~ This subsection does not ~~shall be construed to~~ protect a licensee, individual ~~person~~, or entity from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

(8) ~~(6)~~ The resident or the resident's legal representative shall serve a copy of a ~~any~~ complaint alleging in whole or in

part a violation of any rights specified in this part to the agency ~~for Health Care Administration~~ at the time of filing the initial complaint with the clerk of the court for the county in which the action is pursued. The requirement of providing a copy of the complaint to the agency does not impair the resident's legal rights or ability to seek relief for his or her claim.

(9)~~(7)~~ An action under this part for a violation of rights or negligence recognized herein is not a claim for medical malpractice, and ~~the provisions of~~ s. 768.21(8) does ~~do~~ not apply to a claim alleging death of the resident.

Section 2. Section 400.0237, Florida Statutes, is amended to read:

400.0237 Punitive damages; pleading; burden of proof.—

(1) A ~~In any action for damages brought under this part, no~~ claim for punitive damages may not be brought under this part ~~shall be permitted~~ unless there is a ~~reasonable~~ showing by admissible evidence in the record or proffered by the parties which provides ~~claimant which would provide~~ a reasonable basis for recovery of such damages when the criteria in this section are applied.

(a) The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure in accordance with evidentiary requirements set forth in this section.

(b) The court shall conduct a hearing to determine whether there is sufficient admissible evidence submitted by the parties

to ensure that there is a reasonable basis to believe that the claimant, at trial, will be able to demonstrate by clear and convincing evidence that the recovery of such damages is warranted under a claim for direct liability as specified in subsection (2), or a claim for vicarious liability as specified in subsection (3).

(c) The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. ~~No~~ Discovery of financial worth may not ~~shall~~ proceed until ~~after~~ the pleading on ~~concerning~~ punitive damages is approved by the court ~~permitted~~.

(2) A defendant may be held liable for punitive damages only if the trier of fact, by ~~based on~~ clear and convincing evidence, finds that a specific person or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constitutes gross negligence and contributed to the loss, damages, or injury suffered by the claimant ~~the defendant was personally guilty of intentional misconduct or gross negligence~~. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant against whom punitive damages are sought had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that

knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that a ~~the~~ defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of vicarious liability of an individual, employer, principal, corporation, or other legal entity, punitive damages may not be imposed for the conduct of an employee or agent unless ~~only if~~ the conduct of the employee or agent meets the criteria specified in subsection (2) and an officer, director, or manager of the actual employer, corporation, or legal entity condoned, ratified, or consented to the specific conduct as provided in subsection (2)~~:~~

~~(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;~~

~~(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or~~

~~(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant~~.

(4) The plaintiff shall ~~must~~ establish at trial, by clear and convincing evidence, its entitlement to an award of punitive damages. The "greater weight of the evidence" burden of proof

applies to a determination of the amount of damages.

~~(5) This section is remedial in nature and shall take effect upon becoming a law.~~

Section 3. Section 400.024, Florida Statutes, is created to read:

400.024 Failure to satisfy a judgment or settlement agreement.—

(1) Upon the entry of an adverse final judgment arising from an award, including an arbitration award, from a claim of negligence or violation of residents' rights, in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim pursuant to s. 400.023, as determined by a court or arbitration panel, the licensee, as defined in s. 400.023(2), shall pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days after the date such judgment becomes final and subject to execution, unless otherwise mutually agreed to in writing by the parties. Failure to pay shall provide grounds for the agency to suspend a nursing home facility license, deny a license renewal application, or deny a change of ownership application as provided in this section.

(2) Upon notification of the existence of an unsatisfied judgment or settlement pursuant to subsection (1), the agency shall notify the licensee by certified mail that it is subject to disciplinary action unless, within 30 days after receipt of the notification, the licensee:

(a) Provides proof that the unsatisfied judgment or settlement has been paid in the amount specified;

(b) Provides proof of the existence of a payment plan mutually agreed upon by the parties in writing;

(c) Furnishes the agency with a copy of a timely filed notice of appeal;

(d) Furnishes the agency with a copy of a court order staying execution of the final judgment; or

(e) Provides written proof from a court or an arbitration panel overseeing the action that it is seeking indemnification from an insurance carrier or any other party that it believes is required to pay the award.

(3) If, after 30 days, the licensee fails to demonstrate compliance in accordance with subsection (2), the agency shall issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the agency is in the process of suspending the facility's license.

(4) Following or during the period of suspension, an individual or entity identified as having a controlling interest in the facility whose license is being suspended, as identified on the facility's licensee application, may not file an application for licensure of the facility at issue. Further, if a judgment at trial or arbitration occurs, the agency may not approve a change of ownership application to a related party until the requirements of subsection (1) or subsection (2) are met.

Section 4. Section 400.145, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 400.145, F.S., for present text.)

400.145 Copies of records of care and treatment of resident.—

(1) Upon receipt of a written request that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and this section, a nursing home facility shall furnish to a competent resident or to a representative of that resident who is authorized to make requests for the resident's records under HIPAA or subsection (2) copies of the resident's paper and electronic records that are in possession of the facility. Such records must include any medical records and records concerning the care and treatment of the resident performed by the facility, except for progress notes and consultation report sections of a psychiatric nature. The facility shall provide the requested records within 14 working days after receipt of a request relating to a current resident or within 30 working days after receipt of a request relating to a former resident.

(2) Requests for a deceased resident's medical records under this section may be made by:

(a) Any person appointed by a court to act as the personal representative, executor, administrator, or temporary administrator of the deceased resident's estate.

(b) If a judicial appointment has not been made as provided in paragraph (a), any person designated by the resident to act as his or her representative in a legally valid will; or

(c) If there is no judicially appointed representative or person designated by the resident in a valid will, by only the following individuals:

1. A surviving spouse;

2. If there is no surviving spouse, a surviving child of the resident;

3. If there is no surviving spouse or child, a parent of the resident.

(3) All requests for a deceased resident's records made by a person authorized under:

(a) Paragraph (2)(a) must include a copy of the court order appointing such person as the representative of the resident's estate.

(b) Paragraph (2)(b) must include a copy of the will designating the person as the resident's representative.

(c) Paragraph (2)(c) must be accompanied by a letter from the person's attorney verifying the person's relationship to the resident and the absence of a court-appointed representative and will.

(4) A nursing home facility may charge a reasonable fee for the copying of resident records. Such fee may not exceed $1 per page for the first 25 pages and 25 cents per page for each additional page. The facility shall allow a person who is

authorized to act on behalf of the resident to examine the original records, microfilms, or other suitable reproductions of the records in its possession upon any reasonable terms imposed by the facility to ensure that the records are not damaged, destroyed, or altered.

(5) If a nursing home facility determines that disclosure of the records to the resident would be detrimental to the physical or mental health of the resident, the facility may refuse to furnish the record; however, upon such refusal, the resident's record shall, upon written request by the resident, be furnished to any other medical provider designated by the resident.

(6) A nursing home facility that in good faith and in reliance upon this section releases copies of records shall be indemnified by the requesting party, and may not be found to have violated any criminal or civil laws, and is not civilly liable to the resident, the resident's estate, or any other person for any damages resulting from such release.

(7) A nursing home facility is not required to provide copies of a resident's records requested pursuant to this section more than once per month, except that copies of physician reports in the resident's records must be provided as often as necessary to allow the effective monitoring of the resident's condition.

(8) A nursing home facility may not be cited by the agency through the survey process for any alleged or actual

noncompliance with any of the requirements of this section.

Section 5. The amendments to ss. 400.023 and 400.0237 made by this act apply to causes of action accruing on or after the effective date of this act.

Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 755 Family Law
SPONSOR(S): Steube
TIED BILLS: None **IDEN./SIM. BILLS:** SB 104

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

SUMMARY ANALYSIS

The bill amends child support guidelines to require re-computation of the support award where a change in income would change the award more than 15%, to require imputation of income even where the unemployment or underemployment is not voluntary, and to add that the court may take into account the parenting plan recognized by the parties, even if it is not reduced to writing, in awarding child support outside the statutory schedule.

The bill creates a task force to study the child support guidelines and produce a report prior to next years' legislative session.

The bill amends the Florida Evidence Code to allow the court to take judicial notice of court records in determining family law cases where there is imminent threat of harm, notice is impractical, and a later hearing is scheduled to challenge the matter. The bill adds conforming references regarding this provision to statutes which address injunctions for domestic and repeat violence, and injunctions against stalking.

The portion of the bill creating a task force appears to require an unknown state nonrecurring expenditure in FY 2014-15. The bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Support Guidelines

Current law provides child support guidelines that a court must use in determining a child support award. After considering all relevant factors, the judge may order a payment that varies from the statutory amount by 5% in either direction. The judge may provide an award that varies by more than 5% only upon a written finding explaining why ordering a payment within 5% of the statutory amount would be unjust or inappropriate.[1]

Substantial Change in Circumstances

Once an award is in place, either party can petition for a change in the child support amount, but only upon a showing of a "substantial change in circumstances." A court may find that a difference in outcome of at least 15% between the existing monthly obligation and the amount provided for under the guidelines or $50, whichever is greater, is a substantial change in circumstances.[2]

The bill amends s. 61.30(1)(b), F.S., to provide that the court must find that there is a substantial change in circumstances warranting modification of an existing child support award if the difference between the existing monthly obligation and the amount provided for under the guidelines is at least 15% or $50, whichever is greater. If so, no other grounds for modification need be shown.

Imputed Income

In general, child support guidelines are based on a formula that is based on the actual incomes of the parties and the time-sharing arrangement. Where a party refuses to disclose income, or where the court finds that the party could and should earn a better income, the court may impute to that party the court's expectation of income. When imputing income, the court looks to the parent's employment potential and probable earnings based upon recent work history, occupational qualifications, and prevailing earnings level in the community.[3] To impute income, the court must find that the unemployment or underemployment causing the lower actual income is voluntary, unless the court finds a physical or mental incapacity or another circumstance over which the parent has no control.

The bill amends s. 61.30(2)(b), F.S., to require a court to impute income to an unemployed or underemployed parent even if the unemployment or underemployment is not voluntary.

Impact of Parenting Plan on Child Support Calculation

Child support guidelines allow the court to adjust a statutory award based upon certain factors. One such factor is the "parenting plan." Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.[4] The parenting plan is defined by statute, and must be reduced to a document endorsed by the court.[5] The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.[6]

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[1] Section 61.30(1)(a), F.S.
[2] Section 61.30(1)(b), F.S.
[3] Section 61.30(2), F.S.
[4] Section 61.30(11), F.S.
[5] Section 61.046(14), F.S.
[6] *See State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).

Recently, a number of child support cases have turned upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.[7]

The bill amends s. 61.30(11), F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors "a court ordered timesharing schedule or a timesharing schedule exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

Statewide Task Force on Child Support

The bill creates a statewide task force to examine and analyze the emerging problem of inequity in child support and to review the child support guidelines. The task force will also review the child support guidelines' application in Title IV-D cases and non-Title IV-D cases.[8] The task force is created for the express purpose of collecting, analyzing, and evaluating the dollar amount of child support obligations for each income level, and exploring new methods of calculation. The task force will provide policy recommendations and draft legislative changes considering new methods of calculations for the Legislature.

The task force will consist of the following members or their designates:

- The Attorney General, who will serve as chair;
- The Surgeon General, who will serve as vice chair;
- The Secretary of the Department of Children and Families;
- The executive director of the Department of Law Enforcement;
- A legislator appointed by the President of the Senate;
- A legislator appointed by the Speaker of the House; and
- Three practicing, board-certified family law attorneys with at least 10 years of experience.

The Office of the Attorney General must provide staffing for the task force. Task force members are entitled to receive reimbursement for per diem and travel expenses. The task force will hold an organizational meeting by August 1, 2014 and must meet at least twice a year, with additional meetings at the discretion of the chair.

The task force has the following duties:

- Collect and organize data concerning existing child support obligations for each income level.
- Collect and organize data concerning the costs associated with child support modification and orders in the court system.
- Identify available federal, state, and local programs that provide services to individuals under Title IV-D.
- Require the Department of Revenue to report the exact number and cost associated with Title IV-D cases, including individuals who are requesting assistance regardless of nonindigent status.

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[7] *Id.*

[8] Title IV-D refers to 42 U.S.C. ss. 651 *et seq.* In the context of this bill, the reference to "Title IV-D cases" appears to reference cases where the state pays the legal fees of certain persons in child support cases. Title IV-D funds are generally supposed to be for a person who is on public assistances, but in practice, it is likely that people who request representation are granted counsel regardless of their means.

- Update the information in the 2008 report commissioned by the Florida Legislature by Thomas S. McCaleb et al., "Review and Update of Florida's Child Support Guidelines, Report to the Florida Legislature" including, but not limited to:
    - Florida's existing schedule amounts based on the latest available economic data in anticipation of the state continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such data is publicly available.
    - Whether the existing schedule needs to be updated to reflect the effects of inflation, recommend the amounts of any such update, and evaluate the methodological validity of this approach.
    - Within the context of models other than the income shares model, determine how selected other states treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.
    - Within the context of models other than the income shares model, evaluate the treatment of low-income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the self-support reserve in the income shares model.
    - Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experience in other states not using the income shares model.
    - Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.
    - Itemize the tax benefits and burdens of child support in regard to the child care tax credit.

The task force is required to submit an interim report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by January 15, 2015, and a final report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by February 15, 2015. The authority for the task force is repealed upon submission of the final report or on February 15, 2015, whichever occurs earlier.

Judicial Notice

Judicial notice takes the place of proof, and makes evidence unnecessary.[9] The Florida Evidence Code[10] addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.[11]

Generally, notice is afforded to both parties before the court will take judicial notice of a fact.[12] The court must give each party an opportunity to challenge the information offered for judicial notice prior to taking it into evidence.[13]

In a recent case,[14] a judge issued a domestic violence injunction[15] based upon testimony she observed in a separate court matter between the parties. The ruling was entered without giving advance notice of the matter, pursuant to the current terms of the statute. Because the court essentially took judicial notice of the other hearing in ruling on the injunction, the injunction was reversed.[16]

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[9] *Amos v. Moseley*, 77 So. 619 (Fla. 1917).
[10] Chapter 90, F.S.
[11] Sections 90.201-.207, F.S.
[12] Sections 90.203-.204, F.S.
[13] *Id.*
[14] *Coe v. Coe*, 39 So.3d 542 (Fla. 2d DCA 2010).
[15] Domestic violence injunctions are governed by s. 741.30, F.S.
[16] *Coe* at 543.

The bill amends s. 90.204, F.S., to provide that in a family law case the court may take judicial notice of "records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,"[17] when:

- Imminent danger has been alleged.
- It is impractical to give notice.
- A later opportunity is provided to challenge the matter noticed.

The judge must, within two business days, file a notice in the pending case of the matter judicially noticed.

The bill will allow the court to take judicial notice without further proof of court records at the state and national level in determining family law cases. Family law cases are defined by the Florida Rules of Judicial Administration.

Conforming changes are made to ss. 741.30 (domestic violence), 784.046 (repeat violence), and 784.0485 (stalking), F.S., to include court records in the evidence a judge may take into account when considering an injunction to prevent domestic violence, repeat violence, or stalking

B. SECTION DIRECTORY:

Section 1 amends s. 61.30, F.S., regarding child support guidelines; retroactive child support.

Section 2 creates the Statewide Task Force on Child Support.

Section 3 amends s. 90.204, F.S., regarding determination of propriety of judicial notice and nature of matter noticed.

Section 4 amends s. 741.30, F.S., regarding domestic violence.

Section 5 amends s. 784.046, F.S., regarding action by victim or repeat violence, sexual violence, or dating violence for protective injunction.

Section 6 amends s. 784.0485, F.S., regarding stalking.

Section 7 provides an effective date of July 1, 2004.

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:

   Section 2 of the bill appears to require a nonrecurring state fiscal expenditure in FY 2014-25, although the amount is unknown. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

[17] Section 90.202(6), F.S.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

Section 2 of the bill: The Department of Legal Affairs has not provided a fiscal analysis for this bill. A similar report on the child support guidelines was commissioned last year at a cost of $250,000. The bill also requires staff and travel costs that would be in addition to the estimated cost of the report.

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:

The bill directs a task force to, among other things, update a 2008 report on the child support guidelines. That report was updated in a report dated December 14, 2011, and again in a report dated December 15, 2013.

The bill places 3 private attorneys on a task force (see lines 224-226) but does not indicate how they are selected.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to family law; amending s. 61.30, F.S.; providing that the child support guidelines shall provide the basis for determining whether there is a substantial change in circumstances; providing that the guidelines may serve as the sole basis to support a modification; requiring that monthly income be imputed to all unemployed or underemployed parents, not just those whose unemployment or underemployment was voluntary; providing for consideration of time-sharing schedules or time-sharing arrangements as a factor in the adjustment of awards of child support; creating the Statewide Task Force on Child Support; providing legislative intent; providing for membership; providing for administrative support; providing for meetings; specifying duties; requiring reports; providing for future repeal; amending s. 90.204, F.S.; authorizing judges in family cases to take judicial notice of certain court records without prior notice to the parties when imminent danger to persons or property has been alleged and it is impractical to give prior notice; providing for a deferred opportunity to present evidence; requiring a notice of such judicial notice having been taken to be filed within a specified period; providing that the term "family cases" has the same meaning as provided in the Rules of Judicial Administration; amending ss. 741.30, 784.046, and 784.0485, F.S.; creating an

exception to a prohibition against using evidence other than the verified pleading or affidavit in an ex parte hearing for a temporary injunction for protection against domestic violence, repeat violence, sexual violence, dating violence, or stalking; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1), paragraph (b) of subsection (2), and subsection (11) of section 61.30, Florida Statutes, are amended to read:

61.30 Child support guidelines; retroactive child support.—

(1)

(b) The guidelines shall ~~may~~ provide the basis for proving a substantial change in circumstances upon which a modification of an existing order will ~~may~~ be granted, such basis may be used as the sole basis to support a modification. However, the difference between the existing monthly obligation and the amount provided for under the guidelines shall be at least 15 percent or $50, whichever amount is greater, before the court may find that the guidelines provide a substantial change in circumstances.

(2) Income shall be determined on a monthly basis for each parent as follows:

(b) Monthly income shall be imputed to an unemployed or underemployed parent ~~if such unemployment or underemployment is~~

~~found by the court to be voluntary on that parent's part~~, absent a finding of fact by the court of physical or mental incapacity or other circumstances over which the parent has no control. ~~In the event of such voluntary unemployment or underemployment,~~ The employment potential and probable earnings level of the parent shall be determined based upon his or her recent work history, occupational qualifications, and prevailing earnings level in the community if such information is available. If the information concerning a parent's income is unavailable, a parent fails to participate in a child support proceeding, or a parent fails to supply adequate financial information in a child support proceeding, income shall be automatically imputed to the parent and there is a rebuttable presumption that the parent has income equivalent to the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census. However, the court may refuse to impute income to a parent if the court finds it necessary for that parent to stay home with the child who is the subject of a child support calculation or as set forth below:

1. In order for the court to impute income at an amount other than the median income of year-round full-time workers as derived from current population reports or replacement reports published by the United States Bureau of the Census, the court must make specific findings of fact consistent with the requirements of this paragraph. The party seeking to impute income has the burden to present competent, substantial evidence that~~:~~

~~a. The unemployment or underemployment is voluntary; and~~

~~b.~~ identifies the amount and source of the imputed income, through evidence of income from available employment for which the party is suitably qualified by education, experience, current licensure, or geographic location, with due consideration being given to the parties' time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

2. Except as set forth in subparagraph 1., income may not be imputed based upon:

a. Income records that are more than 5 years old at the time of the hearing or trial at which imputation is sought; or

b. Income at a level that a party has never earned in the past, unless recently degreed, licensed, certified, relicensed, or recertified and thus qualified for, subject to geographic location, with due consideration of the parties' existing time-sharing schedule and their historical exercise of the time-sharing provided in the parenting plan or relevant order.

(11)(a) The court may adjust the total minimum child support award, or either or both parents' share of the total minimum child support award, based upon the following deviation factors:

1. Extraordinary medical, psychological, educational, or dental expenses.

2. Independent income of the child, not to include moneys received by a child from supplemental security income.

3. The payment of support for a parent which has been regularly paid and for which there is a demonstrated need.

4. Seasonal variations in one or both parents' incomes or expenses.

5. The age of the child, taking into account the greater needs of older children.

6. Special needs, such as costs that may be associated with the disability of a child, that have traditionally been met within the family budget even though fulfilling those needs will cause the support to exceed the presumptive amount established by the guidelines.

7. Total available assets of the obligee, obligor, and the child.

8. The impact of the Internal Revenue Service Child & Dependent Care Tax Credit, Earned Income Tax Credit, and dependency exemption and waiver of that exemption. The court may order a parent to execute a waiver of the Internal Revenue Service dependency exemption if the paying parent is current in support payments.

9. An application of the child support guidelines schedule that requires a person to pay another person more than 55 percent of his or her gross income for a child support obligation for current support resulting from a single support order.

10. The particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties, such as where the child spends a significant amount of time, but less than 20 percent of the overnights, with one parent, thereby reducing the financial expenditures incurred by the other parent; or the refusal of a

parent to become involved in the activities of the child.

11. Any other adjustment that is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt. Such expense or debt may include, but is not limited to, a reasonable and necessary expense or debt that the parties jointly incurred during the marriage.

(b) Whenever a particular parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement exercised by agreement of the parties provides that each child spend a substantial amount of time with each parent, the court shall adjust any award of child support, as follows:

1. In accordance with subsections (9) and (10), calculate the amount of support obligation apportioned to each parent without including day care and health insurance costs in the calculation and multiply the amount by 1.5.

2. Calculate the percentage of overnight stays the child spends with each parent.

3. Multiply each parent's support obligation as calculated in subparagraph 1. by the percentage of the other parent's overnight stays with the child as calculated in subparagraph 2.

4. The difference between the amounts calculated in subparagraph 3. shall be the monetary transfer necessary between the parents for the care of the child, subject to an adjustment for day care and health insurance expenses.

5. Pursuant to subsections (7) and (8), calculate the net amounts owed by each parent for the expenses incurred for day care and health insurance coverage for the child.

6. Adjust the support obligation owed by each parent pursuant to subparagraph 4. by crediting or debiting the amount calculated in subparagraph 5. This amount represents the child support which must be exchanged between the parents.

7. The court may deviate from the child support amount calculated pursuant to subparagraph 6. based upon the deviation factors in paragraph (a), as well as the obligee parent's low income and ability to maintain the basic necessities of the home for the child, the likelihood that either parent will actually exercise the time-sharing schedule set forth in the parenting plan, a court-ordered time-sharing schedule, or a particular time-sharing arrangement exercised by agreement of the parties ~~granted by the court~~, and whether all of the children are exercising the same time-sharing schedule.

8. For purposes of adjusting any award of child support under this paragraph, "substantial amount of time" means that a parent exercises time-sharing at least 20 percent of the overnights of the year.

(c) A parent's failure to regularly exercise the time-sharing schedule set forth in the parenting plan, a court-ordered ~~or agreed~~ time-sharing schedule, or a particular time-sharing arrangement exercised by agreement of the parties not caused by the other parent which resulted in the adjustment of the amount of child support pursuant to subparagraph (a)10. or paragraph (b) shall be deemed a substantial change of circumstances for purposes of modifying the child support award. A modification pursuant to this paragraph is retroactive to the date the noncustodial parent first failed to regularly exercise

the court-ordered or agreed time-sharing schedule.

Section 2. Statewide Task Force on Child Support.—

(1) The Legislature declares that the purpose of this section is to create a task force to examine and analyze the emerging problem of inequity in child support and review the child support guidelines as provided in ss. 61.29 and 61.30, Florida Statutes, and their application in representation in the court system in Title IV-D cases and non-Title IV-D cases.

(2)(a) There is created within the Department of Legal Affairs the Statewide Task Force on Child Support, a task force as defined in s. 20.03, Florida Statutes. The task force is created for the express purpose of collecting, analyzing, evaluating the dollar amount of child support obligations for each income level, and exploring new methods of calculation. The task force shall provide policy recommendations and draft legislative changes considering new methods of calculations for the Legislature.

(b) The task force shall consist of the following members, or the member's designee:

1. The Attorney General, who shall serve as chair.

2. The Surgeon General, who shall serve as vice chair.

3. The Secretary of Children and Families.

4. The executive director of the Department of Law Enforcement.

5. A legislator appointed by the President of the Senate.

6. A legislator appointed by the Speaker of the House of Representatives.

7. Three practicing, board-certified, family law attorneys

who each have at least 10 years of practice experience in the state.

(c) Members of the task force are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(d) The Department of Legal Affairs shall provide the task force with staff necessary to assist the task force in the performance of its duties.

(3) The task force shall hold its organizational meeting by August 1, 2014. Thereafter, the task force shall meet at least twice per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. A majority of the members of the task force constitutes a quorum.

(4) The task force shall:

(a) Collect and organize data concerning existing child support obligations for each income level.

(b) Collect and organize data concerning the costs associated with child support modification and orders in the court system.

(c) Identify available federal, state, and local programs that provide services to individuals under Title IV-D.

(d) Require the Department of Revenue to report the exact number and cost associated with Title IV-D cases, including individuals who are requesting assistance regardless of nonindigent status.

(e) Update the information in the 2008 report commissioned by the Florida Legislature by Thomas S. McCaleb et al., "Review

and Update of Florida's Child Support Guidelines, Report to the Florida Legislature" including, but not limited to:

1. Florida's existing schedule amounts based on the latest available economic data in anticipation of the state continuing to use the income shares model to incorporate more recent data on family income shares allocated to children to the extent such data is publicly available.

2. Whether the existing schedule needs to be updated to reflect the effects of inflation, recommend the amounts of any such update, and evaluate the methodological validity of this approach.

3. Within the context of models other than the income shares model, determine how selected other states treat the apportionment of child support to accommodate visitation arrangements and cases of joint or shared custody.

4. Within the context of models other than the income shares model, evaluate the treatment of low-income parents and suggest possible alternatives based on the experience in other states that mitigate or avoid the anomalies created by the self-support reserve in the income shares model.

5. Evaluate the problems created by imputation of income and consider alternative methods of imputing income, including the possible consequences of not imputing income, based on experience in other states not using the income shares model.

6. Evaluate the methodological validity of adjusting the schedule of obligations to account for intrastate variations in the cost of living.

7. Itemize the tax benefits and burdens of child support

in regard to the child care tax credit.

(5) The task force shall submit an interim report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by January 15, 2015, and a final report of its recommendations to the President of the Senate and the Speaker of the House of Representatives by February 15, 2015.

(6) This section is repealed upon submission of the final report or on February 15, 2015, whichever occurs earlier.

Section 3. Subsection (4) is added to section 90.204, Florida Statutes, to read:

90.204 Determination of propriety of judicial notice and nature of matter noticed.—

(4) In family cases, the court may take judicial notice of a matter described in s. 90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term "family cases" has the same meaning as provided in the Rules of Judicial Administration.

Section 4. Paragraph (b) of subsection (5) of section 741.30, Florida Statutes, is amended to read:

741.30 Domestic violence; injunction; powers and duties of

court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, no evidence other than verified pleadings or affidavits shall be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. When the only ground for denial is no appearance of an immediate and present danger of domestic violence, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. Nothing herein affects a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 5. Paragraph (b) of subsection (6) of section 784.046, Florida Statutes, is amended to read:

784.046 Action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.—

(6)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such temporary injunction, no evidence other than the verified pleading or affidavit shall be used as evidence, unless the respondent appears at the hearing

or has received reasonable notice of the hearing.

Section 6. Paragraph (b) of subsection (5) of section 784.0485, Florida Statutes, is amended to read:

784.0485 Stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.—

(5)

(b) Except as provided in s. 90.204, in a hearing ex parte for the purpose of obtaining such ex parte temporary injunction, evidence other than verified pleadings or affidavits may not be used as evidence, unless the respondent appears at the hearing or has received reasonable notice of the hearing. A denial of a petition for an ex parte injunction shall be by written order noting the legal grounds for denial. If the only ground for denial is no appearance of an immediate and present danger of stalking, the court shall set a full hearing on the petition for injunction with notice at the earliest possible time. This paragraph does not affect a petitioner's right to promptly amend any petition, or otherwise be heard in person on any petition consistent with the Florida Rules of Civil Procedure.

Section 7. This act shall take effect July 1, 2014.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Civil Justice Subcommittee

Representative Steube offered the following:

Amendment

Remove lines 205-252 and insert:

(2)(a) There is created within the Department of Revenue the Statewide Task Force on Child Support, a task force as defined in s. 20.03, Florida Statutes. The task force is created for the express purpose of collecting, analyzing, evaluating the dollar amount of child support obligations for each income level, and exploring new methods of calculation. The task force shall provide policy recommendations and draft legislative changes considering new methods of calculations for the Legislature.

(b) The task force shall consist of the following members, or the member's designee:

1. The Executive Director of the Department of Revenue,

who shall serve as chair.

2. The Surgeon General, who shall serve as vice chair.

3. The Secretary of Children and Families.

4. The executive director of the Department of Law Enforcement.

5. A legislator appointed by the President of the Senate.

6. A legislator appointed by the Speaker of the House of Representatives.

8. A circuit judge with experience in hearing family law cases, appointed by the Chief Justice.

9. A general magistrate with experience in hearing family law cases, appointed by the Chief Justice.

10. Three practicing, board-certified, family law attorneys who each have at least 10 years of practice experience in the state, appointed by the Governor.

(c) The Department of Revenue shall provide the task force with staff necessary to assist the task force in the performance of its duties.

(3) The task force shall hold its organizational meeting by August 1, 2014. Thereafter, the task force shall meet at least twice per year. Additional meetings may be held if the chair determines that extraordinary circumstances require an additional meeting. A majority of the members of the task force constitutes a quorum.

(4) The task force shall:

(a) Collect and organize data concerning existing child

support obligations for each income level.

(b) Collect and organize data concerning the costs associated with child support modification and orders in the court system.

(c) Identify available federal, state, and local programs that provide services to individuals under Title IV-D.

(d) Require the Department of Revenue to report the exact number and cost associated with Title IV-D cases, including individuals who are requesting assistance regardless of nonindigent status.

(e) Update the information in the 2013 report commissioned by the Florida Legislature by Stefan C. Norbinn et al., Review

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 807 Residential Properties
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 798

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

SUMMARY ANALYSIS

Relating to the statutory regulation of various forms of residential properties, this bill:

- Defines the term "timeshare project" and substitutes the new term for "timeshare plan" wherever such accommodations are exempt from public lodging regulation.
- Specifies that the statutory notice required of a homeowners' association to renew its covenants and restrictions for an additional 30 years is sufficient.
- Provides that an amendment to the declaration of condominium that prohibits unit owners from renting their units does not apply to unit owners who vote against the measure.
- Provides that a condominium association may access an abandoned unit for the purpose of preservation of the unit and may seek appointment of a receiver to lease the unit to offset costs of maintenance.
- Broadens the information that a condominium, cooperative or homeowners' association may include in a member directory.
- Requires outgoing board members of a condominium or cooperative to relinquish possession of records and property of the association to their successors in office, and authorizes the state to enforce compliance.
- Provides that if 20 percent of the voting interests of the association petition the board to address an item of business, the board, within 60 days shall place the item on the agenda.
- Extends condominium bulk assignee and bulk buyer provisions by one year to July 1, 2016.
- Amends cooperative law to match condominium law on financial oversight, the prohibition on office-holding if delinquent or charged with theft of association funds, and emergency powers.
- Amends homeowners' association emergency powers to parallel those of a condominium.
- Simplifies the notice requirements regarding amendments to the restrictive covenants of a homeowners' association.

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

The effective date of the bill is July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Timeshares and Public Lodging Regulation

The state Division of Hotels and Restaurants[1] regulates public lodging establishments, primarily related to health and safety issues.[2] A timeshare plan[3] may be a "public lodging establishment"[4] if it is rented for less than 30 days,[5] as a "vacation rental."[6] Timeshares and other vacation plans are more extensively regulated by the Division of Condominiums, Timeshares and Mobile Homes.[7] Both divisions are housed in the Department of Business and Professional Regulation.[8]

This bill defines the term "timeshare project" to mean a timeshare property regulated under ch. 721, F.S. The bill changes within public lodging establishment law the term "timeshare plan" to the more appropriate term "timeshare project," and adds the term "timeshare project" wherever the term "vacation plan" or "vacation rental" appears in the regulation of public lodging establishments.

Marketable Record Title Act (MRTA) and Homeowners Associations

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.[9] In general, MRTA provides that any person vested with any estate in land of record for 30 years or more has a marketable record title free and clear of most claims. One effect of MRTA is that homeowner association covenants can lose effect unless the association timely files a renewal. A homeowners' association wishing to timely renew its covenants may only do so under the following conditions:

- The board must give written notice to every parcel owner in a form set by statute;[10]
- The notice must include notice of a meeting of the board of directors including where the directors will decide whether to renew the covenants;[11]
- The board of directors of the association must approve the renewal by a two-thirds vote;[12]
- Notice of the renewal must be recorded in the Official Records of the county;[13] and
- A copy of the notice must be published once a week for 2 consecutive weeks in the form and manner as other legal notices are published.[14]

The bill provides that no notice other than the statutory notice is required.

Condominium Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned, but have an undivided share of access to common facilities.[15] A

[1] Section 509.013(1), F.S.
[2] Section 509.032(1), F.S.
[3] Section 721.05(39), F.S.
[4] Section 509.013(4)(a), F.S.
[5] Section 509.013(4)(b)4., F.S.
[6] Section 509.242(1)(c), F.S.
[7] See generally, ch. 721, F.S.
[8] Section 721.05(11), F.S.
[9] *Blanton v. City of Pinellas Park*, 887 So.2d 1224, 1227 (Fla. 2004).
[10] Section 712.06(1)(b), F.S.
[11] Section 712.05(1), F.S.
[12] *Id.*
[13] Section 712.06(2), F.S.
[14] Section 712.06(3)(b), F.S.

condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[16] A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.[17] Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, establishment of a quorum, voting rights, and election and removal of board members.[18]

Amendment to Limit or Prohibit Rentals

A condominium association may amend its declaration of condominium to limit or prohibit units from being leased.[19] Current law provides that any such amendment only applies to a unit whose owner has consented to the restriction, or to an owner who purchased the unit after the restriction was enacted. The bill amends s. 718.110(13), F.S., to provide that any amendment to the declaration of condominium that limits or prohibits rental of a unit applies to all units in the condominium association other than a unit whose owner voted against the amendment.

Access to an Abandoned Condominium Unit

A condominium association has the right to access each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements, to any portion of a unit maintained by the association pursuant to the declaration, or as necessary to prevent damage to the common elements or to a unit. The bill amends s. 718.111(5), F.S., to add that the condominium association also has a right of access to an abandoned unit to:

- Inspect the unit and adjoining common elements;
- Make repairs to the unit or to the common elements serving the unit, as needed;
- Repair the unit if mold or deterioration is present;
- Turn on the utilities for the unit; or
- Otherwise maintain, preserve, or protect the unit and adjoining common elements.

A unit is presumed to be abandoned if the unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or no tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

Before entry, the association must give at least 2 days' notice of the association's intent to enter the unit, which must be mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

The association may recover from the unit owner any costs incurred by the association. The association may place a lien against the unit to enforce collection of the expense.

The association may petition a court of competent jurisdiction to appoint a receiver and may lease an abandoned unit for the benefit of the association to offset the association's expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the

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[15] Section 718.103(11), F.S.
[16] Section 718.104(2), F.S.
[17] Section 718.104(5), F.S.
[18] Section 718.112, F.S.
[19] *Woodside Village Condominium Ass'n, Inc. v. Jahren*, 806 So.2d 452 (Fla. 2002).

receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney's fees.

Responsibility for Damage to the Condominium

A condominium association is required to maintain a property insurance policy covering loss or damage to the condominium.[20] At one time, the split between association responsibility for loss and owner responsibility was set in the declaration of condominium, but that required insurance companies to review condominium documents when writing coverage and inevitably led to gaps where neither the association nor a member would have insurance for a loss, or led to unnecessary double coverage. Section 718.111(11)(f), F.S., resolves these insurance provisions by providing a clear split between association coverage and unit owner coverage. Where a covered loss to association property occurs, the association is responsible for the repair as a common expense. The bill amends s. 718.111(11)(j), F.S., to provide that where a loss occurs that is not an insurable event, the responsibility for the repair is as set forth in the declaration of condominium or the bylaws. Therefore, the split of responsibility in s. 718.111(11)(f), F.S., only covers insurable events.

Condominium Association Directory

Condominium law requires the association to keep and maintain certain records.[21] In general, all records of the association are open for copying and inspection by any member of the association.[22] However, certain records, including names and phone numbers of unit owners, are confidential.

Some associations publish a unit owner directory for the convenience of the members. An association may publish such a directory that includes unit owners' names, unit addresses, and a phone number. A unit owner may opt out of being published in the directory. The bill provides that multiple phone numbers may be published, and provides that a unit owner may consent to having other contact information published.[23]

Association Records

The bill creates s. 718.111(12)(f), F.S., to provide that an outgoing board member or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The Division of Florida Condominiums, Timeshares and Mobile Homes may enforce this requirement by impose a civil penalty[24] against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Meetings of the Board of Directors

Current law contemplates that most meetings of the directors will be in person, but meeting through use of a teleconference is allowed provided a speakerphone is used. The bill amends s. 718.112(2)(b)5., F.S., to also allow real-time videoconferencing, or similar real-time electronic or video communication, in lieu of physical appearance at the meeting. Directors who appear electronically count toward establishing a quorum and may vote. The bill also amends s. 718.112(2)(c), F.S., to allow board members to communicate via e-mail, although e-mail voting is not allowed.

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[20] Section 718.111(11)(d), F.S.
[21] *See* generally, s. 718.111(12), F.S.
[22] Section 718.111(12)(c), F.S.
[23] Other contact information is a broad term that could include email address, instant message (IM) addresses, Twitter names, or any other form of communication that may exist or be invented.
[24] Section 718.501(1)(d)6., F.S., provides for a civil penalty of up to $5,000. The section also provides that a person who complies with an order of the division within 10 days may not be penalized.

Bulk Assignee and Bulk Buyer Provisions

Bulk assignees and bulk buyers are real estate investors who buy seven or more condominium units from a developer.[25] Regular condominium law requires turnover of association control to the owners when a developer has sold a percentage of the units, but the requirement of an early turnover discourages investors from buying distressed units. To encourage investors to rehabilitate financially troubled condominiums, the bulk assignee and bulk buyer provisions in ss. 718.701-.708, F.S., delay the turnover requirement and provide other legal protections to bulk assignees and bulk buyers. These protections are currently set to expire by a requirement that the bulk transfer occur no later than July 1, 2015. The bill amends s. 718.707, F.S., to extend the acquisition deadline to July 1, 2016.

Cooperative Associations

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned of record by the cooperative association,[26] and individual units are leased to the residents, who own shares in the cooperative association.[27] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives are, in practice, operated in a fashion very similar to condominiums, and the laws regulating cooperatives are in many instances nearly identical.

This bill changes cooperative law in the same manner that condominium law is being changed by this bill (see description above) in the following aspects:

- Owner records and directories; and
- The requirement that an outgoing board or committee member relinquish official records and property of the association.

The bill changes cooperative law to match previous changes to condominium law in the following aspects:

- The bill increases the cooperative association audit deadlines and thresholds at s. 719.104(4)(a), F.S. to match those at s. 718.111(13), F.S.
- The bill creates at s. 719.106(1)(a)2., F.S., a prohibition on holding office in the cooperative upon delinquency in payment of monies owned to the association, or upon arrest for a felony theft or embezzlement charge involving association funds, to match the same requirement at s. 718.112(2)(o), F.S.
- The bill creates s. 719.128, F.S., to give a cooperative association the same emergency powers as a condominium association under s. 718.1265, F.S.

Homeowners' Associations

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute.[28] There is no state agency regulation of homeowners' associations.

The bill changes homeowners' association law in the same manner that condominium law is being changed by this bill (see description above) with respect to owner records and directories.

The bill changes homeowners' association law to match previous changes to condominium law by creating s. 720.316, F.S., to give a homeowners' association the emergency powers similar to those

[25] Section 718.703, F.S.
[26] Section 719.103(2), F.S.
[27] Section 719.103(26), F.S.
[28] Section 720.301(9), F.S.

granted a condominium association under s. 718.1265, F.S. However, where the emergency powers of a condominium association (current law) or a cooperative association (created by this bill) include the right to enter individual units, this bill does not grant to a homeowners' association the right to entry into individual homes.

Amendment to Governing Documents of a Homeowners Association.

A homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. A homeowners' association must furnish each member with a copy of an amendment within 30 days of recording.[29] The bill provides that, in lieu of furnishing all members with a copy of the amendment, and if a draft copy was furnished to the members prior to adoption, the association may provide notice that the amendment was adopted. The notice must refer to the local recording information and must offer to furnish a copy on request and without charge.

B. SECTION DIRECTORY:

Section 1 amends s. 509.013, F.S., regarding definitions.

Section 2 amends s. 509.032, F.S., regarding duties.

Section 3 amends s. 509.221, F.S., regarding sanitary regulations.

Section 4 amends s. 509.241, F.S., regarding licenses required; exceptions.

Section 5 amends s. 509.242, F.S., regarding public lodging establishments; classifications.

Section 6 amends s. 509.251, F.S., regarding license fees.

Section 7 amends s. 712.05, F.S., regarding effect of filing notice.

Section 8 amends s. 718.110, F.S., regarding amendment of declaration; correction of error or omission in declaration by circuit court.

Section 9 amends s. 718.111, F.S., regarding the association.

Section 10 amends s. 718.112, F.S., regarding bylaws.

Section 11 amends s. 718.707, F.S., regarding time limitation for classification as bulk assignee or bulk buyer.

Section 12 amends s. 719.104, F.S., regarding cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 13 amends s. 719.106, F.S., regarding bylaws; cooperative ownership.

Section 14 creates s. 719.128, F.S., regarding association emergency powers.

Section 15 amends s. 720.303, F.S., regarding association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 16 amends s. 720.306, F.S., regarding meetings of members; voting and election procedures; amendments.

[29] Section 720.306(1)(b), F.S.

Section 17 creates s. 720.316, F.S., regarding association emergency powers.

Section 18 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill 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:

The bill creates another matter that the state can investigate and prosecute regarding condominium and cooperative associations, namely, the requirement for outgoing directors to return records and property to the association. It is unknown how often directors fail to return records, and the division's analysis says that the fiscal impact is unknown.[30] Typical enforcement policy is to first warn and give an opportunity to cure. It is estimated that this enforcement would be infrequent and that in those infrequent instances most subjects of enforcement would immediately comply with the requirement to return records and property. Accordingly, the impact is likely minimal to 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.

[30] 2014 Department of Business and Professional Regulation Legislative Bill Analysis of SB 798, the Senate companion, dated February 20, 2014, on file with the House of Representatives Civil Justice Subcommittee.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to require minimal rulemaking. The affected agency appears to have sufficient current rulemaking authority.[31]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[31] *Id.*

A bill to be entitled

An act relating to residential properties; amending s. 509.013, F.S.; replacing reference to timeshare plan with timeshare project; amending s. 509.032, F.S.; providing that timeshare projects are not subject to annual inspection requirements; amending s. 509.221, F.S.; providing that certain public lodging establishment requirements shall not apply to timeshare projects; amending s. 509.241, F.S.; providing a condominium association that does not include any units classified as a timeshare project is not required to apply for or receive a public lodging establishment license; amending s. 509.242, F.S.; providing a definition of timeshare project; deleting the reference to timeshare plans in definition of vacation rental; providing that timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application; An act relating to residential properties; amending s. 712.05, F.S.; clarifying existing law relating to marketable record title; amending s. 718.110, F.S.; providing that an amendment to a declaration relating to rental condominium units does not apply to unit owners who vote against the amendment; amending s. 718.111, F.S.; providing authority to an association to inspect and

repair abandoned condominium units; providing conditions to determine if a unit is abandoned; providing a mechanism for an association to recover costs associated with maintaining an abandoned unit; providing that in the absence of an insurable event, the association or unit owners are responsible for repairs; providing that an owner may consent in writing to the disclosure of certain contact information; requiring an outgoing condominium association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; amending s. 718.112, F.S.; providing that a board or committee member's participation in a meeting via real-time videoconferencing, Internet-enabled videoconferencing, or similar electronic or video communication counts toward a quorum and that such member may vote as if physically present; prohibiting the board from voting via e-mail; amending s. 718.707, F.S.; extending the date by which a condominium parcel must be acquired in order for a person to be classified as a bulk assignee or bulk buyer; amending s. 719.104, F.S.; providing that an owner may consent in writing to the disclosure of certain contact information; requiring an outgoing cooperative

association board or committee member to relinquish all official records and property of the association within a specified time; providing a civil penalty for failing to relinquish such records and property; providing dates by which financial reports for an association must be completed; specifying that members must receive copies of financial reports; requiring specific types of financial statements for associations of varying sizes; providing exceptions; providing a mechanism for waiving or increasing financial reporting requirements; amending s. 719.106, F.S.; providing for suspension from office of a director or officer who is charged with one or more of certain felony offenses; providing procedures for filling such vacancy or reinstating such member under specific circumstances; providing a mechanism for a person who is convicted of a felony to be eligible for board membership; creating s. 719.128, F.S.; providing emergency powers of a cooperative association; amending s. 720.303, F.S.; providing that an owner may consent in writing to the disclosure of certain contact information; amending s. 720.306, F.S.; providing an exception to the need for the association to provide copies of an amendment to members; creating s. 720.316, F.S.; providing emergency powers of a homeowners' association; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 509.013, Florida Statutes, is amended to read:

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

(4)

(b) The following are excluded from the definitions in paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Family Services or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare project ~~plan~~ and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar

month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, <u>timeshare project,</u> vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

Section 2. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually, except for transient and nontransient apartments, which shall be inspected at least annually, and shall be inspected at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as vacation rentals or as a timeshare project are not subject to this requirement but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable adults who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II of chapter 400 or

under chapter 429.

Section 3. Subsection (9) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(9) Subsections (2), (5), and (6) do not apply to any facility or unit classified as a vacation rental, ~~or~~ nontransient apartment, or timeshare project as described in s. 509.242(1)(c)-(e) ~~and (d)~~.

Section 4. Subsection (2) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division prior to the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as a timeshare project or vacation rentals under s. 509.242(1)(c) and (d) is not required to apply for or receive a public lodging establishment license.

Section 5. Subsection (1) of section 509.242, Florida Statutes, is amended to read:

509.242 Public lodging establishments; classifications.—

(1) A public lodging establishment shall be classified as a hotel, motel, nontransient apartment, transient apartment, bed and breakfast inn, timeshare project or vacation rental if the establishment satisfies the following criteria:

(a) Hotel.—A hotel is any public lodging establishment containing sleeping room accommodations for 25 or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the industry.

(b) Motel.—A motel is any public lodging establishment which offers rental units with an exit to the outside of each rental unit, daily or weekly rates, offstreet parking for each unit, a central office on the property with specified hours of operation, a bathroom or connecting bathroom for each rental unit, and at least six rental units, and which is recognized as a motel in the community in which it is situated or by the industry.

(c) Vacation rental.—A vacation rental is any unit or group of units in a condominium~~,~~ or cooperative~~, or timeshare plan~~ or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment and that is not a timeshare project.

(d) Nontransient apartment.—A nontransient apartment is a building or complex of buildings in which 75 percent or more of the units are available for rent to nontransient tenants.

(e) Transient apartment.—A transient apartment is a building or complex of buildings in which more than 25 percent of the units are advertised or held out to the public as available for transient occupancy.

(f) Bed and breakfast inn.—A bed and breakfast inn is a family home structure, with no more than 15 sleeping rooms, which has been modified to serve as a transient public lodging establishment, which provides the accommodation and meal services generally offered by a bed and breakfast inn, and which is recognized as a bed and breakfast inn in the community in which it is situated or by the hospitality industry.

(g) Timeshare project.-A timeshare project is any timeshare property as defined in chapter 721 that is located in this state and that is also a transient public lodging establishment.

Section 6. Subsection (1) of section 509.251, Florida Statutes, is amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment shall not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a

single licensed establishment. The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months prior to the next such renewal period and one-half of the fee if application is made 6 months or less prior to such period. The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302, which are payable in full for each application regardless of when the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division within 30 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law. A license renewal filed with the division more than 30 but not more than 60 days after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $100, in addition to the renewal fee and any other fees required by law.

Section 7. Subsection (1) of section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A ~~Any~~ person claiming an interest in land or a homeowners' association desiring to preserve a ~~any~~ covenant or restriction may preserve and protect the same from extinguishment by the operation of this act by filing for record, during the 30-year period immediately following the effective date of the root of title, a written notice~~, in writing,~~ in accordance with this chapter. Such ~~the provisions hereof, which~~ notice preserves ~~shall have the effect of so preserving~~ such claim of right or such covenant or restriction or portion of such covenant or restriction for up to ~~a period of not longer than~~ 30 years after filing the notice ~~same~~ unless the notice is filed again ~~filed~~ as required in this chapter ~~herein~~. A person's ~~No~~ disability or lack of knowledge of any kind may not ~~on the part of anyone shall~~ delay the commencement of or suspend the running of the ~~said~~ 30-year period. Such notice may be filed for record by the claimant or by any other person acting on behalf of a ~~any~~ claimant who is:

(a) Under a disability;~~,~~

(b) Unable to assert a claim on his or her behalf;~~,~~ or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of

such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least ~~not less than~~ 7 days before ~~prior to~~ such meeting. The homeowners' association or clerk of the circuit court is not required to provide notice other than as provided under s. 712.06(3). The preceding sentence is intended to clarify existing law.

Section 8. Subsection (13) of section 718.110, Florida Statutes, is amended to read:

718.110 Amendment of declaration; correction of error or omission in declaration by circuit court.—

(13) An amendment that prohibits ~~prohibiting~~ unit owners from renting their units or altering the duration of the rental term or that specifies or limits ~~specifying or limiting~~ the number of times unit owners are entitled to rent their units during a specified period does not apply ~~applies only~~ to unit owners who voted against ~~consent to~~ the amendment. However, such amendment applies to unit owners who consented to the amendment, who failed to cast a vote, or ~~and unit owners~~ who acquired ~~acquire~~ title to their units after the effective date of the ~~that~~ amendment.

Section 9. Subsection (5), paragraph (j) of subsection

(11), and paragraph (c) of subsection (12) of section 718.111, Florida Statutes, are amended, and paragraph (f) of subsection (12) of section 718.111 is added to read:

718.111 The association.—

(5) RIGHT OF ACCESS TO UNITS.—

(a) The association has the irrevocable right of access to each unit during reasonable hours, when necessary for the maintenance, repair, or replacement of any common elements or of any portion of a unit to be maintained by the association pursuant to the declaration or as necessary to prevent damage to the common elements or to a unit ~~or units~~.

(b)1. In addition to the association's right of access in paragraph (a) and regardless of whether authority is provided in the declaration or other recorded condominium documents, an association, at the sole discretion of the board, may enter an abandoned unit to inspect the unit and adjoining common elements; make repairs to the unit or to the common elements serving the unit, as needed; repair the unit if mold or deterioration is present; turn on the utilities for the unit; or otherwise maintain, preserve, or protect the unit and adjoining common elements. For purposes of this paragraph, a unit is presumed to be abandoned if:

a. The unit is the subject of a foreclosure action and no tenant appears to have resided in the unit for at least 4 continuous weeks without prior written notice to the association; or

b. No tenant appears to have resided in the unit for 2 consecutive months without prior written notice to the association, and the association is unable to contact the owner or determine the whereabouts of the owner after reasonable inquiry.

2. Except in the case of an emergency, an association may not enter an abandoned unit until 2 days after notice of the association's intent to enter the unit has been mailed or hand-delivered to the owner at the address of the owner as reflected in the records of the association. The notice may be given by electronic transmission to a unit owner who has consented to receive notice by electronic transmission.

3. Any expense incurred by an association pursuant to this paragraph is chargeable to the unit owner and enforceable as an assessment pursuant to s. 718.116, and the association may use its lien authority provided by s. 718.116 to enforce collection of the expense.

4. The association may petition a court of competent jurisdiction to appoint a receiver and may lease out an abandoned unit for the benefit of the association to offset against the rental income the association's costs and expenses of maintaining, preserving, and protecting the unit and the adjoining common elements, including the costs of the receivership and all unpaid assessments, interest, administrative late fees, costs, and reasonable attorney fees.

(11) INSURANCE.—In order to protect the safety, health,

and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable event, responsibility for reconstruction, repair, or replacement shall be by the association or by the unit owners, as determined by the provisions of the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the

insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(12) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right

to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments

to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver's license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and <u>all</u> telephone <u>numbers</u> ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone <u>numbers</u> ~~number~~ from the directory by so requesting in writing to the association. <u>An owner may consent in writing to the</u>

disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

Section 10. Paragraphs (b) and (c) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(b) *Quorum; voting requirements; proxies.*—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4., decisions shall be made by a majority of the voting interests represented at a meeting at which a quorum is present.

2. Except as specifically otherwise provided herein, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A voting interest or consent right allocated to a unit owned by the association may not be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a proxy, limited or general, may not be used in the election of board members. General proxies may be used for other matters for which limited proxies are not

required, and may be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given is effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A proxy is not valid longer than 90 days after the date of the first meeting for which it was given and may be revoked~~. Every proxy is revocable~~ at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create a quorum.

5. A ~~If any of the~~ board or committee member's participation in a meeting via telephone, real-time videoconferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~members meet by telephone conference, those board or committee members may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must be used so that the conversation of such ~~those~~ members may be heard

by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose ~~of the board, but not later than 60 days after the receipt of the petition, shall place the item on the agenda~~. An ~~Any~~ item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members.

Such emergency action must be noticed and ratified at the next regular board meeting. However, written notice of a ~~any~~ meeting at which a nonemergency special assessment ~~assessments,~~ or an ~~at which~~ amendment to rules regarding unit use~~,~~ will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium or association property where all notices of board meetings must ~~are to~~ be posted. If there is no condominium property or association property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting ~~to the owner of each unit~~. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section.

If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. Notice of any meeting in which regular or special assessments against unit owners are to be considered ~~for any reason~~ must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

Section 11. Section 718.707, Florida Statutes, is amended

to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2016 ~~2015~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 12. Paragraph (c) of subsection (2) is amended, paragraph (e) of subsection (2) is added, and subsection (4) of section 719.104, Florida Statutes, is amended to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a

written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for

preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company

employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and <u>all</u> telephone <u>numbers</u> ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone <u>numbers</u> ~~number~~ from the directory by so requesting in writing to the association. <u>An owner may consent in writing to the disclosure of other contact information described in this subparagraph.</u> The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official

record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

(e) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 719.501(1)(d) against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(4) FINANCIAL REPORT.—

(a) Within 90 ~~60~~ days following the end of the fiscal or calendar year or annually on such date as ~~is otherwise~~ provided in the bylaws of the association, the board of administration ~~of the association~~ shall prepare and complete, or contract with a third party to prepare and complete, a financial report covering the preceding fiscal or calendar year. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, calendar year, or other date provided in the bylaws, the association shall provide each member with a copy of

the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. The division shall adopt rules setting forth uniform accounting principles, standards, and reporting requirements. ~~mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months, or a complete set of financial statements for the preceding fiscal year prepared in accordance with generally accepted accounting procedures. The report shall show the amounts of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications including, if applicable, but not limited to, the following:~~

~~1. Costs for security;~~

~~2. Professional and management fees and expenses;~~

~~3. Taxes;~~

~~4. Costs for recreation facilities;~~

~~5. Expenses for refuse collection and utility services;~~

~~6. Expenses for lawn care;~~

~~7. Costs for building maintenance and repair;~~

~~8. Insurance costs;~~

~~9. Administrative and salary expenses; and~~

~~10. Reserves for capital expenditures, deferred maintenance, and any other category for which the association maintains a reserve account or accounts.~~

(b) Except as provided in paragraph (c), an association

whose total annual revenues meet the criteria of this paragraph shall prepare or cause to be prepared a complete set of financial statements according to the generally accepted accounting principles adopted by the Board of Accountancy. The financial statements shall be as follows:

1. An association with total annual revenues between $150,000 and $299,999 shall prepare a compiled financial statement.

2. An association with total annual revenues between $300,000 and $499,999 shall prepare a reviewed financial statement.

3. An association with total annual revenues of $500,000 or more shall prepare an audited financial statement. ~~The division shall adopt rules that may require that the association deliver to the unit owners, in lieu of the financial report required by this section, a complete set of financial statements for the preceding fiscal year. The financial statements shall be delivered within 90 days following the end of the previous fiscal year or annually on such other date as provided in the bylaws. The rules of the division may require that the financial statements be compiled, reviewed, or audited, and the rules shall take into consideration the criteria set forth in s. 719.501(1)(j).~~

4. The requirement to have the financial statements~~s~~ compiled, reviewed, or audited does not apply to an association ~~associations~~ if a majority of the voting interests of the

association present at a duly called meeting of the association have voted ~~determined for a fiscal year~~ to waive this requirement for the fiscal year. In an association in which turnover of control by the developer has not occurred, the developer may vote to waive the audit requirement for the first 2 years of ~~the~~ operation of the association, after which time waiver of an applicable audit requirement shall be by a majority of voting interests other than the developer. The meeting shall be held prior to the end of the fiscal year, and the waiver shall be effective for only one fiscal year. An association may not waive the financial reporting requirements of this section for more than 3 consecutive years. ~~This subsection does not apply to a cooperative that consists of 50 or fewer units.~~

(c)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.

3. A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable:

costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

(d) If at least 20 percent of the unit owners petition the board for a greater level of financial reporting than that required by this section, the association shall duly notice and hold a meeting of members within 30 days after receipt of the petition to vote on raising the level of reporting for that fiscal year. Upon approval by a majority of the voting interests represented at a meeting at which a quorum of unit owners is present, the association shall prepare an amended budget or shall adopt a special assessment to pay for the financial report regardless of any provision to the contrary in the declaration or other recorded governing documents. In addition, the association shall provide within 90 days after the meeting or the end of the fiscal year, whichever occurs later:

1. Compiled, reviewed, or audited financial statements, if the association is otherwise required to prepare a report of cash receipts and expenditures;

2. Reviewed or audited financial statements, if the association is otherwise required to prepare compiled financial statements; or

3. Audited financial statements, if the association is

otherwise required to prepare reviewed financial statements.

(e) If approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare or cause to be prepared:

1. A report of cash receipts and expenditures in lieu of a compiled, reviewed, or audited financial statement;

2. A report of cash receipts and expenditures or a compiled financial statement in lieu of a reviewed or audited financial statement; or

3. A report of cash receipts and expenditures, a compiled financial statement, or a reviewed financial statement in lieu of an audited financial statement.

Section 13. Paragraphs (a) and (d) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(a) Administration.—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, except in the case of cooperatives having five or fewer units, in which case

in not-for-profit corporations, the board shall consist of not fewer than three members. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be

appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3.~~2.~~ When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation,

963 administrative proceeding, or arbitration arising out of the
964 inquiry. The association may, through its board of
965 administration, adopt reasonable rules and regulations regarding
966 the frequency and manner of responding to the unit owners'
967 inquiries, one of which may be that the association is obligated
968 to respond to only one written inquiry per unit in any given 30-
969 day period. In such case, any additional inquiry or inquiries
970 must be responded to in the subsequent 30-day period, or
971 periods, as applicable.
972 Section 14. Section 719.128, Florida Statutes, is created
973 to read:
974 719.128 Association emergency powers.—
975 (1) To the extent allowed by law, unless specifically
976 prohibited by the cooperative documents, and consistent with s.
977 617.0830, the board of administration, in response to damage
978 caused by an event for which a state of emergency is declared
979 pursuant to s. 252.36 in the area encompassed by the
980 cooperative, may exercise the following powers:
981 (a) Conduct board or membership meetings after notice of
982 the meetings and board decisions is provided in as practicable a
983 manner as possible, including via publication, radio, United
984 States mail, the Internet, public service announcements,
985 conspicuous posting on the cooperative property, or any other
986 means the board deems appropriate under the circumstances.
987 (b) Cancel and reschedule an association meeting.
988 (c) Designate assistant officers who are not directors. If

the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine any portion of the cooperative property unavailable for entry or occupancy by unit owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board of administration, determine whether the cooperative property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Require the evacuation of the cooperative property in the event of a mandatory evacuation order in the area where the

cooperative is located. If a unit owner or other occupant of a cooperative fails to evacuate the cooperative property for which the board has required evacuation, the association is immune from liability for injury to persons or property arising from such failure.

(j) Mitigate further damage, including taking action to contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the cooperative property, regardless of whether the unit owner is obligated by the declaration or law to insure or replace those fixtures and to remove personal property from a unit.

(k) Contract, on behalf of a unit owner, for items or services for which the owner is otherwise individually responsible, but which are necessary to prevent further damage to the cooperative property. In such event, the unit owner on whose behalf the board has contracted is responsible for reimbursing the association for the actual costs of the items or services, and the association may use its lien authority provided by s. 719.108 to enforce collection of the charges. Such items or services may include the drying of the unit, the boarding of broken windows or doors, and the replacement of a damaged air conditioner or air handler to provide climate control in the unit or other portions of the property.

(l) Notwithstanding a provision to the contrary, and

regardless of whether such authority does not specifically appear in the cooperative documents, levy special assessments without a vote of the owners.

(m) Without unit owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the cooperative documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the unit owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 15. Paragraph (c) of subsection (5) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state for at least 7 years and shall be made available to a parcel owner for inspection or photocopying within 45 miles of the community or within the county in which the association is located within 10 business days after receipt by the board or its designee of a written request. This subsection may be complied with by having

a copy of the official records available for inspection or copying in the community or, at the option of the association, by making the records available to a parcel owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a fee to a member or his or her authorized representative for the use of a portable device.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records, including the costs of copying and the costs required for personnel to

retrieve and copy the records if the time spent retrieving and copying the records exceeds one-half hour and if the personnel costs do not exceed $20 per hour. Personnel costs may not be charged for records requests that result in the copying of 25 or fewer pages. The association may charge up to 25 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside duplicating service and may charge the actual cost of copying, as supported by the vendor invoice. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation

or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a parcel.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association or management company employee or budgetary or financial records that indicate the compensation paid to an association or management company employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to parcel owners a directory containing the name, parcel address, and all telephone numbers ~~number~~ of each parcel owner. However, an owner may exclude his or her telephone numbers ~~number~~ from the directory by so requesting in writing to the association. An

owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Section 16. Paragraph (b) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. Further, if a copy of the proposed amendment had been previously provided to the members prior to the vote of the members on the amendment

and the proposed amendment was not changed prior to the vote of the members, the association may, in lieu of providing a copy of the amendment, provide notice that the amendment was adopted, the official book and page number or instrument number of the recorded amendment, and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described herein may be provided electronically to those owners who have consented to receive notice electronically.

Section 17. Section 720.316, Florida Statutes, is created to read:

720.316 Association emergency powers.—

(1) To the extent allowed by law, unless specifically prohibited by the declaration or other recorded governing documents, and consistent with s. 617.0830, the board of directors, in response to damage caused by an event for which a state of emergency is declared pursuant to s. 252.36 in the area encompassed by the association, may exercise the following powers:

(a) Conduct board or membership meetings after notice of the meetings and board decisions is provided in as practicable a manner as possible, including via publication, radio, United States mail, the Internet, public service announcements, conspicuous posting on the association property, or any other means the board deems appropriate under the circumstances.

(b) Cancel and reschedule an association meeting.

(c) Designate assistant officers who are not directors. If the executive officer is incapacitated or unavailable, the assistant officer has the same authority during the state of emergency as the executive officer he or she assists.

(d) Relocate the association's principal office or designate an alternative principal office.

(e) Enter into agreements with counties and municipalities to assist counties and municipalities with debris removal.

(f) Implement a disaster plan before or immediately following the event for which a state of emergency is declared, which may include, but is not limited to, turning on or shutting off elevators; electricity; water, sewer, or security systems; or air conditioners for association buildings.

(g) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine any portion of the association property unavailable for entry or occupancy by owners or their family members, tenants, guests, agents, or invitees to protect their health, safety, or welfare.

(h) Based upon the advice of emergency management officials or upon the advice of licensed professionals retained by the board, determine whether the association property can be safely inhabited or occupied. However, such determination is not conclusive as to any determination of habitability pursuant to the declaration.

(i) Mitigate further damage, including taking action to

contract for the removal of debris and to prevent or mitigate the spread of fungus, including mold or mildew, by removing and disposing of wet drywall, insulation, carpet, cabinetry, or other fixtures on or within the association property.

(j) Notwithstanding a provision to the contrary, and regardless of whether such authority does not specifically appear in the declaration or other recorded governing documents, levy special assessments without a vote of the owners.

(k) Without owners' approval, borrow money and pledge association assets as collateral to fund emergency repairs and carry out the duties of the association if operating funds are insufficient. This paragraph does not limit the general authority of the association to borrow money, subject to such restrictions contained in the declaration or other recorded governing documents.

(2) The authority granted under subsection (1) is limited to that time reasonably necessary to protect the health, safety, and welfare of the association and the parcel owners and their family members, tenants, guests, agents, or invitees, and to mitigate further damage and make emergency repairs.

Section 18. This act shall take effect July 1, 2014.