



Civil Justice Subcommittee

**Tuesday, October 20, 2015
1:00 PM – 3:00 PM
Sumner Hall (404 HOB)**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Kathleen Passidomo
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Tuesday, October 20, 2015 01:00 pm
End Date and Time: Tuesday, October 20, 2015 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 111 Jury Service by Combee
HB 131 Persons or Domestic Animals Unattended in Motor Vehicles by Young, Moskowitz



Consideration of the following proposed committee substitute(s):

PCS for HB 23 -- Powers of Attorney

NOTICE FINALIZED on 10/13/2015 4:02PM by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 23 Powers of Attorney
SPONSOR(S): Civil Justice Subcommittee
TIED BILLS: None **IDEN./SIM. BILLS:** SB 362

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

SUMMARY ANALYSIS

A power of attorney is a legal document in which a person ("the principal") voluntarily authorizes another person or entity ("the agent") to act on his or her behalf in medical, legal or financial matters. Powers of attorney are often used in the event of the future incapacity or unavailability of the principal as a low cost and less onerous alternative to a court-ordered guardianship or conservatorship.

The Florida Power of Attorney Act ("FPAA") governs the creation and use of a power of attorney. The FPAA provides that only certain financial institutions with trust powers or a person 18 years of age or older may serve as an agent under a power of attorney.

The bill amends the FPAA to authorize certain not-for-profit corporations to serve as an agent under a power of attorney.

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

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Power of Attorney

A power of attorney is a legal document in which a person ("the principal") voluntarily authorizes another person or entity ("the agent") to act on his or her behalf in medical, legal or financial matters. The scope of the authority granted to an agent depends upon the specific language of the power of attorney. An agent may only exercise authority specifically granted in a power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority.¹ A power of attorney may include, without limitation, the authority to:²

- Convey or mortgage the principal's real property, including homestead property.
- Make a gift of any of the principal's property.
- Conduct banking transactions.
- Conduct investment transactions.
- Open the principal's safe-deposit box.
- Create an inter vivos trust.
- Amend, modify, revoke, or terminate a trust created by or on behalf of the principal if allowed by the trust instrument.
- Create or change rights of survivorship.
- Create or change a beneficiary designation.
- Prepare, execute, and file federal, state, or local tax returns.
- Make health care decisions on behalf of the principal.

Court approval is not required for any action of the agent in furtherance of an express grant of specific authority.³ Such actions have the same effect and inure to the benefit of and bind the principal and the principal's successor in interest as if the principal had performed the act.⁴ Accordingly, the agent has a fiduciary duty to the principal when exercising any authority under a power of attorney.⁵

A power of attorney terminates according to the terms therein, upon the death of the principal, upon the principal being adjudicated incapacitated,⁶ upon revocation by the principal, or upon the termination of the agent's authority if the power of attorney does not provide for a successor agent.⁷

Powers of attorney are often used in the event of the future incapacity or unavailability of the principal as a low cost and less onerous alternative to a court-ordered guardianship or conservatorship.

Qualifications of Agents

Chapter 709, F.S., governs the creation and use of a power of attorney. Persons authorized to serve as an agent under the chapter has changed over time. Prior to 1995, ch.709, F.S. did not limit who may serve as an agent. After the chapter was amended in 1995,⁸ agents were expressly limited to natural

¹ s. 709.2201(1), F.S.

² The exercise of certain powers requires the principal to sign or initial next to the specific enumeration thereof within the power of attorney. ss. 709.2201-709.2202, F.S.

³ s. 709.2201(1), F.S.

⁴ s. 709.2201(6), F.S.

⁵ s. 709.2114(1), F.S.

⁶ A durable power of attorney continues after the principal becomes incapacitated but will terminate upon the occurrence of any of the other listed events. s. 709.2104, F.S.

⁷ s. 709.2109, F.S.

⁸ ch. 95-401, L.O.F.

persons who were 18 years of age or older and certain financial institutions with trust powers.⁹ In 1997,¹⁰ the chapter was further amended to authorize not-for-profit corporations to also serve as an agent if:

- Organized for charitable or religious purposes in Florida.
- Qualified as a court-appointed guardian prior to January 1, 1996.
- A tax-exempt organization under 26 U.S.C. § 501(c)(3).¹¹

The Florida Power of Attorney Act ("FPAA"), enacted effective October 1, 2011, substantially re-wrote ch. 709, F.S., to conform to the Uniform Power of Attorney Act (UPOAA)¹² promulgated by the Uniform Law Commission. As adopted in Florida, the UPOAA did not carry forward the provision that authorized not-for-profit corporations to serve as an agent. Currently, an agent must be a natural person who is 18 years of age or older or a financial institution that has trust powers, has a place of business in this state, and is authorized to conduct trust business in this state.¹³ This limitation is a deviation from the UPOAA, which places no limits on who may serve as an agent, and previous state law.

Non-Profit Corporations as Agents, Guardians and Conservators

A not-for-profit corporation may continue to serve as an agent under a power of attorney executed prior to October 1, 2011.¹⁴ In almost all other circumstances, a not-for-profit corporation must be appointed by a court as a guardian¹⁵ or conservator¹⁶ in order to exercise similar authority over the person or property of another.¹⁷

Unlike an agent, the actions of a guardian or conservator are subject to the control, review and supervision of the court.¹⁸ Such additional oversight results in greater protection for a ward or absentee against abuse, but also results in greater costs for the ward or absentee than under a power of attorney. The costs, which are assessed against the property of the ward or absentee, result from attorney fees for court filings and fees to prepare annual accountings and annual plans.¹⁹

Figure 1 highlights the major similarities and differences between the powers, duties, and oversight of not-for-profit corporations when serving as agents, guardians, or conservators over the person or property of another.

⁹ s. 709.08(2), F.S. (1995).

¹⁰ ch. 97-240, L.O.F.

¹¹ s. 709.08(2), F.S. (1997).

¹² The National Conference of Commissioners on Uniform State Laws, *Uniform Power of Attorney Act (2006)*, http://www.uniformlaws.org/shared/docs/power%20of%20attorney/UPOAA_2011_Final%20Act_2014sep9.pdf, (last visited October 12, 2015).

¹³ s. 709.2105(1), F.S.

¹⁴ s. 709.2106(2), F.S.

¹⁵ A person who is incapable of the care, custody, and management of his or her estate by reason of age or physical infirmity may voluntarily petition for the establishment of a guardianship. s. 744.341, F.S. A guardianship may also be involuntarily established for a person who has been adjudicated incapacitated. s. 744.331, F.S.

¹⁶ A conservatorship may be established to manage the estate and property of an "absentee", a person who is missing as a result of some mental cause or circumstances that indicate he or she has died. s. 747.01, F.S. A conservator has all the rights, powers, and duties of a guardian of property and an absentee, and an absentee's dependents, are entitled to all benefits accruing to a ward or a ward's dependents. s. 747.035(1), F.S.

¹⁷ Not-for-profit corporations may apply to serve as a representative payee under the Social Security Administration's Representative Payment Program. A representative payee receives Social Security or SSI benefits on behalf of a person who cannot manage or direct the management of his or her benefits. A representative payee must use the benefits to pay for current and future needs of the beneficiary and may collect a fee if approved by the Social Security Administration. See SOCIAL SECURITY ADMINISTRATION, *When People Need Help Managing Their Money*, <http://www.socialsecurity.gov/payee/> (last visited October 14, 2015).

¹⁸ s. 747.035(2), F.S.

¹⁹ s. 744.108, F.S.

Figure 1

	Agent	Guardian/Conservator
Selection	Selected by principal. ²⁰	Appointed by court, but court must consider known wishes of ward/absentee and give priority to family members. ²¹
Background Check	Not required.	Must pass a credit and criminal background check. ²² Persons with certain criminal convictions, physical infirmities, or conflicts of interest are disqualified. ²³
Training	Not required.	Several hours of training required. ²⁴
Fiduciary	Yes. ²⁵	Yes. ²⁶
Fees	Unless otherwise provided in the power of attorney, an agent is entitled to reimbursement for reasonable expenses. A "qualified agent" may also be entitled to a fee for his/her services. ²⁷ Fees not subject to court approval.	A guardian/conservator, or an attorney who has rendered services thereto, is entitled to a reasonable fee for services and reimbursement for expenses. Fees must be approved by a court. ²⁸
Required Recordkeeping	<ul style="list-style-type: none"> • Keep a record of all receipts, disbursements, and transactions; and • Maintain an inventory of the principal's safe-deposit box.²⁹ 	<ul style="list-style-type: none"> • An inventory of a ward's/absentee's property;³⁰ • Annual guardianship plans;³¹ and • Annual accountings of a ward's/absentee's property.³²
Court Approval of Actions	Not required. ³³	Required for many actions, including the sale of homestead property. ³⁴
Court Oversight	Actions are not reviewed by a court unless a person petitions a court for review of the agent's actions. ³⁵	Actions are reviewed by a court or clerk of court on an annual basis. ³⁶ Any interested person may petition the court for an earlier review. ³⁷
Liability	Liable for the misuse of a principal's property, ³⁸ but not required to maintain a bond or insurance policy. Subject to criminal penalties for exploitation of an elderly person or disabled adult. ³⁹	Must maintain a bond or insurance policy to ensure the faithful performance of his or her duties. ⁴⁰ Subject to criminal penalties for exploitation, abuse, or neglect. ⁴¹

²⁰ s. 709.2102(11), F.S.

²¹ ss. 744.312 and 747.032, F.S.

²² s. 744.3135, F.S.

²³ s. 744.309(3), F.S.

²⁴ ss. 744.1085 and 744.3145, F.S.

²⁵ s. 709.2114(1), F.S.

²⁶ ss. 744.361 and 744.446, F.S.

²⁷ s. 709.2112, F.S. A qualified agent is an agent who is the principal's spouse, or heir, a financial institution, a certified public accountant, or a natural person who has never served as an agent for more than three principals at the same time.

²⁸ s. 744.108, F.S.

²⁹ s. 709.2114(1)(c) and (d), F.S.

³⁰ s. 744.362(1), F.S.

³¹ s. 744.367, F.S.

³² s. 744.367, F.S.

³³ s. 709.2201(1), F.S.

³⁴ s. 744.441, F.S.

³⁵ s. 709.2116, F.S.

³⁶ ss. 744.368, 744.369, 744.372, and 744.3735, F.S.

³⁷ s. 744.3715(1), F.S.

³⁸ s. 709.2117, F.S.

³⁹ s. 825.103, F.S.

⁴⁰ ss. 744.1085, 744.309(7), 744.351, and 747.034, F.S.

Effect of Bill

The bill essentially reinstates the authority that not-for-profit corporations had to serve as an agent under a power of attorney before the enactment of the FPAA in 2011, but adds protections which are currently applicable to court-appointed and court-supervised guardians and conservators.

Eligible Non-Profit Corporations

The bill amends the FPAA to provide that a not-for-profit corporation may serve as an agent under a power of attorney if the corporation:

- Was organized for charitable or religious purposes in this state on or after January 1, 1980;
- Is qualified to do business in this state;
- Has been in continuous existence in this state for at least 30 years;
- Has never been administratively dissolved; and
- Is tax exempt under s. 501(c)(3) of the Internal Revenue Code and designated as a public charity for deductibility purposes.

The corporation must comply with governance requirements which mirror similar requirements for guardians and conservators under ch. 744, F.S., specifically:

- Conducting, at their own expense, criminal history and, every two years, credit history background checks of each director, officer, and employee of the corporation, and any person who acts on behalf of the corporation in its role as an agent. The corporation must maintain a file on each person which includes a record of the background checks.
- Prohibiting any person from acting on behalf of the corporation as an agent who is disqualified from serving as a guardian or conservator, who has been adjudicated bankrupt in the last 10 years, or who has committed any offense involving dishonesty.
- Allowing the clerk of the circuit court to audit the books and records of the corporation, including records of criminal history and credit history background checks. A principal may also review records of criminal history background checks.

The bill also reaffirms current law that a person acting as an agent must comply with all obligations of an agent under ch. 709, F.S. including fiduciary obligations. The agent is subject to criminal penalties for the exploitation of an elderly person or disabled adult.⁴²

Eligible Principals

The bill limits eligible not-for-profit-corporations to serving as an agent for principals who are residents or former residents of communities that provide housing for older persons.⁴³ The majority of such residents, but not all, are persons age 55 or older. The corporation:

- May not charge a fee or cost to the principal for services, but may require reimbursement for actual expenses.
- Must provide a written disclosure form to each principal who signs a power of attorney on or after July 1, 2016. The disclosure must advise that the corporation's agents may be unlicensed or uncertified and of limited recourse against the corporation for losses caused by such agents.
- Must keep on file in such communities a list of persons authorized to act on behalf of the corporation as an agent along with a copy of any background check. A principal may request a copy of the list of authorized persons.

⁴¹ ss. 744.359 and 825.103, F.S.

⁴² s. 825.103, F.S.

⁴³ Consists of housing provided under any government program that is specifically designed and operated to assist "elderly persons", as defined in the government program; housing intended for, and solely occupied by, persons 62 or older; or housing intended and operated for occupancy by persons 55 or older if at least 80% of the occupied units are occupied by at least one person 55 or older, the facility or community establishes policies and procedures that demonstrate the intent to restrict occupancy to such persons, and the facility or community complies with certain federal rules. s. 760.29(4), F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 709.2105, F.S., relating to qualifications of agent; execution of power of attorney.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to powers of attorney; amending s.
 3 709.2105, F.S.; providing that certain not-for-profit
 4 corporations may act as an agent on behalf of a
 5 principal under a power of attorney; providing
 6 qualifications; providing that a person acting on
 7 behalf of the corporation in its role as an agent
 8 under a power of attorney has a fiduciary
 9 responsibility to the principal; providing an
 10 effective date.

11
 12 Be It Enacted by the Legislature of the State of Florida:

13
 14 Section 1. Subsection (1) of section 709.2105, Florida
 15 Statutes, is amended to read:

16 709.2105 Qualifications of agent; execution of power of
 17 attorney.—

18 (1) The agent must be one of the following:

19 (a) A natural person who is 18 years of age or older. ~~or~~

20 (b) A financial institution that has trust powers, has a
 21 place of business in this state, and authorization is authorized
 22 to conduct trust business in this state.

23 (c)1. A not-for-profit corporation that:

24 a. was organized for charitable or religious purposes in
 25 this state on or after January 1, 1980; is qualified to do
 26 business in this state; has been in continuous existence in this

27 state for at least 30 years; has never been administratively
 28 dissolved; is tax-exempt under s. 501(c)(3) of the Internal
 29 Revenue Code and designated as a public charity for purposes of
 30 determining deductibility; does not charge a fee or cost to a
 31 principal for services, although it may require reimbursement
 32 for actual expenses; and serves only principals who reside in
 33 communities that provide housing for older persons as defined in
 34 s. 760.29(4) and former residents of such communities.

35 b. Requires each principal who signs a power of attorney
 36 on or after July 1, 2016, to sign a separate written instrument
 37 containing the following language in 14-point uppercase type:

38
 39 I UNDERSTAND THAT THE AGENT IS A NOT-FOR-PROFIT CORPORATION
 40 THAT IS NOT CHARGING A FEE FOR SERVICES TO ME (BUT MAY BE
 41 REIMBURSED FOR ACTUAL EXPENSES) AND THAT THE INDIVIDUALS
 42 WHO WILL PROVIDE ME SERVICES ARE VOLUNTEERS WHO MAY NOT
 43 HAVE A STATE LICENSE OR CERTIFICATION.

44
 45 I UNDERSTAND THAT THE ASSETS OF THE NOT-FOR-PROFIT
 46 CORPORATION MAY NOT BE SUFFICIENT TO COVER LIABILITY
 47 ARISING FROM AN ERROR, AN OMISSION, OR ANY INTENTIONAL
 48 MISCONDUCT COMMITTED BY A DIRECTOR, OFFICER, EMPLOYEE,
 49 VOLUNTEER OR AGENT OF THE CORPORATION.

50
 51 c. Allows the clerk of the circuit court for the circuit
 52 in which the corporation maintains its primary place of business

53 to, at any time, audit the books and records of the corporation
 54 upon request.

55 d. Does not allow a person to act on behalf of the non-
 56 profit corporation in its role as an agent who:

57 (I) Has been convicted of a felony or who, from any
 58 incapacity or illness, is incapable of discharging the duties of
 59 an agent, or who is otherwise unsuitable to perform the duties
 60 of an agent.

61 (II) Has been arrested for and is awaiting final
 62 disposition of, who has been found guilty of, regardless of
 63 adjudication, or entered a plea of nolo contendere or guilty to,
 64 any offense involving dishonesty or listed in s. 435.04(2), or
 65 similar law of another jurisdiction.

66 (III) Has been adjudicated bankrupt in the previous 10
 67 years.

68 (IV) Provides substantial services to the principal in a
 69 professional or business capacity, or is a creditor of the
 70 principal, and retains that previous professional or business
 71 relationship.

72 (V) Is in the employ of any person, agency, government, or
 73 corporation that provides service to the principal in a
 74 professional or business capacity unless such person so employed
 75 is the spouse, adult child, parent, or sibling of the principal
 76 or a court determines that the potential conflict of interest is
 77 insubstantial and the ability of such person to act on behalf of
 78 the non-profit corporation in its role as agent would clearly be

79 in the principal's best interest.

80 e. Requires all directors, officers, and employees of the
 81 not-for-profit corporation, and any person who acts on behalf of
 82 the non-profit corporation in its role as an agent, to submit,
 83 at their own expense or at the expense of the corporation, but
 84 never at the cost of any principal, to a criminal history and
 85 credit history background check before acting as an agent. A
 86 credit history background check shall be completed again at
 87 least once every 2 years after the initial check. The
 88 corporation shall maintain a file on each director, officer, and
 89 employee, and any person who acts on behalf of the non-profit
 90 corporation in its role as an agent, and retain in the file
 91 documentation of the result of any criminal history and credit
 92 history background check conducted under this sub-subparagraph.
 93 The corporation must allow a principal to review the criminal
 94 history background check as to any person acting on behalf of
 95 such principal. The clerk of court may audit such criminal
 96 history and credit history background files.

97 f. Keeps on file in the community in which the corporation
 98 is acting an updated listing of each person who is authorized to
 99 act on behalf of the corporation as an agent along with a copy
 100 of the background check requirements. Any principal may request
 101 a copy of the list of authorized persons.

102 2. Any person who acts on behalf of a non-profit
 103 corporation pursuant to this paragraph in its role as an agent
 104 under a power of attorney has a fiduciary responsibility to the

105 | principal and must comply with all provisions of this chapter.

106 | 3. In addition to any other penalty provided by law, any

107 | person acting on behalf of a not-for-profit corporation in its

108 | role as an agent pursuant to this paragraph is subject to s.

109 | 825.103

110 | Section 2. This act shall take effect July 1, 2016.

111 |

112 |

113 |

114 |



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 80-96 and insert:

6 e. Requires all directors, officers, and employees of the
 7 not-for-profit corporation, and any person who acts on behalf of
 8 the not-for-profit corporation in its role as an agent, to
 9 submit, at their own expense or at the expense of the
 10 corporation, but never at the cost of any principal, to a credit
 11 history investigation and to undergo a level 2 background
 12 screening as required under s. 435.04. The corporation shall
 13 maintain a file on each director, officer, and employee, and any
 14 person who acts on behalf of the corporation in its role as an
 15 agent, and retain in the file documentation of the result of any
 16 credit history investigation and criminal history record check



Amendment No. 1

17 conducted under this sub-subparagraph. The clerk of court may
18 audit such files.

19 (I) The background screening must be completed by
20 undergoing an electronic fingerprint criminal history record
21 check by any acceptable method under s. 744.3135(3).
22 Fingerprints shall be retained and used by the Department of Law
23 Enforcement as provided in s. 744.3135(4)(b). The entity
24 completing the criminal history record check must immediately
25 send the results to the corporation. The corporation must allow
26 a principal to review the criminal history record check as to
27 any person acting on behalf of such principal.

28 (II) A credit history investigation may be completed by
29 any acceptable method under s. 744.3135(5)(b). A credit history
30 investigation shall be completed at least once every 2 years
31 after the initial check.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 111 Jury Service
SPONSOR(S): Combee
TIED BILLS: None IDEN./SIM. BILLS: SB 206

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		King <i>AK</i>	Bond <i>MB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Clerks of the Court randomly select citizens to serve in a jury venire. Current law provides numerous grounds by which individuals called for jury duty can be exempt or excused from service.

This bill adds that individuals permanently incapable of caring for themselves can request a permanent exemption from jury duty by submitting a written statement from a doctor verifying the disability.

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

The bill takes effect July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The County Clerks of Court select jury venires at random from a list provided to them by the Florida Department of Highway Safety and Motor Vehicles.¹ The list contains individuals who are legal residents of the county and possess either a valid Driver's License or Identification Card.² If an individual wishes to serve but is not on the list, that person can submit an affidavit to that effect and be added to the list of potential jurors.³ An individual can be exempt, disqualified, or excused from jury service for a number of reasons.⁴ Disqualified individuals cannot be selected for jury duty even if they wish to serve. They include:

- An individual who is currently being prosecuted for certain crimes.⁵
- An individual who is a convicted felon, unless they are restored to civil rights.⁶
- The Governor, Lieutenant Governor, a Cabinet officer, a clerk of court, and judges.⁷
- An individual who has an interest in the case.⁸

Individuals who have served in the past twelve months are exempt.⁹

Individuals who *must* be excused include:

- A person 70 years of age or older.¹⁰
- An expectant mother or parent who is not employed full time and who has custody of a child under 6 years of age.¹¹
- A person who is responsible for the care of a person who, because of mental illness, intellectual disability, senility, or other physical or mental incapacity, is incapable of caring for himself or herself.¹²
- Full-time law enforcement officers.¹³

Persons who *may* be excused include:

- A practicing attorney, physician, or a person who is physically infirm.¹⁴
- A person showing hardship, extreme inconvenience, or public necessity.¹⁵

¹ ss. 40.02(1); 40.011(2), F.S.

² *Id.*

³ s. 40.011(3), F.S.

⁴ s. 40.013, F.S.

⁵ s. 40.013(1), F.S.

⁶ *Id.*

⁷ s. 40.013(2)(a), F.S.

⁸ s. 40.013(3), F.S.

⁹ s. 40.013(7), F.S.

¹⁰ s. 40.013(8), F.S.

¹¹ s. 40.013(4), F.S.

¹² s. 40.013(9), F.S.

¹³ s. 40.013(2)(b), F.S.

¹⁴ s. 40.013(5), F.S.

¹⁵ s. 40.013(6), F.S.

Currently, only individuals 70 years of age or older can request to be permanently excused.¹⁶ The request must be in writing.¹⁷ Individuals who are permanently excused can also request to be added back into the jury pool as long as they are otherwise qualified.¹⁸

Effect of Proposed Changes

This bill creates a new exception that allows those who are permanently incapable of caring for themselves due to "mental illness, intellectual disability, senility, or other physical or mental incapacity" to be permanently excused. Such a person can apply to the clerk¹⁹ for the exemption by submitting a letter from a physician verifying the permanent incapability.

B. SECTION DIRECTORY:

Section 1 amends s. 40.013, F.S., regarding jury service.

Section 2 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

¹⁶ s. 40.013(8), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *see* s. 40.001, F.S.

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 language of the bill provides that a person *may* be permanently excused upon request. This gives the Clerk the discretion in making the ultimate decision. Compare this bill with the language in s. 40.013(8), F.S., which provides that an individual 70 years of age or older *shall* be permanently excused upon request.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to jury service; amending s. 40.013,
3 F.S.; providing that certain persons incapable of
4 caring for themselves may be permanently excluded from
5 jury service upon request; providing requirements for
6 such a request; providing an effective date.

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

9
10 Section 1. Subsection (9) of section 40.013, Florida
11 Statutes, is renumbered as subsection (10), and a new subsection
12 (9) is added to that section to read:

13 40.013 Persons disqualified or excused from jury service.—
14 (9) Any person who, because of mental illness,
15 intellectual disability, senility, or other physical or mental
16 incapacity, is permanently incapable of caring for himself or
17 herself may be permanently excused from jury service upon
18 request if the request is accompanied by a written statement to
19 that effect from a physician licensed pursuant to chapter 458 or
20 chapter 459.

21 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 131 Persons or Domestic Animals Unattended in Motor Vehicles

SPONSOR(S): Young; Moskowitz and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 308

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Robinson <i>TR</i>	Bond <i>VTB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

The "Good Samaritan Act" (GSA) provides immunity from civil liability to persons who voluntarily provide care or treatment to individuals and animals in emergency situations. The bill amends the GSA to provide that such immunity extends to liability for damage caused by the forcible entry of a motor vehicle to remove an endangered individual or animal under certain circumstances.

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Vehicular Heatstroke

Since 1998, more than 660 children have died from vehicular heatstroke¹ in the United States.² Seventy two of those deaths, including 4 in 2015, occurred in Florida.³ Florida ranks second only behind Texas for the number of child vehicular stroke fatalities in the United States.⁴ In addition to death, it is estimated that annually hundreds of children experience varying degrees of vehicle related heat illness throughout the state. These tragic incidents are often caused when children are left unattended in a hot motor vehicle by a caregiver - intentionally or unintentionally - or become trapped while playing in an unlocked vehicle.

Although outside temperatures may be mild or relatively cool, the interior of a motor vehicle can heat up significantly and rapidly (**Figure 1**).

Figure 1

Estimated Vehicle Interior Air Temperature v. Elapsed Time

Elapsed time	Outside Air Temperature (F)					
	70	75	80	85	90	95
0 minutes	70	75	80	85	90	95
10 minutes	89	94	99	104	109	114
20 minutes	99	104	109	114	119	124
30 minutes	104	109	114	119	124	129
40 minutes	108	113	118	123	128	133
50 minutes	111	116	121	126	131	136
60 minutes	113	118	123	128	133	138
> 1 hour	115	120	125	130	135	140

Courtesy Jan Null, CCM, Department of Geosciences, San Francisco State University

The effect of such rapid and extreme temperature rise on infants and small children is often deadly because a child's body temperature heats up three to five times faster than that of an adult.⁵ Elderly adults, disabled individuals, and pets left alone in a motor vehicle are also at particular risk of succumbing to vehicular heatstroke, as these groups of individuals may be unable to open car doors, to express discomfort verbally (or audibly, inside a closed car), or may suffer from existing health issues.

¹ Hyperthermia is the condition of having an abnormally high body temperature caused by a failure of the thermoregulation mechanisms of the body to dissipate more heat than it absorbs from the environment. Heat fatigue, heat syncope (sudden dizziness after prolonged exposure to the heat), heat cramps, heat exhaustion and heat stroke are commonly known forms of hyperthermia. NATIONAL INSTITUTES OF HEALTH, *Hyperthermia: too hot for your health*, <http://www.nih.gov/news/health/jun2012/nia-27.htm> (last visited October 15, 2015).

² Jan Null, *Heatstroke Deaths of Children in Vehicles*, DEPARTMENT OF METEOROLOGY & CLIMATE SCIENCE, SAN JOSE STATE UNIVERSITY, <http://noheatstroke.org/> (last visited October 15, 2015).

³ Id.

⁴ Id.

⁵ Trisha Corinth, *Children left in cars can die of heatstroke in minutes*, AMERICAN ACADEMY OF PEDIATRICS <http://aapnews.aappublications.org/content/36/8/33.4.full> (last visited October 15, 2015).

Current law empowers only law enforcement officers to “use whatever means are reasonably necessary to protect [a] minor child and to remove [an unattended] child from [a] vehicle” in such cases.⁶ However, a great number of tragic incidents involving children, the elderly, disabled adults, and animals trapped in hot cars have been avoided by the forcible entry into such vehicles by good samaritans.⁷ Good samaritans who forcibly enter vehicles for the purpose of rescuing an endangered person or animal do so at the risk of being held civilly liable for damages caused to the vehicle. The vehicle owner may pursue a cause of action for trespass to personal property⁸ or conversion⁹ against the good samaritan unless the good samaritan’s actions are protected under the “Good Samaritan Act.”

Good Samaritan Act

The “Good Samaritan Act” (GSA), codified in s. 768.13, F.S., provides immunity from civil liability for damages to any person who:

- Gratuitously and in good faith renders emergency care or treatment either in direct response to declared state emergencies or at the scene of an emergency situation, without objection of the injured victim, if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹⁰
- Participates in emergency response activities of a community emergency response team if that person acts prudently and within scope of his or her training.¹¹
- Gratuitously and in good faith renders emergency care or treatment to an injured animal at the scene of an emergency if that person acts as an ordinary reasonably prudent person would have acted under the same or similar circumstances.¹²

The GSA does not specifically address immunity from liability for property damage related to the rendering of emergency care or treatment, such as the forcible entry of a motor vehicle to rescue an endangered child or animal.

Effect of Proposed Changes

The bill amends the Good Samaritan Act to provide immunity from civil liability to good samaritans for rescuing certain persons and animals trapped in motor vehicles.

A good samaritan is not liable for damages resulting from the forcible entry of a motor vehicle to remove a minor, a disabled adult¹³ or elderly person¹⁴ as defined in s. 825.101, F.S., or a domestic animal if the good samaritan:

⁶ s. 316.6135(5), F.S.

⁷ See, e.g., *Hero Who Saved Toddler From Hot Car: I Was Just Doing the Right Thing*, FOX NEWS INSIDER <http://insider.foxnews.com/2015/07/21/video-woman-smashes-window-save-toddler-locked-hot-car> (last visited October 15, 2015); Rachelle Blidner, *Georgia Army Veteran Arrested For Smashing Window To Save Dog From Hot Car*, NEW YORK DAILY NEWS (May 12, 2015), <http://www.nydailynews.com/news/national/ga-man-charged-smashing-window-save-dog-hot-car-article-1.2219041>; and *3-year-old Toddler Saves Elderly Man Locked In Hot Car*, THE WEATHER CHANNEL (July 16, 2014), <http://www.weather.com/safety/heat/news/3-year-old-toddler-saves-elderly-man-locked-hot-car-20140716>.

⁸ Trespass to personal property, also known as trespass to chattels, is the intentional use of, or interference with, personal property which is in the possession of another without justification. The measure of damages is the value of the property at the time and place of the wrongful taking or removal. *Coddington v. Staab*, 716 So. 2d 850, 851(Fla. 4th DCA 1998).

⁹ Conversion is an unauthorized act that deprives another of his or her property permanently or for an indefinite time. A defendant may be found liable for conversion if he or she deprived the plaintiff of his or her property by means of such an unauthorized act. The essence of conversion is the exercise of wrongful dominion or control over property to the detriment of the rights of the actual owner. It is interference with the legal rights that is incident to ownership, such as the right to possession. See 12 Fla. Jur. 2d *Conversion and Replevin* § 1 (2015).

¹⁰ s. 768.13(2)(a), F.S.

¹¹ s. 768.13(2)(d), F.S.

¹² s. 768.13(3), F.S.

- Determines that the vehicle is locked or there is no other reasonable method for the person or animal to exit the vehicle.
- Has a good faith and reasonable belief that forcible entry is necessary because the person or animal is in imminent danger of suffering harm.
- Contacts emergency responders before forcibly entering the vehicle.
- Remains with the person or animal in a safe location, out of the elements, but reasonably close to the vehicle, until an emergency responder arrives.
- Uses no more force than necessary to enter the vehicle and remove the person or animal.

The bill defines the term “domestic animal” as a dog, cat, or other animal that is domesticated and kept as a household pet with the exception of livestock or other farm animals. This broad definition may also confer immunity for the rescue of household pets such as birds, fish, hamsters, ferrets, rabbits, snakes, or other exotic animals kept as pets.

B. SECTION DIRECTORY:

Section 1 amends s. 768.13, F.S., relating to the Good Samaritan Act.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill has an indeterminate¹⁵ financial impact on motor vehicle owners and insurance companies. Generally, “other than collision”¹⁶ automobile insurance, also known as “comprehensive coverage”

¹³ A person 18 years of age or older who suffers from a condition of physical or mental incapacity due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that restrict the ability to perform the activities of daily living.

¹⁴ A person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental or emotional dysfunction that impairs the ability to care for oneself.

¹⁵The extent and cost of the damage caused by a good samaritan with immunity under the bill will depend upon the specific circumstances of the event as well as the age, make, and model of the motor vehicle. However, one of the most common methods of forcible entry into a motor vehicle in such cases, breaking a car window, typically involves damages of several hundred dollars. See SAFELITE AUTOGLASS, *Quick Quote*, <https://www.safelite.com/auto-glass-repair-replacement-cost/> (last visited October 13, 2015).

covers intentional damage to a motor vehicle by a third party. If insured, the motor vehicle owner is responsible for the cost of repair up to the amount of the policy deductible.¹⁷ The remaining cost is paid by the insurance company pursuant to the terms of the policy. If uninsured, the motor vehicle owner must pay the entire cost to repair any damage.

Under current law, a motor vehicle owner and an insurance company, as a subrogee¹⁸ to all of the insured's rights to recovery, may recover their respective costs from the party which caused the damage. The immunity provided by this bill will prevent the motor vehicle owner and the insurance company from recovering such costs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Good samaritans that force entry into a motor vehicle to rescue an endangered person or animal may be subject to criminal penalty for tampering or interfering with a motor vehicle under s. 860.17, F.S. or trespass in a conveyance under s. 810.08, F.S. The immunity provided by the bill does not appear to absolve a good samaritan of any potential criminal liability in such cases.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

¹⁶ Coverage which is available under a personal automobile policy that provides a form of "all risks" protection for damage to a covered auto from perils other than collision. Losses include but are not limited to fire, theft or larceny, explosion or earthquake, windstorm, hail, water, flood, malicious mischief, vandalism, riot, contact with an animal, and glass breakage. This protection is sometimes referred to as "comprehensive coverage." INSURANCE RISK MANAGEMENT INSTITUTE, <https://www.irmi.com/online/insurance-glossary/terms/o/other-than-collision-coverage.aspx> (last visited October 13, 2015).

¹⁷ If the damage occurs to the windshield of the motor vehicle, the motor vehicle owner is not required to pay the deductible in order to obtain the benefits of comprehensive coverage. s. 627.7288, F.S.

¹⁸ BLACK'S LAW DICTIONARY (10th ed. 2014) defines subrogation as "the principle under which an insurer [the subrogee] that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured [the subrogor] with respect to any loss covered by the policy."

1 A bill to be entitled
 2 An act relating to persons or domestic animals
 3 unattended in motor vehicles; amending s. 768.13,
 4 F.S.; providing immunity from civil liability for
 5 forcible entry into a motor vehicle to remove an
 6 elderly person, disabled adult, minor, or domestic
 7 animal in certain circumstances; providing a
 8 definition; providing an effective date.

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

11
 12 Section 1. Subsection (4) is added to section 768.13,
 13 Florida Statutes, to read:

14 768.13 Good Samaritan Act; immunity from civil liability.-

15 (4) (a) A person is immune from civil liability for any
 16 damage resulting from the forcible entry of a motor vehicle for
 17 the purpose of removing an elderly person or a disabled adult,
 18 as those terms are defined in s. 825.101, a minor, or a domestic
 19 animal from the vehicle if the person:

20 1. Determines that the vehicle is locked or there is
 21 otherwise no reasonable method for the elderly person, disabled
 22 adult, minor, or domestic animal to exit the vehicle.

23 2. Has a good faith belief that forcible entry into the
 24 vehicle is necessary because the elderly person, disabled adult,
 25 minor, or domestic animal is in imminent danger of suffering
 26 harm if not immediately removed from the vehicle and, based upon

27 the circumstances known to the person at the time, the belief is
 28 a reasonable one.

29 3. Contacts a local law enforcement agency, fire
 30 department, or 911 operator before forcibly entering the
 31 vehicle.

32 4. Remains with the elderly person, disabled adult, minor,
 33 or domestic animal in a safe location, out of the elements but
 34 reasonably close to the vehicle, until a law enforcement
 35 officer, firefighter, or other first responder arrives.

36 5. Uses no more force to enter the vehicle and remove the
 37 elderly person, disabled adult, minor, or domestic animal from
 38 the vehicle than necessary under the circumstances.

39 (b) As used in this subsection, the term "domestic animal"
 40 means a dog, cat, or other animal that is domesticated and kept
 41 as a household pet, but does not include livestock or other farm
 42 animals.

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



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 768.139, Florida Statutes, is created
to read:

768.139 Rescue of vulnerable person or domestic animal
from a motor vehicle; immunity from civil liability.-

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

(a) "Domestic animal" means a dog, cat, or other animal
that is domesticated and kept as a household pet. The term does
not include livestock or other farm animals.

(b) "Motor vehicle" has the same meaning as provided in s.
320.01.

(c) "Vulnerable person" means:

1. A disabled adult as defined in s. 825.101(3).



Amendment No. 1

18 2. An elderly person as defined in s. 825.101(4).

19 3. A minor.

20 (2) IMMUNITY FOR DAMAGE TO MOTOR VEHICLE.—A person who
21 enters a motor vehicle, by force or otherwise, for the purpose
22 of removing a vulnerable person or domestic animal is immune
23 from civil liability for damages to the motor vehicle if the
24 person:

25 (a) Determines the motor vehicle is locked or there is
26 otherwise no reasonable method for the vulnerable person or
27 domestic animal to exit the motor vehicle without assistance.

28 (b) Has a good faith and reasonable belief, based upon the
29 known circumstances, that entry into the motor vehicle is
30 necessary because the vulnerable person or domestic animal is in
31 imminent danger of suffering harm.

32 (c) Ensures that law enforcement is notified prior to
33 entering the motor vehicle or immediately thereafter.

34 (d) Uses no more force to enter the motor vehicle and
35 remove the vulnerable person or domestic animal than is
36 necessary.

37 (e) Remains with the vulnerable person or domestic animal
38 in a safe location, in reasonable proximity to the motor
39 vehicle, until law enforcement or other first responder arrives.

40 (3) APPLICABILITY.—This section does not limit or expand
41 any immunity provided under s. 768.13 for the care or treatment
42 of the vulnerable person or domestic animal.

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



Amendment No. 1

44
45
46
47
48
49
50
51
52

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 unattended persons and animals in motor
vehicles; creating s. 768.139, F.S.; defining terms; providing
immunity from civil liability for entry into a motor vehicle to
remove a person or animal under certain circumstances; providing
for applicability; providing an effective date.