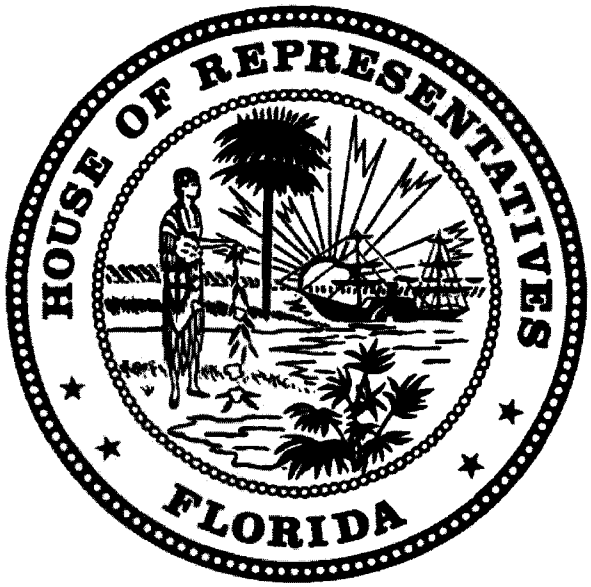

Appropriations Committee

Tuesday, April 18, 2017
9:00 AM – 12:00 PM
212 Knott Building

Meeting Packet

Richard Corcoran
Speaker

Carlos Trujillo
Chair

The Florida House of Representatives

Appropriations Committee

Richard Corcoran
Speaker

Carlos Trujillo
Chair

AGENDA
Wednesday, April 18, 2017
212 Knott Building
9:00 AM – 2:00 PM

I. Call to Order/Roll Call

II. Opening Remarks by Chair Trujillo

III. Consideration of the following bills:

CS/HB 455 Tax Exemptions for First Responders and Surviving Spouses by Ways & Means Committee, Metz

CS/HB 603 Publicly Funded Defined Benefit Retirement Plans by Oversight, Transparency & Administration Subcommittee, Fischer

CS/HB 1123 Fee and Surcharge Reductions by Ways & Means Committee, Drake

CS/HB 1217 Industrial Hemp Programs by Agriculture & Property Rights Subcommittee, Massullo

CS/HB 1235 Military and Veteran Support by Local, Federal & Veterans Affairs Subcommittee, Latvala

CS/HB 1379 Department of Legal Affairs by Civil Justice & Claims Subcommittee, Diaz, J.

HB 1397 Medical Use of Marijuana by Rodrigues

IV. Closing Remarks and Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4810

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 455 Tax Exemptions for First Responders and Surviving Spouses
SPONSOR(S): Ways and Means, Metz and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 764

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	17 Y, 0 N, As CS	Dobson	Langston
2) Appropriations Committee		Hawkins	Leznoff

SUMMARY ANALYSIS

In November of 2016, Florida voters approved an amendment to the state constitution that allows the legislature to provide ad valorem tax relief to certain totally and permanently disabled first responders. This bill implements that amendment by providing a 100 percent homestead tax exemption to first responders who are totally and permanently disabled as a result of injury sustained in the line of duty. The bill also extends a 100 percent exemption to the surviving spouse of a totally and permanently disabled first responder, provided certain conditions are met.

The bill defines "first responder" as a law enforcement officer, correctional officer, firefighter, emergency medical technician or paramedic, who is employed full-time, part-time or serves on a volunteer basis.

The bill specifies that "total and permanent disability" means a medically determinable physical or cognitive impairment that permanently prevents a person from rendering useful and efficient service as a first responder. The term does not include chronic conditions unless the chronic condition was solely caused by injury in the line of duty.

The bill specifies that a first responder who provides the following documents to his or her local property appraiser is entitled to exemption:

- Certification of total and permanent disability from two Florida-licensed physicians;
- Certification from the first responder's former employer that the injury giving rise to disability occurred in the line of duty; and
- Any existing documentation of the injury or incident that gave rise to the first responder's total and permanent disability.

The deadline to apply for exemption from taxes levied in 2017 is August 1st, 2017. However, property appraisers may accept untimely filed applications if certain conditions are met. The deadline to apply for exemption from taxes levied in 2018 and beyond is March 1 of each year.

The Revenue Estimating Conference determined the bill will have a statewide, annual impact of -$4.5 million on local government property tax revenues beginning in FY 2017-18, assuming current tax rates.

The bill takes effect upon becoming law.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. Present Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[1] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value (i.e., market value) for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications and exemptions.[4] Property appraisers calculate assessed value by adjusting just value in accordance with any applicable assessment limitations or usage classifications. The assessed value is then reduced by any exemptions to produce the taxable value.[5] Each year, local government governing boards levy millage rates (i.e. tax rates) on taxable value to generate the property tax revenue contemplated in their annual budgets. Property appraisers must notify property owners of the adopted millage rates by mailing out notices of proposed property taxes, commonly referred to as truth in millage (TRIM) notices.[6]

Case law precedent provides that the Legislature may only grant property tax exemptions that are authorized in the Florida Constitution, and any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[7]

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads on assessed value greater than $50,000 and up to $75,000, excluding school district levies.

Exemptions Related to Disabled Persons or First Responders

Current law provides several exemptions related to the totally and permanently ~~disability~~ disabled or first responders:

- Homestead exemption for certain totally and permanently disabled veterans or their surviving spouse;[8]
- Homestead exemption for surviving spouses of first responders who die in the line of duty;[9]
- Homestead exemption for disabled veterans confined to wheelchairs;[10]

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[1] Fla. Const. art. VII, s. 1(a).

[2] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

[3] Fla. Const., art. VII, s. 4.

[4] Fla. Const. art. VII, ss. 3, 4, and 6.

[5] s. 196.031, F.S.

[6] s. 200.065(2)(b), F.S.

[7] *Sebring Airport Auth. v. McIntyre*, 783 So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp. v. Kinney,* 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

[8] ss. 196.081(1) and (3), F.S.

[9] s. 196.081(6), F.S.

- Homestead exemption for certain totally and permanently disabled persons;[11] and
- Property to the value of $500 owned by widows, widowers, and blind or totally and permanently disabled persons.[12]

Section 196.101, F.S., relating to the annual application process for property tax exemptions, requires applications for several homestead-related exemptions to include the social security number of the applicant and the applicant's spouse, if any.

2016 Constitutional Amendment

In November 2016, Florida electors approved a constitutional amendment that allows the legislature to provide homestead tax relief to first responders who are totally and permanently disabled as a result of injury sustained in the line of duty.[13] The amendment specifies that a causal connection between an injury and service in the line of duty may not be presumed, and that the term "disability" does not include chronic disease, unless injury in the line of duty was the sole cause of the disease.

Effect of Proposed Changes

Exemption for Totally and Permanently Disabled First Responders

The bill creates statute that completely exempts from all homestead taxes first responders who are totally and permanently disabled due to an injury sustained in the line of duty. The term "first responders" refers to full-time, part-time and volunteer law enforcement officers, firefighters, paramedics or emergency medical technicians as those terms are defined in statute.[14]

The bill defines "totally and permanently disabled" to mean a medically determinable physical or cognitive impairment that permanently prevents a person from rendering useful and efficient service as a first responder. The term does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

The bill defines "In the line of duty" as:
- While engaging in law enforcement;
- While performing an activity relating to fire suppression and prevention;
- While responding to a hazardous material emergency;
- While performing a rescue activity;
- While providing emergency medical services;
- While performing disaster relief activity;
- While otherwise engaging in emergency response activity; or
- While engaging in an authorized training exercise related to any of the events or activities enumerated above.

The constitutional language authorizing an exemption for first responders imposes two requirements that must be met in order to qualify for exemption. First, applicants must be totally and permanently disabled. Accordingly, the bill provides that first responders can prove their status as totally and permanently disabled by submitting certification letters from two professionally unrelated physicians. The second constitutional requirement is that causal connection between disability and service in the line of duty cannot be presumed but must be determined in accordance with general law. To that end, the bill permits first responders to prove causal connection between their disability and service in the line of duty by submitting a letter from a representative of the entity who employed the first responder

[10] s. 196.091, F.S.
[11] s. 196.101, F.S.
[12] s. 196.202, F.S.
[13] *See* Article VII, section 6(f)(3) of the Florida Constitution.
[14] The terms are respectively defined in ss. 943.10, 633.102, 401.21, F.S.

when the injury occurred. Among other information, the employer letter must include a statement that the first responder's injury was directly and proximately caused by service in the line of duty, without willful negligence by the first responder, and that the injury is the sole cause of the first responder's total and permanent disability. The employer letter must be accompanied by any existing supporting documentation such as an incident report or insurance claim.

The exemption applies to taxes levied on or after January 1, 2017.

Spousal Exemption

The bill allows the spouse of a totally and permanently disabled first responder to maintain the exemption if the first responder predeceases the spouse. The bill also allows the surviving spouse of a totally and permanently disabled first responder to transfer the exemption to a different homestead property. The surviving spouse exemption remains in effect as long as the new residence is used as the surviving spouse's primary residence and he or she does not remarry.

Application Procedures

The deadline to apply for exemption from taxes levied in 2017 is August 1, 2017. For taxes levied in 2018 and beyond, the application deadline is March 1 of each year.[15] The bill allows property appraisers to accept untimely filed applications until 25 days after TRIM notices are mailed if the applicant is otherwise qualified for exemption and the applicant produces evidence demonstrating that he or she was unable to apply for exemption in a timely manner. The bill also allows first responders to petition for appeal before value adjustment boards in the event the property appraiser denies an application for exemption. A petition for such an appeal must be filed no later than 25 days after the property appraiser mails TRIM notices.

The bill amends s. 196.011, F.S., to add the new exemption created by this bill to the current list of property tax exemptions, the applications for which must include the applicant's social security number.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1. Amends s. 196.011, F.S., adding the new exemption created by this bill to the current list of property tax exemptions, the applications for which must include the applicant's social security number.

Section 2. Creates 196.102, F.S. providing exemptions for totally and permanently disabled first responders and their surviving spouses; prescribes requirements for application; specifies that the deadline for submitting applications for exemption from taxes levied in 2017 is August 1, 2017, and authorizes the Department of Revenue (Department) to adopt emergency rules.

Section 3. Limits applicability to taxes levied on or after January 1, 2017.

Section 4. 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:

None.

[15] *See* s. 196.011(1)(a), F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference determined the bill will have a statewide, annual impact of -$4.5 million on local government property tax revenues beginning in FY 2017-18, assuming current tax rates.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida constitution may apply because this bill reduces local government's ability to raise ad valorem revenues. However, and exemption may apply if the fiscal impact is insignificant. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue rulemaking authority to administer the provisions of the bill. The bill also grants emergency rulemaking authority to the Department to administer the application process for the 2017 calendar year. This emergency rulemaking authority expires on August 30, 2018.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Ways and Means Committee adopted two amendments to the bill. In addition to technical changes, the amendments define the term "total and permanent disability", revise the physician certification form and limit the time period that property appraisers may accept a late-filed exemption application to no more than 25 days after TRIM notices are mailed. As amended, the bill provides that "totally and permanently disabled" means a medically determinable physical or cognitive impairment that permanently prevents a person from rendering useful and efficient service as a first responder. This analysis is drafted to the bill as amended.

A bill to be entitled

An act relating to tax exemptions for first responders and surviving spouses; amending s. 196.011, F.S.; specifying the information to be included in an application for certain tax exemptions; creating s. 196.102, F.S.; providing definitions; providing an exemption from ad valorem taxation for certain first responders under specified conditions; providing an exemption from ad valorem taxation for certain surviving spouses of first responders who have died; specifying the documentation required to receive the exemption; providing a criminal penalty for knowingly or willingly giving false information for a certain purpose; granting rulemaking authority; granting emergency rule-making authority; specifying a deadline for applying for the exemption for the 2017 tax year; authorizing property appraisers, under certain circumstances, to grant exemptions for untimely filed applications for the 2017 tax year; providing procedures and requirements for petitioning value adjustment boards regarding denied exemptions for the 2017 tax year; providing applicability and construction; providing an effective date.

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

Section 1. Paragraph (b) of subsection (1) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(1)

(b) The form to apply for an exemption under s. 196.031, s. 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s. 196.202 must include a space for the applicant to list the social security number of the applicant and of the applicant's spouse, if any. If an applicant files a timely and otherwise complete application, and omits the required social security numbers, the application is incomplete. In that event, the property appraiser shall contact the applicant, who may refile a complete application by April 1. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

Section 2. Section 196.102, Florida Statutes, is created to read:

196.102 Exemption for certain totally and permanently disabled first responders and their surviving spouses.—

(1) As used in this section, and not applicable to the payment of benefits under s. 112.19 or s. 112.191, the term:

(a) "Total and permanent disability" means a medically determinable physical or cognitive impairment that permanently

prevents a person from rendering useful and efficient service as a first responder. The term does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

(b) "First responder" means a law enforcement officer or correctional officer as defined in s. 943.10, a firefighter as defined in s. 633.102, or an emergency medical technician or paramedic as defined in s. 401.23, who is a full-time paid employee, part-time paid employee, or unpaid volunteer.

(c) "Cardiac event" means a heart attack, stroke or vascular rupture.

(d) "In the line of duty" means:

1. While engaging in activities within the course and scope of employment as a first responder;

2. While performing an activity relating to fire suppression and prevention;

3. While responding to a hazardous material emergency;

4. While performing rescue activity;

5. While providing emergency medical services;

6. While performing disaster relief activity;

7. While otherwise engaging in emergency response activity; or

8. While engaging in a training exercise related to any of the events or activities enumerated in this paragraph if the

training had been authorized by the employing entity.

(2) Any real estate that is owned and used as a homestead by a person who is totally and permanently disabled as a result of an injury or injuries sustained in the line of duty while serving as a first responder is exempt from taxation if the first responder is a permanent resident of this state on January 1 of the tax year for which the exemption is being claimed.

(3) The following documents, if provided to the property appraiser of the county where the property is located, serve as prima facie evidence that the first responder is entitled to the exemption:

(a) A certificate of total and permanent disability, in the form set forth in subsection (7), from two licensed physicians of this state who are professionally unrelated, attesting to the applicant's total and permanent disability.

(b) A certificate from the organization that employed the first responder at the time that the injury or injuries occurred. The employer certificate must contain, at a minimum, the information identified in subsection (8). The employer certificate shall be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The first responder may deliver the original employer certificate to the property appraiser's office or the first responder's employer may directly transmit the employer certificate to the applicable property appraiser.

Total and permanent disability that results from a cardiac event does not qualify for the exemption provided in this section unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with competent medical evidence showing that:

1. The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the first responder's total and permanent disability; and

2. The cardiac event was not caused by preexisting vascular disease.

(4)(a) Any real estate owned and used as a homestead by the surviving spouse of a first responder who died but who had been receiving a tax exemption under subsection (2), is exempt from taxation.

(b) The tax exemption provided in paragraph (a) applies as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the surviving spouse's primary residence and he or she does not remarry.

(5) A first responder may apply for the exemption before producing the necessary documentation described in paragraphs (3)(a) or (b). Upon receipt of the documentation, the exemption shall be granted as of the date of the original application and the excess taxes paid shall be refunded. Any refund of excess taxes paid shall be limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e).

(6) The provisions of s. 196.011(9) waiving the requirement that an annual application be submitted to the property appraiser and providing lien authority are applicable to applications submitted pursuant to this section.

(7) The physician's certification shall read as follows:

PHYSICIAN'S CERTIFICATION OF
TOTAL AND PERMANENT DISABILITY

I, (name of physician), a physician licensed pursuant to chapter 458 or chapter 459, Florida Statutes, hereby certify that Mr. Mrs. Miss Ms. (applicant name and social security number), is totally and permanently disabled, due to the following mental or physical condition(s):

(Physical or cognitive impairment that permanently prevents the applicant from rendering useful and efficient service as a first responder);

(Chronic condition or chronic disease solely caused by an injury sustained in the line of duty as a first responder).

It is my professional belief that the above-named condition(s) permanently prevent(s) Mr. Mrs. Miss Ms. (applicant name) from rendering useful and efficient service as a first responder and that the foregoing statements are true, correct, and complete to the best of my knowledge and professional belief.

Signature _____

Address (print) _____

Date _____

Florida Board of Medicine or Osteopathic Medicine license number

Issued on _____.

NOTICE TO TAXPAYER: Each Florida resident applying for an exemption due to a disability that occurred in the line of duty while serving as a first responder must present to the county property appraiser two copies of this form and a letter from the employer for whom the first responder worked at the time of the injury, as required by section 196.102(8), Florida Statutes. Each form is to be completed by a licensed Florida physician.

NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.131(2), Florida Statutes, provides that any person who knowingly and willingly gives false information for the purpose of claiming homestead exemption commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding $5,000, or both.

(8) An employer for whom the first responder worked at the time of the injury must provide a certificate that, at a minimum, attests and includes:

(a) The title of the person signing the certificate.

(b) The name and address of the employing entity.

(c) A description of the incident that caused the injury or injuries.

(d) A statement that the first responder's injury or injuries were:

1. Directly and proximately caused by service in the line of duty.

2. Without willful negligence on the part of the first responder.

3. The sole cause of the first responder's total and permanent disability.

(9) Any person who knowingly or willfully gives false information for the purpose of claiming homestead exemption as set forth in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or by fine of not

more than $5,000, or both.

(10) The Department of Revenue may, and all conditions are deemed to be met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer the application process for the 2017 calendar year. This subsection is repealed on August 30, 2018.

(11) The Department of Revenue may adopt rules to administer this section.

(12) Notwithstanding s. 196.011 and this section, the deadline for a first responder to file an application with the property appraiser for an exemption under this section for the 2017 tax year is August 1, 2017.

(13) If an application is not timely filed under subsection (12), a property appraiser may grant the exemption if:

(a) The applicant files an application for the exemption on or before the 25th day after the mailing of the notice required under s. 194.011(1) by the property appraiser during the 2017 calendar year;

(b) The applicant is qualified for the exemption; and

(c) The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

(14) If the property appraiser denies an exemption under subsections (12) or (13), the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting the exemption be granted. Notwithstanding s. 194.013, an eligible first responder is not required to pay a filing fee for such petition filed on or before December 31, 2017. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

Section 3. This act operates prospectively to the 2017 tax roll and does not provide a basis for relief from an assessment of taxes not paid or create a right to a refund of taxes paid before January 1, 2017.

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

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Metz offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.—

(1)

(b) The form to apply for an exemption under s. 196.031, s. 196.081, s. 196.091, s. 196.101, s. 196.102, s. 196.173, or s. 196.202 must include a space for the applicant to list the social security number of the applicant and of the applicant's spouse, if any. If an applicant files a timely and otherwise complete application, and omits the required social security numbers, the application is incomplete. In that event, the

property appraiser shall contact the applicant, who may refile a complete application by April 1. Failure to file a complete application by that date constitutes a waiver of the exemption privilege for that year, except as provided in subsection (7) or subsection (8).

Section 2. Section 196.102, Florida Statutes, is created to read:

196.102 Exemption for certain totally and permanently disabled first responders; surviving spouse carryover.—

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

(a) "First responder" has the same meaning as in s. 196.081.

(b) "Cardiac event" means a heart attack, stroke, or vascular rupture.

(c) "In the line of duty" has the same meaning as in s. 196.081.

(d) "Total and permanent disability" means an impairment of the mind or body that renders a first responder unable to engage in any substantial gainful occupation and that is reasonably certain to continue throughout his or her life.

(2) Any real estate that is owned and used as a homestead by a person who has a total and permanent disability as a result of an injury or injuries sustained in the line of duty while serving as a first responder in this state or during an operation in another state or country authorized by this state

or a political subdivision of this state is exempt from taxation if the first responder is a permanent resident of this state on January 1 of the year for which the exemption is being claimed.

(3) An applicant may qualify for the exemption under this section by applying by March 1, pursuant to subsection (4) or subsection (5), to the property appraiser of the county where the property is located.

(4) An applicant may qualify for the exemption under this section by providing the employer certificate described in subsection (5) and satisfying the requirements for the totally and permanently disabled exemption in s. 196.101; however, for purposes of this section, the applicant is not required to satisfy the gross income requirement in s. 196.101(4)(a).

(5) An applicant may qualify for the exemption under this section by providing all of the following documents to the county property appraiser, which serve as prima facie evidence that the person is entitled to the exemption:

(a) An award letter from the Social Security Administration, based upon the applicant's total and permanent disability, provided to the property appraiser within 3 months after issuance.

(b)1. A certificate from the organization that employed the applicant as a first responder at the time that the injury or injuries occurred. The employer certificate must contain, at a minimum:

a. The title of the person signing the certificate;

b. The name and address of the employing entity;

c. A description of the incident that caused the injury or injuries;

d. The date and location of the incident; and

e. A statement that the first responder's injury or injuries were:

(I) Directly and proximately caused by service in the line of duty.

(II) Without willful negligence on the part of the first responder.

(III) The sole cause of the first responder's total and permanent disability.

2. If the first responder's total and permanent disability was caused by a cardiac event, the employer must also certify that the requirements of subsection (6) are satisfied.

3. The employer certificate must be supplemented with extant documentation of the incident or event that caused the injury, such as an accident or incident report. The applicant may deliver the original employer certificate to the property appraiser's office or the employer may directly transmit the employer certificate to the applicable property appraiser.

(c) A certificate from a physician licensed in this state under chapter 458 or chapter 459 which certifies that the applicant has a total and permanent disability and that such

disability renders the applicant unable to engage in any substantial gainful occupation due to an impairment of the mind or body, which condition is reasonably certain to continue throughout the life of the applicant. The physician certificate shall read as follows:

FIRST RESPONDER'S
PHYSICIAN CERTIFICATE OF
TOTAL AND PERMANENT DISABILITY

I,...(name of physician)..., a physician licensed pursuant to chapter 458 or chapter 459, Florida Statutes, hereby certify that Mr.....Mrs.....Miss.... Ms.....(applicant name and social security number).... is totally and permanently disabled due to an impairment of the mind or body, and such impairment renders him or her unable to engage in any substantial gainful occupation, which condition is reasonably certain to continue throughout his or her life. Mr.....Mrs.....Miss.... Ms.....(applicant name)... has the following mental or physical condition(s):

It is my professional belief that the above-named condition(s) render Mr.....Mrs.....Miss.... Ms.....(applicant name)... totally and permanently disabled and that the foregoing statements are true, correct, and complete to the best of my

knowledge and professional belief.

Signature....
Address...(print)...
Date....
Florida Board of Medicine or Osteopathic Medicine license number
Issued on.....

NOTICE TO TAXPAYER: Each Florida resident applying for an exemption due to a total and permanent disability that occurred in the line of duty while serving as a first responder must present to the county property appraiser a copy of this form, an award letter from the Social Security Administration, and a certificate from the employer for whom the applicant worked as a first responder at the time of the injury, as required by section 196.102(5), Florida Statutes. This form is to be completed by a licensed Florida physician.

NOTICE TO TAXPAYER AND PHYSICIAN: Section 196.102(10), Florida Statutes, provides that any person who knowingly and willingly gives false information for the purpose of claiming the homestead exemption for totally and permanently disabled first responders commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year or a fine not exceeding $5,000, or both.

(6) A total and permanent disability that results from a cardiac event does not qualify for the exemption provided in this section unless the cardiac event occurs no later than 24 hours after the first responder performed nonroutine stressful or strenuous physical activity in the line of duty and the first responder provides the employer with medical evidence showing that:

(a) The nonroutine stressful or strenuous activity directly and proximately caused the cardiac event that gave rise to the total and permanent disability; and

(b) The cardiac event was not caused by a preexisting vascular disease.

(7) An applicant who is granted the exemption under this section has a continuing duty to notify the property appraiser of any changes in his or her status with the Social Security Administration or in employment or other relevant changes in circumstances which affect his or her qualification for the exemption.

(8) The tax exemption carries over to the benefit of the surviving spouse as long as the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon as specified in s. 196.031, and does not remarry. If the surviving spouse sells the property, an exemption not to exceed the amount granted under the most recent ad valorem tax roll may be transferred to the new residence if it is used as the

surviving spouse's primary residence and he or she does not remarry.

(9) An applicant may apply for the exemption before producing the necessary documentation described in subsection (4) or subsection (5). Upon receipt of the documentation, the exemption must be granted as of the date of the original application and the excess taxes paid must be refunded. Any refund of excess taxes paid must be limited to those paid during the 4-year period of limitation set forth in s. 197.182(1)(e).

(10) A person who knowingly or willfully gives false information for the purpose of claiming the exemption provided in this section commits a misdemeanor of the first degree, punishable by a term of imprisonment not exceeding 1 year or a fine of not more than $5,000, or both.

(11) Notwithstanding s. 196.011 and this section, the deadline for a first responder to file an application with the property appraiser for an exemption under this section for the 2017 tax year is August 1, 2017.

(12) If an application is not timely filed under subsection (11), a property appraiser may grant the exemption if:

(a) The applicant files an application for the exemption on or before the 25th day after the mailing of the notice required under s. 194.011(1) by the property appraiser during the 2017 calendar year;

(b) The applicant is qualified for the exemption; and

(c) The applicant produces sufficient evidence, as determined by the property appraiser, which demonstrates that the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrates extenuating circumstances that warrant granting the exemption.

(13) If the property appraiser denies an exemption under subsection (11) or subsection (12), the applicant may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the exemption be granted. Notwithstanding s. 194.013, the eligible first responder is not required to pay a filing fee for such petition filed on or before December 31, 2017. Upon review of the petition, the value adjustment board shall grant the exemption if it determines the applicant is qualified and has demonstrated the existence of extenuating circumstances warranting the exemption.

(14) The Department of Revenue may, and all conditions are deemed to be met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54 to administer the application process for the 2017 calendar year. This subsection expires August 30, 2018.

Section 3. This act shall take effect upon becoming a law and shall operate retroactively to January 1, 2017.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to tax exemptions for first responders and surviving spouses; amending s. 196.011, F.S.; specifying the information to be included in an application for certain tax exemptions; creating s. 196.102, F.S.; providing definitions; providing an exemption from ad valorem taxation for certain first responders under specified conditions; providing procedures for applying for the exemption; specifying requirements for documents that serve as prima facie evidence of entitlement to the exemption; providing that total and permanent disabilities resulting from cardiac events do not qualify for the exemption except when certain conditions are met; providing that applicants have a continuing duty to notify property appraisers of certain changes; providing that the exemption carries over to the benefit of surviving spouses under certain circumstances; providing requirements relating to the date of granting an exemption and the refund of excess taxes; providing a criminal penalty for knowingly or willfully giving false information to claim the exemption; specifying a deadline and procedures for applying for the exemption for the 2017 tax year; specifying procedures for

petitioning a denial with the value adjustment board; authorizing the Department of Revenue to adopt emergency rules; providing retroactive applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 603 Publicly Funded Defined Benefit Retirement Plans
SPONSOR(S): Oversight, Transparency & Administration Subcommittee; Fischer
TIED BILLS: **IDEN./SIM. BILLS:** SB 632

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	9 Y, 5 N, As CS	Moore	Harrington
2) Appropriations Committee		Delaney DHD	Leznoff
3) Government Accountability Committee			

SUMMARY ANALYSIS

The State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis. Funding a pension benefit requires the use of projections, known as actuarial assumptions, about future events. As with other actuarial assumptions, projecting pension fund investment returns requires a focus on the long-term.

The bill defines the term "long-range return rate" to mean an actuarial assumed rate of return that is expected to be realized at least 50 percent of the time over the next 30-year period.

The bill requires a public pension plan's triennial actuarial report to include the plan's long-range return rate. If a plan has an actuarial assumed rate of return greater than the long-range return rate, the report must also include:

- The difference between the plan's actuarial assumed rate of return and long-range return rate.
- A description of actions taken to reduce the actuarial assumed rate of return.
- Any change to the plan investment strategy, including, but not limited to, changes to asset class allocations, and any change to actuarial methodology which results in a change to either the long-range return rate or the actuarial assumed rate of return of the plan.
- An estimate of the additional cost to the plan or system that would result if the plan used the long-range return rate as the plan's actuarial assumed rate of return.

The bill has an indeterminate, but likely insignificant, fiscal impact on the state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements
Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act
Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.[1] Responsibility for administration of the act has been assigned primarily to the Department of Management Services (department), Division of Retirement (division).

Florida Retirement System
The Florida Retirement System (FRS) is a multiple-employer, contributory plan[2] governed by the Florida Retirement System Act.[3] As of June 30, 2016, the FRS provides retirement income benefits to 630,350 active members, 394,907 retired members and beneficiaries, and 29,602 members of the Deferred Retirement Option Program.[4] It is the primary retirement plan for employees of state and county government agencies, district school boards, state colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 173 cities and 260 special districts that have elected to join the system. Members of the FRS have two primary plan options available for participation:

- The pension plan, which is a defined benefit plan;[5] and
- The investment plan, which is a defined contribution plan.[6]

Local Government Retirement Systems and Plans
The division reports that as of September 30, 2016, there are 489 defined benefit plans sponsored by 247 local governments.[7] The vast majority of the plans, 483, are local government defined benefit systems that provide benefits to 90,994 retirees and have 95,182 active employees and total plan assets of $35.9 billion. The average annual pension in these local plans is $27,414, and the average annual required contribution rate as a percentage of payroll is 33.28 percent.[8]

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last

[1] Section 112.62, F.S.
[2] Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class members or 6 percent for Special Risk Class members. Members were again required to contribute to the system after June 30, 2011.
[3] Chapter 121, F.S.
[4] *Florida Retirement System Pension Plan And Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016*, at 6, *available at* http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports.
[5] As of June 30, 2016, the pension plan had 515,916 members. *Id.*at 120.
[6] As of June 30, 2016, the investment plan had 114,434 members. *Id.*
[7] Department of Management Services, *Florida Local Government Retirement Systems*, 2016 Annual Report, p. 4, *available at* https://www.rol.frs.state.fl.us/forms/2016_Local_Report.pdf.
[8] *Id.*

public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the division.[9] In addition, the statement is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Public Pension Plan Investment Return Assumptions

Funding a pension benefit requires the use of projections, known as actuarial assumptions, about future events. Actuarial assumptions fall into one of two broad categories: demographic and economic. Demographic assumptions are those pertaining to a pension plan's membership, such as changes in the number of working and retired plan participants, when participants will retire, and how long they'll live after they retire. Economic assumptions pertain to such factors as the rate of wage growth and the future expected investment return on the fund's assets. As with other actuarial assumptions, projecting pension fund investment returns requires a focus on the long-term.[10]

Because investment earnings account for a majority of revenue for a typical public pension fund, the accuracy of the return assumption has a major effect on a plan's finances and actuarial funding level. An investment return assumption that is set too low will overstate liabilities and costs, causing current taxpayers to be overcharged and future taxpayers to be undercharged. A rate set too high will understate liabilities, undercharging current taxpayers at the expense of future taxpayers. An assumption that is significantly wrong in either direction will cause a misallocation of resources and unfairly distribute costs among generations of taxpayers.[11]

Amortization of Unfunded Liability

Section 112.64, F.S., governs the amortization of unfunded liability for public employee retirement systems or plans. For those plans in existence on October 1, 1980, the total contributions to the retirement system or plan must be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, this requirement does not permit a retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.[12] For a retirement system or plan that comes into existence after October 1, 1980, the unfunded liability, if any, must be amortized within 40 years of the first plan year.[13] The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses must be amortized within 30 plan years.[14]

Reporting Requirements for Publicly-Funded Retirement Plans

To help ensure that each retirement system or plan maintains funding of retirement systems at an appropriate level, governmental entities are required to submit regularly scheduled actuarial reports to the division for its review and approval.[15]

Section 112.63, F.S., requires the plan administrators for all publicly-funded pension plans to submit an actuarial report at least every three years and requires the actuarial reports to consist of, but not be limited to, the following information:

- Adequacy of employer and employee contribution rates in meeting levels of employee benefits and changes, if any, needed in such rates to achieve or preserve a level of funding deemed adequate to enable payment through the indefinite future of the benefit amounts prescribed by the system;

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[9] *See* s. 112.63, F.S.

[10] *NASRA Issue Brief: Public Pension Plan Investment Return Assumptions*, National Association of State Retirement Administrators, p. 1, February 2017, *available at* http://www.nasra.org/files/Issue%20Briefs/NASRAInvReturnAssumptBrief.pdf.

[11] *Id.*

[12] Section 112.62, F.S.

[13] Section 112.63, F.S.

[14] Section 112.64, F.S.

[15] Section 112.63(1), F.S., requires an enrolled actuary to certify the scheduled actuarial reports.

- A plan to amortize any unfunded liability pursuant to s. 112.64, F.S., and a description of actions taken to reduce the unfunded liability;
- A description and explanation of actuarial assumptions;
- A schedule illustrating the amortization of unfunded liabilities, if any;
- A comparative review illustrating the actual salary increases granted and the rate of investment return realized over the 3-year period preceding the actuarial report with the assumptions used in both the preceding and current actuarial reports;
- Effective January 1, 2016, the mortality tables used in either of the two most recently published actuarial valuation reports of the Florida Retirement System, including the projection scale for mortality improvement; and
- A statement by the enrolled actuary that the report is complete and accurate and that, in his or her opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of the act.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits must only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.[16]

If the division determines that a governmental entity has not submitted a complete, accurate, or reasonable actuarial valuation or required reports, the division must notify the plan administrator of the deficiency and request an appropriate adjustment or the required information.[17] If after a reasonable period of time, a satisfactory adjustment has not been made, or the required report has not been provided, the department may notify DOR and the Department of Financial Services of the noncompliance and those agencies must withhold any funds not pledged for satisfaction of bonds until such adjustment is made to the report.[18] The affected governmental entity may petition the department for a hearing.[19]

Effect of the Bill

The bill defines the term "long-range return rate" to mean an actuarial assumed rate of return that is expected to be realized at least 50 percent of the time over the next 30-year period.

The bill requires a public pension plan's triennial actuarial report to include the plan's long-range return rate. If a plan has an actuarial assumed rate of return greater than the long-range return rate, the report must also include:

- The difference between the plan's actuarial assumed rate of return and long-range return rate.
- A description of actions taken to reduce the actuarial assumed rate of return.
- Any change to the plan investment strategy, including, but not limited to, changes to asset class allocations, and any change to actuarial methodology which results in a change to either the long-range return rate or the actuarial assumed rate of return of the plan.
- An estimate of the additional cost to the plan or system that would result if the plan used the long-range return rate as the plan's actuarial assumed rate of return.

The bill specifies that it fulfills an important state interest because it extends to employees and retirees of the state and its political subdivisions, and their families, the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and that are managed, administered, and funded in an actuarially sound manner.

[16] *Id.*
[17] Section 112.63(4)(a), F.S.
[18] Section 112.63(4)(b), F.S.
[19] Section 112.63(4)(c), F.S.

B. SECTION DIRECTORY:

Section 1. amends s. 112.625, F.S., relating to definitions.

Section 2. amends s. 112.63, F.S., relating to actuarial reports and statements of actuarial impact.

Sections 3. and 4. amend ss. 175.261 and 185.221, F.S., to conform cross-references.

Section 5. provides that the act fulfills an important state interest.

Section 6. provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill requires additional information to be included in the actuarial report that a public pension plan is required to submit under current law. Staff in the Division of Retirement indicated that the administrative costs associated with calculating and reporting the required information for the Florida Retirement System should be insignificant and absorbed within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   The bill requires additional information to be included in the actuarial report that a public pension plan is required to submit under current law. The cost associated with determining and reporting such information is indeterminate, but likely insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Oversight, Transparency & Administration Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed the provision prohibiting a public pension plan from having an actuarial assumed rate of return greater than the plan's long-range return rate; and
- Revised the additional information that must be included in a public pension plan's triennial actuarial report.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

A bill to be entitled

An act relating to publicly funded defined benefit retirement plans; reordering and amending s. 112.625, F.S.; defining the term "long-range return rate"; amending s. 112.63, F.S.; providing additional requirements for actuarial reports submitted by a retirement plan or system subject to part VII of ch. 112, F.S.; amending ss. 175.261 and 185.221, F.S.; conforming cross-references; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 112.625, Florida Statutes, is reordered and amended to read:

112.625 Definitions.—As used in this act:

(9)~~(1)~~ "Retirement system or plan" means any employee pension benefit plan supported in whole or in part by public funds, provided such plan is not:

(a) An employee benefit plan described in s. 4(a) of the Employee Retirement Income Security Act of 1974, which is not exempt under s. 4(b)(1) of such act;

(b) A plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred

compensation for a select group of management or highly compensated employees;

(c) A coverage agreement entered into pursuant to s. 218 of the Social Security Act;

(d) An individual retirement account or an individual retirement annuity within the meaning of s. 408, or a retirement bond within the meaning of s. 409, of the Internal Revenue Code of 1954;

(e) A plan described in s. 401(d) of the Internal Revenue Code of 1954; or

(f) An individual account consisting of an annuity contract described in s. 403(b) of the Internal Revenue Code of 1954.

(7)~~(2)~~ "Plan administrator" means the person so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated. If no plan administrator has been designated, the plan sponsor shall be considered the plan administrator.

(2)~~(3)~~ "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(1)~~(4)~~ "Benefit increase" means a change or amendment in the plan design or benefit structure which results in increased benefits for plan members or beneficiaries.

(3)~~(5)~~ "Governmental entity" means the state, for the Florida Retirement System, and the county, municipality, special district, or district school board which is the employer of the member of a local retirement system or plan.

(6) "Pension or retirement benefit" means any benefit, including a disability benefit, paid to a member or beneficiary of a retirement system or plan as defined in subsection (9)~~(1)~~.

(10)~~(7)~~ "Statement value" means the value of assets in accordance with s. 302(c)(2) of the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury as amended by Pub. L. No. 100-203, as such sections are in effect on August 16, 2006. Assets for which a fair market value is not provided shall be excluded from the assets used in the determination of annual funding cost.

(5)~~(8)~~ "Named fiduciary," "board," or "board of trustees" means the person or persons so designated by the terms of the instrument or instruments, ordinance, or statute under which the plan is operated.

(8)~~(9)~~ "Plan sponsor" means the local governmental entity that has established or that may establish a local retirement system or plan.

(4) "Long-range return rate" means an actuarial assumed rate of return that is expected to be realized at least 50 percent of the time over the next 30-year period.

Section 2. Paragraph (g) of subsection (1) of section 112.63, Florida Statutes, is redesignated as paragraph (h), and a new paragraph (g) is added to that subsection, to read:

112.63 Actuarial reports and statements of actuarial impact; review.—

(1) Each retirement system or plan subject to the provisions of this act shall have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. The actuarial report shall consist of, but is not limited to, the following:

(g) The plan's long-range return rate. Any plan that has an actuarial assumed rate of return greater than the long-range return rate must include:

1. The difference between the plan's actuarial assumed rate of return and long-range return rate.

2. A description of actions taken to reduce the actuarial assumed rate of return.

3. Any change to the plan investment strategy, including, but not limited to, changes to asset class allocations, and any change to actuarial methodology which results in a change to either the long-range return rate or the actuarial assumed rate of return of the plan.

4. An estimate of the additional cost to the plan or system that would result if the plan used the long-range return rate as the plan's actuarial assumed rate of return.

The actuarial cost methods utilized for establishing the amount of the annual actuarial normal cost to support the promised benefits shall only be those methods approved in the Employee Retirement Income Security Act of 1974 and as permitted under regulations prescribed by the Secretary of the Treasury.

Section 3. Paragraph (b) of subsection (2) of section 175.261, Florida Statutes, is amended to read:

175.261 Annual report to Division of Retirement; actuarial valuations.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the board of trustees for every chapter plan and local law plan shall submit the following reports to the division:

(2) With respect to local law plans:

(b) In addition to annual reports provided under paragraph (a), an actuarial valuation of the retirement plan must be made at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

1. The assets shall be valued as provided in s.

112.625(10) ~~s. 112.625(7)~~.

2. The cost of the actuarial valuation must be paid by the individual firefighters' retirement fund or by the sponsoring municipality or special fire control district.

3. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of valuation. If any benefits are insured with a commercial insurance company, the report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

Section 4. Paragraph (b) of subsection (2) of section 185.221, Florida Statutes, is amended to read:

185.221 Annual report to Division of Retirement; actuarial valuations.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the board of trustees for every chapter plan and local law plan shall submit the following reports to the division:

(2) With respect to local law plans:

(b) In addition to annual reports provided under paragraph (a), an actuarial valuation of the retirement plan must be made at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan

or system for existing plans, or commencing 3 years from issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

1. The assets shall be valued as provided in s. 112.625(10) ~~s. 112.625(7)~~.

2. The cost of the actuarial valuation must be paid by the individual police officer's retirement trust fund or by the sponsoring municipality.

3. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of the valuation. If any benefits are insured with a commercial insurance company, the report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

Section 5. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems that provide fair and adequate benefits and

that are managed, administered, and funded in an actuarially sound manner as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

Section 6. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1123 Fee and Surcharge Reductions
SPONSOR(S): Ways and Means Committee, Drake and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	15 Y, 0 N, As CS	Dugan	Langston
2) Appropriations Committee		Topp BDT	Leznoff

SUMMARY ANALYSIS

CS/HB 1123 reduces or eliminates numerous fees or surcharges imposed in the Florida Statutes. Specifically, the committee substitute:

- Eliminates a $10 fee for commissions of elected officers;
- Eliminates the $2 fee deducted from each motor fuel sales tax refund claim;
- Eliminates the $5 registration fee for persons or businesses required to register with the Department of Revenue for collecting, reporting, and remitting sales and use tax;
- Exempts a surviving spouse of a deceased motor vehicle owner from the motor vehicle title transfer fees when transferring the title into the surviving spouse's name;
- Eliminates the $1 and $2 fees for a veteran to receive a "Veteran" designation on his or her driver license or identification card;
- Exempts a veteran from the fee for an original commercial driver license;
- Exempts a person who is 80 years of age or older from the $25 identification card fees;
- Provides a flat $25 delinquency fee for specified professional licensees and removes current law requiring that the delinquency fee is set by each professional board at a rate not to exceed the biennial renewal fee for an active status license;
- Reduces the application and license fees for commercial driver schools by half; and
- Reduces the surcharge assessed on all building permit fees from 1.5 percent to one percent of the permit fee.

The Revenue Estimating Conference (REC) reviewed the committee substitute on April 17, 2017, and estimated the bill's annual impact to be -$2 million to the General Revenue Fund and -$3.7 million to various state trust funds. The bill has a negative fiscal impact to local governments. See *Fiscal Analysis and Economic Impact Statement.*

The committee substitute is effective July 1, 2017, except for certain provisions that take effect January 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Elected Officer's Fee for Commission (Sections 1 and 2)

Current Situation

Section 113.01, F.S., prescribes a $10 fee for the issuance of each commission issued by the Governor and attested by the Secretary of State for elected officers or a notary public. A commission to officers is a warrant or authority granted by government, which empowers the named individual to execute official acts. The commission cannot be issued or bear the state seal until the required fee is paid.[1] The $10 fee is charged to persons elected or appointed to fill vacant positions, paid to the Chief Financial Officer, and deposited in the General Revenue Fund.[2]

The number of people charged the $10 fee varies each year due to the number of elections and appointments. In Fiscal Year 2016-2017, there were 1,936 commissions issued, and 202 commissions that will be issued upon payment of the fee, totaling $21,380 for the fiscal year.[3]

Proposed Changes

The committee substitute eliminates the $10 fee for commissions for elected officers.

Motor Fuel Tax Refund Claims (Section 3)

Current Situation

Section 206.41, F.S., imposes the following state taxes on motor fuel:

- "Constitutional fuel tax" of two cents per net gallon;[4]
- "County fuel tax" of one cent per net gallon;[5]
- "Municipal fuel tax" of one cent per net gallon;[6]
- "Ninth-cent fuel tax" may be imposed by each county of one cent per net gallon;[7]
- "Local option fuel tax" may be imposed by each county of between one and eleven cents per net gallon;[8]
- State Comprehensive Enhanced Transportation System Tax, which is a motor fuel tax equal to two-thirds of the lesser of the sum of a county's ninth-cent fuel tax and the local option fuel tax or six cents, rounded to the nearest tenth of a cent;[9]

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[1] s. 113.02, F.S.
[2] s. 15.09(3), F.S.
[3] Office of Economic and Demographic Research (EDR), Revenue Estimating Conference (REC), *Elimination of $10 Elected Officer's Commission Fee* (Mar. 10, 2017), *available* at p. 319 *at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 22, 2017).
[4] To be placed monthly in the state roads distribution fund in the state treasury and distributed as required by s. 9(c), art. XII of the State Constitution.
[5] To be used for public transportation purposes as required by s. 206.60, F.S.
[6] Which is transferred into the Revenue Sharing Trust Fund for Municipalities to be used for transportation purposes as authorized in s. 206.605, F.S.
[7] County and municipal governments may use the moneys received only for transportation expenditures; See s. 336.021, F.S.
[8] Section 336.025, F.S.; County and municipal governments may use the moneys received only for transportation expenditures needed: to meet the requirements of the capital improvements element of an adopted comprehensive plan; to meet immediate local transportation problems; and for building comprehensive roadway networks by local governmental, excluding routine road maintenance.

- "Fuel sales tax" of at least 6.9 cents per net gallon, which may be increased by a percentage change in the average of the Consumer Price Index issued by the U.S. Department of Labor for the most recent 12-month period ending September 30, compared to the base year average (the average for the 12-month period ending September 30, 1989);[10] and
- An additional 0.125 cents per net gallon to defray expenses related to inspecting, testing, and analyzing motor fuel in this state.

Section 206.41, F.S., exempts qualified entities from certain motor fuel taxes, and authorizes refunds for qualified entities that have purchased and used tax-paid fuel for an exempt purpose. For example, any person who uses motor fuel for the following purposes on which the local option fuel tax, State Comprehensive Enhanced Transportation System Tax, or fuel sales tax was imposed is entitled to a refund of such tax:

- *Agricultural purposes*: motor fuel used in any tractor, vehicle, or farm equipment used exclusively on a farm or for processing farm products on the farm; and motor fuel used for transporting bees by water and the operating of equipment used in the apiary of a beekeeper.
- *Commercial fishing and aquacultural purposes*: motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh water under the jurisdiction of the state for resale to the public. This does not include any fuel used for sport or pleasure fishing, or for any fuel used in any vehicle or equipment operated upon Florida highways.
- *Commercial aviation purposes*: motor fuel used in the operation of aviation ground support vehicles or equipment, not used in any vehicle or equipment operated on Florida highways. [11]

A person must apply to receive a permit from the Department of Revenue (DOR) to be issued a refund. Such permits are in effect for a year and shall be continuous as long as the person files refund claims with the DOR each year. A person will need to apply for a new permit if he or she does not file a claim for any year.[12]

Refunds are issued quarterly, and no refund will be authorized unless the amount due is for at least $5. Additionally, the DOR is authorized to deduct a fee of $2 for each refund claim, which will be deposited into the General Revenue Fund.[13]

In Fiscal Year 2015-2016, the DOR withheld $2,020 from fuel refunds.[14]

Proposed Changes

Effective January 1, 2018, the committee substitute eliminates the $2 fee deducted from each motor fuel sales tax refund claim.

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[9] Majority of the funds are deposited into and used from the State Transportation Trust Fund and may be used only for projects in the adopted work program in the district in which the tax proceeds are collected. See s. 206.608, F.S.

[10] Section 206.606, F.S., provides such proceeds are deposited in the Fuel Tax Collection Trust Fund to be distributed among the State Transportation Trust Fund, the Invasive Plant Control Trust Fund, the State Game Trust Fund, the Agricultural Emergency Eradication Trust Fund, and the Marine Resources Conservation Trust Fund.

[11] Additional entities entitled to certain motor fuel tax refunds are listed in s. 206.41(4), F.S., more information is available on the DOR website, *Fuel Tax Refunds*, http://floridarevenue.com/dor/taxes/fuel/fuel_tax_refunds.html (last visited Mar. 24, 2017).

[12] s. 206.41(5)(a), F.S.

[13] s. 206.41(5)(c), F.S.

[14] EDR, REC, Elimination of the $2 Deduction, *available at p. 320 at:http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 22, 2017).*

Registration Fee for Dealers and Businesses (Sections 4 and 5)

Current Situation

Section 212.18, F.S., provides that every person desiring to engage in or conduct business in this state as a sales and use tax dealer, or to lease, rent, or let or grant license in transient lodgings or real property, and every person who receives money for admissions must register with the DOR to collect, report, and remit such taxes. A $5 registration fee must accompany the application for a certificate of registration; however, the registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. Additionally, the DOR may waive the registration fee for applications submitted through the DOR internet registration process.

A person who engages in activities that require registration but fails or refuses to do so is subject to a $100 registration fee in lieu of the $5 fee. However, the DOR may waive the increase in the fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.[15]

Section 212.0596, F.S., provides that the DOR may establish procedures to provide for the waiver of registration fees from unregistered persons who make mail order purchases for which tax is required to be remitted.

According to the DOR, in Fiscal Year 2015-2016, DOR collected $130,766 of such fees.[16]

Proposed Changes

Effective January 1, 2018, the committee substitute eliminates the $5 registration fee for persons or businesses required to register with the DOR in order to collect, report, and remit sales and use tax.

Motor Vehicle Title Transfer Fee (Sections 6 and 7)

Current Situation

Florida law provides the fees, service charges, and disposition of funds for certificates of title. Specifically, s. 319.32(1), F.S., provides that the Department of Highway Safety and Motor Vehicles (DHSMV) charges a $70 fee for each original and duplicate certificate of title, except for motor vehicles for hire,[17] which are $49, and $2 for each salvage certificate of title. The DHSMV also charges $2 to note a lien on the certificate, $1 to cover the cost of materials, and $2.50 for shipping and handling. Additionally, s. 319.32(2), F.S., provides that there is a $4.25 service charge for each certificate of title application, a $10 additional fee for an original certificate of title issued for a vehicle registered outside of Florida, and a $7 additional fee for each lien placed on a vehicle by the state child enforcement program.

The $70 fee is distributed between the State Transportation Trust Fund and the General Revenue Fund, excluding $1 that is deposited into the Highway Safety Operating Trust Fund to fund the DHSMV's efforts to prevent and detect odometer fraud.[18] The DHSMV or the tax collector who processes the application retains the $4.25 service charge.[19]

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[15] s. 212.18(3)(c), F.S.

[16] EDR, REC, *Elimination of the $5 Registration Fee for Certain Dealers or Businesses* available at p. 321 at:http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page319-332.pdf (last visited Mar. 22, 2017).

[17] Vehicles registered under s. 320.08(6), F.S.

[18] ss. 319.32(5) and 319.324, F.S.; Section 319.32(5), F.S., provides that $47 of each fee collected for an original or duplicate certificate of title is deposited into the State Transportation Trust Fund, which may receive up to $200 million in any fiscal year. The remainder of the fee and any fees in excess of the $200 million are deposited into the General Revenue Fund.

[19] s. 319.32(2)(b), F.S.

A surviving spouse who inherits the deceased spouse's motor vehicle may dispose of the vehicle without being required to obtain a certificate of title in his or her name.[20] If the married couple are co-owners of the vehicle with names appearing conjoined by an "or" on the title, it is not necessary for the surviving spouse to apply for a new title, as he or she already has absolute rights to the vehicle. However, if the names are conjoined by "and" or if the vehicle is not co-owned by the surviving spouse and he or she wishes to maintain ownership of the vehicle, the surviving spouse will be required to apply for an original certificate in his or her own name.

Proposed Changes

The committee substitute exempts a surviving spouse from motor vehicle title transfer fees provided under s. 319.32(1), F.S., when the title is being transferred from the deceased motor vehicle owner to the surviving spouse. The fee exemption is for a surviving spouse regardless of whether he or she is named on the deceased motor vehicle owner's title.

"Veteran" Designation Fee (Sections 8 and 9)

Current Situation

Florida provides the option for a veteran[21] designation to be placed on a veteran's driver license or identification card upon request from the veteran, payment of a fee, and the presentation of a copy of the veteran's DD Form 214[22] or other acceptable form specified by the Florida Department of Veterans' Affairs (FDVA).[23] The designation is added onto a driver license or identification card for a $1 fee when the license or card is being issued or renewed, or a $2 fee solely to replace a license or card in order to add on the designation, which is deposited in the Highway Safety Operating Trust Fund (HSOTF).[24]

Proposed Changes

The committee substitute eliminates the $1 and $2 fee to receive the "Veteran" designation on a driver license or ID card.

Commercial Driver License (CDL) for Veterans (Section 10)

Current Situation

An original or renewal CDL is $75; however, if an applicant for a CDL has completed training and is applying for employment or is currently employed in a public or nonpublic school system that requires a CDL, the CDL is $48.[25] These fees are deposited in the General Revenue Fund.[26]

Proposed Changes

The committee substitute exempts a veteran from the fee for an original CDL upon presentation of his or her DD Form 214 or another acceptable form specified by the FDVA.

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[20] s. 319.28(1)(c), F.S.

[21] Section 1.01(14), F.S., defines a "veteran" as "a person who served in the active military, naval, or air service who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the U.S. Department of Veteran Affairs on individuals discharged or released with other than honorable discharges."

[22] The Department of Defense issues each veteran a DD-214. This form identifies the veteran's condition of discharge, and contains information commonly needed to verify military service for benefits, retirement, employment, and membership in veterans' organizations. *See* DD214 website, http://www.dd214.us/ (last visited Mar. 23, 2017).

[23] See ss. 322.051(8)(b) and 322.14(1)(d), F.S.

[24] The current veteran designation is a "V" printed on the license or card; however, the designation will be changed to read "Veteran" upon implementation of new designs for the license and card by the DHSMV. See ss. 322.051(8)(b) and 322.14(1)(d), F.S.

[25] s. 322.21(1)(a), F.S.

[26] s. 322.21(5), F.S.

Free Identification (ID) Card for Persons 80 Years of Age and Older (Section 10)

Current Situation

Section 322.21(1)(f), F.S., provides that there is a $25 fee for an original, renewal, or replacement ID card. The fee is deposited as follows:

- For an original ID card, the fee is deposited into the General Revenue Fund;
- For a replacement ID card, $6 is deposited into the HSOTF and $19 into the General Revenue Fund;
- For a renewal ID issued by the DHSMV, $9 is deposited into the HSOTF and $16 into the General Revenue Fund; and
- For a replacement ID issued by the tax collector, $9 is retained by the tax collector and $16 is deposited into the General Revenue Fund.

Currently, the fee for an ID card is waived for the following individuals:

- A person who is homeless;
- A person whose annual income is at or below 100 percent of the federal poverty level; and
- A juvenile offender in the custody or under the supervision of the Department of Juvenile Justice who is participating in transition-to-adulthood services under s. 985.461, F.S., and issued the ID card from a DHSMV mobile issuing unit.

Proposed Changes

The committee substitute exempts a person who is 80 years of age or older from the $25 fee for an original, renewal, or replacement ID card.

Delinquency Fee for Professional License (Section 11)

Current Situation

The Department of Business and Professional Regulation (DBPR) is the governmental agency responsible for licensing and regulating many businesses and professionals in the state of Florida.[27]

Chapter 455, F.S., provides the general powers of the DBPR and sets forth the procedural and administrative framework for all of the professional boards housed under the DBPR as well as the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[28]

When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[29]

Sections 455.203 and 455.213, F.S., establish general licensing authority for the DBPR, including the authority to charge license fees and license renewal fees. Each board within the DBPR must determine by administrative rule[30] the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[31]

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[27] *See* Florida DBPR website, http://www.myfloridalicense.com/dbpr/os/os-info.html (last visited Mar. 23, 2017).
[28] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. *See* s. 455.221(1), F.S.
[29] ss. 455.01(4) and (5), F.S.
[30] The administrative rules of the DBPR and of each Board are available through the DBPR's website at http://www.myfloridalicense.com/dbpr/divisions.html (last visited Mar. 23, 2017).
[31] s. 455.219(1), F.S.

Licensees may practice a profession only if they have an active status license.[32] Generally, most licensees who practice a profession without an active status license[33] are subject to discipline, fines, or assessments as described in s. 455.227, F.S. At least 90 days before the end of a licensure cycle, the DBPR must provide a licensure renewal notification to an active or inactive licensee, and a notice of pending cancellation of licensure to a delinquent status licensee.[34]

Each board, or the DBPR when there is no board,[35] must permit a licensee to choose active or inactive status at the time of licensure renewal, and impose a fee for an inactive status license that does not exceed the fee for an active status license.[36] An inactive status licensee may change to active status at any time, if the licensee meets all requirements for active status, including payment of all required fees, and meeting all continuing education requirements. Failure of a licensee to renew a license before its expiration causes the license to become delinquent in the license cycle following expiration (delinquency cycle).[37]

A delinquent status licensee must re-apply for active or inactive status during the delinquency cycle. Failure by a delinquent status licensee to become active or inactive before the expiration of the delinquency cycle renders the license void, with no further action by the board.[38]

The DBPR may, at its discretion, reinstate a license that has become void (excepting those public accountancy licenses issued under ch. 473, F.S.) if the DBPR determines that the individual failed to comply because of illness or economic hardship. The individual must apply to the DBPR for reinstatement, pay all required fees, including a reinstatement fee, meet all continuing education requirements, and otherwise be eligible for renewal of licensure.[39]

Section 477.271(7), F.S., provides that each board must impose an additional delinquency fee, not to exceed the biennial renewal fee for an active status license, when a delinquent status licensee applies for active or inactive status. According to the DBPR, all boards have adopted delinquency fees, which vary by profession ranging from $25 to $260.[40] The fees collected are deposited into the Professional Regulation Trust Fund, which is used to carry out the provisions of ch. 455, F.S., as well as "provisions of law with respect to professions regulated by the department and any board within the department."[41]

Proposed Changes

The committee substitute provides a flat $25 delinquency fee that is assessed against a licensee applying for active or inactive status while in delinquent status. The committee substitute removes current law that the delinquency fee is adopted by rule by each board at a rate not to exceed the biennial renewal fee for an active status license. This change provides consistency among all licensees regulated by the DBPR, and eliminates the needs for boards to engage in continued rulemaking regarding delinquency fees.

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[32] s. 455.271(1), F.S.

[33] Section 455.271, F.S., on inactive and delinquent status of licenses, does not apply to a business establishment registered, permitted, or licensed by the department to do business or to a person licensed, permitted, registered, or certified pursuant to ch. 310, F.S. on Pilots, Piloting, and Pilotage, or ch. 475, F.S., on Real Estate Brokers, Sales Associates, Schools, and Appraisers.

[34] *See* s. 455.273, F.S.

[35] Whenever a board for a profession does not exist, the DBPR is generally authorized by law to act instead. *See* e.g., ss. 455.219 and 455.271, F.S., for multiple references to actions of "the board, or the department when there is no board."

[36] The status or a change in status of a licensee does not alter the board's right to impose discipline or to enforce discipline previously imposed on a licensee for acts or omissions committed by the licensee while holding a license, whether active, inactive, or delinquent. *See* s. 455.271(11), F.S.

[37] *See s. 455.271(11), F.S.*

[38] *See s. 455.271(11), F.S.*

[39] *See s. 455.271(11), F.S.*

[40] DBPR, *2017 Agency Legislative Bill Analysis: SB 514* (identical language in SB 1442) (Feb. 28, 2017) (on file with the Senate Committee on Transportation).

[41] s. 455.219(3), F.S.

Commercial Driver School License Fee (Section 12)

Current Situation

The DHSMV is responsible for overseeing and licensing all commercial driver schools except commercial truck driving schools. A commercial driving school, also known as "traffic school," educates individuals on driving skills, traffic laws, road safety, substance abuse, and other behind-the-wheel skills necessary for non-commercial vehicle drivers.[42]

To become a licensed commercial driving school, the applicant must submit an application to the DHSMV. The application must include:

- The business's name and a certified copy of a certificate of Fictitious Name or Certificate of Incorporation from the Department of State;
- The business's address with a certificate of occupancy or a lease agreement;
- The names of all owners and operators of the business;
- A list of instructors and agents employed by the school;
- A list of the school's vehicles (including current certificates of insurance for each vehicle);
- Fingerprints for a background check of every owner, officer, or partner of the school; and
- A nonrefundable application fee of $50.[43]

If the application is approved, the school must pay a $200 fee to receive the license. The license is valid for one year, and costs $100 to renew. Additionally, the license is nontransferable. In the event that there is any change in ownership or interest in the business, the commercial driving school must surrender its current license and apply for a new license.[44]

Application and license fees, including the renewal fee, are deposited into the General Revenue Fund.[45]

Proposed Changes

The committee substitute reduces the application and license fees, by half, for commercial driver schools. For commercial driver schools, the license application fee is $25, instead of $50; the license issuance fee is $100, instead of $200; and the annual license renewal fee is $50, instead of $100.

Florida Building Code Permit Surcharge (Section 13)

Current Situation

Section 553.721, F.S., provides that all local building departments are required to assess and collect a surcharge at the rate of 1.5 percent on building permit fees (with a minimum surcharge of $2) for the purpose of administering and enforcing the Florida Building Code.[46]

The governmental authority responsible for collecting building permit fees in its local jurisdiction is authorized to retain 10 percent of the surcharge amount, which must be used to fund participation of

[42] DHSMV website, *Commercial Driving Schools*, https://www.flhsmv.gov/driver-licenses-id-cards/education-courses/commercial-driving-schools/ (last visited Mar. 23, 2017).
[43] DHSMV, *Form HSMV 77074S – CDS Application* (September 2010), *available at* https://www.flhsmv.gov/pdf/forms/77074s.pdf (last visited Mar. 23, 2017).
[44] s. 488.03, F.S.
[45] s. 488.08, F.S.
[46] Part IV of ch. 553, F.S., is cited as the "Florida Building Codes Act."

building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code.

The remaining amount is remitted to the DBPR quarterly to be deposited into the Professional Regulation Trust Fund to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program.

From these funds, the Florida Building Code Compliance and Mitigation Program must be allocated $925,000 each fiscal year, and the Program shall fund recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in Fiscal Year 2016-2017. Additionally, funds collected from the surcharge must be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshall for each fiscal year; however, funds used for this purpose may not exceed $15,000. Funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings.

Proposed Changes

The committee substitute reduces the surcharge assessed on all building permit fees from 1.5 percent of the permit fee to one percent of the permit fee.

B. SECTION DIRECTORY:

Section 1. Amends s. 15.09(3), F.S., to conform to changes made in section 2 of the committee substitute.

Section 2. Amends s. 113.01(3), F.S., to delete the fee for a commission of an elected officer by the Governor.

Section 3. Amends s. 206.41(5)(c), F.S., to delete the fee for a motor fuel tax refund.

Section 4. Amends s. 212.0596(7), F.S., to conform to changes made in section 5 of the committee substitute.

Section 5. Amends s. 212.18(3)(a), (c), F.S., to delete certain dealer registration fees.

Section 6. Amends s. 319.28(1)(a), F.S., to conform to changes made in section 7 of the committee substitute.

Section 7. Amends s. 319.32, F.S., to exempt a surviving spouse from the fee to transfer a motor vehicle title.

Section 8. Amends s. 322.051(8)(b), F.S., to delete "Veteran" identification card fees.

Section 9. Amends s. 322.14(1)(d), F.S., to delete "Veteran" driver license fees.

Section 10. Amends s. 322.21(1)(a), (f), F.S., to exempt veterans from commercial driver license fees.

Section 11. Amends s. 455.271(7), F.S., to revise delinquency fees for certain DBPR licenses.

Section 12. Amends s. 488.03, F.S., to reduce driver school operator license fees.

Section 13. Amends s. 553.721, F.S., to reduce the Florida Building Code permit fee surcharge.

Section 14. Provides an effective date of July 1, 2017, except sections 3-5 of the committee substitute are effective January 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) reviewed the committee substitute on April 17, 2017,[47] and estimated the committee substitute's annual impact to be -$2 million to the General Revenue Fund and -$3.7 million to various state trust funds.

The fiscal impacts are as follows:

Elected Officer's Fee for Commission (Sections 1 and 2)

Effective July 1, 2017, the bill eliminates a $10 fee for a commission of an elected officer issued by the Governor. The April 17, 2017, Revenue Estimating Impact Conference determined the elimination of the $10 fee would result in an insignificant, yet negative fiscal impact[48] to the General Revenue Fund of approximately $21,380 annually.

Elected Officer's Fee for Commission ($10) Reduction	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(21,380)	(21,380)	(21,380)

Motor Fuel Tax Refund Claims (Section 3):

Effective January 1, 2018, the bill eliminates a $2 processing fee that is currently deducted from quarterly fuel tax refunds made to qualifying taxpayers. The April 17, 2017, Revenue Estimating Impact Conference determined the elimination of the $2 processing fee would result in an insignificant, yet negative fiscal impact to the General Revenue Fund of approximately $2,544 annually.

Motor Fuel Tax Refund Processing Fee ($2) Reduction	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(2,544)	(2,544)	(2,544)

Registration Fee for Dealers and Businesses (Sections 4 and 5):

Effective January 1, 2018, the bill eliminates a $5 registration fee that is currently charged on each business location that registers with the Department of Revenue to collect, report, and remit sales and use tax. Current law provides that the department may establish procedures, by rule, which can provide for a waiver of registration fees from unregistered persons who make mail order

[47] EDR, REC, *Various State Fees – HB 1123 (SB 1442 identical)* (April 15, 2017), *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0417.pdf (last visited April. 17, 2017).
[48] The Revenue Estimating Conference proposes a fiscal impact of negative insignificant for amounts less than $50,000.

purchases on which tax is required to be remitted. Additionally, the department may waive the fee for applications submitted through the department's online registration process. The bill eliminates the $5 fee that is charged for registration.

The April 17, 2017, Revenue Estimating Impact Conference determined the elimination of this $5 registration fee would result in a negative fiscal impact to the General Revenue Fund of approximately $138,002 annually.

Registration Fee ($5) Reduction	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(138,002)	(138,002)	(138,002)

Motor Vehicle Title Transfer Fee (Sections 6 and 7)

Effective July 1, 2017, the bill exempts a surviving spouse from motor vehicle title transfer fees provided under s. 319.32(1), F.S., when the title is being transferred from the deceased motor vehicle owner to the surviving spouse. The April 17, 2017, 2017 Revenue Estimating Impact Conference determined this exemption would result in a reduction of $500,000 in trust fund revenue and a $1 million reduction to the General Revenue Fund for fiscal year 2017-2018.

Motor Vehicle Title Transfer Fee Exemption	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(1,000,000)	(1,100,000)	(1,100,000)
Net Reduction in Trust Fund Revenue	(500,000)	(500,000)	(500,000)

"Veteran" Designation Fee (Sections 8 and 9)

Effective July 1, 2017, the bill eliminates the $1 and $2 fees required to display or add the word "Veteran" to a veteran's drivers license or ID. The April 17, 2017, Revenue Estimating Impact Conference estimated this fee elimination would result in an insignificant negative reduction to the General Revenue Trust Fund and a $100,000 reduction to state trust funds annually.

"Veteran" Designation Fee Elimination	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in Trust Fund Revenue	(100,000)	(100,000)	(100,000)

Commercial Driver License (CDL) for Veterans (Section 10)

Effective July 1, 2017, the bill exempts veterans from the fee for an original CDL. The April, 2017, Revenue Estimating Impact Conference estimated this exemption would result in a $100,000 reduction to the General Revenue Fund annually.

Commercial Driver License Veteran Exemption	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(100,000)	(100,000)	(100,000)

Free Identification (ID) Card for Persons 80 Years of Age and Older (Section 10)

Effective July 1, 2017, the bill exempts persons 80 years of age or older from the $25 fee for an original, renewal, or replacement ID card. The April 17, 2017, Revenue Estimating Impact Conference estimated this exemption would result in a $500,000 reduction to the General Revenue Fund and $100,000 in state trust fund for fiscal year 2017-2018.

Free ID Card for Persons 80 Years of Age and Older	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(500,000)	(500,000	(600,000)
Net Reduction in Trust Fund Revenue	(100,000)	(100,000)	(100,000)

Delinquency Fee for Professional License (Section 11)

Effective July 1, 2017, the bill establishes a flat delinquency fee of $25 for each professional licensing board, or the DBPR when there is no licensing board, for the renewal of a delinquent status license. This flat fee will reduce the total fees collected. The April 17, 2017, Revenue Estimating Impact Conference estimated the established flat fee will result in a $100,000 reduction to the General Revenue Fund and $600,000 reduction in state trust fund annually.

Establishment of Flat Fee for Delinquency	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(100,000)	(100,000	(100,000
Net Reduction in Trust Fund Revenue	(600,000)	(600,000)	(600,000)

Commercial Driver School License Fee (Section 12)

Effective July 1, 2017, the bill reduces the various fees for the application for issuance and renewal of licenses for commercial driver schools by 50 percent. The April 17, 2017, Revenue Estimating Impact Conference estimated these reductions would result in an insignificant negative fiscal impact to the General Revenue Fund.

Florida Building Code Permit Surcharge (Section 13)

Effective July 1, 2017, the bill reduces the surcharge on applicable building permits from 1.5 percent to 1 percent. The April, 2017, Revenue Estimating Impact Conference estimates this surcharge reduction will result in a $200,000 reduction to the General Revenue Fund and $2.4 million reduction in state trust fund annually.

Florida Building Code Permit Surcharge Reduction	April 17, 2017 REC - Impact Conference Results		
	FY 2017-18	FY 2018-19	FY 2019-20
Net Reduction in State General Revenue	(200,000)	(200,000)	(200,000)
Net Reduction in Trust Fund Revenue	(2,400,000)	(2,400,000)	(2,400,000))

2. Expenditures:

DOR indicates there will be insignificant administrative costs to implement the committee substitute.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

For the modifications made to the permit surcharge in section 13 of the bill, DBPR estimates that local building departments would see a reduction of the surcharge revenues they are permitted to retain based on the lower amount of surcharge assessed against each building permit. The estimated loss of revenue to cities and counties would be approximately $290,039 in FY 2017-18 and the same amount in FY 2018-19 and FY 2019-20.[49]

Cities and Counties Revenue Impact

Florida Building Code Permit Surcharge Reduction	FY 2017-18	FY 2018-19	FY 2019-20
Revenues: 1.5% Surcharge (Current law) – 1.5%	870,118	870,118	870,118
NET Revenues: 1.0% Surcharge (with reduction)	580,079	580,079	580,079
Net Reduction to Cities and Counties	**(290,039)**	**(290,039)**	**(290,039)**

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The committee substitute will have a positive fiscal impact on certain individuals due to the reduction of fees and surcharges.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The committee substitute does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

[49] Department of Business and Professional Regulation, Bill Analysis HB 1123, March 16, 2017, on file with the Appropriations Committee.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 5, 2017, the Ways and Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by clarifying that a surviving spouse is eligible for the motor vehicle title transfer fee exemption regardless of whether he or she is named on the deceased motor vehicle owner's title.

The analysis is drafted to reflect the committee substitute as amended.

A bill to be entitled

An act relating to fee and surcharge reductions; amending s. 113.01, F.S.; deleting the fee for a commission of an elected officer by the Governor; amending s. 206.41, F.S.; deleting the fee for a claim for refund of the tax on motor fuel; amending s. 212.18, F.S.; deleting a registration fee for certain dealers or businesses; amending s. 319.32, F.S.; exempting a surviving spouse from the fee to transfer a motor vehicle title; amending ss. 322.051 and 322.14, F.S.; deleting fees for adding the word "Veteran" to an identification card or driver license; amending s. 322.21, F.S.; exempting veterans from the fee for an original commercial driver license; exempting certain persons from the fee for an identification card; amending s. 455.271, F.S.; revising provisions relating to imposition and amount of a delinquency fee for licensees regulated by the Department of Business and Professional Regulation; amending s. 488.03, F.S.; reducing fees for application, licensure, and renewal of licensure to operate a driver school; amending s. 553.721, F.S.; reducing the amount of the surcharge assessed by the department on Florida Building Code permit fees; amending ss. 15.09, 212.0596, and 319.28, F.S.;

conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Subsection (3) of section 15.09, Florida Statutes, is amended to read:

15.09 Fees.—

(3) All fees arising from certificates of election or appointment to office ~~and from commissions to officers~~ shall be paid to the Chief Financial Officer for deposit in the General Revenue Fund.

Section 2. Section 113.01, Florida Statutes, is amended to read:

113.01 Fee for commissions issued by Governor.—A fee of $10 is prescribed for the issuance of each commission issued by the Governor of the state and attested by the Secretary of State for ~~an elected officer or~~ a notary public.

Section 3. Effective January 1, 2018, paragraph (c) of subsection (5) of section 206.41, Florida Statutes, is amended to read:

206.41 State taxes imposed on motor fuel.—

(5)

(c)1. No refund may be authorized unless a sworn application therefor containing such information as the

department may determine is filed with the department not later than the last day of the month following the quarter for which the refund is claimed. However, when a justified excuse for late filing is presented to the department and the last preceding claim was filed on time, the deadline for filing may be extended an additional month. No refund will be authorized unless the amount due is for $5 or more for any refund period and unless application is made upon forms prescribed by the department.

2. Claims made for refunds provided pursuant to subsection (4) shall be paid quarterly. ~~The department shall deduct a fee of $2 for each claim, which fee shall be deposited in the General Revenue Fund.~~

Section 4. Effective January 1, 2018, subsection (7) of section 212.0596, Florida Statutes, is amended to read:

212.0596 Taxation of mail order sales.—

(7) The department may establish by rule procedures for collecting the use tax from unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the department. The procedures may provide for waiver of registration ~~and registration fees~~, provisions for irregular remittance of tax, elimination of the collection allowance, and nonapplication of local option surtaxes.

Section 5. Effective January 1, 2018, paragraphs (a) and (c) of subsection (3) of section 212.18, Florida Statutes, are

amended to read:

212.18 Administration of law; registration of dealers; rules.—

(3)(a) A person desiring to engage in or conduct business in this state as a dealer, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, or tourist or trailer camps that are subject to tax under s. 212.03, or to lease, rent, or let or grant licenses in real property, and a person who sells or receives anything of value by way of admissions, must file with the department an application for a certificate of registration for each place of business. The application must include the names of the persons who have interests in such business and their residences, the address of the business, and other data reasonably required by the department. However, owners and operators of vending machines or newspaper rack machines are required to obtain only one certificate of registration for each county in which such machines are located. The department, by rule, may authorize a dealer that uses independent sellers to sell its merchandise to remit tax on the retail sales price charged to the ultimate consumer in lieu of having the independent seller register as a dealer and remit the tax. The department may appoint the county tax collector as the department's agent to accept applications for registrations. The application must be submitted to the

department before the person, firm, copartnership, or corporation may engage in such business~~, and it must be accompanied by a registration fee of $5. However, a registration fee is not required to accompany an application to engage in or conduct business to make mail order sales. The department may waive the registration fee for applications submitted through the department's Internet registration process~~.

(c)1. A person who engages in acts requiring a certificate of registration under this subsection and who fails or refuses to register commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Such acts are subject to injunctive proceedings as provided by law. A person who engages in acts requiring a certificate of registration and who fails or refuses to register is also subject to a $100 initial registration fee ~~in lieu of the $5 registration fee required by paragraph (a)~~. However, the department may waive the ~~increase in the~~ registration fee if it finds that the failure to register was due to reasonable cause and not to willful negligence, willful neglect, or fraud.

2.a. A person who willfully fails to register after the department provides notice of the duty to register as a dealer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

b. The department shall provide written notice of the duty to register to the person by personal service or by sending

notice by registered mail to the person's last known address. The department may provide written notice by both methods described in this sub-subparagraph.

Section 6. Paragraph (a) of subsection (1) of section 319.28, Florida Statutes, is amended to read:

319.28 Transfer of ownership by operation of law.—

(1)(a) In the event of the transfer of ownership of a motor vehicle or mobile home by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, attachment, execution, or other judicial sale or whenever the engine of a motor vehicle is replaced by another engine or whenever a motor vehicle is sold to satisfy storage or repair charges or repossession is had upon default in performance of the terms of a security agreement, chattel mortgage, conditional sales contract, trust receipt, or other like agreement, and upon the surrender of the prior certificate of title or, when that is not possible, presentation of satisfactory proof to the department of ownership and right of possession to such motor vehicle or mobile home, and upon payment of the fee prescribed by law, except as provided in s. 319.32(1)(d), and presentation of an application for certificate of title, the department may issue to the applicant a certificate of title thereto.

Section 7. Subsection (1) of section 319.32, Florida Statutes, is amended to read:

319.32 Fees; service charges; disposition.—

(1)(a) The department shall charge a fee of $70 for each original certificate of title, except for a certificate of title for a motor vehicle for hire registered under s. 320.08(6) for which the title fee shall be $49; $70 for each duplicate copy of a certificate of title, except for a certificate of title for a motor vehicle for hire registered under s. 320.08(6) for which the title fee shall be $49; $2 for each salvage certificate of title; and $3 for each assignment by a lienholder. The department shall also charge a fee of $2 for noting a lien on a title certificate, which fee includes the services for the subsequent issuance of a corrected certificate or cancellation of lien when that lien is satisfied.

(b) If an application for a certificate of title is for a vehicle that is required by s. 319.14(1)(b) to have a physical examination, the department shall charge an additional fee of $40 for the initial examination and $20 for each subsequent examination. The initial examination fee shall be deposited into the General Revenue Fund, and each subsequent examination fee shall be deposited into the Highway Safety Operating Trust Fund. The physical examination of the vehicle includes, but is not limited to, verification of the vehicle identification number and verification of the bill of sale or title for major components.

(c) In addition to all other fees charged, a sum of $1

shall be paid for the issuance of an original or duplicate certificate of title to cover the cost of materials used for security purposes. A service fee of $2.50, to be deposited into the Highway Safety Operating Trust Fund, shall be charged for shipping and handling for each paper title mailed by the department.

(d) The surviving spouse of a deceased motor vehicle owner who applies for a transfer of title in his or her own name, regardless of whether the surviving spouse is named on the deceased motor vehicle owner's title, is exempt from the fees imposed under this subsection.

Section 8. Paragraph (b) of subsection (8) of section 322.051, Florida Statutes, is amended to read:

322.051 Identification cards.—

(8)

(b) The word "Veteran" shall be exhibited on the identification card of a veteran upon ~~the payment of an additional $1 fee for the identification card and~~ the presentation of a copy of the person's DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs. Until a veteran's identification card is next renewed, the veteran may have the word "Veteran" added to his or her identification card upon surrender of his or her current identification card~~, payment of a $2 fee to be deposited into the Highway Safety~~

~~Operating Trust Fund,~~ and presentation of a copy of his or her DD Form 214 or another acceptable form specified by the Department of Veterans' Affairs. If the applicant is not conducting any other transaction affecting the identification card, a replacement identification card shall be issued with the word "Veteran" without payment of the fee required in s. 322.21(1)(f)3.

Section 9. Paragraph (d) of subsection (1) of section 322.14, Florida Statutes, is amended to read:

322.14 Licenses issued to drivers.—

(1)

(d) The word "Veteran" shall be exhibited on the driver license of a veteran upon ~~the payment of an additional $1 fee for the license and~~ the presentation of a copy of the person's DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs. Until a veteran's license is next renewed, the veteran may have the word "Veteran" added to his or her license upon surrender of his or her current license~~, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund,~~ and presentation of a copy of his or her DD Form 214 or another acceptable form specified by the Department of Veterans' Affairs. If the applicant is not conducting any other transaction affecting the driver license, a replacement license shall be issued with the word "Veteran" without payment of the

fee required in s. 322.21(1)(e).

Section 10. Paragraphs (a) and (f) of subsection (1) of section 322.21, Florida Statutes, are amended to read:

322.21 License fees; procedure for handling and collecting fees.—

(1) Except as otherwise provided herein, the fee for:

(a) An original or renewal commercial driver license is $75, which shall include the fee for driver education provided by s. 1003.48. However, if an applicant has completed training and is applying for employment or is currently employed in a public or nonpublic school system that requires the commercial license, the fee is the same as for a Class E driver license. A delinquent fee of $15 shall be added for a renewal within 12 months after the license expiration date. A veteran is exempt from the fee for an original commercial driver license upon presentation of his or her DD Form 214, issued by the United States Department of Defense, or another acceptable form specified by the Department of Veterans' Affairs.

(f) An original, renewal, or replacement identification card issued pursuant to s. 322.051 is $25, except that an applicant who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7); his or her annual income is at or below 100 percent of the federal poverty level; ~~or~~ he or she is a juvenile offender who is in the custody or under the supervision of the Department of Juvenile

Justice, is receiving services pursuant to s. 985.461, and whose identification card is issued by the department's mobile issuing units; or he or she is 80 years of age or older is exempt from such fee. Funds collected from fees for original, renewal, or replacement identification cards shall be distributed as follows:

1. For an original identification card issued pursuant to s. 322.051, the fee shall be deposited into the General Revenue Fund.

2. For a renewal identification card issued pursuant to s. 322.051, $6 shall be deposited into the Highway Safety Operating Trust Fund, and $19 shall be deposited into the General Revenue Fund.

3. For a replacement identification card issued pursuant to s. 322.051, $9 shall be deposited into the Highway Safety Operating Trust Fund, and $16 shall be deposited into the General Revenue Fund. Beginning July 1, 2015, or upon completion of the transition of the driver license issuance services, if the replacement identification card is issued by the tax collector, the tax collector shall retain the $9 that would otherwise be deposited into the Highway Safety Operating Trust Fund and the remaining revenues shall be deposited into the General Revenue Fund.

Section 11. Subsection (7) of section 455.271, Florida Statutes, is amended to read:

455.271 Inactive and delinquent status.—

(7) Notwithstanding the provisions of the professional practice acts administered by the department, each board, or the department when there is no board, shall~~, by rule,~~ impose an additional delinquency fee of $25~~, not to exceed the biennial renewal fee for an active status license,~~ on a delinquent status licensee when such licensee applies for active or inactive status.

Section 12. Section 488.03, Florida Statutes, is amended to read:

488.03 License; application; expiration; renewal; fees.—An application for a license shall be made in the form prescribed by the Department of Highway Safety and Motor Vehicles. Every application for an original license must be accompanied by an application fee of $25 ~~$50~~, which fee may not be refunded. If the application is approved, a further fee of $100 ~~$200~~ must be paid before the license may be issued. The license shall be valid for a period of 1 year from the date of issuance and is not transferable. In the event of any change in ownership or interest in the business, an application for a new license, together with all instructors' certificates issued thereunder, must be surrendered to the department before a license will be issued to a new owner of the business. The fee for the annual renewal of a license is $50 ~~$100~~.

Section 13. Section 553.721, Florida Statutes, is amended

to read:

553.721 Surcharge.—In order for the Department of Business and Professional Regulation to administer and carry out the purposes of this part and related activities, there is created a surcharge, to be assessed at the rate of 1 ~~1.5~~ percent of the permit fees associated with enforcement of the Florida Building Code as defined by the uniform account criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting a permit fee pursuant to s. 125.56(4) or s. 166.201 shall collect the surcharge and electronically remit the funds collected to the department on a quarterly calendar basis for the preceding quarter and continuing each third month thereafter. The unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. All funds remitted to the department pursuant to this section shall be deposited in the Professional Regulation Trust Fund. Funds collected from the surcharge shall be allocated to fund the Florida Building Commission and the Florida Building Code Compliance and Mitigation Program under s. 553.841. Funds allocated to the Florida Building Code Compliance and Mitigation

Program shall be $925,000 each fiscal year. The Florida Building Code Compliance and Mitigation Program shall fund the recommendations made by the Building Code System Uniform Implementation Evaluation Workgroup, dated April 8, 2013, from existing resources, not to exceed $30,000 in the 2016-2017 fiscal year. Funds collected from the surcharge shall also be used to fund Florida Fire Prevention Code informal interpretations managed by the State Fire Marshal and shall be limited to $15,000 each fiscal year. The State Fire Marshal shall adopt rules to address the implementation and expenditure of the funds allocated to fund the Florida Fire Prevention Code informal interpretations under this section. The funds collected from the surcharge may not be used to fund research on techniques for mitigation of radon in existing buildings. Funds used by the department as well as funds to be transferred to the Department of Health and the State Fire Marshal shall be as prescribed in the annual General Appropriations Act. The department shall adopt rules governing the collection and remittance of surcharges pursuant to chapter 120.

Section 14. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1217 Industrial Hemp Programs
SPONSOR(S): Agriculture & Property Rights Subcommittee; Massullo, MD
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	13 Y, 1 N, As CS	Thompson	Smith
2) Appropriations Committee		White CCW	Leznoff
3) Commerce Committee			

SUMMARY ANALYSIS

Industrial hemp is an agricultural commodity grown from the plant species Cannabis sativa that is used to produce a variety of industrial and consumer products. Following the enactment of the federal Agricultural Act of 2014 (2014 Farm Bill), hemp cultivation is now allowed in the United States under certain circumstances by research institutions and state departments of agriculture.

The bill authorizes a state university with a departmental or generalization specialization in Florida agriculture to conduct an industrial hemp research project. The research project is required to include hemp cultivation projects that specifically address the potential impact hemp may have on other crops commercially grown in Florida, including the impacts of plant pests and diseases, and any related vectors, as well as research on the invasive nature of industrial hemp. The research project is required to take place over a minimum of 10 semi-annual crop rotations or five years, whichever is longer.

The bill requires a university that conducts an industrial hemp research project to, within 90 days after the end of the project, submit a report on the findings of the research project to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill prohibits the commercial cultivation of industrial hemp in the state of Florida until it is proven scientifically and beyond a reasonable doubt by an industrial hemp research project that any other commercially grown crop in Florida is not put at greater risk of disease or mortality due to the introduction of industrial hemp cultivation.

The bill requires the Department of Agriculture and Consumer Services (DACS) to adopt rules as required under 7 C.F.R. s. 5940 of the 2014 Farm bill to implement provisions of the industrial hemp program.

The fiscal impact to state government is indeterminate. The bill provides an appropriation for the 2017-2018 fiscal year, and annually thereafter through the 2022-2023 fiscal year, in the sum of $150,000 in recurring funds to be appropriated from the General Revenue Fund to the DACS for the purpose of funding industrial hemp research projects pursuant to this act.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Industrial Hemp

Industrial hemp is an agricultural commodity grown from the plant species Cannabis sativa that is used worldwide to produce a variety of industrial and consumer products.[1] Approximately 30 countries in Europe, Asia, and North and South America currently permit farmers to grow hemp.[2] The United States (U.S.) market is largely dependent on imports, both as finished hemp-containing products and as ingredients for use in further processing.[3] Although hemp and marijuana products both come from the cannabis plant, hemp is typically distinguished by its use, physical appearance and lower concentration of tetrahydrocannabinol (THC).[4]

Industrial hemp was grown historically in the U.S. with peak production occurring in the 1940's during World War II when it was used by the armed forces.[5] Subsequently, production sharply declined to the point of elimination by the mid-1950's.[6] Currently, all cannabis varieties, including hemp used for fiber and marijuana that contain THC used as a drug, are classified as "Schedule 1 controlled substances" under the Controlled Substance Act.[7]

Federal Agricultural Act of 2014 (2014 Farm Bill)

Recently, there has been a resurgence in interest[8] in industrial hemp production in the U.S.[9] Following the enactment of the 2014 Farm Bill,[10] hemp cultivation is now allowed under certain circumstances by research institutions and state departments of agriculture if:

- The industrial hemp is grown or cultivated for research conducted under an agricultural pilot program or other agricultural or academic research; and
- The growing or cultivating of industrial hemp is allowed under state law where the university or state department of agriculture is located.[11]

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[1] Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 Mar. 10, 2017, at Summary, available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Mar. 17, 2017).
[2] Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700 Mar. 10, 2017, at p. 7, available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Mar. 17, 2017).
[3] Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700, at Summary (Mar. 10, 2017) available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Mar. 17, 2017).
[4] National Conference of State Legislatures State Industrial Hemp Statutes, available at http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx (last visited Mar. 17, 2017).
[5] UF/IFAS Research, *The Potential for Industrial Hemp Production in Florida*, at p. 1 (Sept. 15, 2015) available at https://www.votehemp.com/PDF/Potential%20for%20Industrial%20Hemp%20Production%20in%20Florida_9-15-2015.pdf (last visited Mar. 17, 2017).
[6] *Id.*
[7] 21 U.S.C. §§801 et seq.; Title 21 C.F.R. Part 1308.11.
[8] Logan Yonavjak, *Industrial Hemp: A Win-Win For The Economy And The Environment*, Forbes (May 29, 2013), https://www.forbes.com/sites/ashoka/2013/05/29/industrial-hemp-a-win-win-for-the-economy-and-the-environment/#2c4e3f4b289b (last visited Mar. 17, 2017).
[9] According to UF/IFAS Research, *The Potential for Industrial Hemp Production in Florida*, at p. 1 (Sept. 15, 2015) "future markets are continuing to emerge, led primarily by the cosmetic and health food industry, leading to greater demand for hemp products.";
[10] Agricultural Act of 2014, Pub. L. 113-79.
[11] 7 U.S.C. § 5940.

The 2014 Farm Bill defines "industrial hemp" as the plant *Cannabis sativa L.* and any part thereof, whether growing or not, with a delta-9 THC concentration of no more than 0.3 percent on a dry weight basis.[12]

According to the Congressional Research Service, Congress has blocked the U.S. Drug Enforcement Administration (DEA) and federal law enforcement authorities from interfering with state agencies, hemp growers, and agricultural research.[13] In addition, appropriators have blocked the U.S. Department of Agriculture (USDA) from prohibiting the transportation, processing, sale, or use of industrial hemp that is grown or cultivated in accordance with the 2014 Farm Bill.[14]

Other States

Approximately 30 states have enacted laws regarding industrial hemp production.[15] These laws have generally taken the following three approaches:

- Establishing commercial industrial hemp programs;
- Establishing industrial hemp research programs; or
- Authorizing studies of industrial hemp or the industrial hemp industry.[16]

At least 20 states have passed laws creating industrial hemp research or pilot programs.[17] State agencies and institutions of higher education administer these programs in order to study the cultivation, processing, and economics of industrial hemp.[18] Some states establish specific regulatory agencies or committees, rules, and goals to oversee the research programs, and may also require coordination between colleges or universities and the programs.[19]

The following is an example of several state laws that have recently been passed creating industrial hemp programs:

- Alabama provides for an industrial hemp research program overseen by the Alabama Department of Agriculture and Industries.[20] The department is authorized to coordinate the study with institutions of higher education.[21]
- North Carolina provides for an agricultural hemp pilot program overseen by the North Carolina Industrial Hemp Commission within the North Carolina Department of Agriculture.[22] The commission must collaborate with North Carolina State University and North Carolina A&T State University.[23]
- New York allows for the growth of hemp as part of an agricultural pilot program by its Department of Agriculture and Markets and/or an institution of higher education.[24] The commissioner of agriculture and markets may authorize no more than 10 sites for growing hemp as part of a pilot program.[25]

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[12] Agricultural Act of 2014, Pub. L. 113-79.
[13] Congressional Research Service, *Hemp as an Agricultural Commodity*, CRS Report 7-5700, at p. 1 (Mar. 10, 2017) available at https://fas.org/sgp/crs/misc/RL32725.pdf (last visited Mar. 17, 2017).
[14] *Id.*
[15] National Conference of State Legislatures State Industrial Hemp Statutes, available at http://www.ncsl.org/research/agriculture-and-rural-development/state-industrial-hemp-statutes.aspx (last visited Mar. 21, 2017).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] Ala. Code § 2-8-380 to 2-8-383 and § 20-2-2.
[21] *Id.*
[22] N.C. Gen. Stat. § 106-568.50 to 106-568.54 and § 90-87.
[23] *Id.*
[24] N.Y. Agriculture and Markets Law § 505 to 508.
[25] *Id.*

- Illinois provides for an industrial hemp pilot program which allows the Illinois Department of Agriculture or state institutions of higher education to grow hemp for research purposes.[26] The law requires institutions of higher education to provide annual reports to the department.[27]
- Tennessee allows commercial hemp production overseen by the Tennessee Department of Agriculture.[28] The law directs the commissioner of agriculture to develop licensing rules for processors and distributors, and allows institutions of higher education to acquire and study seeds for research and possible certification.[29]

Effect of Proposed Changes

Industrial Hemp Research Programs

The bill creates s. 570.0855, F.S., authorizing state universities, with a departmental or generalization specialization in Florida agriculture, to conduct industrial hemp research projects.

In the bill, the Legislature finds that industrial hemp may have the potential to be a viable, commercially grown crop in this state. However, before industrial hemp plants are allowed to be cultivated commercially in this state, it must be proven scientifically and beyond a reasonable doubt by an industrial hemp research project, pursuant to its research authority under this law, that any other commercially grown crop in this state is not put at greater risk of disease or mortality due to the introduction of industrial hemp cultivation.

The term "industrial hemp" is defined in the bill as the plant Cannabis sativa L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis. Industrial hemp includes products imported under the Harmonized Tariff Schedule, 2013, of the United States International Trade Commission, including hemp seed per subheading 1207.99.03, hemp oil per subheading 1515.90.80, oilcake per subheading 2306.90.01, true hemp per heading 5302, true hemp yarn per subheading 5308.20.00, and woven fabrics of true hemp fibers per subheading 5311.00.40. A plant that meets the definition of "industrial hemp" under this act is not "cannabis" as defined in chapter 893, F.S.

The bill authorizes a state university with a departmental or generalization specialization in Florida agriculture to conduct an industrial hemp research project. The research project is to include hemp cultivation projects that specifically address the potential impact hemp may have on other crops commercially grown in Florida, including the impacts of plant pests and diseases, and any related vectors, as well as research on the invasive nature of industrial hemp. The research project is to take place over a minimum of 10 semi-annual crop rotations or five years, whichever is longer.

The bill requires a university that conducts an industrial hemp research project to, within 90 days after the end of the project, submit a report on the findings of the research project to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

The bill requires the Department of Agriculture and Consumer Services (DACS) to adopt rules as required under 7 C.F.R. s. 5940 of the 2014 Farm bill to implement provisions of the industrial hemp program.

An appropriation is provided in the bill for the 2017-2018 fiscal year, and annually thereafter through the 2022-2023 fiscal year, in the sum of $150,000 in recurring funds to be appropriated from the General Revenue Fund to DACS for the purpose of funding industrial hemp research projects pursuant to this act.

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[26] Ill. Ann. Stat. ch. 720 § 550/15.2
[27] *Id.*
[28] Tenn. Code Ann. § 43-26-101 to 43-26-103.
[29] *Id.*

B. SECTION DIRECTORY:

Section 1. creates s. 570.0855, F.S., related to industrial hemp program.

Section 2. provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The fiscal impact on state government is indeterminate. Without knowing how many producers will participate, the fiscal impact to the Department of Agriculture and Consumer Services is indeterminate.[30] The cost to a university to conduct an industrial hemp research project is indeterminate.

The bill provides an appropriation for the 2017-2018 fiscal year, and annually thereafter through the 2022-2023 fiscal year, in the sum of $150,000 in recurring funds to be appropriated from the General Revenue Fund to the DACS for the purpose of funding industrial hemp research projects pursuant to this act.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

[30] Florida Department of Agriculture and Consumer Services Agency Analysis of 2017 House Bill 1217 (March 9, 2017).

B. RULE-MAKING AUTHORITY:

The bill requires DACS to adopt rules as required under 7 C.F.R. s. 5940 of the United States Agricultural Act of 2014 to implement the Industrial Hemp Programs. This is the federal provision that authorizes an institution of higher education or a State department of agriculture to grow or cultivate industrial hemp.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Agriculture & Property Rights Subcommittee adopted one strike-all amendment to the bill. The amendment removes the current language authorizing specified state colleges and universities to engage in industrial hemp programs and, instead authorizes specified state universities to engage in industrial hemp research projects relating to potential impacts the cultivation of industrial hemp may have on other crops commercially grown in Florida. The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.

A bill to be entitled

An act relating to industrial hemp programs; creating s. 570.0855, F.S.; providing legislative findings; providing a definition; authorizing specified universities in the state to engage in industrial hemp research projects; providing research project requirements; requiring such universities to submit a report to the Governor and Legislature; directing the Department of Agriculture and Consumer Services to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Section 570.0855, Florida Statutes, is created to read:

570.0855 Industrial hemp program.—

(1) The Legislature finds that:

(a) Industrial hemp may have the potential to be a viable, commercially grown crop in this state.

(b) Before industrial hemp plants are allowed to be cultivated commercially in this state, it must be proven scientifically and beyond a reasonable doubt by an industrial hemp research project pursuant to subsection (3) that any other commercially grown crop in this state is not put at greater risk

of disease or mortality due to the introduction of industrial hemp cultivation.

(2) As used in this section, the term "industrial hemp" means the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis. Industrial hemp includes products imported under the Harmonized Tariff Schedule, 2013, of the United States International Trade Commission, including hemp seed per subheading 1207.99.03, hemp oil per subheading 1515.90.80, oilcake per subheading 2306.90.01, true hemp per heading 5302, true hemp yarn per subheading 5308.20.00, and woven fabrics of true hemp fibers per subheading 5311.00.40. A plant that meets the definition of "industrial hemp" under this subsection is not "cannabis" as defined in chapter 893.

(3) A university in this state that has a departmental or generalization specialization in Florida agriculture may conduct an industrial hemp research project consistent with this section and all other state and federal laws. The research project shall include hemp cultivation projects that specifically relate to potential impacts on any other crops commercially grown in the state, including, but not limited to, the impacts of plant pests, diseases, and any related vectors as well as definitive research on the invasive nature of industrial hemp, and may include hemp harvesting and processing. The research project

shall take place over a minimum of 10 semi-annual crop rotations or 5 years, whichever is longer.

(4) Within 90 days after the end of an industrial hemp research project pursuant to subsection (3), the university shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the findings of the research project.

(5) The department shall adopt rules as required under 7 C.F.R. s. 5940 of the United States Agricultural Act of 2014 to implement this section.

Section 2. For the 2017-2018 fiscal year, and annually thereafter through the 2022-2023 fiscal year, the sum of $150,000 in recurring funds shall be appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding industrial hemp research projects pursuant to this act.

Section 3. This act shall take effect July 1, 2017.

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: Appropriations Committee
Representative Massullo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 570.0855 Florida Statutes, is created to read:

570.0855 Industrial hemp research programs.—

(1) The Legislature finds that:

(a) Industrial hemp may be a suitable crop for this state, and its production could contribute positively to the future of agriculture in the state.

(b) A viable industrial hemp program would create new business opportunities and jobs in communities throughout the state.

(c) As a food crop, industrial hemp seeds and oil produced from the seeds have high nutritional value, including heathy fats and proteins.

(d) As a fiber crop, industrial hemp can be used in the manufacture of products such as clothing, building supplies, and animal bedding.

(e) As a fuel crop, industrial hemp seeds can be processed into biodiesel and stalks can be pelletized or flaked for burning or processed for cellulosic ethanol.

(f) The production of industrial hemp can play an important role in farm land management as part of a crop rotation system.

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

(a) "Industrial hemp" means the plant *Cannabis sativa L.* and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry-weight basis as defined in s. 7606(b)(2) of the Agricultural Act of 2014, 7 U.S.C. 5940. A plant that meets the definition of industrial hemp under this subsection is not cannabis as defined in chapter 893.

(b) "Industrial hemp research project" means a project associated with an industrial hemp program that includes any aspect of research, cultivation, harvesting, processing, testing, marketing, commercial sales, and uses of approved

industrial hemp agricultural, industrial, and commercial products.

(3) Any land grant university in the state that has a college of agriculture, upon approval by its board of trustees, may engage in an industrial hemp program consistent with the Agricultural Act of 2014, 7 U.S.C. 5940. The purpose of the program is to conduct research projects related to the cultivation, harvesting, processing, testing, marketing, commercial sales, and to identify rural areas of the state that would benefit from the commercialization of industrial hemp.

(4)(a) In implementing an industrial hemp program, the college or university shall adopt rules to ensure the proper operation and security of the program. At a minimum, the rules must:

1. Establish minimum security standards for the growing, handling, and processing of industrial hemp.

2. Designate the physical location of the industrial hemp project facility. Areas must be designated within the facility as general access or limited access. An area where industrial hemp is cultivated, processed, stored, or packaged, or where industrial hemp research is conducted, must be designated as limited access. Access to limited-access areas is restricted to authorized personnel and authorized visitors. All other areas of the project facility may be designated as general access and open to authorized visitors accompanied by authorized personnel.

3. Establish seed procurement and storage standards. At a minimum, all seed must be certified by the university legally imported under United States Drug Enforcement Agency regulation 21 CFR, Section 1312.13, parts (a) and (b).

4. Establish testing processes of industrial hemp plants to ensure that all samples comply with the chemical properties defined in paragraph 2(a).

5. Establish storage, packaging, and labeling requirements for raw hemp material.

6.Facilitate coordination with state and local law enforcement agencies to ensure the program complies with this section and other state and federal laws.

7. Establish a seed-to-product testing program and research protocols to ensure the proper chemical composition and labeling of hemp material.

(b) To the fullest extent feasible, industrial hemp projects should be implemented in rural agricultural areas of the state where the potential for enhancing agricultural economic development is high.

(c) An industrial hemp commercialization project may only be conducted after an industrial hemp program has been in place for 2 years. A university shall delay a industrial hemp commercialization project if the university is not satisfied their research establishes that industrial hemp does not pose a

risk as an invasive species or entomological risk to agriculture industry in the state.

(5) To the fullest extent feasible, an industrial hemp program shall be financed through private resources. All costs incurred by an industrial hemp program shall be funded through federal grants or private funding.

(6) Within 4 years after implementing an industrial hemp program, the university shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives on the status of the program and any research related to the cultivation, harvesting, processing, and uses of industrial hemp, as well as identification of rural areas of the state that would benefit from the commercialization of industrial hemp and any recommendations for implementing such commercialization.

(7)(a) This section does not prohibit any research on cannabis pursuant to ss. 2 and 4, chapter 2016-123, Laws of Florida, lawfully conducted before, on, or after the effective date of this section.

(b) This section does not authorize the use of any industrial hemp product for medical use. Any medical use of industrial hemp is limited to and governed by s. 381.986.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to industrial hemp programs; creating s. 570.0855, F.S.; providing legislative findings; providing definitions; authorizing specified state universities to engage in industrial hemp programs under certain conditions; providing program purpose and requirements; requiring universities to pursue private funding for the program; requiring a report to the Governor and Legislature; providing applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1235 Military and Veteran Support
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Latvala and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1588

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N, As CS	Banner	Miller
2) Appropriations Committee		Seifert	Leznoff
3) Government Accountability Committee			

SUMMARY ANALYSIS

The State of Florida provides many benefits to active duty servicemembers and veterans of the United States Armed Forces. The bill contains provisions relating to rental applications, veteran-owned businesses, employment of military spouses and student veteran support. Specifically, the bill:

- Requires expedited processing of a housing rental application, if required, for a military servicemember's spouse and other adult dependents who plan to reside in the same rental unit;
- Requires the Florida Department of Veterans Affairs (FDVA) to create a website to streamline the procedure for applying for certification as a veteran business enterprise;
- Authorizes the Florida Supreme Court to admit the spouse of a military servicemember to practice law in this state provided that the Florida Board of Bar Examiners certifies that the spouse meets certain criteria;
- Requires the Department of Education (DOE) to expedite the processing of educator certification requests for the spouse of a military servicemember and extends the validity period of a temporary educator certificate for two additional years; and
- Provides legislative intent regarding the collaboration between the State Board of Education and the Board of Governors on issues related to academic credit for military training and coursework, student progression and success, and student services.

The bill has a fiscal impact of $125,000 on the FDVA for website development and maintenance.

The bill takes effect July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Rental Housing Applications for Servicemembers

Present Situation

Residential tenancies are governed by Part II of ch. 83, F.S., known as the Florida Residential Landlord and Tenant Act (Act). The Act generally applies to the rental of a dwelling unit, but does not apply to residence or detention in a facility, temporary occupancy related to a contract for purchase and sale, transient occupancy in a hotel or motel, a mobile home park tenancy, or occupancy by the owner of a cooperative or condominium.[1]

The Act regulates portions of the landlord-tenant relationship but leaves many parts of that relationship to market forces. One such area is that of rental application and tenant review prior to the landlord agreeing to offer a lease to a prospective tenant. Increasingly, landlords may require every prospective tenant to submit to one or more reviews, including:

- A criminal history background check;
- Sexual offender check;
- Credit check; or
- Employment verification.

Servicemembers face many challenges, not the least of which involves the logistics related to the frequent transfers between bases, commonly referred to as a Permanent Change of Station (PCS). When issued a PCS, the military provides 10 days of temporary lodging expense (TLE) for transfers within the continental United States.[2] The Legislature learned an increasingly common practice among landlords was taking a much longer time, sometimes up to 90 days, to review the application and background of a potential tenant who was also an active servicemember.

As a result, in 2016, the Legislature created s. 83.683, F.S., requiring landlords to process rental applications within 7 days, if the prospective tenant is a military servicemember. This provision also applies to condominium associations, cooperative associations, and homeowners associations. This provision did not extend to the spouse or other adult dependents of an active duty service member and these remain subject to much longer processing times.

The United States Department of Defense (USDOD) Strength Figures, as of January 31, 2017, indicates a total active duty military population of 1.3 million worldwide.[3] Florida has a large military population with more than 61,000 active duty military personnel.[4]

Effect of Proposed Changes

The bill expands the requirement for expedited processing of rental applications to include a servicemember's spouses and any adult dependent of the servicemember being required to submit a rental application to reside in the same unit. This expansion also applies to condominium associations, cooperative associations, and homeowners associations.

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[1] Sections 82.41 and 83.42, F.S.

[2] Defense Travel Management Office, Premanent Change of Station/Relocation, Frequently Asked Questions, *available at* http://www.defensetravel.dod.mil/site/faqpcs.cfm (accessed March 27, 2017).

[3] United State Department of Defense, Defense Manpower Data Center, DoD Personnel, Workforce Reports & Publications, Current Stregnth, *available at* https://www.dmdc.osd.mil/appj/dwp/rest/download?fileName=ms0_1701.pdf&groupName=milTop (last accessed March 27, 2017).

[4] Email from Mark Olgesby, Department of Military Affairs, RE: active duty military in Florida (March 27, 2017).

Florida Veteran Business Enterprise Opportunity Act

Present Situation

The intent of the Florida Veteran Business Enterprise Opportunity Act (act)[5] is to rectify the economic disadvantage of service-disabled veterans and to recognize wartime veterans for their sacrifices.

The act creates a certification process within the Department of Management Services (DMS) for service-disabled veteran business enterprises (VBEs). The act also creates a tiebreaker preference for VBEs by requiring a state agency to award a procurement or contract to a bidder who is a certified VBE if two or more bids, proposals, or replies for the procurement of commodities or contractual services are equal with respect to all relevant considerations including price, quality, and service.[6] However, if a certified VBE and one or more VBE or businesses eligible for another statutory vendor preference, such as an MBE, submit bids or proposals that are equal with respect to all relevant considerations including price, quality, and service, the state agency must award the contract or proposal to the business having the smallest net worth.[7]

In order to become certified as a VBE, the owners and the business must satisfy statutory eligibility requirements. In order to be considered a "service-disabled veteran" eligible for certification, the veteran must be a permanent resident of Florida who has a service-connected disability as determined by the U.S. Department of Veterans Affairs or who was terminated from military service by reason of disability by the U.S. Department of Defense.[8] In order to be considered a "wartime veteran" eligible for certification, the veteran must:[9]

- Be a wartime veteran as defined in s. 1.01(14), F.S.[10]; or
- Be a veteran of a period of war, as used in 38 U.S.C. s. 1521, who served in the active military, naval, or air service:
    - For 90 days or more during a period of war;
    - During a period of war and was discharged or released from such service for a service-connected disability;
    - For a period of 90 consecutive days or more and such period began or ended during a period of war; or
    - For an aggregate of 90 days or more in two or more separate periods of service during more than one period of war.

In order to be certified as a VBE, a business enterprise must be an independently owned and operated business that:[11]

- Employs 200 or fewer permanent full-time employees;
- Together with its affiliates has a net worth of $5 million or less or, if a sole proprietorship, has a net worth of $5 million or less including both personal and business investments;
- Is organized to engage in commercial transactions;
- Is domiciled in Florida;

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[5] Section 295.187, F.S.
[6] Section 295.187(4)(a), F.S.
[7] Section 295.187(4)(b), F.S.
[8] Section 295.187(3)(b), F.S.
[9] Section 295.187(3)(d), F.S.
[10] Section 1.01(14), F.S. defines a "veteran" as a person so served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans Affairs on individuals discharged or released with other than honorable discharges. To receive benefits as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge has been authorized or during certain periods of wartime service. *See* s. 1.01(14)(a)-(i), F.S.
[11] Section 295.187(3)(c), F.S.

- Is at least 51 percent owned by one or more wartime veterans or service-disabled veterans; and
- The management and daily business operations of which are controlled by one or more wartime veterans or service-disabled veterans or, for a service-disabled veteran having a permanent and total disability, by the spouse or permanent caregiver of the veteran.

The certification process requires applicants to submit documentation demonstrating that the business meets the above-listed requirements. Certification is renewed biennially[12] and may be revoked for one year if the VBE fails to inform DMS within 30 days after any event that may significantly affect the certification of the business, including, but not limited to a change in ownership or change in management and daily business operations.[13]

The Florida Department of Veterans' Affairs (FDVA) must:[14]

- Assist DMS in establishing a certification procedure, which must be reviewed biennially and updated as necessary;
- Identify eligible veteran business enterprises by any electronic means, including electronic mail or internet website, or by any other reasonable means;
- Encourage and assist eligible veteran business enterprises to apply for certification under this section;
- Provide information regarding services that are available from the Office of Veterans' Business Outreach of the Florida Small Business Development Center to veteran business enterprises.

Effect of Proposed Changes

The bill requires FDVA to create a website to streamline the procedure for applying for certification as a veteran business enterprise.

Supreme Court Admitting Attorneys to Practice Law

Present Situation

The Florida Supreme Court has the exclusive jurisdiction to regulate the admission of attorneys to The Florida Bar and to discipline members of the Bar.[15] Membership in The Florida Bar requires both admission by the Supreme Court and maintaining membership pursuant to applicable Florida Bar rules.[16] Applicants to the Bar must undergo a character and fitness investigation by the Florida Board of Bar Examiners and pass the bar examination.[17]

The Florida Bar has petitioned the Florida Supreme Court to amend the Rules Regulating the Florida Bar to include a new subchapter 21, authorizing military spouses to practice law in Florida.[18] Subchapter 21 would grant full membership to the Florida Bar to spouse of an active duty service member stationed in Florida. The spouse must:

- Be identified and enrolled in the Department of Defense's "Defense Enrollment Eligibility Report System" as the spouse of a full-time active duty member of the United States armed forces or a member of the Guard or Reserve components who is ordered to extended activity duty and transferred from outside of Florida to a duty station in Florida;

[12] Section 295.187(5)(b), F.S.
[13] Section 295.187(5)(d), F.S.
[14] Section 295.187(6), F.S.
[15] Article V, s. 15, Fla. Const.
[16] R. Regulating Fla. Bar 1-3.1.
[17] R. Relating to Admissions to the Fla. Bar. 2-10.
[18] *In Re: Amendments to the Rules Regulating the Florida Bar –Chapter 21 Military Spouse Authorization to Engage in the Practice of Law in Florida* (Feb. 1, 2017).

- Hold a J.D. or LL.B. degree from a law school accredited by the American Bar Association;
- Be admitted after passing a written examination to the practice of law in another jurisdiction;
- Be an active member of the bar in good standing who is eligible to practice in at least one jurisdiction;
- Be a member of good standing in every jurisdiction where the applicant has been admitted to practice law;
- Establish the applicant is not subject to discipline or a pending disciplinary matter in another jurisdiction;
- Not have failed the Florida Bar examination within the past 5 years or previously been denied admission to the Florida Bar for reasons of character and fitness;
- Reside in Florida with the service member stationed in Florida or provide evidence the applicant intends to reside in Florida with the service member within six months;
- Certify to having read the Florida Rules of Discipline,[19] the Florida Rules of Professional Conduct[20] and subchapter chapter 21 and agree to submit to the jurisdiction of the Supreme Court of Florida for disciplinary purposes;
- Submit an application to the Florida Board of Bar Examiners in the form required by that board, including a copy of the military member's orders to a duty station within Florida;
- Pay an application fee established by the Florida Board of Bar Examiners; and
- Establish the applicant's qualifications as to character and fitness to the satisfaction of the Florida Board of Bar Examiners.[21]

The spouse must complete the basic skills course requirement within six months of initial certification and must complete ten hours of continuing legal education during each year the authorization is renewed, including 2 hours of ethics each year.[22]

The spouse is granted full membership, but must associate with a certified lawyer if the spouse has not engaged in the active practice of law for at least three years cumulatively.[23] The spouse must be reauthorized annually and is responsible for the payment of annual membership fees at the same rate as other active members.

A spouse is no longer eligible under this rule if:

- The service member leaves active duty;
- The spouse and service member divorce;
- The service member receives a permanent transfer outside of Florida, except that the certified lawyer may continue to practice pursuant to this chapter if the service member has been assigned to an unaccompanied or remote assignment with no dependents authorized until the service member is assigned to a location with dependents authorized;
- The spouse relocates outside for Florida for more than six continuous months;
- The spouse requests certification be terminated; or
- The spouse becomes a member of the Florida Bar by meeting admission requirements.[24]

[19] R. Regulating Fla. Bar Ch. 3.
[20] R. Regulating Fla. Bar Ch. 4.
[21] *Florida Bar Rules Proposals*, The Florida Bar News (Jan. 1, 2017).
[22] *Id.*
[23] *Id.*
[24] *Id.*

The certification may be revoked if the spouse fails to pay membership fees, fails to meet the continuing education requirement, takes and fails the Florida Bar Examination or the character and fitness investigation, or is disbarred or suspended by another jurisdiction.[25]

The Florida Bar Board of Governors approved the proposed amendment on December 9, 2016 without objection.[26]

Effect of Proposed Changes

The bill authorizes the Florida Supreme Court to admit the spouse of a military servicemember, as defined in s. 250.01, F.S., to practice law in this state given that he or she is certified by the Florida Board of Bar Examiners. Certification by the board is contingent on the applicant:

- Registering in the Defense Enrollment Eligibility Reporting System established by the U.S. Department of Defense;
- Holding a Juris Doctor or Bachelor of Laws from a law school accredited by the American Bar Association;
- Being licensed to practice law in another state, the District of Columbia, or a territory of the U.S. after having passed a written examination;
- Establishing that he or she is a member in good standing in all jurisdictions where licensed to practice law and that he or she is not currently subject to discipline or a pending disciplinary matter relating to the practice of law;
- Demonstrating his or her presence in Florida as a spouse of a servicemember; and
- Otherwise fulfilling all requirements for admission to practice law in Florida.

Additionally, the Florida Supreme Court may specify circumstances under which the license and authorization to practice law in Florida of an attorney licensed in accordance with the above requirements terminates.

Educator Certification Requirements

Present Situation

In order to serve as an educator in a traditional public school, charter school, virtual school, or other publicly operated school, the person must hold a certificate issued by the Florida Department of Education (DOE).[27] Persons seeking employment at a public school as a school supervisor, principal, teacher, library media specialist, counselor, athletic coach, or in another instructional capacity must be certified.[28] The purpose of certification is to require school-based personnel to "possess the credentials, knowledge, and skills necessary to allow the opportunity for a high-quality education in public schools."[29]

Full reciprocity is granted to educators who hold a valid professional standard teaching certificate for a subject area issued by another state or the National Board for Professional Teaching Standards

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[25] *Id.*

[26] *In Re: Amendments to the Rules Regulating the Florida Bar –Chapter 21 Military Spouse Authorization to Engage in the Practice of Law in Florida* (Feb. 1, 2017).

[27] Sections 1012.55(1) and 1002.33(12)(f), F.S.

[28] Sections 1002.33(12)(f) (charter school teachers) and 1012.55(1), F.S. District school boards and charter school governing boards are authorized to hire non-certified individuals who possess expertise in a given field to serve in an instructional capacity. Rule 6A-10502, F.A.C.; ss.1002.33(12)(f) and 1012.55(1)(c), F.S. Occupational therapists, physical therapists, audiologists, and speech therapists are not required to be certified educators. Rule 6A-1.0502(10) and (11), F.A.C.

[29] Section 1012.54, F.S.; *see* rule 6A-4.001(1), F.A.C.

(NBPTS).[30] These individuals are deemed to have met the requirements for Florida professional certification, including mastery of general knowledge, subject area knowledge and professional preparation and education competence.[31] Partial reciprocity is granted to educators who hold American Board for Certification of Teacher Excellence (ABCTE) certification. ABCTE certification satisfies all requirements for a professional certificate, except the professional education competence demonstration requirement. Individuals who hold this certification must complete a professional education competence demonstration program.[32] Individuals who hold an out-of-state, NBPTS, or ABCTE certification must apply for a Florida professional certificate. In each case, the certificate must be comparable to, and require the same or higher level of training as, the Florida subject area certification.[33]

Current law requires that upon the receipt of a license application the agency examine the application and, within 30 days, provide notification of any errors or omissions. Unless a shorter time frame is provided by law, an application for a licensee must be approved or denied within 90 days after the receipt of the completed application.[34]

In addition to educator certificates, DOE may issue temporary certificates to applicants who:

- meet the basic eligibility requirements for certification;[35]
- obtain full-time employment in a position that requires a Florida educator certificate by a school district or private school that has a DOE-approved professional education competence demonstration program;[36] and
- do one of the following:
    - demonstrate mastery of subject area knowledge (e.g., passage of the appropriate subject area test);[37] or
    - complete the required degree or content course specified in state board rule for subject area specialization[38] and attain at least a 2.5 grade point average on a 4.0 scale in the subject area courses.[39]

An educator who is employed under a temporary certificate must demonstrate mastery of general knowledge within one calendar year after employment in order to remain employed in a position that requires a certificate.[40] If the educator is employed under contract, the calendar year deadline for demonstrating mastery of general knowledge may be extended through the end of the school year.[41]

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[30] Section 1012.56(5)(e)-(f), F.S.; *see* rules 6A-4.002(!)(i)-(j) and 6A-4.003(2), F.A.C. (flush left provisions following paragraph (2)(e)); Florida Department of Education, *Reciprocity for Out-of-State Teachers and Administrators*, http://www.fldoe.org/teaching/certification/pathways-routes/certified-teacher-or-administrator.stml (last visited March 13, 2017).
[31] Section 1012.56(3)(c)-(d), (5)(e)-(f), and (6)(c)-(d), F.S.; rule 6A-4.002(l)(i)1. And (j), F.A.C.
[32] Section 1012.56(5)(f), F.S.; Florida Department of Education, *Professional Preparation and Education Competence,* http://www.fldoe.org/teaching/certification/general-cert-requirements/professional-preparation-edu-competenc.stml (last visited March 13, 2017).
[33] *See* Rule 6A-4.002(1)(i) and (j), F.A.C.
[34] Section 120.60(1), F.S.
[35] Section 1012.5(2)(a)-(f) and (7)(b),F.S.
[36] Section 1012.56(1)(b), F.S.; rule 6A-4.004(1)(a)2., F.A.C.
[37] Section 1012.56(7)(b), F.S.; Florida Department of Education, *Subject Area Knowledge,* http://www.fldoe.org/teaching/certification/general-cert-requirements/subject-area-knowledge.stml (last visited March 13, 2017).
[38] Section 1012.56(7)(b), F.S. The degree and content requirements are specified in ch. 6A-4, F.A.C.
[39] Section 1012.56(2)(c), F.S.; *see* Florida Department of Education , *Certificate Types and Requirements,* http://www.fldoe.org/teaching/certification/general-cert-requirements/ (last visited March 13, 2017).
[40] Section 1012.56(7), F.S. (flush –left provisions at end of subsection); *see also* ss. 1012.56(3), F.S. for acceptable means of demonstrating mastery of subject area knowledge.
[41] *Id.*

An educator who has not demonstrated mastery of general knowledge may not be employed or continue to be employed in a position requiring a temporary certificate beyond this time period.[42] A temporary certificate is valid for 3 years and is nonrenewable.[43]

DOE may extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including demonstrating mastery of general knowledge, were not completed due to serious illness or injury of the applicant or other extraordinary extenuating circumstance.[44] Upon the approval of the Commissioner of Education, DOE may reissue the temporary certificate for 2 additional years.[45]

According to DOE staff, 90 percent of the current educator certification applications are evaluated and processed within 30 days of the determination of the completed application and the remaining 10 percent within 40 days.[46]

Effect of Proposed Changes

The bill requires DOE to process and approve or deny educator certification applications within 60 calendar days after the stamped receipted date of the completed application for an applicant who:

- Is the spouse of a servicemember, as defined in section 250.01(19), F.S.;
- Is stationed in the state; and
- Holds a current professional standard teaching certificate issued by another state.

The bill also allows DOE to extend the validity period of a temporary certificate for 2 additional years if the applicant is the spouse of a servicemember stationed in the state.

Continuing Education of Veterans

Present Situation

More than 1.5 million veterans live in Florida, including more than 231,000 veterans of the Afghanistan and Iraq wars, and roughly 506,000 Vietnam-era veterans.[47]

Florida provides many educational benefits for veterans including awarding academic credit for military training and coursework, priority registration, and tuition and fee waivers.

Members of the U.S. Armed Forces are eligible to earn academic college credit at public postsecondary educational institutions for college-level training and education acquired in the military that is recognized by the American Council on Education. The Board of Governors (BOG) by regulations and the State Board of Education (SBE) by rules must provide procedures for credential evaluation and the award of academic credit, equivalency and alignment of military coursework with appropriate college courses, course descriptions, type and amount of college credit that may be awarded, and transfer of

[42] Section 1012.56(7), F.S. (flush –left provisions at end of subsection)
[43] *Id.*
[44] Section 1012.56(7), F.S.; rule 6A-4.002, F.A.C.
[45] *Id.*
[46] Benjamin Palazesi, Government Relations, Florida Department of Education, Re: Teacher Certification (March 21, 2017).
[47] Department of Veterans Affairs, Annual Report Fiscal Year 2015-16, available at http://floridavets.org/wp-content/uploads/2016/11/2016-Annual-Report.pdf (accessed March 14, 2017).

credit.[48] Awarded credit must be noted on the student's transcript and documentation of the credit equivalency evaluation must be maintained in the student veteran's file.[49]

State universities and Florida College System (FCS) institutions offering priority course registration for a segment of the student population, or upon implementation of such a policy, must provide priority course registration to veterans of the U.S. Armed Forces who are receiving GI Bill educational benefits. Individuals are eligible for priority course registration until the expiration of the GI educational benefits.[50] Independent postsecondary educational institutions are encouraged to provide priority course registration in the same manner as public postsecondary institutions.[51]

Florida offers a number of tuition assistance programs for veterans. The Congressman C.W. Bill Young Veteran Tuition Waiver Program provides an out-of-state fee waiver for honorably discharged veterans and those utilizing GI Bill educational benefits who physically reside in the state while enrolled in the institution.[52] In addition, Florida law waives undergraduate tuition for recipients of a Purple Heart or other superior combat decoration who are currently, or were at the time of the military action that led to the award, a resident of the state.[53] Current law also provides for tuition deferments for veterans using GI Bill educational benefits.[54]

Many of the state's public postsecondary institutions have also established student veteran centers to provide guidance and assistance to students as they transition from military service to campus life. Per federal regulation,[55] every postsecondary education institution that is approved for veterans' education and training must have a school certifying official on staff to certify that veterans are enrolled, are making adequate progress, and thereby remain eligible for educational benefits.

At state universities, these individuals are also responsible for assisting student veterans in obtaining academic advising, achieving course registration, and gaining access to student support services available through the university.[56] Additionally, in response to identified best practices presented at State University System (SUS) workshops on serving student veterans, some of the state universities have designated faculty and/or staff as veteran liaisons within academic discipline areas.[57] Examples of trained veteran liaisons are found in Florida Atlantic University's designated veteran student resource team, the University of South Florida's Office of Veterans Services with a fulltime staff dedicated to providing resources and tools to student veterans, and Florida State University's Veteran Student Center with fulltime staff and appointed veteran liaisons.

The Florida Association of Veteran Education Specialists (FAVES), a 501(c)(3) non-profit organization, promotes professional competency and communication among VA School Certifying Officials through State and regional conferences.[58] The FAVES Board of Directors includes representatives from the

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[48] Section 1004.96, F.S.
[49] Regulation 6.013, Board of Governors; rule 6A-14.0302, F.A.C.
[50] Section 1004.075, F.S.
[51] Section 1005.09, F.S.
[52] Section 1009.26(13), F.S.
[53] Section 1009.26(8), F.S.
[54] Section 1009.27(2), F.S.
[55] 38 CFR s. 21.4266(a)(2)
[56] Email from Richard Stevens, Assistant Vice Chancellor, Academic and Student Affairs, Florida Board of Governors, RE: Veteran Student Centers (March 14, 2017).
[57] *Id.*
[58] Florida Association of Veterans Education Specialists, *About Us,* available at http://www.flfaves.org/about-us.php (last visited March 20, 2017).

U.S. Department of Veterans Affairs and the Florida Department of Veterans' Affairs, State Approving Agency for Veterans' Education and Training.

Effect of Proposed Changes

In an effort to provide veterans increased access to postsecondary educational opportunities and success, the bill directs the Board of Governors and the State Board of Education to work collaboratively to:

- Align existing degree programs with applicable military training and experience to maximize academic credit awarded for such training and experience.
- Appoint and train specific faculty within each degree program as liaisons and contacts for veterans.
- Incorporate outreach services tailored to disabled veterans into existing disability services on campus to make available information on disability services provided by the U.S. Department of Veterans Affairs and other federal and state agencies, and private entities.
- Facilitate statewide meetings for personnel who provide student services for veterans to discuss and develop best practices, exchange ideas and experiences, and attend presentations by individuals with expertise in the unique needs of veterans.
- Make every effort to provide veterans with sufficient courses required for graduation, including, but not limited to, giving priority registration to veterans.

B. SECTION DIRECTORY:

Section 1 Amends s. 83.683, F.S., relating to rental applications by a servicemember.

Section 2 Amends s. 295.187, F.S., relating to the Florida Veteran Business Enterprise Opportunity Act.

Section 3 Amends s. 454.021, F.S., relating to the Supreme Court admitting attorneys to practice law.

Section 4 Amends s. 1012.56, F.S., relating to educator certification requirements.

Section 5 Provides legislative intent to require collaboration between the State Board of Education and the Board of Governors of the State University System to achieve specified goals regarding educational opportunities for veterans.

Section 6 Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Section 2 of the bill requires FDVA to create a website for businesses to apply for certification as a Veteran Business Enterprise. The cost for the FDVA to create such website is $100,000 in nonrecurring General Revenue and $25,000 in recurring General Revenue for annual site maintenance costs.

Section 3 of the bill requires DOE to expedite the processing of educator certification requests for spouses of military servicemembers stationed in Florida who current hold active Professional certificates from other states. DOE is currently in the process of developing a new technology system to process educator certification requests. A new process to properly identify certificate evaluation requests for these individuals will need to be added to the new system. There is no fiscal impact associated with this requirement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Education to adopt rules regarding extending validity of a temporary certificate if the applicant is a spouse of a servicemember stationed in Florida.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute (CS). The amendment provides that the requirement for a landlord, condominium association, cooperative association, and homeowners association to process a housing rental application from a military servicemember within seven days of submission also applies to the servicemember's spouse and any adult dependents of the servicemember who are to reside in the same rental unit.

This is analysis is drafted to the bill as amended by the Local, Federal, & Veterans Affairs Subcommittee.

A bill to be entitled

An act relating to military and veteran support; amending s. 83.683, F.S.; requiring landlords, condominium associations, cooperative associations, and homeowners' associations that require a servicemember's spouse or certain adult dependents to submit a rental application to complete processing of the application within a specified timeframe; amending s. 295.187, F.S.; requiring the Department of Veterans' Affairs to create a website to streamline the procedure for businesses applying for certification as a veteran business enterprise; amending s. 454.021, F.S.; authorizing the Supreme Court to admit on motion a bar applicant who is the spouse of a servicemember stationed in this state under certain circumstances; amending s. 1012.56, F.S.; requiring the Department of Education to expedite the processing of an application for educator certification submitted by a spouse of a servicemember stationed in this state; requiring the State Board of Education to adopt rules regarding extending validity of a temporary certificate if the applicant is a spouse of a servicemember stationed in this state; providing legislative findings and intent regarding continuing education for veterans of the United States

Armed Forces; providing legislative intent to require collaboration between the State Board of Education and the Board of Governors of the State University System in achieving specified goals regarding educational opportunities for veterans; providing an effective date.

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

Section 1. Section 83.683, Florida Statutes, is amended to read:

83.683 Rental application by a servicemember.—

(1) If a landlord requires a prospective tenant to complete a rental application before residing in a rental unit, the landlord must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. <u>If the landlord requires the servicemember's spouse or an adult dependent of the servicemember who is to reside in the same rental unit to submit a rental application, the landlord must complete processing of such application within the same 7-day period.</u> Absent a timely denial of the rental application, the landlord must lease the rental unit to the servicemember if

all other terms of the application and lease are complied with.

(2) If a condominium association, as defined in chapter 718, a cooperative association, as defined in chapter 719, or a homeowners' association, as defined in chapter 720, requires a prospective tenant of a condominium unit, cooperative unit, or parcel within the association's control to complete a rental application before residing in a rental unit or parcel, the association must complete processing of a rental application submitted by a prospective tenant who is a servicemember, as defined in s. 250.01, within 7 days after submission and must, within that 7-day period, notify the servicemember in writing of an application approval or denial and, if denied, the reason for denial. <u>If the association requires the servicemember's spouse or an adult dependent of the servicemember who is to reside in the same rental unit or parcel to submit a rental application, the association must complete processing of such application within the same 7-day period.</u> Absent a timely denial of the rental application, the association must allow the unit or parcel owner to lease the rental unit or parcel to the servicemember and the landlord must lease the rental unit or parcel to the servicemember if all other terms of the application and lease are complied with.

(3) The provisions of this section may not be waived or modified by the agreement of the parties under any circumstances.

Section 2. Present paragraph (d) of subsection (6) of section 295.187, Florida Statutes, is redesignated as paragraph (e), and a new paragraph (d) is added to that subsection, to read:

295.187 Florida Veteran Business Enterprise Opportunity Act.—

(6) DUTIES OF THE DEPARTMENT OF VETERANS' AFFAIRS.—The department shall:

(d) Create a website to streamline the procedure for applying for certification as a veteran business enterprise.

Section 3. Subsection (4) is added to section 454.021, Florida Statutes, to read:

454.021 Attorneys; admission to practice law; Supreme Court to govern and regulate.—

(4)(a) The Supreme Court of Florida may admit on motion an applicant as an attorney at law authorized to practice in this state if the applicant is a spouse of a servicemember, as defined in s. 250.01, stationed in this state and upon certification by the Florida Board of Bar Examiners that the applicant meets the following requirements:

1. The applicant has registered in the Defense Enrollment Eligibility Reporting System established by the United States Department of Defense;

2. The applicant holds a Juris Doctor or Bachelor of Laws from a law school accredited by the American Bar Association;

3. The applicant is licensed to practice law in another state, the District of Columbia, or a territory of the United States after having passed a written examination;

4. The applicant can establish that he or she is a member in good standing in all jurisdictions where licensed to practice law and that he or she is not currently subject to discipline or a pending disciplinary matter relating to the practice of law;

5. The applicant can demonstrate his or her presence in this state as a spouse of a servicemember; and

6. The applicant has otherwise fulfilled all requirements for admission to practice law in this state.

(b) The Supreme Court of Florida may specify circumstances under which the license and authorization to practice law in this state of an attorney licensed in accordance with paragraph (a) terminates.

Section 4. Subsections (1) and (7) of section 1012.56, Florida Statutes, are amended to read:

1012.56 Educator certification requirements.—

(1) APPLICATION.—Each person seeking certification pursuant to this chapter shall submit a completed application containing the applicant's social security number to the Department of Education and remit the fee required pursuant to s. 1012.59 and rules of the State Board of Education. Pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, each party is required to provide

his or her social security number in accordance with this section. Disclosure of social security numbers obtained through this requirement is limited to the purpose of administration of the Title IV-D program of the Social Security Act for child support enforcement. Pursuant to s. 120.60, the department shall issue within 90 calendar days after the stamped receipted date of the completed application:

(a) If the applicant meets the requirements, a professional certificate covering the classification, level, and area for which the applicant is deemed qualified and a document explaining the requirements for renewal of the professional certificate;

(b) If the applicant meets the requirements and if requested by an employing school district or an employing private school with a professional education competence demonstration program pursuant to paragraphs (6)(f) and (8)(b), a temporary certificate covering the classification, level, and area for which the applicant is deemed qualified and an official statement of status of eligibility; or

(c) If the ~~an~~ applicant does not meet the requirements for either certificate, an official statement of status of eligibility. The statement of status of eligibility must advise the applicant of any qualifications that must be completed to qualify for certification. Each statement of status of eligibility is valid for 3 years after its date of issuance,

except as provided in paragraph (2)(d).

If the applicant is the spouse of a servicemember, as defined in s. 250.01, stationed in this state and if the applicant holds a current professional standard teaching certificate issued by another state, the department shall expedite the processing of the application and issue a certificate or statement as provided under paragraphs (a)-(c) within 60 calendar days after the stamped receipted date of the completed application.

(7) TYPES AND TERMS OF CERTIFICATION.—

(a) The Department of Education shall issue a professional certificate for a period not to exceed 5 years to any applicant who meets all the requirements outlined in subsection (2) or, for a professional certificate covering grades 6 through 12, any applicant who:

1. Meets the requirements of paragraphs (2)(a)-(h).

2. Holds a master's or higher degree in the area of science, technology, engineering, or mathematics.

3. Teaches a high school course in the subject of the advanced degree.

4. Is rated highly effective as determined by the teacher's performance evaluation under s. 1012.34, based in part on student performance as measured by a statewide, standardized assessment or an Advanced Placement, Advanced International Certificate of Education, or International Baccalaureate

examination.

5. Achieves a passing score on the Florida professional education competency examination required by state board rule.

(b) The department shall issue a temporary certificate to any applicant who completes the requirements outlined in paragraphs (2)(a)-(f) and completes the subject area content requirements specified in state board rule or demonstrates mastery of subject area knowledge pursuant to subsection (5) and holds an accredited degree or a degree approved by the Department of Education at the level required for the subject area specialization in state board rule.

(c) The department shall issue one nonrenewable 2-year temporary certificate and one nonrenewable 5-year professional certificate to a qualified applicant who holds a bachelor's degree in the area of speech-language impairment to allow for completion of a master's degree program in speech-language impairment.

Each temporary certificate is valid for 3 school fiscal years and is nonrenewable. However, the requirement in paragraph (2)(g) must be met within 1 calendar year of the date of employment under the temporary certificate. Individuals who are employed under contract at the end of the 1 calendar year time period may continue to be employed through the end of the school year in which they have been contracted. A school district shall

not employ, or continue the employment of, an individual in a position for which a temporary certificate is required beyond this time period if the individual has not met the requirement of paragraph (2)(g). The State Board of Education shall adopt rules to allow the department to extend the validity period of a temporary certificate for 2 years when the requirements for the professional certificate, not including the requirement in paragraph (2)(g), were not completed due to the serious illness or injury of the applicant, due to the fact that the applicant is the spouse of a servicemember stationed in this state, or due to other extraordinary extenuating circumstances. The department shall reissue the temporary certificate for 2 additional years upon approval by the Commissioner of Education. A written request for reissuance of the certificate shall be submitted by the district school superintendent, the governing authority of a university lab school, the governing authority of a state-supported school, or the governing authority of a private school.

Section 5. Legislative findings and intent; continuing education of veterans of the United States Armed Forces.—The Legislature finds that many veterans of the United States Armed Forces in this state have completed training and coursework during their military service, including overseas deployments, resulting in tangible and quantifiable strides in their pursuit of a postsecondary degree. The Legislature further finds that

the State Board of Education and the Board of Governors of the State University System must work together to ensure that military training and coursework are granted academic credit in order to assist veterans in continuing their education. Therefore, it is the intent of the Legislature that the State Board of Education and the Board of Governors work collaboratively to:

(1) Align existing degree programs, including, but not limited to, vocational and technical degrees, at each state university and Florida College System institution with applicable military training and experience to maximize academic credit awarded for such training and experience.

(2) Appoint and train specific faculty within each degree program at each state university and Florida College System institution as liaisons and contacts for veterans.

(3) Incorporate outreach services tailored to disabled veterans into existing disability services on the campus of each state university and Florida College System institution to make available to such veterans information on disability services provided by the United States Department of Veterans Affairs, other federal and state agencies, and private entities.

(4) Facilitate statewide meetings for personnel at state universities and Florida College System institutions who provide student services for veterans to discuss and develop best practices, exchange ideas and experiences, and attend

presentations by individuals with expertise in the unique needs of veterans.

(5) Make every effort to provide veterans with sufficient courses required for graduation, including, but not limited to, giving priority registration to veterans.

Section 6. This act shall take effect July 1, 2017.

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: Appropriations Committee
Representative Latvala offered the following:

Amendment (with title amendment)

Between lines 255 and 256, insert:

For fiscal year 2017-2018 the recurring sum of $25,000 from the General Revenue Fund and the nonrecurring sum of $100,000 from the General Revenue Fund is hereby appropriated to the Department of Veterans' Affairs to implement the provisions of Section 2 of this act.

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

Between lines 30 and 31, insert:

opportunities for veterans; providing an appropriation; providing an effective

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1379 Department of Legal Affairs
SPONSOR(S): Civil Justice & Claims Subcommittee; Diaz, J.
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	13 Y, 1 N, As CS	MacNamara	Bond
2) Appropriations Committee		Welty	Leznoff
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill amends current law with respect to the duties and responsibilities of the Attorney General and the Department of Legal Affairs. The bill:

- Gives the Statewide Council on Human Trafficking the authority to apply for and accept funds, grants, gifts, and services from the state, the federal government, and other sources to defray the cost of the council's annual statewide policy summit;
- Provides that Attorney General may request the assignment of one or more Florida Highway Patrol officers to the Office of the Attorney General for security services;
- Amends dates to keep Florida's Deceptive and Unfair Trade Practices Act current with applicable federal law and rules;
- Provides a definition of "virtual currency" and amends the term "monetary instruments" to include "virtual currency" in the Florida Money Laundering Act;
- Amends the Florida Trust Code related to charitable trusts to allow the Attorney General to take over for the 20 state attorneys in matters involving oversight of charitable trusts, to require delivery of notice, and to give legal standing to the Attorney General under circumstances where a trustee of a charitable trust seeks to modify the status of the trust or its beneficiaries; and
- Creates s. 960.194, F.S., providing for compensation awards to surviving family members of an emergency responder who, as a result of a crime is killed answering a call for service in the line of duty.

To the extent the Statewide Council on Human Trafficking is successful in securing additional funds, there may be an increase in revenues to the Department of Legal Affairs.

The bill has an indeterminate, but likely insignificant, fiscal impact on the Department of Legal Affairs and the Department of Highway Safety and Motor Vehicles, which will be absorbed by the agencies.

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

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

The bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Attorney General is charged with all powers and duties pertaining to the office except insofar as they have been expressly restricted or modified by statute or the state constitution. The Attorney General is recognized as the chief law officer of the State and, absent express legislative restriction, may exercise such power and authority as the public interest may require. The Attorney General is a member of the Executive Branch's Cabinet. As chief legal officer of the State, the Attorney General must be noticed in certain proceedings under Florida law and may bring actions on behalf citizens of the state as provided for by law.[1]

The Attorney General is also the head of the Department of Legal Affairs. The Department of Legal Affairs (department) is responsible for providing all legal services required by any executive department unless otherwise provided by law. The Attorney General, however, may authorize other counsel where emergency circumstances exist and must authorize other counsel when professional conflict of interest is present.

Current law provides for the creation of various councils, groups, and trust funds that are under the control of the department. Moreover, the department is tasked with oversight duties for certain industries of the state as part of their duty to provide legal services on behalf of the state.

Current Law and Effect of Bill

Statewide Council on Human Trafficking

The Statewide Council on Human Trafficking enhances the development and coordination of state and local law enforcement and social services responses to address commercial sexual exploitation as a form of human trafficking and to support victims.[2] The department provides the council with staff to perform its duties.

The membership of the Council is provided for by statute, with each member serving 4-year terms. The duties of the Council include holding an annual statewide policy summit on topics relating to human trafficking.

The bill authorizes the Council to apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual statewide policy summit.

Assigning Highway Patrol Officers to the Office of the Attorney General

Current law requires the Department of Highway Safety and Motor Vehicles (DHSMV) to assign one Florida Highway Patrol officer to the office of the Governor at the discretion of the Lieutenant Governor. The Governor selects the officer and the law provides the minimum rank and salary requirements for the officer.[3]

For the 2015-16 and 2016-17 fiscal years, the Department of Highway Safety and Motor Vehicles is allowed to assign a patrol officer to the Lieutenant Governor, at his or her discretion, and to a Cabinet

[1] *See e.g.*, s. 736.0110, F.S., relating to charitable trusts.
[2] *See* s. 16.617, F.S.
[3] s. 321.04(3), F.S.

member if the Department deems such assignment appropriate or in response to a threat, if requested in writing by such Cabinet member.[4]

The bill requires, upon the request of the Attorney General, the Department of Highway Safety and Motor Vehicles to assign one or more patrol officers to the Office of the Attorney General for security services.

Florida Deceptive and Unfair Trade Practices

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA or Act) broadly declares unlawful any unfair or deceptive acts or practices committed in the conduct of any trade or commerce.[5] The Act is a separate cause of action intended to be an additional remedy, and it is aimed toward making consumers whole for losses caused by fraudulent consumer practices. The Act protects consumers from deceptive acts that mislead consumers, and protects the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.

The Act applies to any act or practice occurring in the conduct of any trade or commerce, even as between purely commercial interests. It applies to private causes of action arising from single unfair or deceptive acts in the conduct of any trade or commerce, even if it involves only a single party, a single transaction, or a single contract. Section 501.203(3), F.S. provides:

> "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2015.

Similarly, with respect to unlawful acts and practices under s. 501.204(2), F.S., the Act provides that:

> It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2015.

The bill removes the year 2015 from the above provisions in the Act and replaces it with the year 2017 to keep the FDUTPA current with applicable federal law and rules.

Florida Money Laundering Act

Section 896.101, F.S., provides for the requirements and enforcement of the Florida Money Laundering Act. Florida law defines money laundering as a financial transaction or series of transactions used to conceal, disguise, hide, or process money and other proceeds generated through criminal activity. The proceeds may be gained through any felony prohibited by state or federal laws.

Many types of financial transactions can qualify as money laundering under Florida money laundering laws. Activities such as purchases, sales, monetary gifts, loans, bank deposits, wire transfers, currency exchanges, and investments might all qualify as financial transactions for the purpose of money laundering. Transfers of title to real property, cars, and other types of vehicles can also qualify as money laundering if used to hide the proceeds from unlawful activities.

Under the Act, "monetary instruments" means coin or currency of the United States or of any other country, travelers' checks, personal checks, bank checks, money orders, investment securities in

[4] s. 321.04(4), F.S.
[5] ss. 501.201-213, F.S.

bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.[6]

On July 22, 2016, a judge in Miami dismissed a money laundering case where the defendant sold $1,500 of Bitcoins to undercover detectives who told him they wanted to use the money to buy stolen credit-card numbers.[7] For the purpose of the money laundering charge, the judge concluded Bitcoin was not money and therefore, could not fall within the definition of money laundering.

The bill adds to the definition of monetary instruments to include virtual currency. The bill further provides a definition of virtual currency as "a medium of exchange in electronic or digital format that is not a coin or currency of the United States or other country." The effect of these changes is that money laundering using virtual currency is illegal.

Notice for Charitable Trusts

Chapter 736, F.S., is the Florida Trust Code (code). Under s. 736.0110(3), F.S., the Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Florida. Section 736.0103(16), F.S., defines a "qualified beneficiary" as a living beneficiary who, on the date of the beneficiary's qualification is determined:

> (a) Is a distributee or permissible distributee of trust income or principal;
> (b) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributes described in paragraph (a) terminated on that date without causing the trust to terminate; or
> (c) Would be a distribute or permissible distribute of trust income or principal if the trust terminated in accordance with its terms on that date.

A "charitable trust" for purposes of s. 736.0110, F.S., means a trust, or portion of a trust, created for a charitable purpose as described in s. 736.0405(1), F.S. Charitable purposes include, but are not limited to, "the relief of poverty; the advancement of arts, sciences, education, or religion; and the promotion of health, governmental, or municipal purposes."[8] Part XII of ch. 736, F.S., governs all charitable trusts. Specifically, and in relevant part:

- Section 736.1205, F.S., requires that the trustee of a charitable trust notify the state attorney for the judicial circuit of the principal place of administration of the trust if the power to make distributions are more restrictive than s. 736.1204(2), F.S., or if the trustee's powers are inconsistent with s. 736.1204(3), F.S.
- Section 736.1206(2), F.S., provides that the trustee of a charitable trust may amend the governing instrument with consent of the state attorney to comply with the requirements of a private foundation trust as provided in s. 736.1204(2), F.S.
- Section 736.1207, F.S., specifies that Part XII of the code does not affect the power of a court to relieve a trustee from restrictions on that trustee's powers and duties for cause shown and upon complaint of the state attorney, among others.
- Section 736.1208(4)(b), F.S., requires that a trustee who has released a power to select charitable donees accomplished by reducing the class of permissible charitable organizations must deliver a copy of the release to the state attorney.

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[6] s. 896.101(2)(e), F.S.
[7] Bitcoin not money, Miami judge rules in dismissing laundering charges. Miami Herald. http://www.miamiherald.com/news/local/crime/article91682102.html (last accessed April 11, 2017).
[8] s. 736.0405(1), F.S.

- Section 736.1209, F.S., allows the trustee to file an election with the state attorney to bring the trust under s. 736.1208(5), F.S., relating to public charitable organization(s) as the exclusive beneficiary of a trust.

As such, there is some disconnect between s. 736.0110(3), F.S., and Part XII of the code; they can be read to require that notice be given to the Attorney General for certain charitable trusts and to the state attorney of the proper judicial circuit for the same or other trusts.

The bill grants these powers and responsibilities solely to the Attorney General. The bill also amends s. 736.0110(3), F.S., to provide the Attorney General with standing to assert the rights of a qualified beneficiary in any judicial proceeding and amends the provisions in Part XII of the code concerning the state attorney's office.

The changes provide that the Attorney General, rather than the state attorney, would receive notifications, releases, and elections for charitable trusts under ss. 736.1205, 736.1207, 736.1208, and 736.1209, F.S., and the Attorney General, rather than the state attorney, would consent to a charitable trust amendment effectuated under s. 736.1206, F.S.

Lastly, the bill defines how the Attorney General is to be given notifications, releases, and elections in s. 736.1201(2), F.S., and removes the state attorney from the definitions section of Part XII of the code.

Emergency Responder Death Benefits

Sections 960.01-960.28, F.S., relate to the Florida Crimes Compensation Act. The Act was created recognizing that many innocent people suffer personal injury or death as a direct result of adult and juvenile criminal acts or in their efforts to prevent crime or apprehend persons committing or attempting to commit adult and juvenile crimes. As a result, their dependents may thereby suffer disabilities, incur financial hardships, or become dependent upon public assistance. [9]

Consequently, it is the intent of the Act that aid, care, and support be provided by the state, as a matter of moral responsibility, for such victims of adult and juvenile crime. The Act further provides that all state departments and agencies should cooperate with the department in carrying out the provisions of the Act.[10]

A Crimes Compensation Trust Fund was established under the Act pursuant to s. 960.21, F.S. The fund was established for the purpose of providing for the payment of all necessary and proper expenses incurred by the operation of the department and the payment of claims. The Department is tasked with administering the Crimes Compensation Trust Fund. The moneys placed in the fund consist of all moneys appropriated by the Legislature for the purpose of compensating the victims of crime and other claimants under the Act, and of moneys recovered on behalf of the department by subrogation or other action, recovered through restitution, received from the Federal Government, received from additional court costs, received from fines, or received from any other public or private source.[11]

The Act provides a definition of "crime" for purposes of enforcement of claims under the Act, under s. 960.03(3), F.S., as well as a definition of victim under s. 960.03(14), F.S. Section 960.16, F.S., further provides that awards paid pursuant to the Act subrogate[12] to the state for causes of action that claim compensation under an insurance policy when the claim seeks to recover losses directly or indirectly resulting from the crime with respect to which the award is made.

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[9] s. 960.02, F.S.
[10] *Id.*
[11] s. 960.21(1)-(2), F.S.
[12] Subrogation rights place a party in the legal position of one who has been paid money because of the acts of a third party. *See Allstate Ins. Co. v. Metropolitan Dade County*, 436 So.2d 976 (Fla. 3d DCA 1983).

The bill creates s. 960.194, F.S., for death benefits for surviving family members of emergency responders. The bill defines "emergency responder" as a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic.

In addition to providing definitions for purposes of the section, the bill provides that the department may award up to a maximum of $50,000 to the surviving family members of an emergency responder who, as a result of a crime, is killed answering a call for service in the line of duty. The $50,000 award is for each instance and must be apportioned between multiple claimants at the discretion of the department.

The benefits provided for in the bill may be reduced to the extent the emergency responder contributed to his or her death, and may be reduced to the extent the claimant has already received an award under the Act for the same incident.

The bill also adds to the definitions of "crime and "victim." A crime under the bill includes a felony or misdemeanor that results in the death of an emergency responder while answering the call for service in the line of duty. A victim includes an emergency responder who is killed answering a call for service in the line of duty.

Lastly, the bill limits the application of the provision providing for subrogation to the state, to not include awards under the newly created s. 960.194, F.S. As such, claimants seeking emergency responder death benefits will not have their awards subrogated to the state in the event they received compensation pursuant to an insurance policy for the same incident.

The department is authorized to adopt rules to implement these provisions.

B. SECTION DIRECTORY:

Section 1 amends s. 16.617, F.S., relating to the Statewide Council on Human Trafficking.

Section 2 amends s. 321.04, F.S., relating to personnel of the highway patrol.

Section 3 amends s. 501.203, F.S., relating to unfair trade practices definitions.

Section 4 amends s. 501.204, F.S., relating to unlawful acts and practices.

Section 5 amends s. 736.0110, F.S., relating to others treated as qualified beneficiaries.

Section 6 amends s. 736.1201, F.S., relating to definitions.

Section 7 amends s. 736.1205, F.S., relating to notice that this part does not apply.

Section 8 amends s. 736.1206, F.S., relating to power to amend trust instruments.

Section 9 amends s. 736.1207, F.S., relating to power of courts to permit deviation.

Section 10 amends s. 736.1208, F.S., relating to release.

Section 11 amends s. 736.1209, F.S., relating to elections under this part.

Section 12 amends s. 896.101, F.S., relating to the Florida Money Laundering Act.

Section 13 amends s. 960.03, F.S., relating to definitions.

Section 14 amends s. 960.16, F.S., relating to subrogation.

Section 15 creates s. 960.194, F.S., relating to emergency responder death benefits.

Section 16 provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill gives the Statewide Council on Human Trafficking the authority to apply for and accept funds, grants, gifts, and services from the state, the federal government, and other sources to defray the cost of the council's annual statewide policy summit. To the extent the council is successful in securing additional funds, there may be an increase in revenues to the Department of Legal Affairs.

2. Expenditures:

The provisions of the bill relating to charitable trusts may increase expenditures in the Attorney General's office. This workload is indeterminate, but likely insignificant, and absorbable within existing resources.

The Department of Highway Safety and Motor Vehicles (DHSMV) has been providing a security detail to the Attorney General as authorized under Section 109 of HB 5003 (the implementing bill for the Fiscal Year 2016-2017 General Appropriations Act). The bill makes this authorization permanent and absorbed within existing resources of the DHSMV.

The provisions of the bill relating to death benefits for emergency responders have an indeterminate fiscal impact. The number of emergency responders meeting the requirements for benefits under the bill is unknown. The Attorney General's Office reports that any impact can be absorbed within existing resources in the Crimes Compensation Trust Fund.

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:

Surviving family members of an emergency responder who dies in the line of duty while answering a call for service may be entitled to claims under the Crimes Compensation Act.

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 Department of Legal Affairs (DLA) is authorized to adopt rules to implement the emergency responder death benefits in the Crimes Compensation Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2017, the Civil Justice & Claims Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute differs from the bill as filed by:

- Removing a section revising the definition of "monetary currency" under the state's money services businesses law;
- Removing a section that would have expanded the public records exemption related to address confidentiality in domestic violence actions; and
- Amending the portion related to money laundering to add virtual currency to the money laundering offense.

This analysis is drafted to the committee substitute as passed by the Civil Justice & Claims Subcommittee.

A bill to be entitled

An act relating to the Department of Legal Affairs; amending s. 16.617, F.S.; authorizing the Statewide Council on Human Trafficking to apply for and receive funding from additional sources to defray costs associated with the annual policy summit; amending s. 321.04, F.S.; requiring the Department of Highway Safety and Motor Vehicles to assign highway patrol officers to the Office of the Attorney General as requested; amending ss. 501.203 and 501.204, F.S.; updating references for purposes of the Florida Deceptive and Unfair Trade Practices Act; amending s. 736.0110, F.S.; providing that the Attorney General has standing to assert certain rights in certain proceedings; amending s. 736.1201, F.S.; defining the term "delivery of notice"; conforming a provision to changes made by the act; amending s. 736.1205, F.S.; requiring an authorized trustee to provide certain notice to the Attorney General rather than the state attorney; amending ss. 736.1206, 736.1207, 736.1208, and 736.1209, F.S.; conforming provisions; amending s. 896.101, F.S.; defining the term "virtual currency"; expanding the Florida Money Laundering Act to prohibit the laundering of virtual currency; amending s. 960.03, F.S.; revising definitions for purposes of

crime victim assistance; amending s. 960.16, F.S.; providing that awards of emergency responder death benefits under a specified provision are not subject to subrogation; creating s. 960.194, F.S.; providing definitions; providing for awards to the surviving family members of first responders who, as a result of a crime, are killed answering a call for service in the line of duty; specifying considerations in the determination of the amount of such an award; providing for apportionment of awards in certain circumstances; authorizing rulemaking for specified purposes; providing for denial of benefits under certain circumstances; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (3) of section 16.617, Florida Statutes, to read:

16.617 Statewide Council on Human Trafficking; creation; membership; duties.—

(3) ORGANIZATION AND SUPPORT.—

(d) The council may apply for and accept funds, grants, gifts, and services from the state, the Federal Government or any of its agencies, or any other public or private source for the purpose of defraying costs associated with the annual

statewide policy summit.

Section 2. Subsection (4) of section 321.04, Florida Statutes, is renumbered as subsection (5), and a new subsection (4) is added to that section, to read:

321.04 Personnel of the highway patrol; rank classifications; probationary status of new patrol officers; subsistence; special assignments.—

(4) Upon request of the Attorney General, the Department of Highway Safety and Motor Vehicles shall assign one or more patrol officers to the Office of the Attorney General for security services.

Section 3. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

501.203 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2017 ~~2015~~:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts; or

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive,

or unconscionable acts or practices.

Section 4. Section 501.204, Florida Statutes, is amended to read:

501.204 Unlawful acts and practices.—

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017 ~~2015~~.

Section 5. Subsection (3) of section 736.0110, Florida Statutes, is amended to read:

736.0110 Others treated as qualified beneficiaries.—

(3) The Attorney General may assert the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state. The Attorney General has standing to assert such rights in any judicial proceedings.

Section 6. Subsections (2), (3), and (4) of section 736.1201, Florida Statutes, are renumbered as subsections (3), (4), and (5), respectively, present subsection (5) of that section is amended, and a new subsection (2) is added to that

section, to read:

736.1201 Definitions.—As used in this part:

(2) "Delivery of notice" means delivery of a written notice required under this part using any commercial delivery service requiring a signed receipt or by any form of mail requiring a signed receipt.

~~(5) "State attorney" means the state attorney for the judicial circuit of the principal place of administration of the trust pursuant to s. 736.0108.~~

Section 7. Section 736.1205, Florida Statutes, is amended to read:

736.1205 Notice that this part does not apply.—In the case of a power to make distributions, if the trustee determines that the governing instrument contains provisions that are more restrictive than s. 736.1204(2), or if the trust contains other powers, inconsistent with the provisions of s. 736.1204(3) that specifically direct acts by the trustee, the trustee shall notify the Attorney General by delivery of notice ~~state attorney~~ when the trust becomes subject to this part. Section 736.1204 does not apply to any trust for which notice has been given pursuant to this section unless the trust is amended to comply with the terms of this part.

Section 8. Subsection (2) of section 736.1206, Florida Statutes, is amended to read:

736.1206 Power to amend trust instrument.—

(2) In the case of a charitable trust that is not subject to ~~the provisions of~~ subsection (1), the trustee may amend the governing instrument to comply with ~~the provisions of~~ s. 736.1204(2) after delivery of notice to, and with the consent of, the ~~state~~ Attorney General.

Section 9. Section 736.1207, Florida Statutes, is amended to read:

736.1207 Power of court to permit deviation.—This part does not affect the power of a court to relieve a trustee from any restrictions on the powers and duties that are placed on the trustee by the governing instrument or applicable law for cause shown and on complaint of the trustee, the Attorney General ~~state attorney~~, or an affected beneficiary and notice to the affected parties.

Section 10. Paragraph (b) of subsection (4) of section 736.1208, Florida Statutes, is amended to read:

736.1208 Release; property and persons affected; manner of effecting.—

(4) Delivery of a release shall be accomplished as follows:

(b) If the release is accomplished by reducing the class of permissible charitable organizations, by delivery of notice ~~a copy~~ of the release to the Attorney General, including a copy of the release ~~state attorney~~.

Section 11. Section 736.1209, Florida Statutes, is amended

to read:

736.1209 Election to come under this part.—With the consent of that organization or organizations, a trustee of a trust for the benefit of a public charitable organization or organizations may come under s. 736.1208(5) by delivery of notice to ~~filing with~~ the ~~state~~ Attorney General of the ~~an~~ election, accompanied by the proof of required consent. Thereafter the trust shall be subject to s. 736.1208(5).

Section 12. Subsection (2) of section 896.101, Florida Statutes, is amended and reordered, to read:

896.101 Florida Money Laundering Act; definitions; penalties; injunctions; seizure warrants; immunity.—

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

(a) ~~(b)~~ "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(b) ~~(f)~~ "Financial institution" means a financial institution as defined in 31 U.S.C. s. 5312 which institution is located in this state.

(c) ~~(d)~~ "Financial transaction" means a transaction involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce, or a transaction involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, commerce in

any way or degree.

(d) ~~(h)~~ "Knowing" means that a person knew; or, with respect to any transaction or transportation involving more than $10,000 in U.S. currency or foreign equivalent, should have known after reasonable inquiry, unless the person has a duty to file a federal currency transaction report, IRS Form 8300, or a like report under state law and has complied with that reporting requirement in accordance with law.

(e) ~~(a)~~ "Knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity" means that the person knew the property involved in the transaction represented proceeds from some form, though not necessarily which form, of activity that constitutes a felony under state or federal law, regardless of whether or not such activity is specified in paragraph (h) ~~(g)~~.

(f) ~~(c)~~ "Monetary instruments" means coin or currency of the United States or of any other country, virtual currency, travelers' checks, personal checks, bank checks, money orders, investment securities in bearer form or otherwise in such form that title thereto passes upon delivery, and negotiable instruments in bearer form or otherwise in such form that title thereto passes upon delivery.

(g) ~~(i)~~ "Petitioner" means any local, county, state, or federal law enforcement agency; the Attorney General; any state attorney; or the statewide prosecutor.

(h) ~~(g)~~ "Specified unlawful activity" means any "racketeering activity" as defined in s. 895.02.

(i) ~~(e)~~ "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument, use of a safety deposit box, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(j) "Virtual currency" means a medium of exchange in electronic or digital format that is not a coin or currency of the United States or any other country.

Section 13. Paragraph (f) is added to subsection (3) of section 960.03, Florida Statutes, paragraphs (c) and (d) of subsection (14) of that section are amended, and paragraph (e) is added to that subsection, to read:

960.03 Definitions; ss. 960.01-960.28.—As used in ss. 960.01-960.28, unless the context otherwise requires, the term:

(3) "Crime" means:

(f) A felony or misdemeanor that results in the death of an emergency responder, as defined in and solely for the purposes of s. 960.194, while answering a call for service in the line of duty, notwithstanding paragraph (c).

(14) "Victim" means:

(c) A person younger than 18 years of age who was the victim of a felony or misdemeanor offense of child abuse that resulted in a mental injury as defined by s. 827.03 but who was not physically injured; ~~or~~

(d) A person against whom a forcible felony was committed and who suffers a psychiatric or psychological injury as a direct result of that crime but who does not otherwise sustain a personal physical injury or death; or

(e) An emergency responder, as defined in and solely for the purposes of s. 960.194, who is killed answering a call for service in the line of duty.

Section 14. Section 960.16, Florida Statutes, is amended to read:

960.16 Subrogation.—Except for an award under s. 960.194, payment of an award pursuant to this chapter shall subrogate the state, to the extent of such payment, to any right of action accruing to the claimant or to the victim or intervenor to recover losses directly or indirectly resulting from the crime with respect to which the award is made. Causes of action which shall be subrogated under this section include, but are not limited to, any claim for compensation under any insurance provision, including an uninsured motorist provision, when such claim seeks to recover losses directly or indirectly resulting from the crime with respect to which the award is made.

Section 15. Section 960.194, Florida Statutes, is created

to read:

960.194 Emergency responder death benefits.—

(1) For the purposes of this section, the term:

(a) "Call for service" means actively performing official duties, including the identification, prevention, or enforcement of the penal, traffic, or highway laws of this state, traveling to the scene of an emergency situation, and performing those functions for which the emergency responder has been trained and certified to perform.

(b) "Emergency responder" means a law enforcement officer, a firefighter, an emergency medical technician, or paramedic.

(c) "Emergency medical technician" has the same meaning as provided in s. 401.23.

(d) "Firefighter" has the same meaning as provided in s. 633.102.

(e) "Law enforcement officer" has the same meaning as provided in s. 943.10.

(f) "Paramedic" has the same meaning as provided in s. 401.23.

(g) "Surviving family members of an emergency responder" means the surviving spouse, children, parents or guardian, or siblings of a deceased emergency responder.

(2) Notwithstanding s. 960.065(1) and s. 960.13, the department may award for any one claim up to a maximum of $50,000, to the surviving family members of an emergency

responder who, as a result of a crime, is killed answering a call for service in the line of duty.

(3) In determining the amount of an award, the department shall determine whether, because of his or her conduct, the emergency responder contributed to his or her death, and the department shall reduce the amount of the award or reject the claim altogether, in accordance with such determination. However, the department may disregard the contribution of the emergency responder to his or her own death when the record shows that such contribution was attributed to efforts by the emergency responder acting as an intervenor as defined in s. 960.03.

(4) If there are two or more persons entitled to an award pursuant to this section for the same incident, the award shall be apportioned among the claimants at the discretion and direction of the department.

(5) The department may adopt rules that establish award limits below the amount set forth in subsection (2) and establish criteria governing awards pursuant to this section.

(6) An award pursuant to this section shall be reduced or denied if the department has previously approved or paid out a claim under s. 960.13 to the same claimant regarding the same incident. An award for victim compensation under s. 960.13 shall be denied if the department has previously approved or paid out an emergency responder death benefits claim under this section.

Section 16. This act shall take effect July 1, 2017.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1397 Medical Use of Marijuana
SPONSOR(S): Rodrigues and others
TIED BILLS: HB 7095 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	14 Y, 1 N	Royal	McElroy
2) Appropriations Committee		Mielke	Leznoff
3) Health & Human Services Committee			

SUMMARY ANALYSIS

HB 1397 implements Art. X, Sec. 29 of the Florida Constitution, which allows the use of marijuana by patients with debilitating medical conditions.

The Compassionate Medical Cannabis Act (CMCA) (ss. 381.986, 499.0295 F.S.) legalized a low-THC and high-CBD form of cannabis for medical use by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms, and legalized medical cannabis without any THC limit or CBD mandate for the terminally ill. The CMCA required the Department of Health (DOH) to approve dispensing organizations to cultivate, process and dispense low-THC cannabis and medical cannabis and provided regulatory standards for those activities. The CMCA also established criteria for physicians to meet to order low-THC cannabis or medical cannabis for patients.

On November 7, 2016, Florida voters approved an amendment to the Florida Constitution (Fla. Const. art. X, s. 29) which allows the medical use of marijuana by patients with an enumerated debilitating medical condition. The amendment authorizes entities known as Medical Marijuana Treatment Centers (MMTCs) to be marijuana providers. It also requires DOH to establish regulations regarding the licensure of and regulatory standards for MMTCs and issue identification cards to patients and caregivers. The amendment imposes deadlines for DOH to adopt rules and begin registering MMTCs and issuing identification cards. The amendment also creates a cause of action for any Florida citizen if DOH fails to meet those deadlines.

The bill implements Fla. Const. art X, s. 29 by significantly amending the CMCA. The bill sets requirements for MMTC licensure and regulatory standards for cultivating, processing, testing, packaging, labeling, dispensing, transporting and advertising medical marijuana. The bill establishes requirements for physicians to certify patients for medical use. The bill also specifies criteria for qualified patients and caregivers to meet in order to use and administer marijuana. The bill grants DOH regulatory oversight and authorizes DOH to create a registry and identification card system for patients and caregivers.

The bill grants DOH limited emergency rulemaking authority to ensure DOH can implement the amendment and this bill by the deadlines set forth in the amendment. The bill also establishes procedures for the cause of action against DOH for failure to meet the amendment's deadlines and provides DOH with affirmative defenses.

The bill exempts marijuana for medical use from sales tax. The bill preempts to the state the regulation of cultivation, processing and delivery of marijuana but authorizes local ordinances that determine number and location of dispensing facilities.

The bill makes the necessary conforming changes throughout the Florida statutes.

The bill has a range of significant negative fiscal impacts on DOH, Department of Highway Safety and Motor Vehicles (DHSMV), Florida Department of Law Enforcement (FDLE), and the University of Florida College of Pharmacy. It has negative fiscal impact on local governments. See Fiscal Analysis.

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Cannabis

Marijuana, also called cannabis, has been used for a variety of health conditions for at least 3,000 years.[1] Currently, the U.S. Food and Drug Administration (FDA) has not approved the use of cannabis to treat any health condition due to the lack of research to show that the benefits of using cannabis outweigh the risks.[2] However, based on the scientific study of cannabinoids, which are chemicals contained in cannabis, the FDA has approved two synthetic prescription drugs that contain certain cannabinoids.[3]

Although there are more than 100 cannabinoids in a marijuana plant, the two main cannabinoids of medical interest are delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD). THC is a mind-altering chemical that increases appetite and reduces nausea and may also decrease pain, inflammation, and muscle control problems. CBD is a chemical that does not affect the mind or behavior, but may be useful in reducing pain and inflammation, controlling epileptic seizures, and possibly treating mental illness and addictions.[4]

The THC potency of illicit cannabis has consistently increased over time from 4% in 1995 to 12% in 2014. The CBD content has decreased from .28% in 2001 to .15% in 2014. In 1995, the level of THC was 14 times higher than its CBD level. In 2014, the THC level was 80 times the CBD level.[5]

Research on the Medical Use of Cannabis

During the course of drug development, a typical compound is found to have some medical benefit and then extensive tests are undertaken to determine its safety and proper dosage for medical use.[6] In contrast, marijuana has been widely used in the United States for decades. In 2014, just over 49% of the U.S. population over 12 years old had tried marijuana or hashish at least once and just over 10% were current users.[7] The data on the adverse effects of marijuana are more extensive than the data on its effectiveness.[8] Clinical studies of marijuana are difficult to conduct as researchers interested in clinical studies of marijuana face a series of barriers, research funds are limited, and there is a daunting thicket of federal and state regulations to be negotiated.[9] In fact, recently, there has been an exponential rise in the use of marijuana compared to the rise in scientific knowledge of its benefits or adverse effects because some states have allowed the public or patients to access marijuana while the

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[1] U.S. Department of Health & Human Services, National Center for Complementary and Integrative Health, *Medical Marijuana, available at* https://nccih.nih.gov/health/marijuana (last visited on February 12, 2016).
[2] U.S. Department of Health & Human Services, National Center for Complementary and Integrative Health, *What is medical marijuana?, available at* http://www.drugabuse.gov/publications/drugfacts/marijuana-medicine (last visited on February 12, 2016).
[3] *Id.*
[4] *Id.*
[5] ElSohly, M.A., Mehmedic, Z., Foster, S., Gon, C., Chandra, S. and Church, J.C. *Changes in Cannabis Potency Over the Last 2 Decades (1995-2014): Analysis of Current Data in the United States.*. Biological Psychiatry. April 1, 2016; 79:613-619.
[6] Institute of Medicine, *Marijuana and Medicine: Assessing the Science Base*, The National Academies Press, 1999, available at http://www.nap.edu/catalog/6376/marijuana-and-medicine-assessing-the-science-base (last visited on February 12, 2016).
[7] Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, *Results from the 2014 National Survey on Drug Use and Health: Detailed Tables, available at* http://www.samhsa.gov/data/population-data-nsduh/reports (last visited on February 12, 2016).
[8] *Supra,* note 6.
[9] *Id.*

federal government continues to limit scientific and clinical investigators' access to marijuana for research.[10]

In 1999, the Institute of Medicine published a study based on a comprehensive review of existing scientific data and clinical studies pertaining to the medical value of marijuana.[11] The study concluded that there is potential therapeutic value of cannabinoid drugs, primarily THC, for pain relief, control of nausea and vomiting, and appetite stimulation.[12] Recent comprehensive reviews of studies regarding the health effects of marijuana published by the Journal of the American Medical Association and the National Academies of Sciences, Engineering, and Medicine concluded that there is moderate-quality evidence that the use of cannabis or cannabinoids for the treatment of chronic pain, spasticity symptoms in patients with MS, and nausea and vomiting due to chemotherapy.[13] There is limited evidence suggesting that cannabis or cannabinoids are associated with improvements increasing appetite and weight gain in HIV infected patients, sleep disorders, anxiety, Post-Traumatic Stress Disorder and Tourette syndrome.[14] There is inconclusive evidence that cannabis or cannabinoids are effective or ineffective in the treatment of cancer, epilepsy, ALS, Huntington's disease, Parkinson's, or spasticity symptoms in patients with spinal cord injuries.[15]

There is also research that suggests the combination of THC and CBD increases the efficacy of treatment while reducing adverse reactions.[16] CBD may offset the negative effects of THC including intoxication, sedation, and increased heartrate. CBD may also relive pain, nausea, and vomiting and contain anti-carcinogenic properties.

The 1999 Institute of Medicine study also concluded that smoked marijuana is a crude THC delivery system that delivers harmful substances.[17] The Institute of Medicine's study, which warned that smoking marijuana is harmful, was corroborated by a study published in the New England Journal of Medicine in 2014.[18] Smoking marijuana is associated with worse respiratory symptoms such as coughing, wheezing, and chest tightness and more frequent episodes of chronic bronchitis.[19] Marijuana smoke contains many of the same toxins as tobacco smoke, including those that cause cardiovascular disease.[20] A recent study found that one minute of exposure to second hand marijuana smoke diminishes blood vessel function to the same extent as second hand tobacco smoke, but the harmful cardiovascular effects last three times longer.[21]

The New England Journal of Medicine 2014 study further warned that long-term marijuana use can lead to addiction and that adolescents have an increased vulnerability to adverse long-term outcomes from marijuana use.[22] Specifically, the study found that, as compared with persons who begin to use

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[10] Friedman, D., M.D., Devinsky, O., M.D., *Cannabinoids in the Treatment of Epilepsy*, NEW ENG. J. MED., September 10, 2015, on file with the Health Quality Subcommittee.
[11] *Supra* note 6.
[12] *Id.*
[13] Whiting, P.F., et. al., *Cannabinoids for Medical Use: A Systematic Review and Meta-analysis*, JAMA (June 2015) and The National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* (2017) available at: https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state (last visited on March 3, 2017).
[14] *Id.*
[15] The National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* (2017) available at: https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state (last visited on March 3, 2017).
[16] Russo, E., Guy, G.W., *A tale of two cannabinoids:The therapeutic rationale for combining tetrahydrocannabinol and cannabidiol.* (2006) Med Hypotheses 66(2):234-46.
[17] *Supra note 6*
[18] Volkow, N.D., Baler, R.D., Compton, W.M. and Weiss, S.R., *Adverse Health Effects of Marijuana Use*, NEW ENG. J. MED., June 5, 2014, *available at* dfaf.org/assets/docs/Adverse%20health%20effects.pdf (last visited on February 12, 2016).
[19] *Supra*, note 15.
[20] Wang, X., Derakhshandeh, R., Liu, J., Narayan, S., Nabavizadeh, P., Le, S.,Springer, M. L. (2016). *One Minute of Marijuana Secondhand Smoke Exposure Substantially Impairs Vascular Endothelial Function.* Journal of the American Heart Association: Cardiovascular and Cerebrovascular Disease, 5(8), e003858. http://doi.org/10.1161/JAHA.116.003858
[21] *Id.*
[22] *Supra,* note 18.

marijuana in adulthood, those who begin in adolescence are approximately 2 to 4 times as likely to have symptoms of cannabis dependence within 2 years after first use.[23] The study also found that cannabis-based treatment with THC may have irreversible effects on brain development in adolescents as the brain's endocannabinoid system undergoes development in childhood and adolescence.[24] Heavy use of marijuana by adolescents is associated with impairments in attention, learning, memory, poor grades, high drop rates and I.Q. reduction.[25]

Federal Regulation of Cannabis

Criminal Laws and Enforcement

The Federal Controlled Substances Act[26] lists cannabis as a Schedule I drug, meaning it has a high potential for abuse, has no currently accepted medical use, and has a lack of accepted safety for use under medical supervision.[27] The Federal Controlled Substances Act imposes penalties on those who possess, sell, distribute, dispense, and use cannabis.[28] A first misdemeanor offense for possession of cannabis in any amount can result in a $1,000 fine and up to a year in prison, climbing for subsequent offenses to as much as $5,000 and three years.[29] Selling and cultivating cannabis are subject to even greater penalties.[30]

In August of 2013, the United States Department of Justice (USDOJ) issued a publication entitled "Smart on Crime: Reforming the Criminal Justice System for the 21st Century."[31] This document details the federal government's changing stance on low-level drug crimes announcing a "change in Department of Justice charging policies so that certain people who have committed low-level, nonviolent drug offenses, who have no ties to large-scale organizations, gangs, or cartels will no longer be charged with offenses that impose draconian mandatory minimum sentences. Under the revised policy, these people would instead receive sentences better suited to their individual conduct rather than excessive prison terms more appropriate for violent criminals or drug kingpins."[32]

On August 29, 2013, United States Deputy Attorney General James Cole issued a memorandum to federal attorneys that provided guidance to states that have legalized cannabis in some form regarding the federal government's cannabis-related offense enforcement policies.[33] The memo stated that the USDOJ was committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational ways, and outlined eight areas of enforcement priorities.[34]

These enforcement priorities include preventing cannabis from being distributed to minors, preventing cannabis sale revenues going to criminal gangs or other similar organizations, preventing the diversion of cannabis from states where it is legal under state law in some form to other states, preventing state-authorized cannabis activity from being used as a cover or pretext for trafficking of other illegal drugs or illegal activity, preventing violence and the use of firearms in the cultivation and distribution of cannabis, preventing drugged driving and the exacerbation of other adverse public health consequences, and

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[23] *Id.*
[24] *Id.*
[25] Bertha K. Madras, PhD., Dept. of Psychiatry, McLean Hospital, Harvard Medical School, *Marijuana: Risks and Consequences,* prepared for Florida Legislature, February 2016 and *Presentation to the Health Quality Subcommittee on January 11, 2017.* On file with the Health Quality Subcommittee.
[26] 21 U.S.C. ss. 801-971.
[27] 21 U.S.C. s. 812.
[28] 21 U.S.C. ss. 841-65.
[29] 21 U.S.C. s. 844.
[30] 21 U.S.C. ss. 841-65.
[31] U.S. Department of Justice, *Smart on Crime: Reforming the Criminal Justice System for the 21st Century.* Available at: http://www.justice.gov/ag/smart-on-crime.pdf. (last visited on March 26, 2017).
[32] *Id.*
[33] U.S. Department of Justice, *Guidance Regarding Marijuana Enforcement*, August 29, 2014. Available at: http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf (last visited on March 26, 2017).
[34] *Id.*

preventing cannabis being grown, possessed or used on public lands.[35] The memo indicated that outside of the listed enforcement priorities, the federal government would not enforce federal cannabis-related laws in states that have legalized the drug and that have a robust regulatory scheme in place with effective enforcement procedures that address the enforcement priorities of the federal government listed above.[36]

In 2014, Congress enacted the Consolidated and Further Continuing Appropriations Act of 2015 (Appropriations Act of 2015). Section 538 of the Appropriations Act of 2015 prohibits the USDOJ from expending any funds in connection with the enforcement of any law that interferes with a state's ability to implement its own state law that authorizes the use, distribution, possession, or cultivation of medical marijuana.[37] Despite this prohibition in the Appropriations Act of 2015, the USDOJ has continued to take some enforcement measures against dispensaries of cannabis for medical use. However, in October 2015, the United States District Court for the Northern District of California held that section 538 plainly on its face prohibits the Department of Justice from taking such action.[38] Congress recently re-enacted the prohibition in section 542 of the Consolidated Appropriations Act of 2016.[39]

Federal Financial Transaction Laws and Enforcement[40]

Under the U.S. dual banking system, financial institutions are chartered under either federal or state law. All financial institutions, regardless whether they are federally or state-chartered, must comply with the federal Bank Secrecy Act and anti-money laundering laws and regulations ("BSA/AML"). The BSA/AML contains a broad set of programmatic requirements, enforced by the Financial Crimes Enforcement Network (FinCEN), to safeguard the U.S. financial system from illicit use, to combat money laundering, and to promote national security through the collection, analysis, and dissemination of financial intelligence. The BSA/AML requires all financial institutions to assist U.S. law enforcement by keeping records of cash purchases of negotiable instruments, filing reports of cash transactions exceeding $10,000, and filing suspicious activity reports if the financial institutions suspect money laundering, tax evasion, or other criminal activities. The BSA/AML also requires financial institutions to implement robust customer identification programs/"know your customer" verification procedures for new account holders.

In 2014, FinCEN issued guidance for financial institutions regarding the provision of banking services to marijuana-related businesses.[41] Financial institutions providing services to marijuana-related businesses must file marijuana-specific suspicious activity reports for all of its marijuana-related businesses. The type of marijuana-specific suspicious activity report that must be filed is based on whether or not the financial institution reasonably believes, based on its due diligence, that the marijuana-related business is violating one of the Cole Memo priorities or state law. The guidance requires heightened due diligence and reporting requirements by financial institutions but does not provide immunity and is discretionary for prosecutors to follow.

State Regulation of Cannabis for Medical Use

Currently, 27 states[42] and the District of Columbia have laws that permit and regulate the use of cannabis for medicinal purposes.[43] While these laws vary widely, most specify the medical conditions a

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[35] *Id.*
[36] *Id.*
[37] Pub. L. 113-235 (2014).
[38] *U.S. v. Marin Alliance for Medical Marijuana*, 2015 WL 6123062 (N.D. Cal. Oct. 19, 2015).
[39] Pub. L. 114-113 (2015).
[40] Florida House of Representatives, Insurance and Banking Subcommittee, *Banking Services for Marijuana Businesses* (2016). On file with the Health Quality Subcommittee.
[41] United States Department of Treasury, Financial Crimes Enforcement Unit, *BSA Expectations Regarding Marijuana-Related Businesses*. (February 2014) Available at: https://www.fincen.gov/resources/statutes-regulations/guidance/bsa-expectations-regarding-marijuana-related-businesses (last visited March 26, 2017).
[42] These states include: Alaska, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island,

patient must be diagnosed with to be eligible to use cannabis for treatment, allow a caregiver to assist with such treatment, require the registration of the patient and caregiver and a registration ID card to be issued to the patient and caregiver, restrict where cannabis can be used, and provide standards pertaining to the growing, processing, packaging, transport, and dispensing of cannabis for medical use.

Medical Use of Cannabis

Of the 27 states that allow medical use of cannabis, most have a statutory list of medical conditions for which the patient may be treated with cannabis for medical use, the particular conditions vary from state to state. Twenty three states also provide a mechanism for the list of qualifying medical conditions to be expanded, mostly by allowing the public to petition a state agency or a board to add qualifying medical conditions to the list or by providing a physician with some discretion in determining whether such treatment would benefit the patient.[44] The chart below indicates the most common qualifying conditions.[45]

Medical Condition	Number of States
Cancer	27
HIV/AIDS	27
Multiple Sclerosis	26
Epilepsy	26
Glaucoma	25
Chronic Pain	24
Chron's Disease	17
Amyotrophic Lateral Sclerosis (ALS)	14
Hepatitis C	12
Alzheimer's Disease	11

Five states include terminal illness with a probable life expectancy of one year or less as a qualifying condition (Delaware, Minnesota, New Jersey, New York and Pennsylvania).

Twenty-one states require a physician to certify that the patient has a qualifying condition. Some states require physicians to have certain qualifications to be able to order cannabis for medical use for qualified patients.[46] Sixteen states require a physician to report the patient's diagnosis when

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Vermont, and Washington. California was the first to establish a medical marijuana program in 1996 and Ohio and Pennsylvania were the most recent state to pass medical marijuana legislation which took effect in 2016. National Conference of State Legislatures, *State Medical Marijuana Laws*, *available at* http://www.ncsl.org/issues-research/health/state-medical-marijuana-laws.aspx (last visited on February 24, 2017).

[43] According to the National Conference of State Legislatures, 17 other states allow the use of low-THC cannabis for medical use or allow a legal defense for such use, including Florida. National Conference of State Legislatures, *State Medical Marijuana Laws*, *available at* http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx (last visited on February 15, 2017).

[44] For example, see the following state laws allowing an agency to approve other conditions: AS § 17.37.070 (Alaska), A.R.S. § 36-2801 (Arizona), C.R.S.A. Const. Art. 18, § 14 (Colorado), C.G.S.A. § 21a-408 (Connecticut), 16 Del.C. § 4902A (Delaware), HRS § 329-121 (Hawaii), 410 ILCS 130/10 (Illinois), M.C.L.A. 333.26423 (Michigan), M.S.A. §152.22 (Minnesota), N.R.S. 453A.050 (Nevada), N.H. Rev. Stat. §126-X:1 (New Hampshire), N.J.S.A. 24:6I-3 (New Jersey), N.M.S.A. 1978, § 26-2B-3 (New Mexico), O.R.S. § 475.302 (Oregon), and Gen. Laws 1956, § 21-28.6-3 (Rhode Island). For examples of states allowing for physician discretion in treating other conditions with the medical use of cannabis, see M.G.L.A. 94C App. §1-2.

[45] These are conditions specified in states' statutes or state constitutional amendments. Many also include symptoms or conditions that could apply to several other conditions, such as cachexia or wasting syndrome, severe pain, severe nausea, seizures, or muscle spasms.

[46] For example, the following states require the ordering physician to be a neurologist: Iowa (I.C.A. § 124D.3), Missouri (V.A.M.S. 192.945), Utah (U.C.A. 1953 § 26-56-103), and Wyoming (W.S.1977 § 35-7-1902). Additionally, Vermont requires a physician to establish a bona fide relationship with the patient for not less than 6 months before ordering such treatment. *See* 18 V.S.A. § 4472.

recommending or certifying medical marijuana, usually on a form certifying the patient has a qualifying condition that is submitted to the state agency that regulates the medical use of marijuana.[47] All states require proof of residency in order for a patient to use medical cannabis.[48] Twenty states require qualified patients to register with the state and obtain a registration ID card, usually from a state agency.[49]

Patient populations vary greatly by state, from 0.1 patients per 1,000 state residents to 19.8 patients per 1,000 state residents.[50] The Florida Office of Economic and Demographic Research estimated that the number of potential users of medical marijuana in Florida upon full implementation of the 2014 constitutional amendment allowing use of marijuana for the treatment of debilitating medical conditions would be approximately 450,000 persons per year.[51] However, calculating the expected patient population and rate of increase is difficult. In Colorado, the patient population grew exponentially after 2009 when retail dispensaries were established and the caregiver limit of 5 patients per caregiver was eliminated. The Colorado patient population increased from roughly 5,000 in 2009 to just over 100,000 patients in 2010. The Colorado patient population has remained steady since 2010. Other states have experienced slower and steadier increases in patients.[52]

Most states place restrictions on where cannabis for medical use may be used by patients. Typically, cannabis for medical use may not be used in public places, such as parks and on buses, or in areas where there are more stringent restrictions placed on the use of drugs, such as in or around schools or in prisons.[53]

Caregivers

Twenty-three states allow caregivers to purchase or grow cannabis for the patient, possess a specified quantity of cannabis, and aid the patient in using cannabis, but prohibit them from using cannabis themselves. Eleven states also require the caregiver to be at least 21[54] and Colorado prohibits the caregiver from being the patient's physician.[55] Like the patient receiving treatment, the caregiver is usually required to be registered and have a registration ID card, typically issued by a state agency.

Regulatory Framework

There are two general methods by which patients can obtain cannabis for medical use. They may either self-cultivate the cannabis in their homes, or buy commercially-produced cannabis from specified points of sale or dispensaries. Sixteen states allow patients and/or their caregivers to cultivate cannabis. Regulations governing the amount of cannabis for medical use that may be grown or dispensed vary widely. For example, the amount of cannabis for medical use patients are allowed to have ranges from 1 ounce of usable[56] cannabis to 24 ounces of usable cannabis, depending on the state. Furthermore,

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[47] Arizona, Colorado, Delaware, Georgia, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington.
[48] Procon.org, *28 Legal Medical Marijuana States and DC: Laws, Fees, and Possession Limits*. Available at: http://medicalmarijuana.procon.org/view.resource.php?resourceID=005889 (last visited on February 24, 2017).
[49] *Supra* note 42.
[50] Procong.org, *Number of Legal Medical Marijuana Patients*. Available at: http://medicalmarijuana.procon.org/view.resource.php?resourceID=005889 (last visited on February 24, 2017).
[51] The Florida Office of Economic and Demographic Research, *Complete Initiative Financial Information Statement for the Use of Marijuana for Debilitating Medical Conditions (15-01)*.
[52] For example Arizona saw an increase from 34,699 in 2012 to 43,148 in 2013, 65,547 in 2014, 92,838 in 2015 and a slight decrease to 89,405 in 2016.
[53] For example, see N.R.S. 453A.322 (Nevada), N.J.S.A. 18A:40-12.22 (New Jersey), 5 CCR 1006-2:12 (Colorado), and West's Ann.Cal.Health & Safety Code § 11362.768 (California).
[54] See, for example, 22 M.R.S.A. § 2423-A (Maine), 105 CMR 725.020 (Massachusetts), and Gen.Laws 1956, § 44-67-2 (Rhode Island).
[55] *See*, e.g., the definition of "primary caregiver" in C.R.S.A. § 25-1.5-106 (Colorado).
[56] "Usable cannabis" generally means the seeds, leaves, buds, and flowers of the cannabis plant and any mixture or preparation thereof, but does not include the stalks and roots of the plant or the weight of any non-cannabis ingredients combined with cannabis. For example, see 410 ILCS 130/10 (Illinois) and OAR 333-008-0010 (Oregon).

the number of cannabis plants that patients are allowed to grow ranges from 2 mature marijuana plants to 18 seedling marijuana plants. At least 10 states limit the amount of cannabis for medical use that may be ordered by specifying the number of days or months of a supply a physician may order.[57]

States regulations vary for the commercial production of marijuana for medical use. A state may require vertical integration, in which a single entity engages in the entire enterprise of manufacturing and distribution. Or a state may allow horizontal integration, in which separate entities form a drug manufacturing/distribution chain, regulated by a single state agency or multiple state agencies. Ten states require vertical integration in which a single licensed entity cultivates, processes, and dispenses medical marijuana. Four of states require such entities to operate as non-profits. Colorado requires vertical integration for medical but requires horizontal integration for recreational. Colorado found that horizontal integration has more of a tendency towards monopolization or consolidation than vertical integration, especially among growers.[58]

Quality and Safety Standards

Most states with cannabis laws require entities that cultivate and process medical cannabis to meet certain standards to ensure the quality, safety and security of medical cannabis.

For example, 22 states require marijuana cultivated and process for medical use be laboratory tested for potency, mold, toxins, contaminants, and pesticides. Six states require laboratories that test medical marijuana be licensed or registered by the state. Oregon requires that laboratories that test medical cannabis be accredited and licensed through the state's Environmental Lab Accreditation Program. The accreditation program ensures that laboratories meet the standards adopted by the National Environmental Laboratory Accreditation Program and ensures the accuracy and reliability of their test results. Connecticut requires laboratories to be accredited to standards set by the International Organization for Standardization and licensed as a controlled substance laboratory.[59] Connecticut also prohibits laboratories from having a direct or indirect interest in any entity that cultivates processes or dispenses or in any certifying physician.[60]

States also require certain packaging and labeling standards for cannabis for medical use, including the requirement for packaging to meet the standards under the United States Poison Prevention Packaging Act which requires child-resistant packaging.[61]

Security and Diversion Standards

Some states have experienced diversion of medical cannabis into the black market. An estimated 75 percent of the medical marijuana in the State of Oregon is diverted to the black market.[62] About 60 to 80 percent of the black-market cannabis consumed nationally is from California.[63] In Colorado, patients and caregivers are allowed to cultivate up to 99 plants without any state or local regulation, which has resulted in criminal enterprises operating under the guise of patients or caregivers.[64] During 2009-2012,

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[57] *See* C.G.S.A. §21a-4089 (Connecticut), 410 ILCS 130/10 (Illinois), MD Code, Health-General, § 13-3301 (Maryland), M.G.L.A. 94C App. §1-2 (Massachusetts), M.S.A. § 152.29 (Minnesota), N.R.S. 453A.200 (Nevada), N.H. Rev. Stat. § 126-X:8 (New Hampshire), N.J.S.A. 24:6I-10 (New Jersey), N.M.S.A. 1978, § 26-2B-3 (New Mexico), and McKinney's Public Health Law § 3362 (New York).
[58] Andrew Freedman, Former Director of Marijuana Coordination in Colorado, *Presentation to the Health Quality Subcommittee on January 25, 2017.* On file with the Health Quality Subcommittee.
[59] *See* Conn. Gen. Stat. Ch. 420f and Conn. Regs. §§ 21a-408-1 to 21a-408-70 (Connecticut)
[60] *Id.*
[61] *See* C.R.S.A. § 12-43.3-104(Colorado) and Haw. Admin. Rules (HAR) § 11-850-92 (Hawaii).
[62] Rob Patridge, chairman of the Oregon Liquor Control Commission, quoted at: http://www.oregonlive.com/mapes/index.ssf/2015/03/medical_marijuana_growers_may.html
[63] Hezekiah Allen, Executive Director of the California Growers Association, quoted at: http://www.laweekly.com/news/how-will-marijuana-legalization-affect-californias-black-market-exports-7660623
[64] Colorado Office of the Governor, *Marijuana Grey Market Report (2016).* Available at: https://www.colorado.gov/pacific/sites/default/files/16Marijuana0817Marijuana%20Grey%20Market.pdf

the yearly average number of interdiction seizures of Colorado marijuana increased 357% from 53 to 242 per year.[65]

To prevent diversion, some states require facilities that grow, process, transport, and dispense cannabis for medical use to implement an inventory tracking system that tracks the cannabis from "seed-to-sale."[66] Nine states require one statewide approved "seed-to-sale" tracking program be used by all facilities that grow, process, transport, and dispense cannabis for medical use.[67] Colorado's requirement for licensees to use one "seed-to-sale" tracking system established by the state has been successful in preventing diversion from commercial production into the black market and preventing access by youth. [68]

Medical Marijuana Products

Some states allow for the production of only certain forms of medical marijuana. Minnesota only allows marijuana in liquid, oil, pill, or vapor form for medical use.[69] Several states ban smoking of marijuana for medical use.[70] New York only allows production of five "brands" of medical marijuana, one of which must be low-THC and one that must have an equal THC to CBD ratio.[71]

Fifteen states allow patients to consume cannabis-infused food products known as "edibles." However some states have faced difficulties in ensuring the safety and quality of edible products. The effects of THC are typically delayed 1-3 hours after ingestion. Users that feel no immediate effect after ingestion may consume more than the suggested serving size, leading to overdose which can cause psychosis.[72] In Colorado, edibles were implicated in three deaths.[73] Calls to poison-control centers for unintentional marijuana exposure in children under the age of 9 occur at higher rates in states where medical marijuana is legal, [74] and at a children's hospital and a regional poison control center in Colorado edibles were responsible for over half of the accidental marijuana ingestions by children.[75]

Colorado and Oregon recently implemented new regulations regarding edibles.[76] Colorado prohibits edibles in the shape or likeness of humans, animals, or fruit. Colorado and Oregon require that edibles be marked with a universal symbol and labeled with the serving size and amount of THC. Both cap the amount of THC per edible at 100 mg. The efficacy of these regulations in preventing overdose or accidental ingestion by children is unknown at this point.

Labeling of the doses of THC and CBD in edibles has been found to be unreliable.[77] Tests of edibles purchased in California and Washington found that only 17% were accurately labeled for THC. On average, the tested edibles delivered a dose of THC 28 times higher than labeled. Sixty percent of the products that were tested had at least 10 percent less THC than labeled. Fifty-nine percent had

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[65] Rocky Mountain High Intensity Drug Trafficking Area Program, *The impact of Legalization of Marijuana in Colorado, Vol. 4 (2016),* available at http://www.rmhidta.org

[66] *See* C.R.S.A. § 35-61-105.5 (Colorado), OAR 333-064-0100 (Oregon), and West's RCWA 69.51A.250 (Washington).

[67] Alaska, Colorado, Hawaii, Illinois, Nevada, New Mexico, New York, Oregon and Washington require the use of one seed-to-sale tracking program established by the state.

[68] Andrew Freedman, Former Director of Marijuana Coordination in Colorado, *Presentation to the Health Quality Subcommittee on January 25, 2017.* On file with the Health Quality Subcommittee.

[69] *See* Minn. Stat. § 152.22 (Minnesota)

[70] Minnesota, New York, Ohio and Pennsylvania ban the smoking of marijuana for medical use.

[71] *See* NYCRR 1000.4 (New York)

[72] Bertha K. Madras, PhD., *Marijuana: Risks and Consequences*, prepared for Florida Legislature, February 2016. On file with the Health Quality Subcommittee.

[73] *See* http://www.newsweek.com/deaths-prompt-colorado-crackdown-pot-infused-food-251833; http://denver.cbslocal.com/2015/03/25/marijuana-edibles-blamed-for-keystone-death/; and https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6428a6.htm?s_cid=mm6428a6_x

[74] Wang GS., Roosevelt G., Le Lait MC., et al. *Association of Unintentional Pediatric Exposures with Decriminalization of Marijuana in the United States.* Ann Emerg Med 2014; 63:684-689.

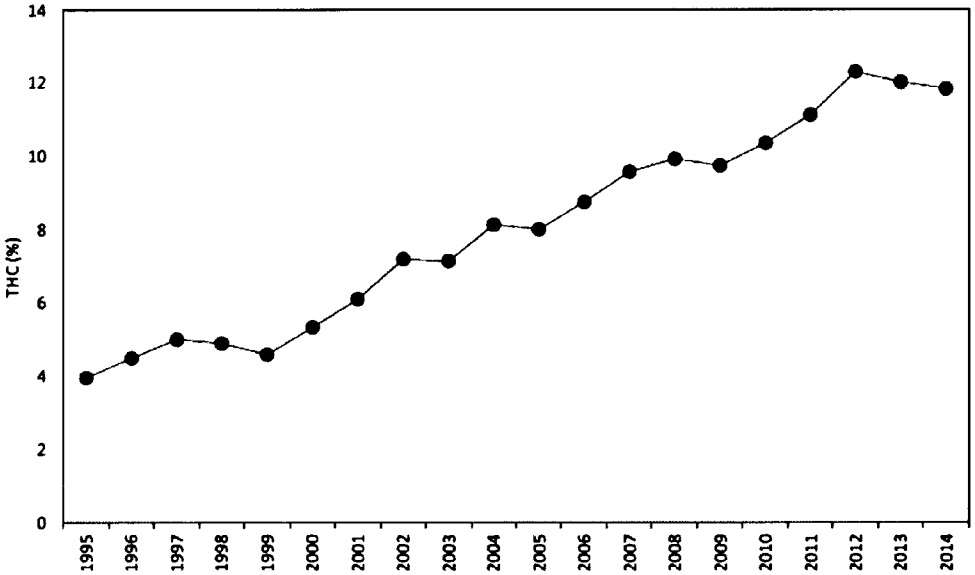
[75] Wang GS, et. al., *Pediatric Marijuana Exposures in a Medical Marijuana State.* JAMA Pediatr 2013;167:630-633.

[76] See 1 CCR 212-1 (Colorado) and OAR 333-007-0220 (Oregon).

[77] Vandrey, R., Raber, J., Raber M., Douglass B., Miller C, Bonn-Miller M., *Cannabinoid Dose and Label Accuracy in Edible Medical Cannabis Products*, JAMA 2015; 2491-2493.

detectable levels of CBD, but only 13 of those products had CBD labeled. The average ratio of THC to CBD was 36:1 and only one product had a 1:1 ratio. Inconsistent dosing poses a problem for patients who may experience adverse effects and less effective treatment.

Marijuana potency has increased in recent decades. One study examined samples from illicit marijuana seized by the U.S. Drug Enforcement Administration 1995-2014. It documents a rise from 4% THC to over 12% THC in that time.[78]



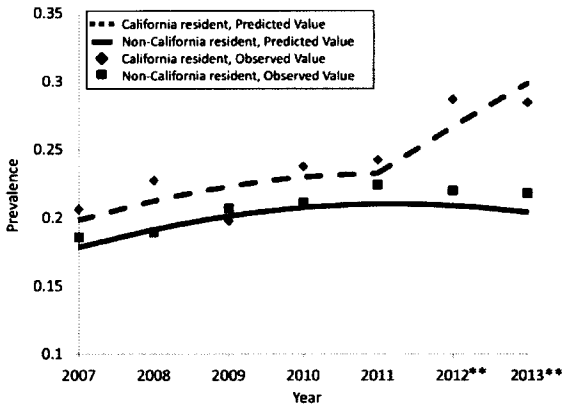
An analysis by a marijuana testing laboratory in Colorado found THC levels of close to 30%, and many samples with little or no CBD.[79]

Youth Education and Prevention

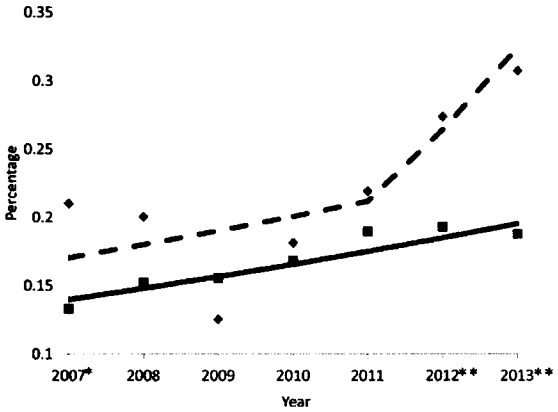
Recent research has found that a one percentage point increase in the amount of adults registered as medical marijuana patients within a state increases the prevalence of past month use by youth by 5-6%.[80] Studies have also found that medical marijuana laws reduce the perception of harm among adolescents.[81] A 2016 study in California found reduced perception of harm by youth after legalization, and increased youth use.[82]

[78] *Supra*, note 5.
[79] American Chemical Society, March 23, 2015, available at https://www.acs.org/content/acs/en/pressroom/newsreleases/2015/march/legalizing-marijuana-and-the-new-science-of-weed-video.html (last viewed March 25, 2017). The analysis also found high levels of contaminants.
[80] Rosalie Pacula, PhD, RAND Drug Policy Research Center, *Presentation to the Health Quality Subcommittee on January 25, 2017*. On file with the Health Quality Subcommittee.
[81] *Id.*
[82] Miech, R., Johnston, L., O'Malley, P, Bachman, J., Schulenberg, J., Patrick, M., *Trends in use of marijuana and attitudes toward marijuana among youth before and after decriminalization: The case of California 2007–2013*, International Journal of Drug Policy; vol. 26:4; 336-344 (April 2015).

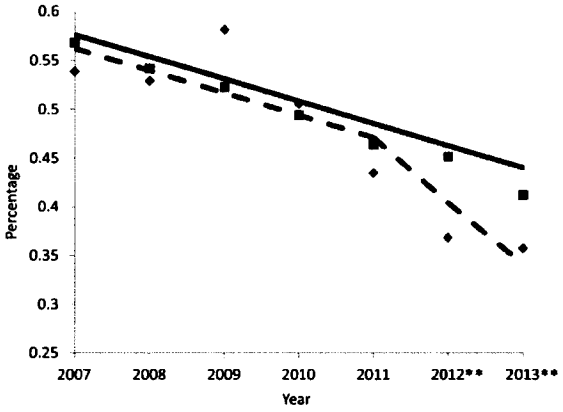
Marijuana Use and Attitudes among California 12th Graders by Year[83]



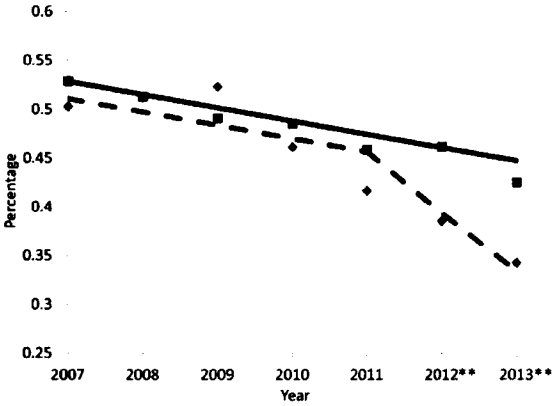
Panel A: Past 30-Day Marijuana Use



Panel B: Expect to Use Marijuana Five Years in the Future



Panel C: See "Great Risk" in Regular Marijuana Use



Panel D: "Strongly Disapprove" of People who Smoke Marijuana Regularly

In Colorado, there was a 26% increase in youth monthly marijuana use in the three years after medical marijuana retail dispensaries were established in 2009.[84] A study of adolescents in outpatient substance treatment in Denver, CO, found that 48.8% reported obtaining marijuana from someone with a medical marijuana license.[85]

Colorado and Washington have implemented youth education and prevention campaigns.[86] Colorado performed a survey of youth in 2014 to determine baseline knowledge among youth of marijuana laws and perceptions of harm and risk. The survey found that youth were less familiar with marijuana laws and perceived the use of marijuana as less harmful.[87] Colorado launched its education campaign in mid-2015 with the focus on the health and legal consequences of marijuana use for youth and has had a positive effect on youth education.[88] Washington's program included providing grants to prevention

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[83] *Id.*

[84] Rocky Mountain High Intensity Drug Trafficking Area Program, *The impact of Legalization of Marijuana in Colorado, Vol. 2 (2014),* available at http://www.rmhidta.org

[85] Thurstone,C. Lieberman, S., Schmiege, S, *Medical marijuana diversion and associated problems in adolescent substance treatment. Drug Alcohol Depend.* 2011 Nov 1; 118(2-3): 489–492.

[86] *See* http://protectwhatsnext.com/ (Colorado) and http://www.doh.wa.gov/YouandYourFamily/Marijuana (Washington)

[87] https://www.colorado.gov/pacific/sites/default/files/MJ_RMEP_baseline-analysis_Youth-Findings.pdf

[88] Andrew Freedman, Former Director of Marijuana Coordination in Colorado, *Presentation to the Health Quality Subcommittee on January 25, 2017.* On file with the Health Quality Subcommittee.

and treatment programs. Evaluation of the 21 programs receiving grants found that 18 of the programs produced benefits that outweighed the costs of funding.[89]

Advertising

Greater exposure to medical marijuana advertisements at an early age is associated with higher marijuana use by adolescents.[90] Colorado recently enacted legislation to regulate medical marijuana advertising that has a high likelihood of reaching youth. The new law also prohibits health or physical benefit claims, pop up advertising, banner ads on mass market websites, marketing directing toward location-based devices, and opt-in marketing that does not permit an easy and permanent and opt-out feature.[91] Colorado restricts retail advertising aimed at people under the age of 21 and restricts advertising across various mediums unless there is reliable evidence that no more than 30% of the viewing audience is reasonably expected to be under the age of 21.[92] Outdoor advertising is generally prohibited in Colorado except for signage identifying location of a retail dispensary.

Florida's Cannabis Laws

Criminal Law and Medical Necessity Defense

Florida's drug control laws are set forth in ch. 893, F.S., entitled the Florida Comprehensive Drug Abuse Prevention and Control Act (Drug Control Act).[93] The Drug Control Act classifies controlled substances into five categories, ranging from Schedule I to Schedule V.[94] Cannabis is currently a Schedule I controlled substance,[95] which means it has a high potential for abuse, it has no currently accepted medical use in treatment in the United States, and its use under medical supervision does not meet accepted safety standards.[96] Cannabis is defined as:

> All parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "low-THC cannabis," as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986.[97]

The Drug Control Act contains a variety of provisions criminalizing behavior related to cannabis:

- Section 893.13, F.S., makes it a crime to sell, manufacture, deliver, purchase, or possess cannabis. The penalties for these offenses range from first degree misdemeanors to second degree felonies.[98]
- Section 893.135(1)(a), F.S., makes it a first degree felony[99] to traffic in cannabis, i.e., to possess, sell, purchase, manufacture, deliver, or import more than 25 pounds of cannabis or 300 or more cannabis plants. Depending on the amount of cannabis or cannabis plants

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[89] Washington State Institute for Public Policy, *Preventing and Treating Youth Marijuana Use: An Updated Review of the Evidence.* Available at http://www.wsipp.wa.gov/ReportFile/1571/Wsipp_Preventing-and-Treating-Youth-Marijuana-Use-An-Updated-Review-of-the-Evidence_Report.pdf
[90] *Supra*, note 80.
[91] *See* C.R.S.A. §12-43.3-202 (Colorado).
[92] *See* 1 CCR 212-2 (Colorado)
[93] Section 893.01, F.S.
[94] Section 893.03, F.S.
[95] Section 893.03(1)(c)7., F.S.
[96] Section 893.03(1), F.S.
[97] Section 893.02(3), F.S.
[98] A first degree misdemeanor is punishable by up to one year in county jail and a $1,000 fine; a third degree felony is punishable by up to five years imprisonment and a $5,000 fine; and a second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. ss. 775.082 and 775.083, F.S.
[99] A first degree felony is punishable by up to 30 years imprisonment and a $10,000 fine. ss. 775.082 and 775.083, F.S.

trafficked, mandatory minimum sentences of three to 15 years and fines of $25,000 to $200,000 apply to a conviction.[100]
- Section 893.147, F.S., makes it a crime to possess, use, deliver, manufacture, transport, or sell drug paraphernalia.[101] The penalties for these offenses range from first degree misdemeanors to second degree felonies.[102]

Florida courts have held that persons charged with offenses based on the possession, use, or manufacture of marijuana may use the medical necessity defense, which requires a defendant to prove that:

- He or she did not intentionally bring about the circumstance which precipitated the unlawful act;
- He or she could not accomplish the same objective using a less offensive alternative; and
- The evil sought to be avoided was more heinous than the unlawful act.[103]

In *Jenks v. State,*[104] the defendants, a married couple, suffered from uncontrollable nausea due to AIDS treatment and had testimony from their physician that they could find no effective alternative treatment. The defendants tried cannabis, and after finding that it successfully treated their symptoms, decided to grow two cannabis plants.[105] They were subsequently charged with manufacturing and possession of drug paraphernalia. Under these facts, the First District Court of Appeal found that "section 893.03 does not preclude the defense of medical necessity" and that the defendants met the criteria for the medical necessity defense.[106] The court ordered the defendants to be acquitted.[107]

Seven years after the *Jenks* decision, the First District Court of Appeal again recognized the medical necessity defense in *Sowell v. State.*[108] More recently, the State Attorney's Office in the Twelfth Judicial Circuit cited the medical necessity defense as the rationale for not prosecuting a person arrested for cultivating a small amount of cannabis in his home for his wife's medical use.[109]

Compassionate Medical Cannabis Act

The Compassionate Medical Cannabis Act (CMCA) was enacted in 2014.[110] The CMCA legalized a low-THC and high-CBD form of low-THC cannabis[111] for medical use[112] by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. In 2016, the legislature also amended the Right to Try Act (RTTA) to allow eligible patients with a terminal condition to receive a form of cannabis with no THC limit or CBD mandate referred to as medical cannabis.[113]

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[100] Section 893.13(1)(a), F.S.
[101] Drug paraphernalia is defined in s. 893.145, F.S., as: All equipment, products, and materials of any kind which are used, intended for use, or designed for use in the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.
[102] Section 893.147, F.S.
[103] *Jenks v. State*, 582 So.2d 676, 679 (Fla. 1st DCA 1991), *rev. denied,* 589 So.2d 292 (Fla. 1991).
[104] 582 So.2d 676 (Fla. 1st DCA 1991).
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] 739 So.2d 333 (Fla. 1st DCA 1998).
[109] *Interdepartmental Memorandum*, State Attorney's Office for the Twelfth Judicial Circuit of Florida, SAO Case # 13CF007016AM, April 2, 2013, on file with the Health Quality Subcommittee.
[110] *See* ch. 2014-157, L.O.F., ch. 2016-123, L.O.F. and s. 381.986, F.S.
[111] The act defines "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. *See* s. 381.986(1)(b), F.S.
[112] Section 381.986(1)(c), F.S., defines "medical use" as "administration of the ordered amount of low-THC cannabis. The term does not include the possession, use, or administration by smoking. The term also does not include the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient." Section 381.986(1)(e), F.S., defines "smoking" as "burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer."
[113] Section 499.0295, F.S.

Dispensing Organizations

Under the CMCA, DOH was required to approve by January 1, 2015, five dispensing organizations to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis with one dispensing organization in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida. DOH was also authorized to impose an initial application and biennial renewal fee that is sufficient to cover the costs of regulating the program.[114] To be approved as a dispensing organization, an applicant must:

- Possess a certificate of registration issued by the Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants;
- Be operated by a nurseryman;
- Have been operating as a registered nursery in this state for at least 30 continuous years;
- Have the technical and technological ability to cultivate and produce low-THC cannabis;
- Have the ability to secure the premises, resources, and personnel necessary to operate as a dispensing organization.
- Have the ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.
- Have an infrastructure reasonably located to dispense low-THC cannabis to registered patients statewide or regionally as determined by the department.
- Have the financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financials to the department. Upon approval, the applicant must post a $5 million performance bond.
- Have all owners and managers fingerprinted and all owners and managers must have successfully passed a level 2 background screening pursuant to s. 435.04.
- Employ a medical director, who must be a Florida-licensed allopathic physician or osteopathic physician and have successfully completed a course and examination that encompasses appropriate safety procedures and knowledge of low-THC cannabis.

Implementation by DOH of the dispensing organization approval process was delayed due to litigation challenging proposed rules that addressed the initial application requirements for dispensing organizations, revocation of dispensing organization approval, and inspection and cultivation authorization procedures for dispensing organizations. The litigation was resolved on May 27, 2015, with an order entered by the Division of Administrative Hearings holding that the challenged rules do not constitute an invalid exercise of delegated legislative authority.[115] Thereafter, the rules took effect on June 17, 2015.[116]

The application process to become a dispensing organization closed on July 8, 2015, with 28 applications received by DOH. Each application was evaluated and complete applications that met the minimum statutory requirements were then scored by three reviewers using a scorecard.[117] The scorecards of each reviewer were combined to generate an aggregate score for each application. The applicant with the highest aggregate score in each region was to be awarded a license.

[114] Section 381.986(5)(b), F.S.
[115] *Baywood v.Nurseries Co., Inc. v. Dep't of Health,* Case No. 15-1694RP (Fla. DOAH May 27, 2015).
[116] Rule Chapter 64-4, F.A.C.
[117] Rule 64-4.002, F.A.C.

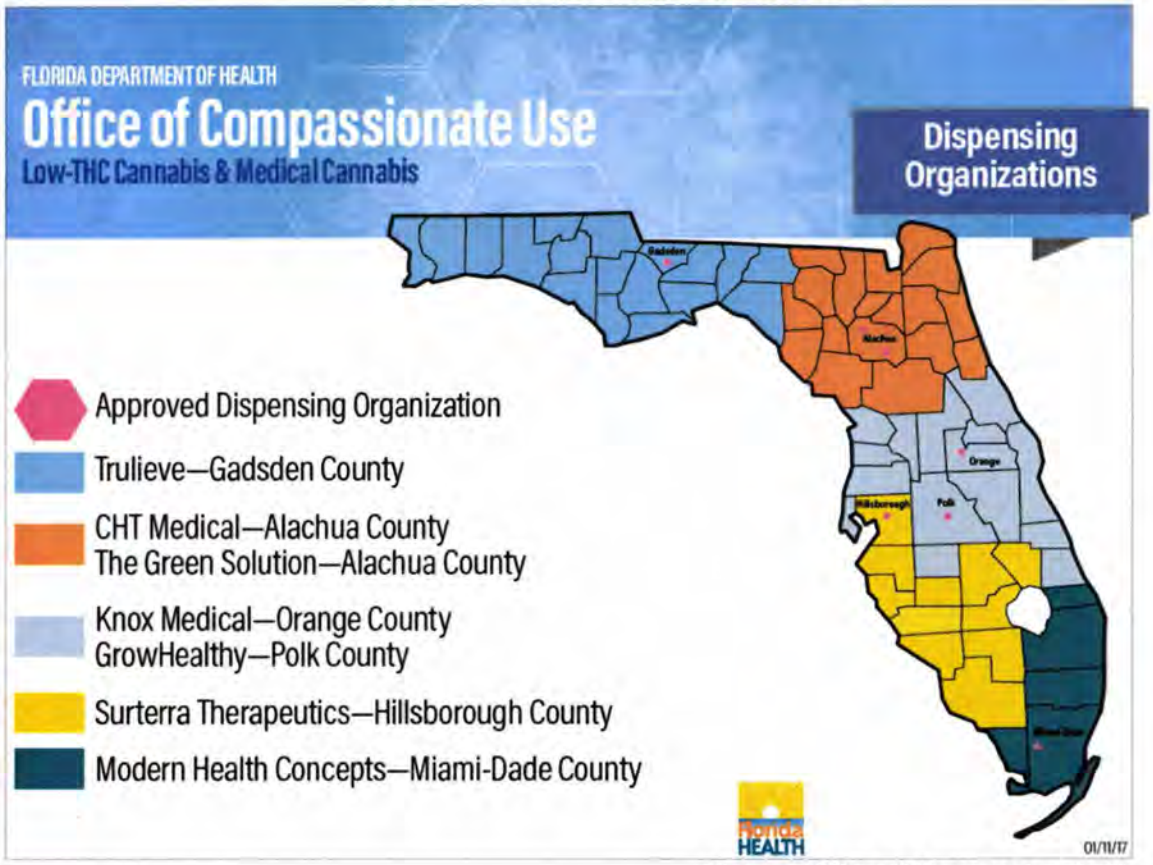
2014 Dispensing Organizations Applications:
Aggregate Score and Regional Rank

Applicant	Region	Reviewer 1	Reviewer 2	Reviewer 3	Final Rank	Regional Rank
3 Boys	Southwest	2.6875	3.1000	4.6125	3.4667	4
Alpha	Southwest	4.8750	3.5000	3.9375	4.1042	5
Perkins	Southwest	1.3750	2.0375	2.9375	2.1167	1
Plants of Ruskin	Southwest	2.7625	2.3375	2.8375	2.6458	2
Sun Bulb	Southwest	3.3000	4.0250	2.1500	3.1583	3
Bill's	Southeast	2.1125	1.1500	1.3875	1.5500	1
Costa	Southeast	4.2750	4.2375	4.6875	4.4000	5
Keith's St. Germain	Southeast	2.4125	4.1250	3.1000	3.2125	4
Nature's Way	Southeast	2.4500	3.4875	2.7125	2.8833	2
Redland	Southeast	3.7500	2.0000	3.7750	3.1750	3
Deleon	Central	1.8375	2.8875	1.0000	1.9083	1
Dewar	Central	4.7500	4.5750	2.5375	3.9542	3
Knox	Central	4.1750	6.5875	5.8750	5.5458	7
McCrory's	Central	5.4125	4.6875	6.5250	5.5417	6
Redland	Central	6.4000	2.3375	4.5500	4.4292	4
Spring Oak	Central	1.4375	1.3750	3.3125	2.0417	2
Treadwell	Central	3.9875	5.4375	4.2750	4.5667	5
Bill's	Northeast	1.2500	1.4250	1.0000	1.2250	1
Chestnut Hill	Northeast	4.7250	3.6500	3.0000	3.7917	4
Hart's	Northeast	3.2375	2.0750	2.0000	2.4375	2
Loop's	Northeast	2.7250	3.9875	4.0000	3.5708	3
San Felasco	Northeast	3.0625	3.8625	5.0000	3.9750	5
Alpha	Northwest	3.3125	2.9000	2.0000	2.7375	3
Hackney	Northwest	3.6125	3.4500	4.0000	3.6875	4
Hart's	Northwest	1.7250	1.9250	3.0000	2.2167	2
Tree King	Northwest	1.3500	1.7250	1.0000	1.3583	1

On November 23, 2015, DOH announced the five approved dispensing organizations: Hackney Nursery in the northwest region, Chestnut Hill Tree Farm in the northeast region, Knox Nursery in the central region, Costa Nursery Farms in the southeast region, and Alpha Foliage in the southwest region. Thirteen applicants that were denied a license filed petitions contesting their licensure denial and DOH's approval of these five dispensing organizations.[118] As of February 20, 2017, all but two of the petitions have been resolved. DOH awarded additional licenses to two of the petitioners, McCrory's and San Felasco, bringing the total number of dispensing organizations to seven. Loop's Nursery lost its challenge[119] and two more petitioners, 3 Boys and Plants of Ruskin, are awaiting final order from the Division of Administrative Hearings.[120] The remaining petitions were voluntarily dismissed.

[118] A copy of each petition is available at http://www.floridahealth.gov/programs-and-services/office-of-compassionate-use/dispensing-organizations/dispensing-application-process/index.html (last visited on February 20, 2016).
[119] *Loop's Nursery and Greenhouses, Inc. v. Dep't of Health*. Case No. 15-7274 (Fla. DOAH October 7, 2016).
[120] *Plants of Ruskin and 3 Boys v. Dep't of Health*, DOAH Case Nos. 17-0116, 17-0117.

Approved Dispensing Organizations



Source: Office of Compassionate Use

Future New Dispensing Organization Approvals

Current law requires DOH to approve three additional dispensing organizations upon the registration of 250,000 active qualified patients in the compassionate use registry.[121] One of these additional dispensing organizations must be a recognized class member of certain class-action cases[122] and a member of the Black Farmers and Agriculturalists Association. The applicants for such approval must meet all of the criteria for dispensing organizations except for the requirements to possess a certificate of registration issued by the Department of Agriculture and Consumer Services for the cultivation of more than 400,000 plants, be operated by a nurseryman and have been operating as a registered nursery in this state for at least 30 continuous years.

Growing Low-THC Cannabis and Medical Cannabis

The CMCA sets standards growing low-THC cannabis or medical cannabis. Dispensing organizations must:

- Grow low-THC cannabis and medical cannabis within an enclosed structure and in a room separate from any other plant;
- Inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state, notify the Department of Agriculture and Consumer Services within 10 calendar days of a determination that a plant is infested or infected by such plant pest, and implement and maintain phytosanitary policies and procedures; and
- Perform fumigation or treatment of plants or the removal and destruction of infested or infected plants in accordance with ch. 581, F.S., or any rules adopted thereunder.

[121] Section 381.986(5)(c), F.S.
[122] *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011).

A dispensing organization may also use pesticides determined by DOH to be safely applied to plants intended for human consumption.

Processing Low-THC Cannabis and Medical Cannabis

The CMCA sets standards processing low-THC cannabis or medical cannabis. Dispensing organizations must:

- Process the low-THC cannabis or medical cannabis in an enclosure separate from other plants or products;
- Reserve two processed samples per each batch, retain such samples for at least 9 months, and make those samples available for testing when an audit is being conducted by an independent testing laboratory.

Testing Low-THC Cannabis and Medical Cannabis

Under the CMCA, each dispensing organization must contract with an independent testing laboratory[123] to perform audits on the dispensing organization's standard operating procedures, testing records, and samples and provide the results to DOH to confirm the low-THC cannabis and medical cannabis meet the requirements of the CMCA and that the medical cannabis and low-THC cannabis is safe for human consumption. Dispensing organizations have contracted with testing laboratories upon DOH approval. However there is no regulatory oversight of the laboratories beyond DOH's initial approval, resulting in a lack of true independence between the dispensing organization and testing laboratory.

Current law also creates an exemption from criminal law for the independent testing laboratories and their employees, allowing the laboratories and laboratory employees to possess, test, transport, and lawfully dispose of low-THC cannabis and medical cannabis.

Packaging and Labeling Low-THC Cannabis and Medical Cannabis

The CMCA requires dispensing organizations to package low-THC cannabis and medical cannabis in compliance with the U.S. Poison Prevention Act which requires child-resistant packaging. Dispensing organizations must also firmly affix to the package a legible label that includes the following information:

- A statement that the low-THC cannabis meets certain composition requirements, and that the low-THC cannabis and medical cannabis are safe for human consumption and are free from contaminants that are unsafe for human consumption.
- The name of the dispensing organization where the medical cannabis or low-THC cannabis originates; and
- The batch number and harvest number from which the medical cannabis or low-THC cannabis originates.

Dispensing Low-THC Cannabis and Medical Cannabis

Under the CMCA a dispensing organization may not dispense more than a 45-day supply of low-THC cannabis or medical cannabis to a patient or the patient's legal representative[124] or sell any products other than the physician ordered low-THC cannabis, medical cannabis, or a cannabis delivery device.

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[123] "Independent testing laboratory" is defined by the bill to mean a laboratory, including the managers, employees, or contractors of the laboratory, which has no direct or indirect interest in a dispensing organization.

[124] Section 381.986(1)(d), F.S. defines "legal representative" means the qualified patient's parent, legal guardian acting pursuant to a court's authorization as required under s. 744.3215(4), health care surrogate acting pursuant to the qualified patient's written consent or a court's authorization as required under s. 765.113, or an individual who is authorized under a power of attorney to make health care decisions on behalf of the qualified patient.

However, DOH allows two orders to be entered into the compassionate use registry so that a patient may obtain a refill.

When dispensing low-THC cannabis or medical cannabis, a dispensing organization employee must use the compassionate use registry created by DOH to:

- Enter his or her name or unique employee identifier;
- Verify that a physician has ordered low-THC cannabis, medical cannabis, or a specific type of cannabis delivery device for the patient;
- Verify the patient or patient's legal representative holds a valid and active registration card; and
- Record the date, time, quantity, and form dispensed and type of cannabis delivery device dispensed.

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Products and Routes of Administration

The CMCA prohibits smoking marijuana for medical use. Vaping of low-THC marijuana is not prohibited. Current law allows patients to use a physician-recommended cannabis delivery device[125] which is defined as an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing low-THC cannabis or medical cannabis into the human body.

Safety and Security Measures

Current law requires a dispensing organization to:

- Maintain a fully operational security alarm system or a video surveillance system that records continuously 24 hours per day and meets certain minimum criteria;
- Ensure that the outdoor premises of the dispensing organization has sufficient lighting from dusk until dawn;
- Not dispense low-THC cannabis, medical cannabis, or cannabis delivery devices between the hours of 9 p.m. and 7 a.m., but allows the dispensing organization to perform all other operations and deliveries of its product 24 hours per day;
- Establish and maintain a tracking system approved by DOH that traces the low-THC cannabis and medical cannabis from seed to sale, including key notification of events as determined by DOH;
- Store low-THC cannabis and medical cannabis in secured, locked rooms or a vault;
- Have at least 2 employees of the dispensing organization or of a contracted security agency be on the dispensing organization premises at all times;
- Have all employees wear a photo identification badge at all times while on the premises;
- Have visitors wear a visitor's pass at all times while on the premises;
- Implement an alcohol and drug free workplace policy; and
- Report to local law enforcement within 24 hours of the dispensing organization being notified or becoming aware of the theft, diversion, or loss of low-THC cannabis or medical cannabis.

Transportation

To ensure the safe transport of low-THC cannabis or medical cannabis to dispensing organization facilities, laboratories, or patients, dispensing organizations must:

- Maintain a transportation manifest, which must be retained for at least one year;
- Ensure only vehicles in good-working order are used to transport low-THC cannabis or medical cannabis;

[125] Section 381.986(1)(a), F.S.

- Lock low-THC cannabis or medical cannabis in a separate compartment or container within the vehicle;
- Have at least two persons in a vehicle transporting low-THC cannabis or medical cannabis and at least one person remain in the vehicle while the low-THC cannabis or medical cannabis is being delivered; and
- Provide specific safety and security training to those employees transporting low-THC cannabis or medical cannabis.

Inspections

Current law authorizes DOH to conduct inspections. DOH:

- May conduct announced or unannounced inspections of dispensing organizations to determine compliance with the law;
- Must inspect a dispensing organization upon complaint or notice provided to DOH that the dispensing organization has dispensed low-THC cannabis or medical cannabis containing any mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment;
- Must conduct at least a biennial inspection to evaluate dispensing organization records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices;

DOH may enter into interagency agreements with the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Agency for Health Care Administration, and such agencies are authorized to enter into an interagency agreement with DOH, to conduct inspections or perform other responsibilities assigned to DOH under the CMCA.

Penalties and Exceptions

DOH may impose reasonable fines not to exceed $10,000 on a dispensing organization for certain delineated violations and may suspend, revoke, or refuse to renew the approval of a dispensing organization for committing any of those violations.

The CMCA exempts from criminal prosecution under ch. 893, F.S.,[126] approved dispensing organizations and their owners, managers, and employees for manufacturing, possessing, selling, delivering, distributing, dispensing, and lawfully disposing of reasonable quantities, as established by DOH rule, of low-THC cannabis and medical cannabis in accordance with the CMCA and the RTTA. Such dispensing organizations and their owners, managers, and employees are not subject to licensure or regulation under ch. 465, F.S., relating to pharmacies.[127]

Preemption of Regulations

The CMCA preempts to the state all matters regarding the regulation of the cultivation and processing of medical cannabis or low-THC cannabis by dispensing organizations. Pertaining to dispensing, a municipality may determine by ordinance the criteria for and the number and location of, and other permitting requirements that do not conflict with state law or rule for, dispensing facilities of dispensing

[126] Section 893.13, F.S., makes it a crime to sell, manufacture, deliver, purchase, or possess cannabis. The penalties for these offenses range from first degree misdemeanors to second degree felonies; Section 893.135(1)(a), F.S., makes it a first degree felony to traffic in cannabis, i.e., to possess, sell, purchase, manufacture, deliver, or import more than 25 pounds of cannabis or 300 or more cannabis plants. Depending on the amount of cannabis or cannabis plants trafficked, mandatory minimum sentences of three to 15 years and fines of $25,000 to $200,000 apply to a conviction; Section 893.147, F.S., makes it a crime to possess, use, deliver, manufacture, transport, or sell drug paraphernalia. The penalties for these offenses range from first degree misdemeanors to second degree felonies.
[127] Section 381.986(7), F.S.

organizations located within its municipal boundaries. A county has the same authority for dispensing facilities located within the unincorporated areas of that county.

Registry and ID Cards

The CMCA requires DOH to create a secure, electronic, and online registry for the registration of physicians and patients.[128] A physician must register as the orderer of low-THC cannabis or medical cannabis for a named patient on the registry and must update the registry to reflect the contents of the order.[129] The registry must prevent an active registration of a patient by multiple physicians and must be accessible to law enforcement agencies and to dispensing organizations to verify patient authorization for low-THC cannabis or medical cannabis and to record the low-THC cannabis or medical cannabis dispensed.[130]

The CMCA authorizes DOH to establish a registration card system for patients and their legal representatives, establish the circumstances under which the cards may be revoked by or must be returned to DOH, and establish fees to implement such system. The registration cards must, at a minimum:

- State the name, address, and date of birth of the patient or legal representative;
- Have a full-face, passport-style photograph of the patient or legal representative that has been taken within 90 days prior to registration;
- Identify whether the cardholder is a patient or legal representative;
- List a unique numerical identifier for the patient or legal representative that is matched to the identifier used for such person in DOH's compassionate use registry;
- Provide the expiration date, which shall be from one year from the physician's initial order of low-THC cannabis or medical cannabis;
- For the legal representative, provide the name and unique numerical identifier of the patient the legal representative is assisting; and
- Be resistant to counterfeiting or tampering.

Physicians

Only a Florida licensed allopathic or osteopathic physician who has completed an 8-hour course and examination offered by the Florida Medical Association[131] may order low-THC cannabis or medical cannabis for a qualified patient. To meet the requirements of the CMCA, each of the following conditions must be satisfied:

- The physician must have treated the patient for three months immediately preceding the patient's registration in the compassionate use registry.
- The physician must determine that the risks of ordering low-THC cannabis or medical cannabis are reasonable in light of the potential benefit for that patient.[132]
- The physician must obtain the voluntary informed consent of the patient or the patient's legal guardian to treatment with low-THC cannabis or medical cannabis.[133]

[128] Section 381.985(5)(a), F.S.
[129] Section 381.986(2)(c), F.S.
[130] Section 381.986(5)(a), F.S.
[131] Section 381.986(4), F.S., requires such physicians to successfully complete an 8-hour course and examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompasses the clinical indications for the appropriate use of low-THC cannabis, appropriate delivery mechanisms, contraindications for such use, and the state and federal laws governing its ordering, dispensing, and processing.
[132] If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record. s. 381.986(2)(b), F.S.
[133] Section 381.986(2), F.S.

- The physician must register as the orderer of low-THC cannabis or medical cannabis for the patient on the compassionate use registry (registry) and must update the registry to reflect the contents of the order.
- The physician must update the registry within 7 days after any change is made to the original order.
- The physician must deactivate the registration of a patient and the patient's legal representative when treatment is discontinued.
- The physician must maintain a patient treatment plan that includes the dose, route of administration, planned duration, and monitoring of the patient's symptoms and other indications of the patient's tolerance or reaction to low-THC cannabis or medical cannabis.
- The physician must submit the treatment plan quarterly to the University of Florida College of Pharmacy for research.

The University of Florida College of Pharmacy has been unable to perform research on the data collected from the treatment plans due to lack of funding.[134]

The CMCA requires DOH to publish a list of qualified ordering physicians on its website.

The CMCA prohibits a physician ordering low-THC cannabis or medical cannabis from being employed as a medical director of a dispensing organization. A physician, who orders low-THC cannabis or medical cannabis and receives compensation from a dispensing organization related to the ordering of such, is subject to disciplinary action, including suspension or revocation of license, restriction of practice and administrative fines.

The CMCA makes it a first degree misdemeanor for a physician to order low-THC cannabis or medical cannabis for a patient without a reasonable belief that the patient is suffering from a required condition.

Patients

For a qualified patient to receive low-THC or medical cannabis from a dispensing organization, the patient must be a Florida resident who has been added to the compassionate use registry by a physician.[135] The CMCA exempts from criminal prosecution under Ch. 893, F.S.[136] qualified patients and their legal representatives that purchase and possess low-THC cannabis or medical cannabis up to the amount ordered for the patient's medical use in accordance with the requirements of the CMCA.

The CMCA makes it a first degree misdemeanor for:
- Any person to fraudulently represent that he or she has a required condition to a physician for the purpose of being ordered low-THC cannabis or medical cannabis.[137]
- An eligible patient under the RTTA to use medical cannabis in plain view or in a place open to the general public, on the grounds of a school, or in a school bus, vehicle, aircraft, or motorboat.
- A legal representative of an eligible patient under the RTTA to administer medical cannabis in plain view or in a place open to the general public, on the grounds of a school, or in a school bus, vehicle, aircraft, or motorboat.

Low-THC cannabis and medical cannabis cannot be used or administered:
- On any form of public transportation;
- In any public place;
- In a qualified patient's place of work, if restricted by his or her employer;

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[134] Almut Winterstein, PhD., University of Florida College of Pharmacy, *Presentation to the Health Quality Subcommittee on January 25, 2017*. On file with the Health Quality Subcommittee.
[135] Section 381.986(1)(h), F.S.
[136] See supra note 119.
[137] Section 381.986(3), F.S.

- In a state correctional institution, as defined in s. 944.02, F.S., or a correctional institution, as defined in s. 944.241, F.S.;
- On the grounds of any preschool, primary school, or secondary school; and
- On a school bus or in a vehicle, aircraft, or motorboat.

Amendment 2: Use of Marijuana for Debilitating Medical Conditions (Fla Const. art. X, s. 29)

On November 7, 2016, Florida voters approved Amendment 2, Use of Marijuana for Debilitating Medical Conditions as Art. X, Sec. 29 of the Florida Constitution. The amendment authorizes patients with a debilitating medical condition to obtain medical marijuana.

Medical Marijuana Treatment Center (MMTC)

The amendment requires DOH to register MMTCs to provide medical marijuana and related supplies to patients or their caregivers. MMTCs may acquire, cultivate, possess process, transfer, transport, sell, distribute, dispense, or administer marijuana and products containing marijuana. MMTCs may also provide related supplies and educational materials.

The amendment requires DOH to establish procedures for the registration of MMTCs that include procedures for the issuance, renewal, suspension and revocation of registration. The amendment also requires DOH to establish regulatory standards for security, record keeping, testing, labeling, inspection, and safety.

The amendment does not address what types of marijuana products a MMTC can produce. The amendment does state that it does not require the accommodation of smoking in a public place.

The amendment also does not address the authority of local governments to regulate MMTCs.

The bill exempts actions and conduct by MMTCs registered with DOH, or its agents or employees, in compliance with the amendment and DOH regulations, from criminal or civil liability or sanctions under Florida law.

Identification Cards

The amendment requires DOH to establish procedures for the issuance and annual renewal of identification cards for qualified patients and caregivers. The amendment requires DOH obtain written consent from a minor's parent or legal guardian before issuing a card to a minor patient.

Physicians

The amendment allows a physician licensed to practice medicine in Florida to certify patients for the medical use of marijuana. The amendment requires the physician conduct a physical examination and a full assessment of a patient's medical history prior to issuing a physician's certification. The amendment requires the physician to issue a "physician certification" signed by the physician, stating the patient has a debilitating medical condition and that the benefits of marijuana to treat the condition outweigh the risks associated with using marijuana. It must also specify how long the patient is recommended to use marijuana.

The amendment also requires DOH to establish the amount of marijuana that could reasonably be presumed to be an adequate supply for a qualified patients' medical use. The presumption may be overcome with evidence of a particular qualified patient's appropriate medical use.

A physician that issues a physician certification with reasonable care to a person diagnosed with a debilitating medical condition in compliance with Amendment 2 shall not be subject to criminal or civil liability or sanctions under Florida law.

Patients

The amendment allows a "qualified patient" who has been diagnosed with a debilitating medical condition and has a physician's certification and a valid patient identification card to obtain medical marijuana from a MMTC. The amendment defines "debilitating medical condition" as cancer, epilepsy, glaucoma, HIV/AIDS, Post-Traumatic Stress Disorder (PTSD), Amyotrophic Lateral Sclerosis (ALS/Lou Gehrig's disease), Crohn's disease, Parkinson's disease, multiple sclerosis, or other medical conditions of the same kind or class as or comparable to the preceding conditions that the patient's physician finds to be debilitating.

The amendment exempts the medical use[138] of marijuana by a qualified patient in compliance with the amendment from criminal or civil liability or sanctions under Florida law.

The amendment states that it does not require accommodation of medical use of marijuana in the workplace.

Caregivers

The amendment allows caregivers to assist qualified patients with the medical use of marijuana. The amendment requires a caregiver to be at least twenty-one years old and meet qualifications established by DOH. A caregiver must also obtain a caregiver identification card from DOH. The amendment prohibits caregivers from consuming medical marijuana and authorizes DOH to limit the number of patients a caregiver may assist and the number of caregivers a qualified patient may have. The amendment exempts the acquisition, possession, or administration of marijuana by a caregiver in compliance with the amendment from criminal or civil liability or sanctions under Florida law.

Implementation/Rulemaking

The amendment requires DOH to adopt rules by July 3, 2017 for:

- Patient and caregiver ID cards;
- Caregivers' qualifications;
- MMTC registration process and operational regulations; and
- The amount of marijuana reasonably presumed to be an adequate supply for medical use by a patient, based on best available evidence.

The amendment requires DOH to begin registering MMTCs and issuing patient and caregiver ID cards by October 3, 2017.

If a constitutional provision is self-executing, legislative action is not required to implement the provision. A constitutional provision is self-executing if it "lays down a sufficient rule by means of which the right or purpose which it gives or is intended to accomplish may be determined, enjoyed, or protected without the aid of legislative enactment."[139] Even though the provision may be self-executing, the provision may be supplemented by legislation.[140]

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[138] Medical use means the acquisition, possession, use, delivery, transfer, or administration of an amount of marijuana not in conflict with DOH rules, or of related supplies by a qualifying patient or caregiver for the use by the caregiver's designated qualifying patient for the treatment of a debilitating medical condition.
[139] Gray v. Bryant, 125 So.2d 846, 851 (Fla. 1960).
[140] *Id.*

The amendment states that the legislature may enact laws consistent with the amendment. Amendment 2 presents a unique situation as it does not require action to be taken by the legislature to implement it. However, it is not self-executing since it requires DOH to adopt rules in order to implement the amendment.

Cause of Action

The amendment allows any "Florida citizen" to bring a private cause of action to compel DOH rule-making, MMTC registration or issuance of ID cards, if DOH fails to meet the 6 or 9 month deadlines. The amendment does not specify the kind of cause of action, the remedy, or the venue for such cause of action.

HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects personal health information. Privacy rules were initially issued in 2000 by the U.S. Department of Health and Human Services and later modified in 2002.[141] These rules address the use and disclosure of an individual's personal health information as well as create standards for information security.
Only certain entities are subject to HIPAA's provisions. These "covered entities" include[142]:

- Health plans;
- Health care providers;
- Health care clearinghouses; and
- Business associates of any of the above.

HIPAA allows the disclosure of protected health information by a covered entity to a health oversight agency[143] for oversight activities authorized by law, including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system and entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards.[144] A health oversight agency includes an agency of a state that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

DOH is a health oversight agency for the purposes of administering the CMCA, Fla. Const. art. X s. 29, and the medical practice acts.

Patient Referrals, Kickbacks, and Patient Brokering

Section 456.053, F.S. prohibits a health care provider from referring a patient for clinical laboratory services, physical therapy services, comprehensive rehabilitative services, diagnostic-imaging services, and radiation therapy services to an entity in which the health care provider is an investor or has an investment interest unless certain exceptions apply. A violation of 456.053, F.S. constitutes grounds for disciplinary action to be taken by the applicable board.

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[141] *The Privacy Rule*, U.S. Department of Health and Human Services. http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/ (last visited on February 24, 2017).
[142] *For Covered Entities and Business Associates*, U.S. Department of Health and Human Services. http://www.hhs.gov/ocr/privacy/hipaa/understanding/coveredentities/ (last visited on February 24, 2017).
[143] *See The Privacy Rule*, U.S. Department of Health and Human Services. http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/ (last visited on February 24, 2017).
[144] The Privacy Rule, U.S. Department of Health and Human Services. http://www.hhs.gov/ocr/privacy/hipaa/administrative/privacyrule/ (last visited on February 24, 2017).

Section 466.054, F.S. prohibits "kickbacks" which mean payments or remuneration made by a health care provider to another as an incentive or inducement to refer patients. A violation of 456.054, F.S. is considered patient brokering and is a third degree felony punishable under s. 817.505, F.S.

Section 817.505, F.S. prohibits patient brokering. It is a third degree felony for any person to offer or pay another to induce the referral of patients, solicit or receive compensation in return for referring patients, solicit or receive compensation in return for the acceptance or acknowledgement of treatment from a healthcare provider or facility and to aid, abet, advise or otherwise participate in such conduct.

EFFECTS OF PROPOSED CHANGES

The bill implements Fla Const. art. X, s. 29 by significantly amending the CMCA.

The bill amends the CMCA to remove the requirement that only terminally ill patients under the RTTA may use a form of marijuana with no THC limit or CBD mandate. The bill amends the CMCA to allow patients with debilitating medical conditions, including terminal illnesses, to obtain marijuana, which is defined by the bill as all parts of any plant of the genus Cannabis whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt sale, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, that is dispensed only from a medical marijuana treatment center for medical use by a qualified patient.

Medical Marijuana Treatment Centers (MMTCs)

The bill maintains the vertically integrated regulatory structure of the CMCA and authorizes MMTCs licensed by DOH to acquire, cultivate, possess process, transfer, transport, sell, distribute, dispense, or administer marijuana or marijuana delivery devices for medical use to qualified patients.

The bill requires DOH to grant MMTC licenses to dispensing organizations currently registered under the CMCA. The bill also requires DOH to grant MMTC licenses to dispensing organization applicants that were denied registration as a dispensing organization in each region that had the next highest score to the applicants that have been awarded licenses in that region. The bill also requires DOH to grant an MMTC license to an applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011), and a member of the Black Farmers and Agriculturalists Association. The bill requires DOH to grant MMTC licenses to 5 additional applicants when the patient population reaches 200,000 and 3 additional MMTC licenses for every additional 100,000 patients.

The bill maintains the qualifications under the CMCA for applicants seeking licensure as an MMTC, however; it amends the requirement for an applicant to have been operating as a registered nursery in Florida from at least 30 continuous years to 5 continuous years.

Growing Medical Marijuana

The bill retains the current law under the CMCA for growing standards.

Processing and Testing Medical Marijuana

The bill retains current law under the CMCA for processing standards but also adds a prohibition on the use of hydrocarbon based solvents, such as butane, hexane or propane.

The bill requires MMTCs to contract with a certified marijuana testing laboratory to perform testing of its processed marijuana before it is dispensed. The bill allows MMTCs to contract with a laboratory that is not certified until at least one laboratory becomes certified. The bill requires DOH to establish a certification program for marijuana testing laboratories and lays out the requirements a laboratory must

meet to receive certification, which includes accreditation by an accreditation body of the National Environmental Laboratory Accreditation Program. Florida is an accrediting body and the accreditation program is currently administered through DOH. The bill also authorizes DOH to establish regulatory standards for marijuana testing laboratories.

Packaging and Labeling Medical Marijuana

The bill increases the packaging and labeling requirements under current law. In addition to the CMCA requirement to comply with the US Poison Prevention Act, the bill requires MMTCs to include a package insert with the following information:

- Clinical pharmacology
- Indications and use
- Dosage and administration
- Contraindications
- Warnings and precautions
- Adverse reactions

The bill requires the label on the package to include:

- Statement that cannabis meets testing and safety requirements
- Name of MMTC
- Batch number and harvest number of origin
- Recommend dose
- Name of physician who issued certification
- Name of patient
- Product name, if applicable,
- Dosage form
- Concentration of THC and CBD
- Warning transfer to another person is illegal
- Medical Marijuana Universal Symbol developed by DOH

Dispensing Medical Marijuana

The bill requires an employee of a MMTC who dispenses marijuana for medical use to perform the following when dispensing marijuana for medical use:

- Enter the employee's name or unique employee identifier into the medical marijuana registry
- Verify in the medical marijuana registry physician has issued certification
- Verify patient has active registration in registry
- Verify the qualified patient or caregiver has valid and active marijuana registry identification card
- Verify the amount and type of marijuana dispensed matches the contents of the certification in the medical marijuana registry
- Verify that the physician certification has not already been filled
- Record in the medical marijuana registry the quantity and form dispensed and the type of marijuana delivery device dispensed
- Record in registry the name and registry ID number of the qualified patient or caregiver to whom the marijuana or delivery device was dispensed
- Dispense only cannabis delivery devices specified in certification.
- Dispense no more than a 90 day supply.

Products and Routes of Administration

The bill prohibits certain forms of marijuana for medical use. The bill prohibits smoking of marijuana for medical use. The bill also prohibits vaping of marijuana for medical use but provides an exception for terminally ill patients. The bill also prohibits edibles which are defined as commercially produced food items made with cannabis or cannabis oil. The bill allows for marijuana delivery devices recommended by a qualified physician. The bill requires MMTCs produce at least one low-THC marijuana product.

MMTC Safety and Security Measures

The bill requires that employees of MMTCs must be over the age of 21, pass a level 2 background screening, and receive training on the legal requirements to dispense marijuana for medical use. The bill maintains the current law requirement to employ a medical director who is Florida-licensed allopathic physician or osteopathic physician with an active, unrestricted license and has passed an initial 2 hour board-approved course and examination.

The bill retains the current law's prohibition on hours of operation. The bill also retains the security requirements under current law, but requires that MMTCs use one seed to sale tracking program established by DOH. The bill also adds the requirement that MMTCs maintain all of their business banking accounts with a single bank.

Transportation

The bill increases the requirements for the maintenance of the transportation manifest that must be kept in any vehicle transporting marijuana. The bill requires the transportation manifest be maintained by the MMTC and testing laboratory for at least five years and include:

- Departure date and time of departure
- Name, address, license number of originating MMTC
- Name and address of recipient
- Quantity and form or marijuana or device being delivered
- Arrival date and estimated time of arrival
- Delivery vehicle make, model, license plate number
- Name and signature of MMTC employees delivering product

The bill requires the MMTC or marijuana testing laboratory to provide a copy of the transportation manifest to each individual, MMTC or marijuana testing laboratory that receives delivery and requires the receiving individual to sign a copy of the manifest acknowledging receipt.

The bill also requires each MMTC employee to possess his or her employee ID at all times when transporting and present a copy of the transportation manifest and his or her employee ID to law enforcement upon request. The bill makes the failure or refusal to present a transportation manifest upon request of a law enforcement officer a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S. or s. 775.083, F.S.[145]

Advertising

The bill restricts advertising by MMTCs. The bill prohibits MMTCs from engaging in advertising that is visible to members of the public from any street, sidewalk, park or other public place. However, a dispensing location may have a sign with the licensee's business name or DOH-approved trade name affixed to the outside of the building or in a window.

The bill also restricts advertising via the internet. The bill requires DOH to approve all internet advertisements by a MMTC, prohibits internet advertising that targets individuals under 18, which

[145] A second degree misdemeanor is punishable by imprisonment up 60 days and a fine up to $500.00.

includes but is not limited to cartoon characters or similar images. The bill prohibits pop-up ads and requires that opt-in marketing must have an easy and permanent opt-out feature.

The bill requires an MMTC to publish on its website each marijuana product and delivery device available for purchase along with the price for a 30 day supply. The bill also requires the MMTC publish on its website any discounts offered and the eligibility requirements to receive such discounts.

Inspections

The bill requires DOH to conduct announced or unannounced inspections of MMTC facilities and retains the current law authorization for DOH to enter into interagency agreements to conduct inspections. The bill retains current law requiring biennial license renewal inspections and inspections upon complaint.

Penalties

The bill retains the current law's authorization for DOH to impose reasonable fines not to exceed $10,000 on a MMTC for certain delineated violations and to suspend, revoke, or refuse to renew the approval of a dispensing organization for committing any of those violations.

The bill authorizes DOH to discipline unlicensed activity by any person or entity that is not registered or licensed with DOH. The bill allows DOH to issue cease and desist orders or impose an administrative penalty up to $5,000 or a civil penalty from $5,000 to $10,000. The bill also requires DOH to notify law enforcement of any unlicensed activity.

The bill retains the exceptions from criminal prosecution under Ch. 893, F.S. for manufacturing, possessing, selling, delivering, distributing, dispensing, and lawfully disposing of marijuana by MMTCs.

Preemption of Regulation of MMTCs

The bill preempts to the state the regulation of cultivation, processing and delivery of marijuana. The bill prohibits cultivation and processing facilities from being within 500 feet of a private or public elementary, middle or secondary school.

The bill authorizes local ordinances that determine number and location of, and other permitting requirements not in conflict with state law or department rule for dispensing. The bill prohibits dispensing facilities within 500 feet of a private or public elementary, middle or secondary school. However, the bill allows a municipality or county to approve a dispensing facility location within 500 feet if the municipality or county approves the location as promoting the public health, safety, and general welfare of the community. The bill prohibits a municipality or county from enacting ordinances determining the location of dispensing facilities that are less restrictive than ordinances determining the location of entities licensed to sell alcoholic beverages.

The bill prohibits a municipality or county from charging a MMTC a license or permit fee that is higher than the fees charged to pharmacies.

Registry and Identification Cards

The bill requires DOH to maintain the registry established under the CMCA and requires additional information regarding patients and caregivers be entered into the registry.

The bill also requires DOH to register qualified patients and caregivers into the registry and issue identification cards to qualified patients and caregivers who meet the requirements of the bill. Patients and caregivers must be permanent residents of the state. Adult patients and caregivers must document

permanent residency by providing DOH with a copy of his or her Florida driver's license or Florida identification card and a copy of one of the following:

- Proof of voter registration in this state;
- A utility bill in the individual's name including a Florida address which matches the address on the individual's Florida driver's license or Florida identification card; or
- The address as listed on federal income tax returns filed by the individual seeking to prove residency which matches the address on the individual's Florida driver's license or Florida identification card.

A minor patient must provide DOH a certified copy of the minor's birth certificate or current record of registration from a Florida K-12 school and must have a parent or legal guardian who is not a qualified physician and does not have an economic interest in a MMTC or marijuana testing laboratory.

The bill establishes conditions for suspension or revocation of the registration of a qualified patient or caregiver by DOH.

Physicians

The bill allows only a qualified physician to certify a patient for medical use of marijuana. The bill defines a qualified physician as a Florida-licensed allopathic physician or osteopathic physician, who holds an active, unrestricted license and has completed a board-approved 2-hour educational course and exam. The bill prohibits a qualified physician from being employed as a medical director of a MMTC and from having a financial interest in a MMTC or a certified marijuana testing laboratory.

The bill requires a qualified physician to have treated a qualified patient for at least 3 months before certifying the patient for medical use of marijuana, unless the qualified patient has a terminal condition. Terminal condition is defined by the bill as a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.

To certify a patient for medical use of marijuana, a qualified physician must:

- Determine that the qualified patient suffers from at least one the debilitating medical conditions listed in Amendment 2 or has a terminal condition.
- Provide documentation to the applicable board supporting the physician's determination that a qualified patient suffers from a debilitating medical condition that is of the same kind or class as the conditions listed in Fla. Const. art. X s. 29.
- Perform in in-person physical exam and full medical history
- Determine that medical marijuana would likely outweigh the health risks to patient
- Develop a treatment plan and submit the plan to the University of Florida College of Pharmacy
- Review the registry and confirm that the patient does not have a valid certification from another qualified physician.
- Register as the issuer of the certification in the registry.
- Enter into the registry the patient's qualifying condition, marijuana dosage and form, delivery device if needed, and the supply amount (up to 90 days).

In addition, the qualified physician must obtain informed written consent of a patient on a form adopted by the applicable board each time the qualified physician certifies the patient for medical use of marijuana,[146] which must document the:

- Federal government's classification of cannabis as Schedule I controlled substance;

[146] If the patient is a minor, the parent or legal guardian must consent.

- Approval and oversight status of cannabis by the FDA;
- Current state of research on efficacy;
- Potential for addiction;
- Potential effect on coordination, motor skills, and cognition;
- Potential side effects; and
- Risks, benefits, and drug interactions of cannabis

The bill requires the qualified physician to update the registry within 7 days if any change made to the certification, and to deactivate the qualified patient's registration if treatment is stopped.

The bill prohibits a qualified physician from issuing a certification for more than a 90-day supply. Pursuant to Fla. Const. art. X s. 29(d)(1)d, the bill allows a qualified physician to request an exception from DOH from the 90-day supply limit. If DOH fails to approve or deny the request within 30 days, the requested amount is deemed approved. The bill requires a qualified physician to submit the following to DOH:

- The qualified patient's qualifying medical condition.
- The dosage and route of administration that was insufficient to provide relief to the qualified patient.
- A description of how the patient will benefit from an increased supply.
- The minimum supply of marijuana that would be sufficient for the treatment of the qualified patient's qualifying medical condition.
- The qualified patient's records, upon the request of the department.

The bill retains the current law's criminal violation that makes it a first degree misdemeanor for a qualified physician to order marijuana for a patient without a reasonable belief that the patient is suffering from a qualifying medical condition. The bill also retains the current law's provision that subjects a qualified physician who issues a physician certification for marijuana or a marijuana delivery device and receives compensation from a medical marijuana treatment center related to the issuance of a physician certification to disciplinary action, including suspension or revocation of license, restriction of practice and administrative fines.

In addition, the patient referral, anti-kickback and patient brokering prohibitions set forth in ss. 456.053, 456.054 and 817.505, F.S. are applicable to qualified physicians.

Physician Certification Pattern Review Panel

The bill requires the Board of Medicine and Board of Osteopathic Medicine to jointly establish a physician certification pattern review panel. The panel must review all physician certifications submitted to the medical marijuana use registry and issue a yearly report to the Governor, President of the Senate and Speaker of the House. The report must include the number of physician certifications and the qualifying medical conditions, dosage, supply amount, and form of marijuana certified. The panel shall report the data both by individual qualified physician and in the aggregate, by county and statewide.

Patients

The bill defines a qualified patient as a permanent resident of Florida who has been added to the medical marijuana registry by a qualified physician to receive marijuana for medical use. A qualified patient must obtain a marijuana registry identification card and must possess the card when in possession of marijuana or a delivery device. The bill requires a qualified patient to present the card to law enforcement upon request.

Until DOH begins issuing the identification cards, the bill allows all patients with an order issued under the CMCA and registered in the registry to be considered qualified patients.

The bill requires each district school board to enact a policy and procedure for the medical use of marijuana by a student who is a qualified patient and exempts school personnel from prosecution for possession when acting pursuant to the policy and procedure. The bill specifically allows an employer to enforce a drug-free workplace.

The bill retains current law exemptions from criminal prosecution and prohibitions on the use or administration of marijuana but allows for use on the grounds of a school if in accordance with a policy and procedure adopted by the district school board for medical use by a student who is a qualified patient.

The bill makes it a second degree misdemeanor for a qualified patient to fail or refuse to present his or her marijuana use registry identification card upon requires of law enforcement. The bill also makes it a criminal violation of 893.13[147] for a qualified patient who cultivates marijuana or who acquires, possesses, or delivers marijuana from any person or entity other than a medical marijuana treatment center.

Caregivers

The bill allows a qualified patient to designate only one caregiver. The bill requires caregivers to be permanent Florida residents over the age of 21 years. The bill requires a caregiver to agree in writing to assist a qualified patient, pass a level 2 background screening, pass a caregiver certification course and exam, be registered in the medical marijuana registry and acquire a medical marijuana registry identification card from DOH. The bill requires a caregiver to possess the card when in possession of marijuana or delivery device and present the card to law enforcement upon request.

The bill prohibits caregivers from receiving compensation for assisting a qualified patient except for payment of fees associated with the certification course and exam.

The bill prohibits a caregiver from assisting more than one patient unless:

- The caregiver is a parent of more than one minor child who is a qualified patient or more than one adult child
- All qualified patients are receiving hospice services or are residents in the same nursing home and the caregiver is an employee of the hospice or nursing home and the caregiver provides personal care or services directly to clients of the hospice or nursing home as part of his or her employment duties.

The bill exempts caregivers from criminal prosecution under Ch. 893, F.S.[148] for assisting qualified patients in accordance with the requirements of the bill. The bill makes it is a first degree misdemeanor for a caregiver to administer marijuana in plain view of or in a place open to the general public, on the grounds of a school, unless in accordance with a policy and procedure adopted by the district school board for medical use by a student who is a qualified patient, or in a school bus, vehicle, aircraft, or boat. The bill makes it a second degree misdemeanor for a caregiver to fail or refuse to present his or her medical marijuana use registry identification card upon the request of law enforcement. The bill makes it a criminal violation of 893.13[149] for a caregiver to cultivate marijuana or acquire, possess, or deliver marijuana from any person or entity other than a medical marijuana treatment center.

[147] See supra note 119.
[148] See supra note 119.
[149] See supra note 119.

Education and Prevention

The bill requires DOH to implement a statewide marijuana education and use prevention campaign regarding the health effects of marijuana use, particularly on minors and young adults, the legal requirements for legal use and possession of marijuana and the safe use of marijuana, including preventing access by minors and those who are not qualified patients. DOH must annually evaluate the campaign for impact and efficacy.

The bill requires DHSMV to implement a statewide marijuana impaired driving education campaign to raise awareness of and prevent marijuana impaired driving.

Implementation/Rulemaking

The bill grants DOH and the applicable boards limited emergency rulemaking authority in order for DOH to meet the rulemaking deadlines imposed by Fla Const. Art. X sec. 29. The bill allows DOH and the applicable boards to adopt emergency rules necessary to implement the bill. The bill allows DOH and the applicable boards to adopt emergency rules to replace any emergency rules that were held to be an invalid delegation of legislative authority or unconstitutional. However, the bill prohibits DOH and the applicable boards from adopting emergency rules to replace those emergency rules if they are also held to be an invalid delegation of legislative authority or unconstitutional. The bill requires DOH and the applicable boards to begin replacing the emergency rules by January 1, 2017.

The bill also exempts DOH and the applicable boards from the statement of regulatory costs requirements and the emergency rulemaking requirement that there is an immediate danger to the public health, safety, or welfare which requires emergency action. The bill also exempts the emergency rules from the 90 day effective date and allows the emergency rules to remain in effect until replaced through non-emergency rulemaking procedures by DOH and the applicable boards.

Cause of Action

The bill also establishes the Circuit Court in and for Leon County as the venue[150] for any cause of action brought under Fla. Const. art.X s.29 due to DOH's failure to meet the rulemaking deadlines imposed by Fla. Const. art. X s.29. The bill specifies that the judicial relief for such cause of action shall be an action for a declaratory judgment pursuant to ch. 86, F.S.[151] The bill also provides affirmative defenses to DOH for a cause of action brought under Fla. Const. art.X. s.29 due to DOH's failure to meet the rulemaking deadlines.

Taxation

The bill exempts marijuana for medical use by a qualified patient from sales tax.

Conforming changes

The bill makes the necessary conforming changes to the following statutes ss. 385.211, 499.0295, 893.02, and 1004.441, F.S.

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[150] "It has long been the established common law of Florida that venue in civil actions brought against the state or one of its agencies or subdivisions, absent waiver or exception, properly lies in the county where the state, agency, or subdivision, maintains its principal headquarters." *Carlile v. Game & Fresh Water Fish Com., 354 So. 2d 362, 363-364 (Fla. 1977).*

[151] "Generally, the Legislature is empowered to enact substantive law while this Court has the authority to enact procedural law... Substantive law has been defined as that part of the law which creates, defines, and regulates rights, or that part of the law which courts are established to administer. It includes those rules and principles which fix and declare the primary rights of individuals with respect towards their persons and property. On the other hand, practice and procedure 'encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. 'Practice and procedure' may be described as the machinery of the judicial process as opposed to the product thereof." It is the method of conducting litigation involving rights and corresponding defenses." *Massey v. David, 979 So. 2d 931, 936-937 (Fla. 2008).*

B. SECTION DIRECTORY:

Section 1: Amends s.212.08, F.S., relating to sales tax exemptions.
Section 2: Amends s.381.986, F.S., relating to the medical use of marijuana.
Section 3: Amends s.458.331, F.S., relating to grounds for disciplinary action.
Section 4: Amends s.459.015, F.S., relating to grounds for disciplinary action.
Section 5: Creates s.381.988, F.S., relating to marijuana testing laboratories.
Section 6: Creates s.381.989, F.S., relating to public education campaigns.
Section 7: Amends s.385.211, F.S., relating to refractory and intractable epilepsy treatment and research at recognized medical centers.
Section 8: Amends s.499.0295, F.S., relating to experimental treatment for terminal conditions.
Section 9: Amends s.893.02, F.S., relating to the definition of cannabis.
Section 10: Amends s.1004.441, F.S. relating to refractory and intractable epilepsy treatment and research.
Section 11: Amends s.1006.062, F.S. relating to the administration of medication and provision of medical services by district school board personnel.
Section 12: Creates an unnumbered section relating to rulemaking authority and a cause of action.
Section 13: Creates an unnumbered section relating to appropriation of funds.
Section 14: Provides the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill requires DOH to set fees for licensure and licensure renewal of MMTCs and certification of marijuana testing laboratories. The bill also requires DOH to set fees for issuing and renewing qualified patient and caregiver identification cards. DOH may also generate revenue from any fines assessed against MMTCs in violation of the bill, which would also positively affect revenues.

Revenues received are highly dependent on the number of patients in the registry. At full market adoption, the Revenue Estimating Conference estimates 105,305 patients to be in the registry.[152]

The following provides a potential scenario of what revenues may be for Fiscal Year 2017-2018. For estimating purposes, current fees[153] charged by the DOH for identification cards and MMTC licenses is utilized, it is estimated 33% of patients will need a caregiver, and an estimated application fee for laboratories is used.

Estimated Revenues for Fiscal Year 17-18

Source	Fee	Number	Revenue
Patient ID card	$75	22,500	$1,687,500
Caregiver ID card	$75	7,425	$556,875
MMTC license	$60,063	7	$420,441
Laboratory application	$1,000	2	$2,000
			$2,666,816

The bill exempts marijuana for medical use by qualified patients from sales tax. On March 24, 2017, the revenue estimating conference met to estimate the impact of the sales tax exemption in the bill. The conference agreed that the bill will result in a revenue loss to General Revenue of -$2.3 million

[152] The Florida Office of Economic and Demographic Research. Revenue Estimating Conference. Pages 395-399. Available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0324.pdf.
[153] Rule 64-4.002 and 64-4.011, F.A.C.

in FY 2017-18, but is expected to grow to a recurring annual impact of -$21.5 million in five years.[154]

2. Expenditures:

DOH will incur costs associated with licensing additional MMTCs, certification of marijuana testing laboratories, registering and issuing identification cards to qualified patients and caregivers, responding to program inquiries, conducting field inspections of MMTC facilities, and maintaining the physician certifications review panel.

DOH estimates at full implementation 55 FTEs and $8,793,440 in spending authority will be required to fully implement the program:

Estimated Implementation Staffing Needs

Program	FTE	Functions
Administration	10	Promulgating rules, processing MMTC applications/renewals, monitoring MMTC operational requirements
Card Program	1	Contract manager to serve as point of contact for patient and caregiver card applications/renewals, which will likely be contracted with a third party
Customer Service	3	Answer emails and calls from patients, caregivers, physicians, MMTC employees, and law enforcement about the program
Field	31	Field staff to conduct required inspection of MMTC facilities
Medical Quality Assurance	10	Staff to review, track, and report physician certifications submitted to the registry on qualifying medical condition, dosage, supply amount, and form of marijuana certified
	55	

It is estimated full market adoption may not be realized during the first year of implementation, therefore 27 FTE and associated spending authority should be held in reserve pending a justified need and revenue to support. The bill authorizes DOH to set fees to cover the costs of administering these programs; however, DOH will need startup dollars until sufficient fees are received.

Currently, the bill appropriates $1,008,463 in nonrecurring funds from the General Revenue Fund to DOH to implement the requirements of the bill. The bill also appropriates $2,050,000 in nonrecurring funds from the General Revenue Fund to DOH for contracted consultant services, information technology improvements for the marijuana use registry and litigation costs for the purpose of implementing the requirements of the act.

DOH will incur expenditures associated with the implementation of the statewide marijuana education and use prevention campaign. The bill appropriates $1,000,000 in recurring and $2,000,000 in nonrecurring funds from the General Revenue Fund to the DOH to implement the statewide marijuana education and use prevention campaign.

[154] Id. at 152.

DHSMV will incur expenditures associated with the implementation of the statewide marijuana impaired driving education campaign. The bill appropriates $1,000,000 in recurring and $1,000,000 in nonrecurring funds from the General Revenue Fund to DHSMV to implement the impaired driving education campaign.

DHSMV will likely incur expenses associated with training law enforcement officers to recognize marijuana impaired driving. The bill appropriates $100,000 in recurring funds from the Highway Safety Operating Trust Fund to DHSMV for the purpose of training additional law enforcement officers as drug recognition experts.

The University of Florida College of Pharmacy will incur costs associated with research on the safety and efficacy of marijuana on patients based on the submission of the treatment plans. The bill appropriates $1,000,000 in nonrecurring funds from the General Revenue Fund to the University of Florida College of Pharmacy to meet the research requirements.

DOH will have to alter the medical marijuana use registry to accommodate the additional information required by the bill and registration of caregivers. DOH may incur costs associated with any such system change. DOH may also incur costs associated with rulemaking and any potential challenges to those rules.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill exempts marijuana for medical use by qualified patients from sales tax, thereby eliminating local governments' ability to impose a local sales tax. On March 24, 2017, the revenue estimating conference met to estimate the impact of the sales tax exemption in the bill. The conference agreed that the bill will result in a revenue loss of local government revenues of -$0.5 million in FY 2017-18, but is expected to grow to a recurring annual impact of -$5.5 million in five years.[155]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

MMTCs will likely incur costs associated with licensure and meeting the regulatory standards required by the bill. Marijuana testing laboratories may incur additional costs to become certified by DOH.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

[155] Id.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOH or the applicable board to adopt rules to implement the requirements set forth in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to medical use of marijuana; amending s. 212.08, F.S.; providing an exemption from the state tax on sales, use, and other transactions for marijuana used for medical purposes; amending s. 381.986, F.S.; providing, revising, and deleting definitions; providing qualifying medical conditions for a patient to be eligible to receive marijuana or a marijuana delivery device; providing requirements for designating a qualified physician; providing criteria for certification of a patient for medical marijuana treatment by a qualified physician; providing for certain patients registered with the compassionate use registry to be deemed qualified; requiring the Department of Health to monitor physician registration and certifications in the medical marijuana use registry; requiring the Board of Medicine and the Board of Osteopathic Medicine to create a physician certification pattern review panel; providing rulemaking authority to the department and the boards; requiring the department to establish a medical marijuana use registry; specifying entities and persons who have access to the registry; providing requirements for registration of, and maintenance of registered status by, qualified patients and

caregivers; authorizing the department to revoke the registration of a patient or caregiver under certain circumstances; providing requirements for the issuance of medical marijuana use registry identification cards; requiring the department to issue licenses to a certain number of medical marijuana treatment centers; providing for license renewal and revocation; providing for continuance of certain entities authorized to dispense low-THC cannabis, medical cannabis, and cannabis delivery devices; requiring background screening of owners, officers, board members, and managers of medical marijuana treatment centers; requiring the department to establish, maintain, and control a computer seed-to-sale marijuana tracking system; requiring the department to establish protocols and procedures for operation, conduct periodic inspections, and restrict location of medical marijuana treatment centers; providing a limit on county and municipal permit fees; providing penalties; authorizing the department to impose sanctions on persons or entities engaging in unlicensed activities; providing that a person is not exempt from prosecution for certain offenses and is not relieved from certain requirements of law under certain circumstances; providing for certain school

personnel to possess marijuana pursuant to certain established policies and procedures; amending ss. 458.331 and 459.015, F.S.; providing additional acts by a physician or an osteopathic physician which constitute grounds for denial of a license or disciplinary action to which penalties apply; creating s. 381.988, F.S.; providing for the establishment of medical marijuana testing laboratories; requiring the Department of Health, in collaboration with the Department of Agriculture and Consumer Services and the Department of Environmental Protection, to develop certification standards and rules; creating s. 381.989, F.S.; directing the department to institute public education campaigns relating to cannabis and marijuana and impaired driving; authorizing the department to contract with vendors to implement and evaluate the campaigns; amending ss. 385.211, 499.0295, and 893.02, F.S.; conforming provisions to changes made by the act; amending s. 1004.441, F.S.; revising a definition; amending s. 1006.062, F.S.; requiring district school boards to adopt policies and procedures for access to medical marijuana by qualified patients who are students; providing emergency rulemaking authority; providing for venue for a cause of action against the department;

providing for defense against certain causes of action; providing appropriations; providing an effective date.

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

Section 1. Paragraph (l) of subsection (2) of section 212.08, Florida Statutes, is redesignated as paragraph (m), and a new paragraph (l) is added to that subsection, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(2) EXEMPTIONS; MEDICAL.—

(l) Marijuana, as defined in s. 381.986, is exempt from the taxes imposed under this chapter.

Section 2. Section 381.986, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 381.986, F.S., for present text.)

381.986 Medical use of marijuana.—

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

(a) "Caregiver" means a permanent resident of this state

who has agreed to assist with a qualified patient's medical use of marijuana, has a caregiver identification card, and meets the requirements of subsection (6).

(b) "Low-THC cannabis" means a plant of the genus Cannabis, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed only from a medical marijuana treatment center.

(c) "Marijuana" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis which are dispensed only from a medical marijuana treatment center for medical use by a qualified patient.

(d) "Marijuana delivery device" means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing marijuana into the human body.

(e) "Marijuana testing laboratory" means a facility that collects and analyzes marijuana samples from a medical marijuana treatment center and has been certified by the department

pursuant to s. 381.988.

(f) "Medical director" means a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or osteopathic physician under chapter 459 and is in compliance with the requirements of paragraph (3)(a).

(g) "Medical use" means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:

1. Possession, use, or administration of marijuana that was not purchased or acquired from a medical marijuana treatment center.

2. Possession, use, or administration of marijuana in a form for smoking or vaping or in the form of commercially produced food items made with marijuana or marijuana oils, except for vapable forms possessed, used, or administered by or for a qualified patient diagnosed with a terminal condition.

3. Use or administration of any form or amount of marijuana in a manner that is inconsistent with the qualified physician's directions or physician certification.

4. Transfer of marijuana to a person other than the qualified patient for whom it was authorized or the qualified patient's caregiver on behalf of the qualified patient.

5. Use or administration of marijuana in the following locations:

a. On any form of public transportation.

b. In any public place.

c. In a qualified patient's place of employment, except when permitted by his or her employer.

d. In a state correctional institution, as defined in s. 944.02, or a correctional institution, as defined in s. 944.241.

e. On the grounds of a preschool, primary school, or secondary school, except as provided in s. 1006.062.

f. In a school bus, a vehicle, an aircraft, or a motorboat.

(h) "Physician certification" means a qualified physician's authorization for a qualified patient to receive marijuana and a marijuana delivery device from a medical marijuana treatment center.

(i) "Qualified patient" means a resident of this state who has been added to the medical marijuana use registry by a qualified physician to receive marijuana or a marijuana delivery device for a medical use and who has a qualified patient identification card.

(j) "Qualified physician" means a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements of subsection (3).

(k) "Smoking" means burning or igniting a substance and inhaling the smoke.

(l) "Terminal condition" means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.

(2) QUALIFYING MEDICAL CONDITIONS.—A patient must be diagnosed with at least one of the following conditions to qualify to receive marijuana or a marijuana delivery device:

(a) Cancer.

(b) Epilepsy.

(c) Glaucoma.

(d) Positive status for human immunodeficiency virus.

(e) Acquired immune deficiency syndrome.

(f) Post-traumatic stress disorder.

(g) Amyotrophic lateral sclerosis.

(h) Crohn's disease.

(i) Parkinson's disease.

(j) Multiple sclerosis.

(k) Medical conditions of the same kind or class as or comparable to those enumerated in paragraphs (a)-(j).

(l) A terminal condition diagnosed by a physician other than the qualified physician issuing the physician certification.

(3) QUALIFIED PHYSICIANS.-To be approved as a qualified

physician, as defined in paragraph (1)(j), a physician must:

(a) Successfully complete a 2-hour course and subsequent examination approved by the applicable board which encompass the requirements of this section and any rules adopted hereunder. The course and examination shall be administered at least annually and may be offered in a distance learning format, including an electronic, online format that is available upon request. A physician who has met the physician education requirements of former s. 381.986(4), Florida Statutes 2016, before the effective date of this section, shall be deemed to be in compliance with this paragraph from the effective date of this act until 90 days after the course and examination required by this paragraph become available.

(b) Not be employed by, or have any direct or indirect economic interest in, a medical marijuana treatment center or marijuana testing laboratory.

(4) PHYSICIAN CERTIFICATION.—

(a) A qualified physician may issue a physician certification only if the qualified physician:

1. Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.

2. Diagnosed the patient with at least one qualifying medical condition, and, if the diagnosis is pursuant to paragraph (2)(k), submits to the applicable board:

a. Documentation supporting the qualified physician's opinion that the medical condition is of the same kind or class as the conditions in paragraphs (2)(a)-(j).

b. Documentation that establishes the efficacy of marijuana as treatment for the condition.

c. Documentation supporting the qualified physician's opinion that medical use of marijuana would likely outweigh the potential health risks for the patient.

d. Any other documentation requested by the board.

3. Treated the patient for at least 3 months immediately preceding the patient's registration in the medical marijuana use registry, except for a patient who has been diagnosed with a terminal condition.

4. Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such determination must be documented in the patient's medical record.

5. Reviewed the medical marijuana use registry and confirmed that the patient does not have an active physician certification from another qualified physician.

6. Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the department, and:

a. Enters into the registry the contents of the physician certification, including the patient's qualifying condition and the dosage, amount, and form of marijuana authorized for the patient and any marijuana delivery device needed by the patient for the medical use of marijuana.

b. Updates the registry within 7 days after any change is made to the original physician certification to reflect such change.

c. Deactivates the registration of the qualified patient and the patient's caregiver when treatment is discontinued.

7. Maintains an individualized patient treatment plan that includes the qualified patient's qualifying condition and the dose, route of administration, planned duration, treatment objectives, plan for assessing and monitoring the qualified patient's risk of aberrant drug-related behavior, and plan for monitoring the qualified patient's symptoms and other indicators of tolerance or reaction to the marijuana.

8. Submits the patient treatment plan quarterly to the University of Florida College of Pharmacy for research on the safety and efficacy of marijuana.

9. Obtains the voluntary and informed written consent of the patient to treatment with marijuana each time the qualified physician issues a physician certification for the patient, which shall be maintained in the patient's medical record. The patient, or the patient's parent or legal guardian if the

patient is a minor, must sign the informed consent acknowledging that the qualified physician has sufficiently explained its content. The qualified physician must use a standardized informed consent form adopted in rule by the Board of Medicine and the Board of Osteopathic Medicine, which must include, at a minimum, information related to:

a. The Federal Government's classification of marijuana as a Schedule I controlled substance.

b. The approval and oversight status of marijuana by the Food and Drug Administration.

c. The current state of research on the efficacy of marijuana to treat the qualifying conditions set forth in this section.

d. The potential for addiction.

e. The potential effect that marijuana may have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.

f. The potential side effects of marijuana use.

g. The risks, benefits, and drug interactions of marijuana.

(b) A qualified physician may not issue a physician certification for more than a 90-day supply of marijuana. The department shall quantify by rule a daily dose amount with

equivalent dose amounts for each allowable form of marijuana dispensed by a medical marijuana treatment center. The department shall use the daily dose amount to calculate the 90-day supply.

1. A qualified physician may request an exception to the 90-day supply limit. The request shall be made electronically on a form adopted by the department in rule and must include, at a minimum:

a. The qualified patient's qualifying medical condition.

b. The dosage and route of administration that was insufficient to provide relief to the qualified patient.

c. A description of how the patient will benefit from an increased supply.

d. The minimum supply of marijuana that would be sufficient for the treatment of the qualified patient's qualifying medical condition.

2. A qualified physician must provide the qualified patient's records upon the request of the department.

3. The department shall approve or disapprove the request within 30 days after receipt of the complete documentation required by this paragraph. The request shall be deemed approved if the department fails to act within this time period.

(c) A qualified physician must evaluate an existing patient at least once every 90 days to determine if the patient still meets the requirements of paragraph (a).

(d) An active order for low-THC cannabis or medical cannabis issued pursuant to former s. 381.986, Florida Statutes 2016, and registered with the compassionate use registry before the effective date of this section, is deemed a physician certification, and all patients possessing such orders are deemed qualified patients until the department begins issuing medical marijuana use registry identification cards.

(e) The department shall monitor physician registration in the medical marijuana use registry and the issuance of physician certifications for practices that could facilitate unlawful diversion or misuse of marijuana or a marijuana delivery device and shall take disciplinary action as appropriate.

(f) The Board of Medicine and the Board of Osteopathic Medicine shall jointly create a physician certification pattern review panel that shall review all physician certifications submitted to the medical marijuana use registry. The panel shall track and report the number of physician certifications and the qualifying medical conditions, dosage, supply amount, and form of marijuana certified. The panel shall report the data both by individual qualified physician and in the aggregate, by county, and statewide. The physician certification pattern review panel shall, beginning January 1, 2018, submit an annual report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(g) The department, the Board of Medicine, and the Board

of Osteopathic Medicine may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(5) MEDICAL MARIJUANA USE REGISTRY.—

(a) The department shall create and maintain a secure, electronic, and online medical marijuana use registry for physicians, patients, and caregivers as provided under this section. The medical marijuana use registry must be accessible to law enforcement agencies, qualified physicians, and medical marijuana treatment centers to verify the authorization of a qualified patient or a caregiver to possess marijuana or a marijuana delivery device and record the marijuana or marijuana delivery device dispensed. The medical marijuana use registry must prevent an active registration of a qualified patient by multiple physicians.

(b) The department shall determine whether an individual is a permanent resident of this state for the purpose of registration of qualified patients and caregivers in the medical marijuana use registry. To prove permanent residency:

1. An adult must provide the department with a copy of his or her valid Florida driver license issued under s. 322.18 or a valid Florida identification card issued under s. 322.051 and a copy of one of the following documents:

a. Proof of voter registration in this state.

b. A utility bill in the individual's name including a Florida address which matches the address on the individual's

Florida driver license or Florida identification card.

c. The address as listed on federal income tax returns filed by the individual seeking to prove residency which matches the address on the individual's Florida driver license or Florida identification card.

2. A minor must provide the department with a certified copy of a birth certificate or a current record of registration from a Florida K-12 school and must have a parent or legal guardian who meets the requirements of subparagraph (6)(b)1.

(c) The department may suspend the registration of a qualified patient or caregiver if the qualified patient or caregiver:

1. Provides misleading, incorrect, false, or fraudulent information to the department;

2. Obtains a supply of marijuana in an amount greater than the amount authorized by the physician certification;

3. Falsifies, alters, or otherwise modifies an identification card;

4. Fails to timely notify the department of any changes to his or her qualified patient status; or

5. Violates the requirements of this section or any rule adopted under this section.

(d) The department shall immediately suspend the registration of a qualified patient charged with a violation of chapter 893 until final disposition of any alleged offense.

Thereafter, the department may extend the suspension, revoke the registration, or reinstate the registration.

(e) The department shall immediately suspend the registration of any caregiver charged with a violation of chapter 893 until final disposition of any alleged offense. The department shall revoke a caregiver registration if the caregiver does not meet the requirements of subparagraph (6)(b)6.

(f) The department may revoke the registration of a qualified patient or caregiver who cultivates marijuana or who acquires, possesses, or delivers marijuana from any person or entity other than a medical marijuana treatment center.

(g) The department shall revoke the registration of a qualified patient, and the patient's associated caregiver, upon notification that the patient no longer meets the criteria of a qualified patient.

(h) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(6) CAREGIVERS.—

(a) The department must register an individual as a caregiver on the medical marijuana use registry and issue a caregiver identification card if an individual designated by a qualified patient meets all of the requirements of this subsection and department rule.

(b) A qualified patient may designate one caregiver to

assist with the qualified patient's medical use of marijuana. A caregiver must:

1. Not be a qualified physician and not be employed by or have an economic interest in a medical marijuana treatment center or a marijuana testing laboratory.

2. Be 21 years of age or older and a permanent resident of this state.

3. Agree in writing to assist with the qualified patient's medical use of marijuana.

4. Be registered in the medical marijuana use registry as a caregiver for no more than one qualified patient, except as provided in this paragraph.

5. Successfully complete a caregiver certification course and subsequent examination developed and administered by the department or its designee, which must be renewed biennially.

6. Successfully pass a level 2 background screening as provided under chapter 435, which, in addition to the disqualifying offenses provided in s. 435.04, shall exclude an individual who has an arrest awaiting final disposition for, has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to an offense under chapter 837, chapter 895, or chapter 896 or similar law of another jurisdiction.

(c) A caregiver may be registered in the medical marijuana use registry as a designated caregiver for no more than one

qualified patient, unless:

1. The caregiver is a parent or legal guardian of more than one minor child who is a qualified patient;

2. The caregiver is a parent or legal guardian of more than one adult child who is a qualified patient and who has an intellectual or developmental disability that prevents the adult child from being able to protect or care for himself or herself without assistance or supervision; or

3. All qualified patients the caregiver has agreed to assist are admitted to a hospice program or are residents of the same nursing facility and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice or nursing facility; and the caregiver provides personal care or other services directly to clients of the hospice or nursing facility in the scope of that employment.

(d) A caregiver may not receive compensation for any services provided to the qualified patient but may recover caregiver certification fees.

(e) A caregiver must be in immediate possession of his or her medical marijuana use registry identification card at all times when in possession of marijuana or a marijuana delivery device and must present his or her medical marijuana use registry identification card upon the request of a law enforcement officer.

(f) The department may adopt rules pursuant to ss.

120.536(1) and 120.54 to implement this subsection.

(7) IDENTIFICATION CARDS.-

(a) The department shall issue medical marijuana use registry identification cards for qualified patients and caregivers who are permanent residents of this state, which must be renewed annually. The identification cards must be resistant to counterfeiting and tampering and must include, at a minimum, the following:

1. The name, address, and date of birth of the qualified patient or caregiver.

2. A full-face, passport-type, color photograph of the qualified patient or caregiver taken within the 90 days immediately preceding registration.

3. Identification as a qualified patient or a caregiver.

4. The unique numeric identifier used for the qualified patient in the medical marijuana use registry.

5. For a caregiver, the name and unique numeric identifier of the qualified patient or patients that the caregiver is assisting.

6. The expiration date of the identification card.

(b) The department must receive written consent from a qualified patient's parent or legal guardian before it may issue an identification card to a qualified patient who is a minor.

(c) The department shall, by July 3, 2017, adopt rules pursuant to ss. 120.536(1) and 120.54 establishing procedures

for the issuance, renewal, suspension, replacement, surrender, and revocation of medical marijuana use registry identification cards and shall begin issuing qualified patient identification cards by October 3, 2017.

(d) Applications for identification cards must be submitted on a form prescribed by the department. The department may charge a reasonable fee associated with the issuance, replacement, and renewal of identification cards. The department may contract with a third party to issue identification cards.

(e) A qualified patient or caregiver must return his or her identification card to the department within 5 business days after revocation.

(8) MEDICAL MARIJUANA TREATMENT CENTERS.—

(a) The department shall license medical marijuana treatment centers to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification under this section.

1. The department shall license as a medical marijuana treatment center any entity that holds an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices, under former s. 381.986 Florida Statutes 2016, before July 1, 2017, and which meets the requirements of this section. In addition to the authority granted under this section, these entities are

authorized to dispense low-THC cannabis, medical cannabis, and cannabis delivery devices ordered pursuant to former s. 381.986, Florida Statutes 2016, which were entered into the compassionate use registry before July 1, 2017. The department may grant variances from the representations made in such an entity's original application for approval under former s. 381.986, Florida Statutes 2014, pursuant to paragraph (e).

2. The department shall also license as a medical marijuana treatment center any applicant that was denied a dispensing organization license by the department under former s. 381.986, Florida Statutes 2014, if the applicant is awarded a license pursuant to an administrative or legal challenge filed prior to January 1, 2017, and meets the requirements of this section.

3. Upon the registration of 150,000 active qualified patients in the medical marijuana use registry, the department shall also license as a medical marijuana treatment center one applicant per region which was a dispensing organization applicant under former s. 381.986, Florida Statutes 2014; was the next-highest scoring applicant after the applicant or applicants that were awarded a license for that region; and meets the requirements of this section.

4. Upon the registration of 150,000 active qualified patients in the medical marijuana use registry, the department shall also license as a medical marijuana treatment center one

applicant that is a recognized class member of Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999), or In Re Black Farmers Litig., 856 F. Supp. 2d 1 (D.D.C. 2011); is a member of the Black Farmers and Agriculturalists Association; and meets the requirements of this section.

5. Upon the registration of 200,000 active qualified patients in the medical marijuana use registry, the department shall license five additional medical marijuana treatment centers that meet the requirements of this section. Thereafter, the department shall license three medical marijuana treatment centers upon the registration of each additional 100,000 active qualified patients in the medical marijuana use registry who meet the requirements of this section.

(b) An applicant for licensure as a medical marijuana treatment center shall apply to the department on a form prescribed by the department and adopted in rule. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 establishing a procedure for the issuance and biennial renewal of licenses, including initial application and biennial renewal fees sufficient to cover the costs of administering this licensure program. The department shall issue a license to an applicant if the applicant meets the requirements of this section and pays the initial application fee. The department shall renew the licensure of a medical marijuana treatment center biennially if the licensee meets the requirements of this

section and pays the biennial renewal fee. An applicant for licensure as a medical marijuana treatment center must demonstrate:

1. The technical and technological ability to cultivate and produce marijuana, including, but not limited to, low-THC cannabis. The applicant must possess a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131 which is issued for the cultivation of more than 400,000 plants, be operated by a nurseryman as defined in s. 581.011, and have operated as a registered nursery in this state for at least 5 continuous years.

2. The ability to secure the premises, resources, and personnel necessary to operate as a medical marijuana treatment center.

3. The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.

4. An infrastructure reasonably located to dispense marijuana to registered qualified patients statewide or regionally as determined by the department.

5. The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financial statements to the department. Upon

approval, the applicant must post a $5 million performance bond. However, a medical marijuana treatment center serving at least 1,000 qualified patients is only required to maintain a $2 million performance bond.

6. That all owners, officers, board members, and managers have successfully passed a level 2 background screening as provided under chapter 435, which, in addition to the disqualifying offenses provided in s. 435.04, shall exclude an individual that has an arrest awaiting final disposition for, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to an offense under chapter 837, chapter 895, or chapter 896 or similar law of another jurisdiction.

7. The employment of a medical director to supervise the activities of the medical marijuana treatment center.

(c) A medical marijuana treatment center may make a wholesale purchase of marijuana from, or a distribution of marijuana to, another medical marijuana treatment center.

(d) The department shall establish, maintain, and control a computer software tracking system that traces marijuana from seed to sale and allows real-time, 24-hour access by the department to data from all medical marijuana treatment centers and marijuana testing laboratories. The tracking system must, at a minimum, include notification of when marijuana seeds are planted, when marijuana plants are harvested and destroyed, and

when marijuana is transported, sold, stolen, diverted, or lost. Each medical marijuana treatment center shall use the seed-to-sale tracking system selected by the department.

(e) A licensed medical marijuana treatment center must, at all times, maintain compliance with the criteria demonstrated and representations made in the initial application and the criteria established in this subsection. Upon request, the department may grant a medical marijuana treatment center a variance from the representations made in the initial application. Consideration of such a request shall be based upon the individual facts and circumstances surrounding the request. A variance may not be granted unless the requesting medical marijuana treatment center can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the department can reasonably determine will not be a lower standard than the specific representation in the application.

1. A medical marijuana treatment center, and any individual or entity who directly or indirectly owns, controls, or holds with power to vote 25 percent or more of the voting shares of a medical marijuana treatment center, may not acquire direct or indirect ownership or control of more than 5 percent of the voting shares or other form of ownership of any other medical marijuana treatment center.

2. All employees of a medical marijuana treatment center must be 21 years of age or older and have successfully passed a level 2 background screening as provided under chapter 435, which, in addition to the disqualifying offenses provided in s. 435.04, shall exclude an individual who has an arrest awaiting final disposition for, has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to an offense under chapter 837, chapter 895, or chapter 896 or similar law of another jurisdiction.

3. Each medical marijuana treatment center must adopt and enforce policies and procedures to ensure employees and volunteers receive training on the legal requirements to dispense marijuana to qualified patients.

4. When growing marijuana, a medical marijuana treatment center:

a. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.

b. Must grow marijuana within an enclosed structure and in a room separate from any other plant.

c. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state, notify the Department of Agriculture and

Consumer Services within 10 calendar days after a determination that a plant is infested or infected by such plant pest, and implement and maintain phytosanitary policies and procedures.

d. Must perform fumigation or treatment of plants, or remove and destroy infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.

5. Each medical marijuana treatment center must produce and make available for purchase at least one low-THC cannabis product, which must be available in all forms that a medical marijuana treatment center produces for other products.

6. When processing marijuana, a medical marijuana treatment center must:

a. Process the marijuana within an enclosed structure and in a room separate from other plants or products.

b. Not use a hydrocarbon based solvent, such as butane, hexane, or propane, to extract or separate resin from marijuana.

c. Test the processed marijuana using a medical marijuana testing laboratory before it is dispensed. Results must be verified and signed by two medical marijuana treatment center employees. Before dispensing, the medical marijuana treatment center must determine that the test results indicate that low-THC cannabis meets the definition of low-THC cannabis and that all marijuana is safe for human consumption and free from contaminants that are unsafe for human consumption. The Department of Health shall determine by rule which contaminants

must be tested for and the maximum levels of each contaminant which are safe for human consumption. The medical marijuana treatment center must retain records of all testing and samples of each homogenous batch of marijuana for at least 9 months. The medical marijuana treatment center must contract with a marijuana testing laboratory to perform audits on the medical marijuana treatment center's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the marijuana or low-THC cannabis meets the requirements of this section and that the marijuana or low-THC cannabis is safe for human consumption. A medical marijuana treatment center shall reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose such audits. A medical marijuana treatment center may use a laboratory that has not been certified by the department under s. 381.988 until such time as at least one laboratory holds the required certification, but in no event later than July 1, 2018.

d. Package the marijuana in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

e. Package the marijuana in a receptacle that has a firmly affixed and legible label stating the following information:

(I) The marijuana or low-THC cannabis meets the requirements of sub-subparagraph c.

(II) The name of the medical marijuana treatment center from which the marijuana originates.

(III) The batch number and harvest number from which the marijuana originates and the date dispensed.

(IV) The name of the physician who issued the physician certification.

(V) The name of the patient;

(VI) The product name, if applicable, and dosage form, including concentration of THC and CBD.

(VII) The recommended dose.

(VIII) A warning that it is illegal to transfer medical marijuana to another person.

(IX) A marijuana universal symbol developed by the department.

7. The medical marijuana treatment center shall include in each package a patient package insert with information on the specific product dispensed related to:

a. Clinical pharmacology.

b. Indications and use.

c. Dosage and administration.

d. Dosage forms and strengths.

e. Contraindications.

f. Warnings and precautions.

g. Adverse reactions.

8. When dispensing marijuana or a marijuana delivery

device, a medical marijuana treatment center:

a. May dispense any active, valid order for low-THC cannabis, medical cannabis and cannabis delivery devices issued pursuant to former s. 381.986 Florida Statutes 2016, which was been entered into the medical marijuana use registry before July 1, 2017.

b. May not dispense more than a 90-day supply of marijuana to a qualified patient or caregiver.

c. Must have the medical marijuana treatment center's employee who dispenses the marijuana or a marijuana delivery device enter into the medical marijuana use registry his or her name or unique employee identifier.

d. Must verify that the qualified patient and the caregiver, if applicable, both have an active and valid compassionate use registry identification card and that the amount and type of marijuana dispensed matches the physician's certification in the medical marijuana use registry for that qualified patient.

e. May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a marijuana delivery device required for the medical use of marijuana and which is specified in a physician certification.

f. Must verify that the qualified patient has an active registration in the medical marijuana use registry, the

qualified patient or caregiver holds a valid and active medical marijuana use registry identification card, the physician certification presented matches the physician certification contents as recorded in the registry, and the physician certification has not already been filled.

g. Must, upon dispensing the marijuana or marijuana delivery device, record in the registry the date, time, quantity, and form of marijuana dispensed; the type of marijuana delivery device dispensed; and the name and medical marijuana use registry identification number of the qualified patient or caregiver to whom the marijuana delivery device was dispensed.

(f) To ensure the safety and security of its premises and any off-site storage facilities, and to maintain adequate controls against the diversion, theft, and loss of marijuana or marijuana delivery devices, a medical marijuana treatment center shall:

1.a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; or

b. Maintain a video surveillance system that records continuously 24 hours a day and meets the following criteria:

(I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing

rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms.

(II) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points.

(III) Recorded images must clearly and accurately display the time and date.

(IV) Retain video surveillance recordings for at least 45 days or longer upon the request of a law enforcement agency.

2. Ensure that the medical marijuana treatment center's outdoor premises have sufficient lighting from dusk until dawn.

3. Not dispense from its premises marijuana or a marijuana delivery device between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver marijuana to qualified patients 24 hours a day.

4. Store marijuana in a secured, locked room or a vault.

5. Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times.

6. Require each employee to wear a photo identification badge at all times while on the premises.

7. Require each visitor to wear a visitor pass at all times while on the premises.

8. Implement an alcohol and drug-free workplace policy.

9. Report to local law enforcement within 24 hours after

the treatment center is notified or becomes aware of the theft, diversion, or loss of marijuana.

(g) If a medical marijuana treatment center uses a banking institution, the treatment center must maintain all accounts that are directly or indirectly associated with the business of the medical marijuana treatment center at a single bank.

(h) To ensure the safe transport of marijuana to medical marijuana treatment centers, marijuana testing laboratories, or qualified patients, a medical marijuana treatment center must:

1. Maintain a marijuana transportation manifest in any vehicle transporting marijuana. The marijuana transportation manifest must be generated from a medical marijuana treatment center's seed-to-sale tracking system and include the:

a. Departure date and approximate time of departure.

b. Name, location address, and license number of the originating medical marijuana treatment center.

c. Name and address of the recipient of the delivery.

d. Quantity and form of any marijuana or marijuana delivery device being transported.

e. Arrival date and estimated time of arrival.

f. Delivery vehicle make and model and license plate number.

g. Name and signature of the medical marijuana treatment center employees delivering the product.

(I) A copy of the marijuana transportation manifest must

be provided to each individual, medical marijuana treatment center, or marijuana testing laboratory that receives a delivery. The individual, or a representative of the center or laboratory, must sign a copy of the marijuana transportation manifest acknowledging receipt.

(II) An individual transporting marijuana must present a copy of the relevant marijuana transportation manifest and his or her employee identification card to a law enforcement officer upon request.

(III) Medical marijuana treatment centers and marijuana testing laboratories must retain copies of all marijuana transportation manifests for at least 5 years.

2. Ensure only vehicles in good working order are used to transport marijuana.

3. Lock marijuana in a separate compartment or container within the vehicle.

4. Require employees to have possession of their employee identification card at all times when transporting marijuana.

5. Require at least two persons to be in a vehicle transporting marijuana, and require at least one person to remain in the vehicle while the marijuana is being delivered.

6. Provide specific safety and security training to employees transporting or delivering marijuana.

(i) A medical marijuana treatment center may not engage in advertising that is visible to members of the public from any

street, sidewalk, park, or other public place, except:

1. The dispensing location of a medical marijuana treatment center may have a sign that is affixed to the outside or hanging in the window of the premises which identifies the dispensary by the licensee's business name or by a department-approved trade name.

2. A medical marijuana treatment center may engage in Internet advertising and marketing under the following conditions:

a. All advertisements must be approved by the department.

b. An advertisement may not have any content that specifically targets individuals under the age of 18, including cartoon characters or similar images.

c. An advertisement may not be an unsolicited pop-up advertisement.

d. Opt-in marketing must include an easy and permanent opt-out feature.

(j) Each medical marijuana treatment center that dispenses marijuana and marijuana delivery devices shall make available to the public on its website:

1. Each marijuana and low-THC product available for purchase, including the form, strain of marijuana from which it was extracted, CBD content, THC content, dose unit, total number of doses available, and the ratio of CBD to THC for each product.

2. The price for a 30-day supply at a standard dose for each marijuana and low-THC product available for purchase.

3. The price for each marijuana delivery device available for purchase.

4. If applicable, any discount policies and eligibility criteria for such discounts.

(k) Medical marijuana treatment centers are the sole source from which a qualified patient may legally obtain marijuana.

(l) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(9) MEDICAL MARIJUANA TREATMENT CENTER INSPECTIONS; ADMINISTRATIVE ACTIONS.—

(a) The department shall conduct announced or unannounced inspections of medical marijuana treatment centers to determine compliance with this section or rules adopted pursuant to this section.

(b) The department shall inspect a medical marijuana treatment center upon receiving a complaint or notice that the medical marijuana treatment center has dispensed marijuana containing mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment.

(c) The department shall conduct at least a biennial inspection of each medical marijuana treatment center to

evaluate the medical marijuana treatment center's records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.

(d) The department may enter into interagency agreements with the Department of Agriculture and Consumer Services, the Department of Business and Professional Regulation, the Department of Transportation, the Department of Highway Safety and Motor Vehicles, and the Agency for Health Care Administration, and such agencies are authorized to enter into an interagency agreement with the department to conduct inspections or perform other responsibilities assigned to the department under this section.

(e) The department shall publish a list of all approved medical marijuana treatment centers, medical directors, and qualified physicians on its website.

(f) The department may impose reasonable fines not to exceed $10,000 on a medical marijuana treatment center for any of the following violations:

1. Violating this section or department rule.

2. Failing to maintain qualifications for approval.

3. Endangering the health, safety, or security of a qualified patient.

4. Improperly disclosing personal and confidential information of the qualified patient.

5. Attempting to procure medical marijuana treatment

center approval by bribery, fraudulent misrepresentation, or extortion.

6. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the business of a medical marijuana treatment center.

7. Making or filing a report or record that the medical marijuana treatment center knows to be false.

8. Willfully failing to maintain a record required by this section or department rule.

9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.

10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of a medical marijuana treatment center.

11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of a medical marijuana treatment center.

12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of a medical marijuana treatment center suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation

under Florida law.

13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(g) The department may suspend, revoke, or refuse to renew a medical marijuana treatment center license if the treatment center commits any of the violations in paragraph (f).

(h) The department shall renew the medical marijuana treatment center license biennially if the treatment center meets the requirements of this section and pays the biennial renewal fee.

(i) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(10) PREEMPTION.—Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a) A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

(b) A municipality may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of the municipality. A

county may determine by ordinance the criteria for the number and location of, and other permitting requirements that do not conflict with state law or department rule for, all such dispensing facilities located within the unincorporated areas of that county. However, a medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location as promoting the public health, safety, and general welfare of the community under proceedings as provided in s. 125.66(4) for counties, and s. 166.041(3)(c) for municipalities. A municipality or county may not enact ordinances determining the location of dispensing facilities which are less restrictive than the county's or municipality's ordinances determining the location of entities licensed to sell alcoholic beverages.

(c) A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater that the fee charged by such municipality or county to pharmacies.

(11) PENALTIES.—

(a) A qualified physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the qualified physician orders marijuana for a patient without a reasonable belief that the patient is

suffering from a qualifying medical condition.

(b) A person who fraudulently represents that he or she has a qualifying medical condition to a qualified physician for the purpose of being issued a physician certification commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A qualified patient's marijuana, and such patient's caregiver who administers marijuana, in plain view of or in a place open to the general public, in a school bus, a vehicle, an aircraft, or a boat, or on the grounds of a school except as provided in s. 1006.062, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A qualified patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than a medical marijuana treatment center violates s. 893.13 and is subject to the penalties provided therein.

(e) A qualified patient or caregiver in possession of marijuana or a marijuana delivery device who fails or refuses to present his or her marijuana use registry identification card upon the request of a law enforcement officer commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(f) A caregiver who violates any of the applicable provisions of this section or applicable department rules, for

the first offense, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and, for a second or subsequent offense, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(g) A qualified physician who issues a physician certification for marijuana or a marijuana delivery device and receives compensation from a medical marijuana treatment center related to the issuance of a physician certification for marijuana or a marijuana delivery device is subject to disciplinary action under the applicable practice act and s. 456.072(1)(n).

(h) A person transporting marijuana or marijuana delivery devices on behalf of a medical marijuana treatment center or marijuana testing laboratory who fails or refuses to present a transportation manifest upon the request of a law enforcement officer commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(i) Persons and entities conducting activities authorized and governed by this section and s. 381.988 are subject to the provisions of ss. 456.053, 456.054, and 817.505, as applicable.

(12) UNLICENSED ACTIVITY.—

(a) If the department has probable cause to believe that a person or entity that is not registered or licensed with the department has violated this section, s. 381.988, or any rule adopted pursuant to this section, the department may issue and

deliver to such person or entity a notice to cease and desist from such violation. The department also may issue and deliver a notice to cease and desist to any person or entity who aids and abets such unlicensed activity. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person or entity who violates any provisions of such order.

(b) In addition to the remedies under paragraph (a), the department may impose by citation an administrative penalty not to exceed $5,000 per incident. The citation shall be issued to the subject and shall contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. If the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section. Each day that the unlicensed activity continues after issuance of a notice to cease and desist constitutes a separate violation. The department shall be entitled to recover the costs of investigation and prosecution

in addition to the fine levied pursuant to the citation. Service of a citation may be made by personal service or by mail to the subject at the subject's last known address or place of practice. If the department is required to seek enforcement of the cease and desist or agency order, it shall be entitled to collect attorney fees and costs.

(c) In addition to or in lieu of any other administrative remedy, the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist. The civil penalty shall be no less than $5,000 and no more than $10,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation and prosecution.

(d) The department must notify local law enforcement of such unlicensed activity for a determination of any criminal violation of chapter 893.

(13) EXCEPTIONS TO OTHER LAWS.—

(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient's caregiver may purchase from a medical marijuana treatment center for the patient's medical use a marijuana delivery device and up to the amount of marijuana authorized in the physician

certification, but may not possess more than a 90-day supply of marijuana at any given time and all marijuana purchased must remain in its original packaging.

(b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved medical marijuana treatment center and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of marijuana or a marijuana delivery device as provided in this section, s. 381.988, and by department rule. For purposes of this subsection, the terms "manufacture," "possession," "deliver," "distribute," and "dispense" have the same meanings as provided in s. 893.02.

(c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a certified marijuana testing laboratory, including an employee of a certified marijuana testing laboratory acting within the scope of his or her employment, may acquire, possess, test, transport, and lawfully dispose of marijuana as provided in this section, s. 381.988, and by department rule.

(d) A licensed medical marijuana treatment center and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or

lawfully disposing of marijuana or a marijuana delivery device, as provided in this section, s. 381.988, and by department rule.

(e) This subsection does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of marijuana or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

(f) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section and pursuant to policies and procedures established pursuant to s. 1006.62(8), school personnel may possess marijuana that is obtained for medical use pursuant to this section by a student who is a qualified patient.

(14) APPLICABILITY.—This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy.

Section 3. Paragraph (uu) is added to subsection (1) of section 458.331, Florida Statutes, to read:

458.331 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(uu) Issuing a physician certification, as defined in s. 381.986, in a manner out of compliance with the requirements of

that section and rules adopted thereunder.

Section 4. Paragraph (ww) is added to subsection (1) of section 459.015, Florida Statutes, to read:

459.015 Grounds for disciplinary action; action by the board and department.—

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):

(ww) Issuing a physician certification, as defined in s. 381.986, in a manner not in compliance with the requirements of that section and rules adopted thereunder.

Section 5. Section 381.988, Florida Statutes, is created to read:

381.988 Medical marijuana testing laboratories; marijuana tests conducted by a certified laboratory.—

(1) A person or entity seeking to be a certified marijuana testing laboratory must:

(a) Not be owned or controlled by a medical marijuana treatment center.

(b) Submit a completed application accompanied by an application fee, as established by department rule.

(c) Submit proof of accreditation issued by an accreditation body of the National Environmental Laboratory Accreditation Program.

(d) Require all owners and managers to submit to and pass a level 2 background screening pursuant to s. 435.04 and shall

deny certification if the person or entity has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in chapter 837, chapter 895, or chapter 896 or similar law of another jurisdiction.

(e) Demonstrate to the department the capability of meeting the standards for certification required by this subsection, and the testing requirements of s. 381.986 and this section and rules adopted thereunder.

(2) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 establishing a procedure for initial certification and biennial renewal, including initial application and biennial renewal fees sufficient to cover the costs of administering this certification program. The department shall renew the certification biennially if the laboratory meets the requirements of this section and pays the biennial renewal fee.

(3) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 establishing the standards for certification of marijuana testing laboratories under this section. The Department of Agriculture and Consumer Services and the Department of Environmental Protection shall assist the department in developing the rule, which must include, but is not limited to:

(a) Security standards.

(b) Minimum standards for personnel.

(c) Sample collection method and process standards.

(d) Proficiency testing.

(e) Reporting content, format, and frequency.

(f) Onsite inspections.

(g) Quality assurance.

(h) Any other standard the department deems necessary to ensure the health and safety of the public.

(4) A marijuana testing laboratory may acquire marijuana only from a medical marijuana treatment center. A marijuana testing laboratory is prohibited from selling, distributing, or transferring marijuana received from a marijuana treatment center, except that a marijuana testing laboratory may transfer a sample to another marijuana testing laboratory in this state.

(5) A marijuana testing laboratory must properly dispose of all samples it receives, unless transferred to another marijuana testing laboratory, after all necessary tests have been conducted and any required period of storage has elapsed, as established by department rule.

(6) A marijuana testing laboratory shall use the computer software tracking system selected by the department under s. 381.986.

(7) The following acts constitute grounds for which disciplinary action specified in subsection (8) may be taken against a certified marijuana testing laboratory:

(a) Permitting unauthorized persons to perform technical procedures or issue reports.

(b) Demonstrating incompetence or making consistent errors in the performance of testing or erroneous reporting.

(c) Performing a test and rendering a report thereon to a person or entity not authorized by law to receive such services.

(d) Failing to file any report required under this section or s. 381.986 or the rules adopted thereunder.

(e) Reporting a test result if the test was not performed.

(f) Failing to correct deficiencies within the time required by the department.

(g) Violating or aiding and abetting in the violation of any provision of s. 381.986 or this section or any rules adopted thereunder.

(8) The department may refuse to issue or renew, or may suspend or revoke, the certification of a marijuana testing laboratory that is found to be in violation of this section or any rules adopted hereunder. The department may impose fines for violations of this section or rules adopted thereunder, based on a schedule adopted in rule. In determining the administrative action to be imposed for a violation, the department must consider the following factors:

(a) The severity of the violation, including the probability of death or serious harm to the health or safety of any person that may result or has resulted; the severity or

potential harm; and the extent to which the provisions of s. 381.986 or this section were violated.

(b) The actions taken by the marijuana testing laboratory to correct the violation or to remedy the complaint.

(c) Any previous violation by the marijuana testing laboratory.

(d) The financial benefit to the marijuana testing laboratory of committing or continuing the violation.

(9) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section.

Section 6. Section 381.989, Florida Statutes, is created to read:

381.989 Public education campaigns.—

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

(a) "Cannabis" has the same meaning as in s. 893.02.

(b) "Department" means the Department of Health.

(c) "Marijuana" has the same meaning as in s. 381.986.

(2) STATEWIDE CANNABIS AND MARIJUANA EDUCATION AND USE PREVENTION CAMPAIGN.—

(a) The department shall implement a statewide cannabis and marijuana education and use prevention campaign to publicize accurate information regarding:

1. The short-term and long-term health effects of cannabis and marijuana use, particularly on minors and young adults.

2. The legal requirements for licit use and possession of

marijuana in this state.

3. Safe use of marijuana, including preventing access by persons other than qualified patients as defined in s. 381.986, particularly children.

4. Other cannabis-related and marijuana-related education determined by the department to be necessary to the public health and safety.

(b) The department may use television messaging, radio broadcasts, print media, digital strategies, social media, and any other form of messaging deemed necessary and appropriate by the department to implement the campaign. The department may work with school districts, community organizations and businesses and business organizations and other entities to provide training and programming.

(c) The department may contract with one or more vendors to implement the campaign.

(d) The department shall contract with an independent entity to conduct annual evaluations of the campaign. The evaluations shall assess the reach and impact of the campaign, success in educating the citizens of the state regarding the legal parameters for marijuana use, success in preventing illicit access by adults and youth, and success in preventing negative health impacts from the legalization of marijuana. The first year of the program, the evaluator shall conduct surveys to establish baseline data on youth and adult cannabis use, the

attitudes of youth and the general public toward cannabis and marijuana, and any other data deemed necessary for long-term analysis. By January 31 of each year, the department shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives the annual evaluation of the campaign.

(3) STATEWIDE IMPAIRED DRIVING EDUCATION CAMPAIGN.—The Department of Highway Safety and Motor Vehicles shall implement a statewide impaired driving education campaign to raise awareness and prevent marijuana-related and cannabis-related impaired driving and may contract with one or more vendors to implement the campaign. The Department of Highway Safety and Motor Vehicles may use television messaging, radio broadcasts, print media, digital strategies, social media, and any other form of messaging deemed necessary and appropriate by the department to implement the campaign.

Section 7. Subsection (1) of section 385.211, Florida Statutes, is amended to read:

385.211 Refractory and intractable epilepsy treatment and research at recognized medical centers.—

(1) As used in this section, the term "low-THC cannabis" means "low-THC cannabis" as defined in s. 381.986 that is dispensed only from a dispensing organization as defined in former s. 381.986, Florida Statutes 2016, or a medical marijuana treatment center as defined in s. 381.986.

Section 8. Paragraphs (b) through (e) of subsection (2) of section 499.0295, Florida Statutes, are redesignated as paragraphs (a) through (d), respectively, and present paragraphs (a) and (c) of that subsection, and subsection (3) of that section are amended to read:

499.0295 Experimental treatments for terminal conditions.—

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

~~(a) "Dispensing organization" means an organization approved by the Department of Health under s. 381.986(5) to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices.~~

(b) ~~(c)~~ "Investigational drug, biological product, or device" means~~:~~

~~1.~~ a drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration~~; or~~

~~2. Medical cannabis that is manufactured and sold by a dispensing organization~~.

(3) Upon the request of an eligible patient, a manufacturer may~~, or upon a physician's order pursuant to s. 381.986, a dispensing organization may~~:

(a) Make its investigational drug, biological product, or

device available under this section.

(b) Provide an investigational drug, biological product, or device~~, or cannabis delivery device as defined in s. 381.986~~ to an eligible patient without receiving compensation.

(c) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device~~, or cannabis delivery device as defined in s. 381.986~~.

Section 9. Subsection (3) of section 893.02, Florida Statutes, is amended to read:

893.02 Definitions.—The following words and phrases as used in this chapter shall have the following meanings, unless the context otherwise requires:

(3) "Cannabis" means all parts of any plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term does not include "marijuana," ~~"low-THC cannabis,"~~ as defined in s. 381.986, if manufactured, possessed, sold, purchased, delivered, distributed, or dispensed, in conformance with s. 381.986.

Section 10. Subsection (1) of section 1004.441, Florida Statutes, is amended to read:

1004.441 Refractory and intractable epilepsy treatment and research.—

(1) As used in this section, the term "low-THC cannabis" means "low-THC cannabis" as defined in s. 381.986 that is dispensed only from a dispensing organization as defined in former s. 381.986, Florida Statutes 2016, or a medical marijuana treatment center as defined in s. 381.986.

Section 11. Subsection (8) is added to section 1006.062, Florida Statutes, to read:

1006.062 Administration of medication and provision of medical services by district school board personnel.—

(8) Each district school board shall adopt a policy and a procedure for allowing a student who is a qualified patient, as defined in s. 381.986, to use marijuana obtained pursuant to that section. Such policy and procedure shall ensure access by the qualified patient; identify how the marijuana will be received, accounted for, and stored; and establish processes to prevent access by other students and school personnel unnecessary to the implementation of the policy.

Section 12. Department of Health; authority to adopt rules; cause of action.—

(1) EMERGENCY RULEMAKING.—

(a) The Department of Health and the applicable boards shall adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, and this subsection necessary to implement ss. 381.986 and 381.988, Florida Statutes. If an emergency rule adopted under this subsection is held to be unconstitutional or an

invalid exercise of delegated legislative authority, and becomes void, the department or the applicable boards may adopt an emergency rule to replace the rule that has become void. If the emergency rule adopted to replace the void emergency rule is also held to be unconstitutional or an invalid exercise of delegated legislative authority and becomes void, the department and the applicable boards must follow the nonemergency rulemaking procedures of the Administrative Procedures Act to replace the rule that has become void.

(b) For emergency rules adopted under this section, the department and the applicable boards need not make the findings required by s. 120.54(4)(a), Florida Statutes. Emergency rules adopted under this section are exempt from ss. 120.54(3)(b) and 120.541, Florida Statutes. The department and the applicable boards shall meet the procedural requirements in s. 120.54(a), Florida Statutes, if the department or the applicable boards have, prior to the effective date of this act, held any public workshops or hearings on the subject matter of the emergency rules adopted under this subsection. Challenges to emergency rules adopted under this subsection shall be subject to the time schedules provided in s. 120.56(5), Florida Statutes.

(c) Emergency rules adopted under this section are exempt from s. 120.54(4)(c), Florida Statutes, and shall remain in effect until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedures Act. By

January 1, 2018, the department and the applicable boards shall initiate nonemergency rulemaking pursuant to the Administrative Procedures Act to replace all emergency rules adopted under this subsection by publishing a notice of rule development in the Florida Administrative Register. Except as provided in paragraph (a), after January 1, 2018, the department and applicable boards may not adopt rules pursuant to the emergency rulemaking procedures provided in this subsection.

(2) CAUSE OF ACTION.—

(a) As used in s. 29(d)(3), Art X, of the State Constitution, the term:

1. "Issue regulations" means the filing by the department of a rule or emergency rule for adoption with the Department of State.

2. "Judicial relief" means an action for declaratory judgment pursuant to chapter 86, Florida Statutes.

(b) The venue for actions brought against the department pursuant to s. 29(d)(3), Art X, of the State Constitution shall be in the circuit court in and for Leon County.

(c) If the department is not issuing patient and caregiver identification cards or licensing medical marijuana treatment centers by October 3, 2016, the following shall be a defense to a cause of action brought under s. 29(d)(3), Art X, of the State Constitution:

1. The department is unable to issue patient and caregiver

identification cards or license medical marijuana treatment centers due to litigation challenging a rule as an invalid exercise of delegated legislative authority or unconstitutional.

2. The department is unable to issue patient or caregiver identification cards or license medical marijuana treatment centers due to a rule being held as an invalid exercise of delegated legislative authority or unconstitutional.

Section 13. (1) For the 2017-2018 fiscal year, 10 full-time equivalent positions, with associated salary rate of 411,811, are authorized and the sum of $1,008,463 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Health for the purpose of implementing the requirements of the act.

(2) For the 2017-2018 fiscal year, the sum of $2,050,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Health for contracted consultant services, information technology improvements for the medical marijuana use registry, and litigation costs for the purpose of implementing the requirements of the act.

(3) For the 2017-2018 fiscal year, the sums of $1,000,000 in recurring funds and $2,000,000 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Health to implement the statewide cannabis and marijuana education and use prevention campaign established under s. 381.989, Florida Statutes.

(4) For the 2017-2018 fiscal year, the sums of $1,000,000 in recurring funds and $1,000,000 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Highway Safety and Motor Vehicles to implement the statewide impaired driving education campaign established under s. 381.989, Florida Statutes.

(5) For the 2017-2018 fiscal year, the sum of $1,000,000 in nonrecurring funds from the General Revenue Fund is appropriated to the University of Florida College of Pharmacy to implement the requirements of s. 381.986(4)(a)8., Florida Statutes.

(6) For the 2017-2018 fiscal year, the sum of $100,000 in recurring funds from the Highway Safety Operating Trust Fund is appropriated to the Department of Highway Safety and Motor Vehicles for the purpose of training additional law enforcement officers as drug recognition experts.

Section 14. This act shall take effect upon becoming a law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Rodrigues offered the following:

Amendment

Remove lines 1483-1516 and insert:

Section 13. (1) For the 2017-2018 fiscal year, 55 full-time equivalent positions, with associated salary rate of 2,198,860, are authorized and the sums of $3,500,000 in nonrecurring funds from the General Revenue Fund and $4,055,292 in recurring and $1,238,148 in nonrecurring funds from the Medical Quality Assurance Trust Fund is appropriated to the Department of Health for the purpose of implementing the requirements of this act. Of the funds provided, $3,158,572 in recurring and $1,238,148 in nonrecurring funds from the Medical Quality Assurance Trust Fund and 27 full-time equivalent positions shall be placed in reserve. The Department of Health is authorized to submit budget

amendments requesting release of funds being held in reserve pursuant to the provisions of chapter 216, Florida Statutes contingent upon need and demonstration of fee collections to support the budget authority.

(2) For the 2017-2018 fiscal year, the sum of $10,000,000 in nonrecurring funds from the General Revenue Fund is appropriated to the Department of Health to implement the statewide cannabis and marijuana education and use prevention campaign established under s. 381.989, Florida Statutes.

(3) For the 2017-2018 fiscal year, the sum of $5,000,000 in nonrecurring funds from the Highway Safety Operating Trust Fund are appropriated to the Department of Highway Safety and Motor Vehicles to implement the statewide impaired driving education campaign established under s. 381.989, Florida Statutes.

(4) For the 2017-2018 fiscal year, the sum of $1,000,000 in nonrecurring funds from the General Revenue Fund is appropriated to the University Of Florida College Of Pharmacy to implement the requirements of s. 381.986(4)(a)8., Florida Statutes.

(5) For the 2017-2018 fiscal year, the sum of $100,000 in recurring funds from the Highway Safety Operating Trust Fund is appropriated to the Department of Highway Safety and Motor Vehicles for the purpose of training additional law enforcement officers as drug recognition experts.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Appropriations Committee
Representative Rodrigues offered the following:

Amendment (with title amendment)

Remove line 92 and insert:

(1) Marijuana and marijuana delivery devices, as defined in s. 381.986, are exempt from

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

Remove line 5 and insert:

marijuana and marijuana delivery devices used for medical purposes; amending s.