



Civil Justice & Claims Subcommittee

**Wednesday, January 17, 2018
9:00 – 11:30 AM
404 HOB**

Meeting Packet

**Richard Corcoran
Speaker**

**Heather Fitzenhagen
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Claims Subcommittee

Start Date and Time: Wednesday, January 17, 2018 09:00 am
End Date and Time: Wednesday, January 17, 2018 11:30 am
Location: Sumner Hall (404 HOB)
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 505 Dependency Proceedings by Roth, Williams
HB 507 Pub. Rec./E-mail Addresses of Current Justices and Judges by Shaw
HB 771 Notaries Public by Grant, J.
HB 875 Limitations of Actions Other Than for the Recovery of Real Property by Leek
HB 993 Service of Process by Killebrew

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 16, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 16, 2018.

NOTICE FINALIZED on 01/12/2018 4:12PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 505 Dependency Proceedings
SPONSOR(S): Roth
TIED BILLS: None **IDEN./SIM. BILLS:** SB 774

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski (T)	Bond YWB
2) Children, Families & Seniors Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

There are currently two separate procedures for identification and subsequent treatment of prospective parents and unmarried biological fathers prior to the termination of parental rights required for adoption. One is found in ch. 39, F.S., "Proceedings Relating to Children," and the other is found in ch. 63, F.S., "Adoption." The primary focus of ch. 39, F.S., is the preservation and strengthening of families, with the health and safety of children of paramount concern. By contrast, the purpose of ch. 63, F.S., is to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placements, and to hold parents accountable for meeting the needs of children. The most significant difference is in the identification and treatment of prospective parents. In ch. 39, F.S., proceedings, an identified prospective father is not required to come forward and establish his parental rights within any certain timeframe, leading to delays in achieving permanency. In ch. 63, F.S., proceedings, once a prospective father is identified he must act within a time certain to exercise his parental rights or a court can move forward with the case terminating his parental rights.

HB 505 aligns procedures for identification of prospective biological parents and their subsequent treatment within ch. 39, F.S., proceedings with ch. 63, F.S., to move children toward permanency more quickly. The bill:

- Adds questions to and rewords existing questions in the inquiry courts use to identify parents to elicit more precise responses;
- Provides a process, similar to ch. 63, F.S., for an unmarried biological father to assert his parental rights and become a legal father;
- Allows a court to proceed in a child's case if an identified unmarried biological father fails to assert his rights after being individually served with an explanation of how to assert his rights;
- Specifies that a dependency court can make a formal determination of the child's paternity within the ch. 39, F.S., proceeding; and
- Credits community-based care lead agencies with certain ch. 63, F.S., adoptions of children from ch. 39, F.S., proceedings.

The bill also makes several conforming cross-reference changes throughout the bill.

The bill appears to have a significant negative fiscal impact on the Department of Children and Families, which estimates the need for a nonrecurring \$517,000 appropriation in the 2018-19 fiscal year for computer programming to comply with section 8 of the bill. The bill does not appear to have any fiscal impact on local government.

The bill is effective October 1, 2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Currently, there are two separate procedures for the termination of parental rights (TPR) required prior to the adoption of a child. One is found in ch. 39, F.S., "Proceedings Relating to Children," and the other is found in ch. 63, F.S., "Adoption." The primary focus of ch. 39, F.S., is the preservation and strengthening of families, with the health and safety of children of paramount concern.¹ A child is to be removed from parental custody only when the child's welfare cannot be adequately safeguarded without such removal.² Other permanency options are provided but only when reunification and adoption are not possible.³ By contrast, the purpose of ch. 63, F.S., is to provide stable and permanent homes for adoptive children in a prompt manner, to prevent the disruption of adoptive placements, and to hold parents accountable for meeting the needs of children.⁴ Consent to TPR is central under ch. 63, F.S., and is mandatory unless certain statutory criteria are present.⁵

HB 505 amends multiple areas of law to align the process of identifying prospective parents and establishing parentage in ch. 39, F.S. with the quicker process in ch. 63, F.S.

The bill adds intent language to s. 39.001, F.S., stating that parents should be engaged to the fullest extent possible in the lives of their children and that an unmarried biological father has the same rights under ch. 39, F.S., as he would under ch. 63, F.S. The bill provides that an unmarried biological father's interest is inchoate until he demonstrates a timely and full commitment to the responsibilities of parenthood and that failure to comply with the requirements of ch. 39, F.S., may result in the termination of his parental rights.

The bill defines "unmarried biological father" as the child's biological father who is not married to the child's mother at the time of conception or on the date of the birth of the child and who, before the advisory hearing is held on a petition to terminate parental rights, has not been adjudicated or declared by a court to be the legal father of the child or executed an affidavit of paternity. The bill also removes language from the definition of "parent" that conforms with the overall changes of the bill, making a person identified under oath as a prospective parent a participant in the proceeding until he or she assert parental rights to be considered a party.

Paternity Inquiry

Current Situation

One of the most significant differences between the statutes relate to the identification and treatment of prospective parents and unmarried biological fathers.

Chapter 39, F.S., considers a "prospective parent" any person who claims to be, or has been identified as, a person who may be the mother or father of a child.⁶ A judge is required to conduct an inquiry if the identity or location of the father is unknown and a petition for shelter,⁷ dependency,⁸ or TPR⁹ has been filed. The judge is required to ask whether:

¹ S. 39.001(1), F.S.

² S. 39.001(1)(f), F.S.

³ S. 39.001(1)(j), F.S.

⁴ S. 63.022(1)(a), F.S.

⁵ S. 63.062, F.S.

⁶ S. 39.01(62), F.S.

⁷ S. 39.402(8)(c)4., F.S.

⁸ S. 39.503(1), F.S.

⁹ S. 39.803(1), F.S.

- The mother of the child was married at the probable time of conception of the child or at the time of birth of the child.
- The mother was cohabiting with a man at the probable time of conception of the child.
- The mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.
- The mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.
- Any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.
- Any man is named on the birth certificate.
- Any man has been determined by a court order to be the father of the child.
- Any man has been determined to be the father of the child by the Department of Revenue.

The law does not specify that the inquiry should stop after an affirmative response to any particular question and provides a means for any man identified through the inquiry to become a party to the proceedings and to be treated as a parent, as follows:¹⁰

"If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood . . . shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood."

By contrast, ch. 63, F.S., states that the child's biological father who was not married to the child's mother at the time of conception or birth of the child "has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during the pregnancy and after the child's birth."¹¹

To establish the identity of an unmarried biological father, the judge is to conduct an inquiry of the person who is placing the minor for adoption and of any relative or person having legal custody of the minor who is present at the hearing and likely to have the following information regarding the identity of any man:¹²

- To whom the mother of the minor was married at any time when conception of the minor may have occurred or at the time of the birth of the minor;
- Who has filed an affidavit of paternity pursuant to s. 382.013(2)(c), F.S., before the date that a petition for TPR is filed with the court;
- Who has adopted the minor;
- Who has been adjudicated by a court as the father of the minor child before the date a petition for TPR is filed with the court; and
- Whom the mother identified to the adoption entity as a potential biological father before the date she signed the consent for adoption.

Effect of Proposed Changes - Paternity Inquiry

The bill updates the court's paternity inquiry in the three places it is required in statute, ss. 39.402, 39.503, and 39.803, F.S., by changing wording that should elicit more specific responses and adding additional questions. The bill adds four additional questions from the ch. 63, F.S., paternity inquiry, seeking information regarding the identity of any man:

¹⁰ SS. 39.503(8) and 803(8), F.S.

¹¹ SS. 63.032(19) and 63.022(1)(e), F.S.

¹² S. 63.088(4).

1. Who has filed an affidavit of paternity pursuant to s, 382.013(2)(c), F.S., before the date that a petition for TPR is filed with the court;
2. Who has adopted the minor;
3. Who has been adjudicated by a court as the father of the minor child before the date a petition for TPR is filed with the court; and
4. Whom the mother identified to the adoption entity as a potential biological father before the date she signed the consent for adoption.

Establishment of Parental Rights

Current Situation

Chapter 39, F.S., does not require the prospective father to take any action to establish parental rights or make any affirmative demonstration of the intent to parent other than to execute the affidavit of parenthood as directed by statute. There is no specific deadline to execute the affidavit of parenthood, other than the provision that it must be filed "while the child is a dependent child but no later than at the time of or prior to the adjudicatory hearing in any termination of parental rights proceeding for the child."¹³ This means that a prospective father may be named early in the case, receive notice of hearings and be served with documents throughout the case without coming forward and asserting his right to the child, and then file an affidavit of parenthood at the TPR trial, establishing rights for the first time and delaying or stopping the TPR proceedings.

In contrast, ch. 63, F.S., requires an unmarried biological father to preserve and perfect his rights by registering with the Putative Father Registry or filing a ch. 742, F.S., claim of paternity.¹⁴ This can be done at any time, including prior to a child's birth, but not after the date a petition is filed for TPR.¹⁵ Failure to assert paternity before the date a petition is filed for TPR bars a ch. 742, F.S., claim of paternity.¹⁶ An unmarried biological father is also required to take some measure of responsibility for the child and the child's future and to demonstrate a full commitment to the responsibilities of parenthood by providing financial support and regularly visiting or maintaining regular communication with the child unless prevented from doing so.¹⁷

Effect of Proposed Changes - Establishment of Parental Rights

The bill creates a procedure for giving notice in ch. 39, F.S., dependency (s. 39.502, F.S.) and TPR (s. 39.802, F.S.) proceedings to unmarried biological fathers, requiring individual service to those who are known and locatable. This notice is not required if the unmarried biological father has signed an affidavit of nonpaternity or a consent to TPR. The notice of petition for dependency must specifically state that if the unmarried biological father wishes to assert his parental rights and contest the dependency petition he must, within 30 days after service:

1. File a claim of paternity with the Florida Putative Father Registry;
2. Legally establish his parental rights to the child pursuant to the laws of the state;
3. File a verified response with the court which contains a pledge of commitment to the child, a request for the court to calculate and order child support, and an agreement to submit to the court's jurisdiction;
4. Provide support for the child as calculated by the court; and
5. Seek to establish a substantial relationship with the child within the parameters established by the court, such as taking parental responsibility, providing support, and establishing regular contact with the child in accordance with a written court order that takes the child's safety, well-being, or physical, mental, or emotional health of the child into account.

¹³ Id.

¹⁴ S. 63.054, F.S.

¹⁵ Id.

¹⁶ Id.

¹⁷ S. §63.062(2).

Determination of Standing

The bill requires the court, at the dependency and TPR advisory hearings, to determine whether the unmarried biological father took the necessary steps to assert his parental rights to gain standing to contest the dependency or TPR petition. If the court determines that the unmarried biological father has failed to assert his parental rights, it may find that he is no longer a prospective parent and is no longer entitled to further notice regarding the child unless otherwise ordered by the court.

If an unmarried biological father was not identified by the court's inquiry at the dependency or TPR advisory, but was subsequently identified, he may not use the lack of notice as a defense against the finding of dependency or TPR.

This change at the TPR advisory will allow courts to move forward to achieve permanency by adoption in a shorter time frame.

Establishment of Parentage

Current Situation

Under s. 39.503(8), F.S., the court may accept an affidavit of parentage and consider the affiant a parent for all purposes unless the known parent contests the determination of parentage. If the known parent contests the determination of parentage, the prospective parent may not be recognized as a parent until proceedings to determine parentage under ch. 742, F.S., have been concluded. This requires the parties to file separate pleadings for a determination of parentage, although it may still be heard by the same judge.

Effect of Proposed Changes - Establishment of Paternity

The bill allows the court to enter an agreed order establishing parentage based on an uncontested request to establish parentage, order the Office of Vital Statistics to amend the child's birth certificate to reflect the new parentage, and order child support. A prospective parent may only file an affidavit of parenthood when the child does not already have two legally recognized parents. If the child already has two legally recognized parents or the known parent objects to the recognition of parentage, the prospective parent must seek to establish parentage pursuant to ch. 742, F.S., which may be heard by the same court in accordance with the procedures of that chapter.

The bill allows the known and prospective parent to agree to voluntarily submit to scientific testing to determine parentage if the child does not already have two legally recognized parents. If the known and prospective parent both agree to scientific testing, the court must assess the cost as a cost of litigation. This will allow the use of genetic testing if the parties agree without the formality of a ch. 742, F.S., proceeding.

The bill requires a genetic test as evidence be weighed along with all other evidence of parentage unless the statistical probability of parentage equals or exceeds 95 percent, which creates a rebuttable presumption that the alleged parent is the biological parent of the child. If the test show the alleged parent is not the biological parent, the alleged parent is no longer considered a participant or entitled to further notice.

Other

Currently, DCF negotiates agreements with community-based care lead agencies to establish measureable outcome targets to increase the number of adoptions and define the method for measuring performance and determining the level of performance required to earn the incentive payment, and the amount of the incentive payment for each target met. The bill amends s. 409.1662,

F.S., relating to the adoption incentive program, to credit community-based care lead agencies with certain ch. 63, F.S., adoptions of children involved in ch. 39, F.S., proceedings.

The bill also makes several conforming cross-reference changes throughout the bill.

The bill is effective October 1, 2018.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.001, F.S., relating to purposes and intent; personnel standards and screening.
- Section 2:** Amends s. 39.01, F.S., relating to definitions.
- Section 3:** Amends s. 39.402, F.S., relating to placement in shelter.
- Section 4:** Amends s. 39.502, F.S., relating to notice, process, and service.
- Section 5:** Amends s. 39.503, F.S., relating to identity of location of parent unknown; special procedures.
- Section 6:** Amends s. 39.801, F.S., relating to procedures and jurisdiction; notice; service of process.
- Section 7:** Amends s. 39.803, F.S., relating to identity or location of parent unknown after filing of termination of parental rights petition; special procedures.
- Section 8:** Amends s. 409.1662, F.S., relating to children within the child welfare system; adoption incentive program.
- Section 9:** Provides an effective date of October 1, 2018

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has a significant negative fiscal impact on the Department of Children and Families, that estimates the need for a nonrecurring \$517,000 appropriation in the 2018-19 fiscal year for computer programming to comply with section 8 of the bill.

The bill requires that the annually negotiated outcome-based agreements between the Department and the community-based care lead agencies ensure that any placement by an adoption entity pursuant to s. 63.082(6), F.S., is credited to the lead agency and its sub-contractor as if the lead agency or sub-contractor made the placement. The Department does not currently document adoption placements and finalizations made by adoption entities pursuant to s. 63.082(6), F.S., in the Florida Safe Families Network (FSFN). To capture the information required by the bill, the Department needs to make the following changes to FSFN:¹⁸

- Creation of a new private adoption page.
- Modification to Create Case Work page.
- Modifications to existing logic tied to current Private Adoption for Subsidy page.
- New logic to prohibit the creation of this page across FSFN when there is an open Out of Home Placement, Living Arrangement, Family Support or regular Private Adoption page.
- New Case Types.

¹⁸ Department of Children and Families, Agency Analysis of 2018 House Bill 505, p. 8 (December 19, 2017).

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. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 222:

". . . pursuant to the inquiry under this section, the unmarried . . ." should read ". . . pursuant to the inquiry in s. 39.503, the unmarried . . .", as s. 39.503 is where the inquiry is located, not within s. 39.502.

On line 467:

". . . pursuant to the inquiry under this section, the unmarried . . ." should read ". . . pursuant to the inquiry in s. 39.803, the unmarried . . .", as s. 39.803 is where the inquiry is located, not within s. 39.802.

On lines 468-469:

". . . contest the dependency petition pursuant . . ." should read ". . . contest the petition for termination of parental rights pursuant . . .".

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

26 of a petition for termination of parental rights to be
 27 served on an unmarried biological father identified
 28 under oath or by a diligent search of the Florida
 29 Putative Father Registry under certain circumstances;
 30 providing conditions for contesting the petition;
 31 conforming cross-references; amending s. 409.1662,
 32 F.S.; requiring the Department of Children and
 33 Families to include certain information regarding
 34 adoptions in outcome-based agreements between lead
 35 agencies and their subcontracted providers; providing
 36 an effective date.

37
 38 Be It Enacted by the Legislature of the State of Florida:

39
 40 Section 1. Paragraphs (n), (o), and (p) of subsection (1)
 41 of section 39.001, Florida Statutes, are redesignated as
 42 paragraphs (o), (p), and (q), respectively, and a new paragraph
 43 (n) is added to that subsection to read:

44 39.001 Purposes and intent; personnel standards and
 45 screening.—

46 (1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

47 (n) Whenever possible, to ensure that children have the
 48 benefit of loving and caring relationships with both of their
 49 parents. To that end, parents should be engaged to the fullest
 50 extent possible in the lives of their children and prospective

51 | parents should be afforded a prompt, full, and fair opportunity
 52 | to establish a parental relationship with their children and
 53 | assume all parental duties. A prospective parent who is an
 54 | unmarried biological father has the same rights under this
 55 | chapter as under chapter 63. Accordingly, his interest is
 56 | inchoate until he demonstrates a timely and full commitment to
 57 | the responsibilities of parenthood. Because time is of the
 58 | essence under this chapter, and the time limitations belong to
 59 | the child and not to the parent or to any prospective parent,
 60 | prospective parents, including unmarried biological parents,
 61 | must be aware that failure to comply with the specific
 62 | requirements of this chapter may result in permanent elimination
 63 | or termination of their rights or interests as actual or
 64 | inchoate parents or prospective parents.

65 | Section 2. Subsection (50) of section 39.01, Florida
 66 | Statutes, is amended, subsection (81) is renumbered as
 67 | subsection (82), and a new subsection (81) is added to that
 68 | section, to read:

69 | 39.01 Definitions.—When used in this chapter, unless the
 70 | context otherwise requires:

71 | (50) "Parent" means a woman who gives birth to a child and
 72 | a man whose consent to the adoption of the child would be
 73 | required under s. 63.062(1). The term "parent" also means legal
 74 | father as defined in this section. If a child has been legally
 75 | adopted, the term "parent" means the adoptive mother or father

76 of the child. For purposes of this chapter only, when the phrase
 77 "parent or legal custodian" is used, it refers to rights or
 78 responsibilities of the parent and, only if there is no living
 79 parent with intact parental rights, to the rights or
 80 responsibilities of the legal custodian who has assumed the role
 81 of the parent. The term does not include an individual whose
 82 parental relationship to the child has been legally terminated,
 83 or an alleged or prospective parent, unless+

84 ~~(a) The parental status falls within the terms of s.~~
 85 ~~39.503(1) or s. 63.062(1); or~~

86 ~~(b)~~ parental status is applied for the purpose of
 87 determining whether the child has been abandoned.

88 (81) "Unmarried biological father" means the child's
 89 biological father who is not married to the child's mother at
 90 the time of conception or on the date of the birth of the child
 91 and who, before the advisory hearing is held on a petition to
 92 terminate parental rights, has not been adjudicated or declared
 93 by a court of competent jurisdiction to be the legal father of
 94 the child or has not executed an affidavit pursuant to s.
 95 382.013(2)(c).

96 Section 3. Paragraph (c) of subsection (8) of section
 97 39.402, Florida Statutes, is amended to read:

98 39.402 Placement in a shelter.—

99 (8)

100 (c) At the shelter hearing, the court shall:

- 101 1. Appoint a guardian ad litem to represent the best
 102 interest of the child, unless the court finds that such
 103 representation is unnecessary;
- 104 2. Inform the parents or legal custodians of their right
 105 to counsel to represent them at the shelter hearing and at each
 106 subsequent hearing or proceeding, and the right of the parents
 107 to appointed counsel, pursuant to the procedures set forth in s.
 108 39.013;
- 109 3. Give the parents or legal custodians an opportunity to
 110 be heard and to present evidence; and
- 111 4. Inquire of those present at the shelter hearing as to
 112 the identity and location of the legal father. In determining
 113 who the legal father of the child may be, the court shall
 114 inquire under oath of those present at the shelter hearing
 115 whether they have any of the following information regarding the
 116 identity of any man:
- 117 a. To whom the mother of the child was married at any time
 118 when conception of the child may have occurred or at the time of
 119 the birth of the child.
- 120 b. Who has filed an affidavit of paternity pursuant to s.
 121 382.013(2)(c) before an advisory hearing is held on a petition
 122 for termination of parental rights.
- 123 c. Who has adopted the child.
- 124 d. Who has been adjudicated by a court of competent
 125 jurisdiction as the father of the child before an advisory

126 hearing is held on a petition for termination of parental
 127 rights.

128 e. Whom the mother identified as the father under oath to
 129 a representative of the department.

130 ~~a. Whether the mother of the child was married at the~~
 131 ~~probable time of conception of the child or at the time of birth~~
 132 ~~of the child.~~

133 ~~f.b. With whom Whether~~ the mother was cohabiting ~~with a~~
 134 ~~male~~ at the probable time of conception of the child.

135 g.e. Who claims to be the father and from whom ~~Whether~~ the
 136 mother has received payments or promises of support with respect
 137 to the child or because of her pregnancy ~~from a man who claims~~
 138 ~~to be the father.~~

139 h.d. Whom ~~Whether~~ the mother has named ~~any man~~ as the
 140 father on the birth certificate of the child or in connection
 141 with applying for or receiving public assistance.

142 i.e. Who ~~Whether any man~~ has acknowledged or claimed
 143 paternity of the child in a jurisdiction in which the mother
 144 resided at the time of or since conception of the child or in
 145 which the child has resided or resides.

146 j.f. Who ~~Whether a man~~ is named on the birth certificate
 147 of the child pursuant to s. 382.013(2).

148 k.g. Who ~~Whether a man~~ has been determined by a court
 149 order to be the father of the child.

150 l.h. Who ~~Whether a man~~ has been determined to be the

151 | father of the child by the Department of Revenue as provided in
 152 | s. 409.256.

153 | Section 4. Subsections (7) through (19) of section 39.502,
 154 | Florida Statutes, are renumbered as subsections (8) through
 155 | (20), respectively, subsection (1) and present subsection (9) of
 156 | that section are amended, and a new subsection (7) is added to
 157 | that section, to read:

158 | 39.502 Notice, process, and service.—

159 | (1) Unless parental rights have been terminated, all
 160 | parents must be notified of all proceedings or hearings
 161 | involving the child. Notice in cases involving shelter hearings
 162 | and hearings resulting from medical emergencies must be that
 163 | most likely to result in actual notice to the parents. In all
 164 | other dependency proceedings, notice must be provided in
 165 | accordance with subsections (4)-(10) ~~(4)-(9)~~, except when a
 166 | relative requests notification pursuant to s. 39.301(14)(b), in
 167 | which case notice shall be provided pursuant to subsection (20)
 168 | ~~(19)~~.

169 | (7)(a) Notice of the petition for dependency shall be
 170 | individually served upon any known and locatable unmarried
 171 | biological father who is identified under oath before the court
 172 | or who is identified by a diligent search of the Florida
 173 | Putative Father Registry. Service of the notice of the petition
 174 | for dependency is not required if the unmarried biological
 175 | father signs an affidavit of nonpaternity or a consent to

176 termination of his parental rights and such affidavit or consent
 177 is accepted by the department. The recipient of the notice may
 178 waive service of process by executing a waiver and acknowledging
 179 receipt of the notice.

180 (b) The notice of petition for dependency must
 181 specifically state that if the unmarried biological father
 182 desires to assert his parental rights to acquire standing to
 183 contest the dependency petition he must, within 30 days after
 184 service:

185 1. File a claim of paternity with the Florida Putative
 186 Father Registry pursuant to instructions provided for submitting
 187 a claim of paternity form to the Office of Vital Statistics,
 188 including the address to which the claim must be sent.

189 2. Legally establish his parental rights to the child
 190 pursuant to the laws of the state.

191 3. File a verified response with the court which contains
 192 a pledge of commitment to the child, a request for the court to
 193 calculate and order child support, and an agreement to submit to
 194 the court's jurisdiction.

195 4. Provide support for the child as calculated by the
 196 court under s. 61.30.

197 5. Seek to establish a substantial relationship with the
 198 child within the parameters established by court order. An
 199 unmarried biological father must develop a substantial
 200 relationship with the child by taking parental responsibility

201 for the child and the child's future; providing financial
 202 support to the child in accordance with his ability, if not
 203 prevented from doing so by the person or authorized agency
 204 having lawful custody of the child; and establishing or
 205 maintaining regular contact with the child in accordance with a
 206 written court order. An order for visitation or other contact
 207 may be entered by the court if the court determines that such
 208 contact will not endanger the safety, well-being, or physical,
 209 mental, or emotional health of the child. The court may consider
 210 the results of any home study in making such determination.

211 (c) The court shall determine whether the unmarried
 212 biological father took the steps necessary to assert his
 213 parental rights to acquire standing to contest the dependency
 214 petition pursuant to paragraph (b) and, if not, the court shall
 215 enter a finding that the unmarried biological father is no
 216 longer a prospective parent or participant, may not contest the
 217 petition for dependency or any subsequent petition for
 218 termination of parental rights, and is no longer entitled to any
 219 further notice of proceedings regarding the child unless
 220 otherwise ordered by the court.

221 (d) If an unmarried biological father is not identified
 222 pursuant to the inquiry under this section, the unmarried
 223 biological father's claim that he did not receive actual notice
 224 of the dependency proceeding is not a defense to a finding that
 225 the child is dependent.

226 ~~(10)~~~~(9)~~ When an affidavit of diligent search has been
 227 filed under subsection (9) ~~(8)~~, the petitioner shall continue to
 228 search for and attempt to serve the person sought until excused
 229 from further search by the court. The petitioner shall report on
 230 the results of the search at each court hearing until the person
 231 is identified or located or further search is excused by the
 232 court.

233 Section 5. Section 39.503, Florida Statutes, is amended to
 234 read:

235 39.503 Identity or location of parent unknown; special
 236 procedures.—

237 (1) If the identity or location of a parent is unknown and
 238 a petition for dependency or shelter is filed, the court shall
 239 conduct under oath the following inquiry of the parent or legal
 240 custodian who is available, or, if no parent or legal custodian
 241 is available, of any relative or custodian of the child who is
 242 present at the hearing and likely to have any of the following
 243 information regarding the identity of any man:

244 (a) To whom the mother of the minor was married at any
 245 time when conception of the child may have occurred or at the
 246 time of the birth of the child.

247 (b) Who has filed an affidavit of paternity pursuant to s.
 248 382.013(2)(c) before an advisory hearing is held on a petition
 249 for termination of parental rights.

250 (c) Who has adopted the child.

251 (d) Who has been adjudicated by a court of competent
 252 jurisdiction as the father of the child before an advisory
 253 hearing is held on a petition for termination of parental
 254 rights.

255 (e) Whom the mother identified as the father under oath to
 256 a representative of the department.

257 ~~(a) Whether the mother of the child was married at the~~
 258 ~~probable time of conception of the child or at the time of birth~~
 259 ~~of the child.~~

260 (f)(b) With whom ~~Whether~~ the mother was cohabiting ~~with a~~
 261 ~~male~~ at the probable time of conception of the child.

262 (g)(e) Who claims to be the father and from whom ~~Whether~~
 263 the mother has received payments or promises of support with
 264 respect to the child or because of her pregnancy ~~from a man who~~
 265 ~~claims to be the father.~~

266 (h)(d) Who ~~Whether~~ the mother has named ~~any man~~ as the
 267 father on the birth certificate of the child or in connection
 268 with applying for or receiving public assistance.

269 (i)(e) Who ~~Whether any man~~ has acknowledged or claimed
 270 paternity of the child in a jurisdiction in which the mother
 271 resided at the time of or since conception of the child, or in
 272 which the child has resided or resides.

273 (j)(f) Who ~~Whether a man~~ is named on the birth certificate
 274 of the child pursuant to s. 382.013(2).

275 (k)(g) Who ~~Whether a man~~ has been determined by a court

276 order to be the father of the child.

277 (1) ~~(h)~~ Who ~~Whether a man~~ has been determined to be the
 278 father of the child by the Department of Revenue as provided in
 279 s. 409.256.

280 (2) The information required under ~~in~~ subsection (1) may
 281 be supplied to the court or the department in the form of a
 282 sworn affidavit by a person having personal knowledge of the
 283 facts.

284 (3) If the inquiry under subsection (1) identifies any
 285 person as a parent or prospective parent, the court shall
 286 require notice of the hearing to be provided to that person.

287 (4) If the inquiry under subsection (1) fails to identify
 288 any person as a parent or prospective parent, the court shall so
 289 find and may proceed without further notice.

290 (5) If the inquiry under subsection (1) identifies a
 291 parent or prospective parent, and that person's location is
 292 unknown, the court shall direct the petitioner to conduct a
 293 diligent search for that person before scheduling a disposition
 294 hearing regarding the dependency of the child unless the court
 295 finds that the best interest of the child requires proceeding
 296 without notice to the person whose location is unknown.

297 (6) If the inquiry under subsection (1) identifies an
 298 unmarried biological father or an unmarried biological father is
 299 identified by another means and is individually served with a
 300 petition for dependency but fails to assert his parental rights

301 | as specified in s. 39.502(7), the court shall so find and may
 302 | proceed without further notice.

303 | ~~(7)(6)~~ The diligent search required by subsection (5) must
 304 | include, at a minimum, inquiries of all relatives of the parent
 305 | or prospective parent made known to the petitioner, inquiries of
 306 | all offices of program areas of the department likely to have
 307 | information about the parent or prospective parent, inquiries of
 308 | other state and federal agencies likely to have information
 309 | about the parent or prospective parent, inquiries of appropriate
 310 | utility and postal providers, a thorough search of at least one
 311 | electronic database specifically designed for locating persons,
 312 | a search of the Florida Putative Father Registry, and inquiries
 313 | of appropriate law enforcement agencies. Pursuant to s. 453 of
 314 | the Social Security Act, 42 U.S.C. s. 653(c)(4), the department,
 315 | as the state agency administering Titles IV-B and IV-E of the
 316 | act, shall be provided access to the federal and state parent
 317 | locator service for diligent search activities.

318 | ~~(8)(7)~~ Any agency contacted by a petitioner with a request
 319 | for information pursuant to subsection ~~(7)~~ ~~(6)~~ shall release the
 320 | requested information to the petitioner without the necessity of
 321 | a subpoena or court order.

322 | ~~(9)(a)(8)~~ If the inquiry and diligent search identifies a
 323 | prospective parent, that person must be given the opportunity to
 324 | become a party to the proceedings by completing a sworn
 325 | affidavit of parenthood and filing it with the court or the

326 department. A prospective parent who files a sworn affidavit of
 327 parenthood while the child is a dependent child but no later
 328 than at the time of or before the adjudicatory hearing in any
 329 termination of parental rights proceeding for the child shall be
 330 considered a parent for all purposes under this section unless
 331 the other parent contests the determination of parenthood. If
 332 neither the known parent nor the prospective parent objects to a
 333 request to establish parentage under the laws of the state, the
 334 court may enter an agreed order, order the Office of Vital
 335 Statistics to amend the child's birth certificate, and order the
 336 petitioning parent to pay support for the child.

337 (b) If the known parent contests the recognition of the
 338 prospective parent as a parent, the prospective parent may not
 339 be recognized as a parent until proceedings to determine
 340 maternity or paternity under chapter 742 have been concluded.
 341 However, the prospective parent shall continue to receive notice
 342 of hearings as a participant pending results of the chapter 742
 343 proceedings to determine maternity or paternity. The dependency
 344 court may hear the chapter 742 proceeding and establish
 345 parentage in accordance with the procedures in that chapter,
 346 including entry of an order or judgment establishing parentage.

347 (c) A prospective parent may only file a sworn affidavit
 348 of parenthood when the child does not have two legally
 349 recognized parents. If a child has two legally recognized
 350 parents, the prospective parent must seek to establish parentage

351 pursuant to chapter 742.

352 (d) Nothing in this subsection prevents the known parent
 353 and the prospective parent from agreeing to voluntarily submit
 354 to scientific testing to determine the maternity or paternity of
 355 the child if the child does not already have two legally
 356 recognized parents and the court determines it is in the child's
 357 best interest.

358 (e) Test results are admissible in evidence and shall be
 359 weighed along with other evidence of parentage unless the
 360 statistical probability of parentage equals or exceeds 95
 361 percent. A statistical probability of parentage that equals or
 362 exceeds 95 percent creates a rebuttable presumption, as
 363 described in s. 90.304, that the alleged parent is the
 364 biological parent of the child. If a party fails to rebut the
 365 presumption of parentage which arose from the statistical
 366 probability of parentage that equals or exceeds 95 percent, the
 367 court may enter a summary judgment of parentage. If the test
 368 results show the alleged parent is not the biological parent,
 369 the prospective parent is no longer considered a participant or
 370 entitled to notice of the proceedings.

371 (f) The court shall assess the cost of the paternity
 372 determination as a cost of litigation.

373 (10)(9) If the diligent search under subsection (5) fails
 374 to identify and locate a parent or prospective parent, the court
 375 shall so find and may proceed without further notice.

376 Section 6. Subsection (3) of section 39.801, Florida
 377 Statutes, is amended to read:

378 39.801 Procedures and jurisdiction; notice; service of
 379 process.—

380 (3) Before the court may terminate parental rights, in
 381 addition to the other requirements set forth in this part, the
 382 following requirements must be met:

383 (a) Notice of the date, time, and place of the advisory
 384 hearing for the petition to terminate parental rights and a copy
 385 of the petition must be personally served upon the following
 386 persons, specifically notifying them that a petition has been
 387 filed:

- 388 1. The parents of the child.
- 389 2. The legal custodians of the child.
- 390 3. If the parents who would be entitled to notice are dead
 391 or unknown, a living relative of the child, unless upon diligent
 392 search and inquiry no such relative can be found.
- 393 4. Any person who has physical custody of the child.
- 394 5. Any grandparent entitled to priority for adoption under
 395 s. 63.0425.
- 396 6. Any prospective parent who has been identified under s.
 397 39.503 or s. 39.803, unless a court order has been entered
 398 pursuant to s. 39.503(4), (6), or (10) or s. 39.803(4), (6), or
 399 (10) s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates
 400 no further notice is required. Except as otherwise provided in

401 | this section, if there is not a legal father, notice of the
 402 | petition for termination of parental rights must be provided to
 403 | any known prospective father who is identified under oath before
 404 | the court or who is identified by a diligent search of the
 405 | Florida Putative Father Registry. Service of the notice of the
 406 | petition for termination of parental rights is not required if
 407 | the prospective father executes an affidavit of nonpaternity or
 408 | a consent to termination of his parental rights which is
 409 | accepted by the court after notice and opportunity to be heard
 410 | by all parties to address the best interests of the child in
 411 | accepting such affidavit.

412 | 7. The guardian ad litem for the child or the
 413 | representative of the guardian ad litem program, if the program
 414 | has been appointed.

415 |
 416 | The document containing the notice to respond or appear must
 417 | contain, in type at least as large as the type in the balance of
 418 | the document, the following or substantially similar language:
 419 | "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
 420 | CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
 421 | THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
 422 | TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
 423 | CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
 424 | NOTICE."

425 | (b) Notice of the petition for termination of parental

426 rights shall be individually served upon any known and locatable
 427 unmarried biological father who is identified under oath before
 428 the court or who is identified by a diligent search of the
 429 Florida Putative Father Registry. Service of the notice of the
 430 petition for termination of parental rights is not required if
 431 the unmarried biological father signs an affidavit of
 432 nonpaternity or a consent to termination of his parental rights
 433 and such affidavit or consent is accepted by the department. The
 434 recipient of the notice may waive service of process by
 435 executing a waiver and acknowledging receipt of the notice. The
 436 notice of petition for termination of parental rights must
 437 specifically state that if the unmarried biological father
 438 desires to assert his parental rights to acquire standing to
 439 contest the petition he must, within 30 days after service:

- 440 1. File a claim of paternity with the Florida Putative
 441 Father Registry pursuant to instructions provided for submitting
 442 a claim of paternity form to the Office of Vital Statistics,
 443 including the address to which the claim must be sent.
- 444 2. Legally establish his parental rights to the child
 445 pursuant to the laws of the state.
- 446 3. File a verified response with the court which contains
 447 a pledge of commitment to the child, a request for the court to
 448 calculate and order child support, and an agreement to submit to
 449 the court's jurisdiction.
- 450 4. Provide support for the child as calculated by the

451 | court under s. 61.30.

452 | 5. Seek to establish a substantial relationship with the
 453 | child within the parameters established by court order. A father
 454 | must develop a substantial relationship with the child by taking
 455 | parental responsibility for the child and the child's future;
 456 | providing financial support to the child in accordance with his
 457 | ability, if not prevented from doing so by the person or
 458 | authorized agency having lawful custody of the child; and
 459 | establishing or maintaining regular contact with the child in
 460 | accordance with a written court order. An order for visitation
 461 | or other contact may be entered by the court if the court
 462 | determines that such contact will not endanger the safety, well-
 463 | being, and physical, mental, or emotional health of the child.
 464 | The court may consider the results of any home study when making
 465 | such determination.

466 | (c) The court shall determine whether the unmarried
 467 | biological father took the steps necessary to assert his
 468 | parental rights to acquire standing to contest the dependency
 469 | petition pursuant to paragraph (b) and, if not, the court shall
 470 | enter a finding that the unmarried biological father is no
 471 | longer a prospective parent or participant, may not contest the
 472 | petition for termination of parental rights, and is no longer
 473 | entitled to any further notice of proceedings regarding the
 474 | child unless otherwise ordered by the court.

475 | (d) If an unmarried biological father is not identified

476 pursuant to the inquiry under this section, the unmarried
 477 biological father's claim that he did not receive actual notice
 478 of the termination proceeding is not a defense to the petition
 479 nor grounds that the proceeding is otherwise defective.

480 (e)~~(b)~~ If a party required to be served with notice as
 481 prescribed in paragraph (a) cannot be served, notice of hearings
 482 must be given as prescribed by the rules of civil procedure, and
 483 service of process must be made as specified by law or civil
 484 actions.

485 (f)~~(e)~~ Notice as prescribed by this section may be waived,
 486 in the discretion of the judge, with regard to any person to
 487 whom notice must be given under this subsection if the person
 488 executes, before two witnesses and a notary public or other
 489 officer authorized to take acknowledgments, a written surrender
 490 of the child to a licensed child-placing agency or the
 491 department.

492 (g)~~(d)~~ If the person served with notice under this section
 493 fails to personally appear at the advisory hearing, the failure
 494 to personally appear shall constitute consent for termination of
 495 parental rights by the person given notice. If a parent appears
 496 for the advisory hearing and the court orders that parent to
 497 personally appear at the adjudicatory hearing for the petition
 498 for termination of parental rights, stating the date, time, and
 499 location of said hearing, then failure of that parent to
 500 personally appear at the adjudicatory hearing shall constitute

501 consent for termination of parental rights.

502 Section 7. Section 39.803, Florida Statutes, is amended to
503 read:

504 39.803 Identity or location of parent unknown after filing
505 of termination of parental rights petition; special procedures.—

506 (1) If the identity or location of a parent is unknown and
507 a petition for termination of parental rights is filed, the
508 court shall conduct under oath the following inquiry of the
509 parent who is available, or, if no parent is available, of any
510 relative, caregiver, or legal custodian of the child who is
511 present at the hearing and likely to have the information
512 regarding the identity of any man:

513 (a) To whom the mother of the child was married at any
514 time when conception of the child may have occurred or at the
515 time of the birth of the child.

516 (b) Who has filed an affidavit of paternity pursuant to s.
517 382.013(2)(c) before an advisory hearing is held on a petition
518 for termination of parental rights.

519 (c) Who has adopted the child before an advisory hearing
520 is held on the petition for termination of parental rights.

521 (d) Who has been adjudicated by a court as the father of
522 the child before an advisory hearing is held on a petition for
523 termination of parental rights.

524 (e) Whom the mother identified as the father under oath to
525 a representative of the department before an advisory hearing is

526 held on the petition for termination of parental rights.

527 ~~(a) Whether the mother of the child was married at the~~
 528 ~~probable time of conception of the child or at the time of birth~~
 529 ~~of the child.~~

530 ~~(f)(b) With whom~~ Whether the mother was cohabiting with a
 531 ~~male~~ at the probable time of conception of the child.

532 ~~(g)(e) Who claims to be the father and from whom~~ Whether
 533 the mother has received payments or promises of support with
 534 respect to the child or because of her pregnancy ~~from a man who~~
 535 ~~claims to be the father.~~

536 ~~(h)(d) Who~~ Whether the mother has named ~~any man~~ as the
 537 father on the birth certificate of the child or in connection
 538 with applying for or receiving public assistance before an
 539 advisory hearing is held on the petition for termination of
 540 parental rights.

541 ~~(i)(e) Who~~ Whether ~~any man~~ has acknowledged or claimed
 542 paternity of the child in a jurisdiction in which the mother
 543 resided at the time of or since conception of the child, or in
 544 which the child has resided or resides before an advisory
 545 hearing is held on the petition for termination of parental
 546 rights.

547 ~~(j)(f) Who~~ Whether ~~a man~~ is named on the birth certificate
 548 of the child pursuant to s. 382.013(2).

549 ~~(k)(g) Who~~ Whether ~~a man~~ has been determined by a court
 550 order to be the father of the child.

551 ~~(1)(h)~~ Who ~~Whether a man~~ has been determined to be the
 552 father of the child by the Department of Revenue as provided in
 553 s. 409.256.

554 (2) The information required in subsection (1) may be
 555 supplied to the court or the department in the form of a sworn
 556 affidavit by a person having personal knowledge of the facts.

557 (3) If the inquiry under subsection (1) identifies any
 558 person as a parent or prospective parent, the court shall
 559 require notice of the hearing to be provided to that person.

560 (4) If the inquiry under subsection (1) fails to identify
 561 any person as a parent or prospective parent, the court shall so
 562 find and may proceed without further notice.

563 (5) If the inquiry under subsection (1) identifies a
 564 parent or prospective parent, and that person's location is
 565 unknown, the court shall direct the petitioner to conduct a
 566 diligent search for that person before scheduling an
 567 adjudicatory hearing regarding the petition for termination of
 568 parental rights to the child unless the court finds that the
 569 best interest of the child requires proceeding without actual
 570 notice to the person whose location is unknown.

571 (6) If the inquiry under subsection (1) identifies an
 572 unmarried biological father or an unmarried biological father is
 573 identified by another means and is individually served with a
 574 petition for termination of parental rights but fails to assert
 575 his parental rights as specified in s. 39.801(3)(b), the court

576 shall so find and may proceed without further notice.

577 (7)~~(6)~~ The diligent search required by subsection (5) must
 578 include, at a minimum, inquiries of all known relatives of the
 579 parent or prospective parent, inquiries of all offices of
 580 program areas of the department likely to have information about
 581 the parent or prospective parent, inquiries of other state and
 582 federal agencies likely to have information about the parent or
 583 prospective parent, inquiries of appropriate utility and postal
 584 providers, a thorough search of at least one electronic database
 585 specifically designed for locating persons, a search of the
 586 Florida Putative Father Registry, and inquiries of appropriate
 587 law enforcement agencies. Pursuant to s. 453 of the Social
 588 Security Act, 42 U.S.C. s. 653(c)(4), the department, as the
 589 state agency administering Titles IV-B and IV-E of the act,
 590 shall be provided access to the federal and state parent locator
 591 service for diligent search activities.

592 (8)~~(7)~~ Any agency contacted by petitioner with a request
 593 for information pursuant to subsection (7) ~~(6)~~ shall release the
 594 requested information to the petitioner without the necessity of
 595 a subpoena or court order.

596 (9)~~(8)~~ If the inquiry and diligent search identifies a
 597 prospective parent, that person must be given the opportunity to
 598 become a party to the proceedings by completing a sworn
 599 affidavit of parenthood and filing it with the court or the
 600 department. A prospective parent who files a sworn affidavit of

601 | parenthood while the child is a dependent child but no later
 602 | than at the time of or before the adjudicatory hearing in the
 603 | termination of parental rights proceeding for the child shall be
 604 | considered a parent for all purposes under this section.

605 | (10)~~(9)~~ If the diligent search under subsection (5) fails
 606 | to identify and locate a prospective parent, the court shall so
 607 | find and may proceed without further notice.

608 | Section 8. Paragraph (b) of subsection (2) of section
 609 | 409.1662, Florida Statutes, is amended to read:

610 | 409.1662 Children within the child welfare system;
 611 | adoption incentive program.—

612 | (2) ADMINISTRATION OF THE PROGRAM.—

613 | (b) Using the information from the baseline assessment,
 614 | the department shall annually negotiate outcome-based agreements
 615 | with lead agencies and their subcontracted providers. The
 616 | agreements must establish measurable outcome targets to increase
 617 | the number of adoptions resulting in permanent placements that
 618 | enhance children's well-being. The agreements must ~~will~~ define
 619 | the method for measuring performance and for determining the
 620 | level of performance required to earn the incentive payment, and
 621 | the amount of the incentive payment which may be earned for each
 622 | target. The agreements must ensure that any placement for
 623 | adoption by an adoption entity pursuant to s. 63.082(6) is
 624 | credited to the lead agency and its subcontractor as if the lead
 625 | agency or its subcontractor had made the placement.

HB 505

2018

626

Section 9. This act shall take effect October 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
 2 Subcommittee
 3 Representative Roth offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraphs (n), (o), and (p) of subsection (1)
 8 of section 39.001, Florida Statutes, are redesignated as
 9 paragraphs (o), (p), and (q), respectively, and a new paragraph
 10 (n) is added to that subsection to read:

11 39.001 Purposes and intent; personnel standards and
 12 screening.—

13 (1) PURPOSES OF CHAPTER.—The purposes of this chapter are:

14 (n) Whenever possible, to ensure that children have the
 15 benefit of loving and caring relationships with both of their
 16 parents. To that end, parents should be engaged to the fullest



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17 extent possible in the lives of their children and prospective
18 parents should be afforded a prompt, full, and fair opportunity
19 to establish a parental relationship with their children and
20 assume all parental duties. A prospective parent who is an
21 unmarried biological father has the same rights under this
22 chapter as under chapter 63. Accordingly, his interest is
23 inchoate until he demonstrates a timely and full commitment to
24 the responsibilities of parenthood. Because time is of the
25 essence under this chapter, and the time limitations belong to
26 the child and not to the parent or to any prospective parent,
27 prospective parents, including unmarried biological parents,
28 must be aware that failure to comply with the specific
29 requirements of this chapter may result in permanent elimination
30 or termination of their rights or interests as actual or
31 inchoate parents or prospective parents.

32 Section 2. Subsection (50) of section 39.01, Florida
33 Statutes, is amended, subsection (81) is renumbered as
34 subsection (82), and a new subsection (81) is added to that
35 section, to read:

36 39.01 Definitions.—When used in this chapter, unless the
37 context otherwise requires:

38 (50) "Parent" means a woman who gives birth to a child and
39 a man whose consent to the adoption of the child would be
40 required under s. 63.062(1). The term "parent" also means legal
41 father as defined in this section. If a child has been legally

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42 adopted, the term "parent" means the adoptive mother or father
43 of the child. For purposes of this chapter only, when the phrase
44 "parent or legal custodian" is used, it refers to rights or
45 responsibilities of the parent and, only if there is no living
46 parent with intact parental rights, to the rights or
47 responsibilities of the legal custodian who has assumed the role
48 of the parent. The term does not include an individual whose
49 parental relationship to the child has been legally terminated,
50 or an alleged or prospective parent, unless:

51 ~~(a) The parental status falls within the terms of s.~~
52 ~~39.503(1) or s. 63.062(1); or~~

53 ~~(b) parental status is applied for the purpose of~~
54 ~~determining whether the child has been abandoned.~~

55 (81) "Unmarried biological father" means the child's
56 biological father who is not married to the child's mother at
57 the time of conception or on the date of the birth of the child
58 and who, before the advisory hearing is held on a petition to
59 terminate parental rights, has not been adjudicated or declared
60 by a court of competent jurisdiction to be the legal father of
61 the child or has not executed an affidavit pursuant to s.
62 382.013(2)(c).

63 Section 3. Paragraph (c) of subsection (8) of section
64 39.402, Florida Statutes, is amended to read:

65 39.402 Placement in a shelter.—

66 (8)

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- 67 (c) At the shelter hearing, the court shall:
- 68 1. Appoint a guardian ad litem to represent the best
- 69 interest of the child, unless the court finds that such
- 70 representation is unnecessary;
- 71 2. Inform the parents or legal custodians of their right
- 72 to counsel to represent them at the shelter hearing and at each
- 73 subsequent hearing or proceeding, and the right of the parents
- 74 to appointed counsel, pursuant to the procedures set forth in s.
- 75 39.013;
- 76 3. Give the parents or legal custodians an opportunity to
- 77 be heard and to present evidence; and
- 78 4. Inquire of those present at the shelter hearing as to
- 79 the identity and location of the legal father. In determining
- 80 who the legal father of the child may be, the court shall
- 81 inquire under oath of those present at the shelter hearing
- 82 whether they have any of the following information regarding the
- 83 identity of any man:
- 84 a. To whom the mother of the child was married at any time
- 85 when conception of the child may have occurred or at the time of
- 86 the birth of the child.
- 87 b. Who has filed an affidavit of paternity pursuant to s.
- 88 382.013(2)(c) before an advisory hearing is held on a petition
- 89 for termination of parental rights.
- 90 c. Who has adopted the child.
- 91 d. Who has been adjudicated by a court of competent

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92 jurisdiction as the father of the child before an advisory
93 hearing is held on a petition for termination of parental
94 rights.

95 e. Whom the mother identified as the father under oath to
96 a representative of the department.

97 ~~a. Whether the mother of the child was married at the~~
98 ~~probable time of conception of the child or at the time of birth~~
99 ~~of the child.~~

100 ~~f.b. With whom~~ Whether the mother was cohabiting with a
101 ~~male~~ at the probable time of conception of the child.

102 ~~g.e. Who claims to be the father and from whom~~ Whether the
103 mother has received payments or promises of support with respect
104 to the child or because of her pregnancy ~~from a man who claims~~
105 ~~to be the father.~~

106 ~~h.d. Whom~~ Whether the mother has named ~~any man~~ as the
107 father on the birth certificate of the child or in connection
108 with applying for or receiving public assistance.

109 ~~i.e. Who~~ Whether ~~any man~~ has acknowledged or claimed
110 paternity of the child in a jurisdiction in which the mother
111 resided at the time of or since conception of the child or in
112 which the child has resided or resides.

113 ~~j.f. Who~~ Whether ~~a man~~ is named on the birth certificate
114 of the child pursuant to s. 382.013(2).

115 ~~k.g. Who~~ Whether ~~a man~~ has been determined by a court
116 order to be the father of the child.

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117 ~~l.h. Who~~ Whether a man has been determined to be the
118 father of the child by the Department of Revenue as provided in
119 s. 409.256.

120 Section 4. Subsections (7) through (19) of section 39.502,
121 Florida Statutes, are renumbered as subsections (8) through
122 (20), respectively, subsection (1) and present subsection (9) of
123 that section are amended, and a new subsection (7) is added to
124 that section, to read:

125 39.502 Notice, process, and service.—

126 (1) Unless parental rights have been terminated, all
127 parents must be notified of all proceedings or hearings
128 involving the child. Notice in cases involving shelter hearings
129 and hearings resulting from medical emergencies must be that
130 most likely to result in actual notice to the parents. In all
131 other dependency proceedings, notice must be provided in
132 accordance with subsections (4)-(10) ~~(4)-(9)~~, except when a
133 relative requests notification pursuant to s. 39.301(14)(b), in
134 which case notice shall be provided pursuant to subsection (20)
135 ~~(19)~~.

136 (7)(a) If a child does not have a legal father, notice of
137 the petition for dependency shall be personally served upon any
138 known and locatable unmarried biological father who is
139 identified under oath before the court or who is identified by a
140 diligent search of the Florida Putative Father Registry. Service
141 of the notice of the petition for dependency is not required if



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142 the unmarried biological father signs an affidavit of
143 nonpaternity or a consent to termination of his parental rights
144 and such affidavit or consent is accepted by the department. The
145 recipient of the notice may waive service of process by
146 executing a waiver and acknowledging receipt of the notice.

147 (b) The notice of petition for dependency must
148 specifically state that if the unmarried biological father
149 desires to assert his parental rights to acquire standing to
150 contest the dependency petition he must, within 30 days after
151 service:

152 1. File a claim of paternity with the Florida Putative
153 Father Registry pursuant to instructions provided for submitting
154 a claim of paternity form to the Office of Vital Statistics,
155 including the address to which the claim must be sent.

156 2. Legally establish his parental rights to the child
157 pursuant to the laws of the state.

158 3. File a verified response with the court which contains
159 a pledge of commitment to the child, a request for the court to
160 calculate and order child support, and an agreement to submit to
161 the court's jurisdiction.

162 4. Provide support for the child as calculated by the
163 court under s. 61.30.

164 5. Seek to establish a substantial relationship with the
165 child within the parameters established by court order. An
166 unmarried biological father must develop a substantial

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167 relationship with the child by taking parental responsibility
168 for the child and the child's future; providing financial
169 support to the child in accordance with his ability, if not
170 prevented from doing so by the person or authorized agency
171 having lawful custody of the child; and establishing or
172 maintaining regular contact with the child in accordance with a
173 written court order. An order for visitation or other contact
174 may be entered by the court if the court determines that such
175 contact will not endanger the safety, well-being, or physical,
176 mental, or emotional health of the child. The court may consider
177 the results of any home study in making such determination.

178 (c) The court shall determine whether the unmarried
179 biological father took the steps necessary to assert his
180 parental rights to acquire standing to contest the dependency
181 petition pursuant to paragraph (b) and, if not, the court shall
182 enter a finding that the unmarried biological father is no
183 longer a prospective parent or participant, may not contest the
184 petition for dependency or any subsequent petition for
185 termination of parental rights, and is no longer entitled to any
186 further notice of proceedings regarding the child unless
187 otherwise ordered by the court.

188 (d) If an unmarried biological father is not identified
189 pursuant to the inquiry under section 39.503, the unmarried
190 biological father's claim that he did not receive actual notice
191 of the dependency proceeding is not a defense to a finding that



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192 the child is dependent.

193 (10)~~(9)~~ When an affidavit of diligent search has been
194 filed under subsection (9) ~~(8)~~, the petitioner shall continue to
195 search for and attempt to serve the person sought until excused
196 from further search by the court. The petitioner shall report on
197 the results of the search at each court hearing until the person
198 is identified or located or further search is excused by the
199 court.

200 Section 5. Section 39.503, Florida Statutes, is amended to
201 read:

202 39.503 Identity or location of parent unknown; special
203 procedures.—

204 (1) If the identity or location of a parent is unknown and
205 a petition for dependency or shelter is filed, the court shall
206 conduct under oath the following inquiry of the parent or legal
207 custodian who is available, or, if no parent or legal custodian
208 is available, of any relative or custodian of the child who is
209 present at the hearing and likely to have any of the following
210 information regarding the identity of any man:

211 (a) To whom the mother of the minor was married at any
212 time when conception of the child may have occurred or at the
213 time of the birth of the child.

214 (b) Who has filed an affidavit of paternity pursuant to s.
215 382.013(2)(c) before an advisory hearing is held on a petition
216 for termination of parental rights.

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217 (c) Who has adopted the child.

218 (d) Who has been adjudicated by a court of competent
219 jurisdiction as the father of the child before an advisory
220 hearing is held on a petition for termination of parental
221 rights.

222 (e) Whom the mother identified as the father under oath to
223 a representative of the department.

224 ~~(a) Whether the mother of the child was married at the~~
225 ~~probable time of conception of the child or at the time of birth~~
226 ~~of the child.~~

227 ~~(f)(b) With whom~~ Whether the mother was cohabiting with a
228 ~~male~~ at the probable time of conception of the child.

229 ~~(g)(e) Who claims to be the father and from whom~~ Whether
230 the mother has received payments or promises of support with
231 respect to the child or because of her pregnancy ~~from a man who~~
232 ~~claims to be the father.~~

233 ~~(h)(d) Who~~ Whether the mother has named ~~any man~~ as the
234 father on the birth certificate of the child or in connection
235 with applying for or receiving public assistance.

236 ~~(i)(e) Who~~ Whether ~~any man~~ has acknowledged or claimed
237 paternity of the child in a jurisdiction in which the mother
238 resided at the time of or since conception of the child, or in
239 which the child has resided or resides.

240 ~~(j)(f) Who~~ Whether ~~a man~~ is named on the birth certificate
241 of the child pursuant to s. 382.013(2).

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242 (k) ~~(g)~~ Who ~~Whether a man~~ has been determined by a court
243 order to be the father of the child.

244 (1) ~~(h)~~ Who ~~Whether a man~~ has been determined to be the
245 father of the child by the Department of Revenue as provided in
246 s. 409.256.

247 (2) The information required under ~~in~~ subsection (1) may
248 be supplied to the court or the department in the form of a
249 sworn affidavit by a person having personal knowledge of the
250 facts.

251 (3) If the inquiry under subsection (1) identifies any
252 person as a parent or prospective parent, the court shall
253 require notice of the hearing to be provided to that person.

254 (4) If the inquiry under subsection (1) fails to identify
255 any person as a parent or prospective parent, the court shall so
256 find and may proceed without further notice.

257 (5) If the inquiry under subsection (1) identifies a
258 parent or prospective parent, and that person's location is
259 unknown, the court shall direct the petitioner to conduct a
260 diligent search for that person before scheduling a disposition
261 hearing regarding the dependency of the child unless the court
262 finds that the best interest of the child requires proceeding
263 without notice to the person whose location is unknown.

264 (6) If the inquiry under subsection (1) identifies an
265 unmarried biological father or an unmarried biological father is
266 identified by another means and is personally served with a



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267 petition for dependency but fails to assert his parental rights
268 as specified in s. 39.502(7), the court shall so find and may
269 proceed without further notice.

270 (7)~~(6)~~ The diligent search required by subsection (5) must
271 include, at a minimum, inquiries of all relatives of the parent
272 or prospective parent made known to the petitioner, inquiries of
273 all offices of program areas of the department likely to have
274 information about the parent or prospective parent, inquiries of
275 other state and federal agencies likely to have information
276 about the parent or prospective parent, inquiries of appropriate
277 utility and postal providers, a thorough search of at least one
278 electronic database specifically designed for locating persons,
279 a search of the Florida Putative Father Registry, and inquiries
280 of appropriate law enforcement agencies. Pursuant to s. 453 of
281 the Social Security Act, 42 U.S.C. s. 653(c)(4), the department,
282 as the state agency administering Titles IV-B and IV-E of the
283 act, shall be provided access to the federal and state parent
284 locator service for diligent search activities.

285 (8)~~(7)~~ Any agency contacted by a petitioner with a request
286 for information pursuant to subsection (7) ~~(6)~~ shall release the
287 requested information to the petitioner without the necessity of
288 a subpoena or court order.

289 (9)(a)~~(8)~~ If the inquiry and diligent search identifies a
290 prospective parent, that person must be given the opportunity to
291 become a party to the proceedings by completing a sworn

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292 affidavit of parenthood and filing it with the court or the
293 department. A prospective parent who files a sworn affidavit of
294 parenthood while the child is a dependent child but no later
295 than at the time of or before the adjudicatory hearing in any
296 termination of parental rights proceeding for the child shall be
297 considered a parent for all purposes under this section unless
298 the other parent contests the determination of parenthood. If
299 neither the known parent nor the prospective parent objects to a
300 request to establish parentage under the laws of the state, the
301 court may enter an agreed order, order the Office of Vital
302 Statistics to amend the child's birth certificate, and order the
303 petitioning parent to pay support for the child.

304 (b) If the known parent contests the recognition of the
305 prospective parent as a parent, the prospective parent may not
306 be recognized as a parent until proceedings to determine
307 maternity or paternity under chapter 742 have been concluded.
308 However, the prospective parent shall continue to receive notice
309 of hearings as a participant pending results of the chapter 742
310 proceedings to determine maternity or paternity. The dependency
311 court may hear the chapter 742 proceeding and establish
312 parentage in accordance with the procedures in that chapter,
313 including entry of an order or judgment establishing parentage.

314 (c) A prospective parent may only file a sworn affidavit
315 of parenthood when the child does not have two legally
316 recognized parents. If a child has two legally recognized



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317 parents, the prospective parent must seek to establish parentage
318 pursuant to chapter 742.

319 (d) Nothing in this subsection prevents the known parent
320 and the prospective parent from agreeing to voluntarily submit
321 to scientific testing to determine the maternity or paternity of
322 the child if the child does not already have two legally
323 recognized parents and the court determines it is in the child's
324 best interest.

325 (e) Test results are admissible in evidence and shall be
326 weighed along with other evidence of parentage unless the
327 statistical probability of parentage equals or exceeds 95
328 percent. A statistical probability of parentage that equals or
329 exceeds 95 percent creates a rebuttable presumption, as
330 described in s. 90.304, that the prospective parent is the
331 biological parent of the child. If a party fails to rebut the
332 presumption of parentage which arose from the statistical
333 probability of parentage that equals or exceeds 95 percent, the
334 court may enter a summary judgment of parentage. If the test
335 results show the prospective parent is not the biological
336 parent, the prospective parent is no longer considered a
337 participant or entitled to notice of the proceedings.

338 (f) The court shall assess the cost of the paternity
339 determination as a cost of litigation.

340 (10)~~(9)~~ If the diligent search under subsection (5) fails
341 to identify and locate a parent or prospective parent, the court

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342 shall so find and may proceed without further notice.

343 Section 6. Subsection (3) of section 39.801, Florida
344 Statutes, is amended to read:

345 39.801 Procedures and jurisdiction; notice; service of
346 process.—

347 (3) Before the court may terminate parental rights, in
348 addition to the other requirements set forth in this part, the
349 following requirements must be met:

350 (a) Notice of the date, time, and place of the advisory
351 hearing for the petition to terminate parental rights and a copy
352 of the petition must be personally served upon the following
353 persons, specifically notifying them that a petition has been
354 filed:

- 355 1. The parents of the child.
- 356 2. The legal custodians of the child.
- 357 3. If the parents who would be entitled to notice are dead
358 or unknown, a living relative of the child, unless upon diligent
359 search and inquiry no such relative can be found.
- 360 4. Any person who has physical custody of the child.
- 361 5. Any grandparent entitled to priority for adoption under
362 s. 63.0425.
- 363 6. Any prospective parent who has been identified under s.
364 39.503 or s. 39.803, unless a court order has been entered
365 pursuant to s. 39.503(4), (6), or (10) or s. 39.803(4), (6), or
366 (10) s. 39.503(4) or (9) or s. 39.803(4) or (9) which indicates

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367 no further notice is required. Except as otherwise provided in
368 this section, if there is not a legal father, notice of the
369 petition for termination of parental rights must be provided to
370 any known prospective father who is identified under oath before
371 the court or who is identified by a diligent search of the
372 Florida Putative Father Registry. Service of the notice of the
373 petition for termination of parental rights is not required if
374 the prospective father executes an affidavit of nonpaternity or
375 a consent to termination of his parental rights which is
376 accepted by the court after notice and opportunity to be heard
377 by all parties to address the best interests of the child in
378 accepting such affidavit.

379 7. The guardian ad litem for the child or the
380 representative of the guardian ad litem program, if the program
381 has been appointed.

382
383 The document containing the notice to respond or appear must
384 contain, in type at least as large as the type in the balance of
385 the document, the following or substantially similar language:
386 "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING
387 CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF
388 THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND
389 TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE
390 CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS
391 NOTICE."

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392 (b) If a child does not have a legal father, notice of the
393 petition for termination of parental rights shall be personally
394 served upon any known and locatable unmarried biological father
395 who is identified under oath before the court or who is
396 identified by a diligent search of the Florida Putative Father
397 Registry. Service of the notice of the petition for termination
398 of parental rights is not required if the unmarried biological
399 father signs an affidavit of nonpaternity or a consent to
400 termination of his parental rights and such affidavit or consent
401 is accepted by the department. The recipient of the notice may
402 waive service of process by executing a waiver and acknowledging
403 receipt of the notice. The notice of petition for termination of
404 parental rights must specifically state that if the unmarried
405 biological father desires to assert his parental rights to
406 acquire standing to contest the petition he must, within 30 days
407 after service:

408 1. File a claim of paternity with the Florida Putative
409 Father Registry pursuant to instructions provided for submitting
410 a claim of paternity form to the Office of Vital Statistics,
411 including the address to which the claim must be sent.

412 2. Legally establish his parental rights to the child
413 pursuant to the laws of the state.

414 3. File a verified response with the court which contains
415 a pledge of commitment to the child, a request for the court to
416 calculate and order child support, and an agreement to submit to

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417 the court's jurisdiction.

418 4. Provide support for the child as calculated by the
419 court under s. 61.30.

420 5. Seek to establish a substantial relationship with the
421 child within the parameters established by court order. A father
422 must develop a substantial relationship with the child by taking
423 parental responsibility for the child and the child's future;
424 providing financial support to the child in accordance with his
425 ability, if not prevented from doing so by the person or
426 authorized agency having lawful custody of the child; and
427 establishing or maintaining regular contact with the child in
428 accordance with a written court order. An order for visitation
429 or other contact may be entered by the court if the court
430 determines that such contact will not endanger the safety, well-
431 being, and physical, mental, or emotional health of the child.
432 The court may consider the results of any home study when making
433 such determination.

434 (c) The court shall determine whether the unmarried
435 biological father took the steps necessary to assert his
436 parental rights to acquire standing to contest the termination
437 of parental rights petition pursuant to paragraph (b) and, if
438 not, the court shall enter a finding that the unmarried
439 biological father is no longer a prospective parent or
440 participant, may not contest the petition for termination of
441 parental rights, and is no longer entitled to any further notice

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442 of proceedings regarding the child unless otherwise ordered by
443 the court.

444 (d) If an unmarried biological father is not identified
445 pursuant to the inquiry under section 39.803, the unmarried
446 biological father's claim that he did not receive actual notice
447 of the termination proceeding is not a defense to the petition
448 nor grounds that the proceeding is otherwise defective.

449 (e)~~(b)~~ If a party required to be served with notice as
450 prescribed in paragraph (a) cannot be served, notice of hearings
451 must be given as prescribed by the rules of civil procedure, and
452 service of process must be made as specified by law or civil
453 actions.

454 (f)~~(e)~~ Notice as prescribed by this section may be waived,
455 in the discretion of the judge, with regard to any person to
456 whom notice must be given under this subsection if the person
457 executes, before two witnesses and a notary public or other
458 officer authorized to take acknowledgments, a written surrender
459 of the child to a licensed child-placing agency or the
460 department.

461 (g)~~(d)~~ If the person served with notice under this section
462 fails to personally appear at the advisory hearing, the failure
463 to personally appear shall constitute consent for termination of
464 parental rights by the person given notice. If a parent appears
465 for the advisory hearing and the court orders that parent to
466 personally appear at the adjudicatory hearing for the petition

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467 for termination of parental rights, stating the date, time, and
468 location of said hearing, then failure of that parent to
469 personally appear at the adjudicatory hearing shall constitute
470 consent for termination of parental rights.

471 Section 7. Section 39.803, Florida Statutes, is amended to
472 read:

473 39.803 Identity or location of parent unknown after filing
474 of termination of parental rights petition; special procedures.-

475 (1) If the identity or location of a parent is unknown and
476 a petition for termination of parental rights is filed, the
477 court shall conduct under oath the following inquiry of the
478 parent who is available, or, if no parent is available, of any
479 relative, caregiver, or legal custodian of the child who is
480 present at the hearing and likely to have the information
481 regarding the identity of any man:

482 (a) To whom the mother of the child was married at any
483 time when conception of the child may have occurred or at the
484 time of the birth of the child.

485 (b) Who has filed an affidavit of paternity pursuant to s.
486 382.013(2)(c) before an advisory hearing is held on a petition
487 for termination of parental rights.

488 (c) Who has adopted the child before an advisory hearing
489 is held on the petition for termination of parental rights.

490 (d) Who has been adjudicated by a court as the father of
491 the child before an advisory hearing is held on a petition for

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492 termination of parental rights.

493 (e) Whom the mother identified as the father under oath to
494 a representative of the department before an advisory hearing is
495 held on the petition for termination of parental rights.

496 ~~(a) Whether the mother of the child was married at the~~
497 ~~probable time of conception of the child or at the time of birth~~
498 ~~of the child.~~

499 ~~(f)(b) With whom~~ Whether the mother was cohabiting ~~with a~~
500 ~~male~~ at the probable time of conception of the child.

501 ~~(g)(e) Who claims to be the father and from whom~~ Whether
502 the mother has received payments or promises of support with
503 respect to the child or because of her pregnancy ~~from a man who~~
504 ~~claims to be the father.~~

505 ~~(h)(d) Who~~ Whether the mother has named ~~any man~~ as the
506 father on the birth certificate of the child or in connection
507 with applying for or receiving public assistance before an
508 advisory hearing is held on the petition for termination of
509 parental rights.

510 ~~(i)(e) Who~~ Whether ~~any man~~ has acknowledged or claimed
511 paternity of the child in a jurisdiction in which the mother
512 resided at the time of or since conception of the child, or in
513 which the child has resided or resides before an advisory
514 hearing is held on the petition for termination of parental
515 rights.

516 ~~(j)(f) Who~~ Whether ~~a man~~ is named on the birth certificate

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517 of the child pursuant to s. 382.013(2).

518 (k)~~(g)~~ Who ~~Whether a man~~ has been determined by a court
519 order to be the father of the child.

520 (1)~~(h)~~ Who ~~Whether a man~~ has been determined to be the
521 father of the child by the Department of Revenue as provided in
522 s. 409.256.

523 (2) The information required in subsection (1) may be
524 supplied to the court or the department in the form of a sworn
525 affidavit by a person having personal knowledge of the facts.

526 (3) If the inquiry under subsection (1) identifies any
527 person as a parent or prospective parent, the court shall
528 require notice of the hearing to be provided to that person.

529 (4) If the inquiry under subsection (1) fails to identify
530 any person as a parent or prospective parent, the court shall so
531 find and may proceed without further notice.

532 (5) If the inquiry under subsection (1) identifies a
533 parent or prospective parent, and that person's location is
534 unknown, the court shall direct the petitioner to conduct a
535 diligent search for that person before scheduling an
536 adjudicatory hearing regarding the petition for termination of
537 parental rights to the child unless the court finds that the
538 best interest of the child requires proceeding without actual
539 notice to the person whose location is unknown.

540 (6) If the inquiry under subsection (1) identifies an
541 unmarried biological father or an unmarried biological father is



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542 identified by another means and is personally served with a
543 petition for termination of parental rights but fails to assert
544 his parental rights as specified in s. 39.801(3)(b), the court
545 shall so find and may proceed without further notice.

546 ~~(7)~~(6) The diligent search required by subsection (5) must
547 include, at a minimum, inquiries of all known relatives of the
548 parent or prospective parent, inquiries of all offices of
549 program areas of the department likely to have information about
550 the parent or prospective parent, inquiries of other state and
551 federal agencies likely to have information about the parent or
552 prospective parent, inquiries of appropriate utility and postal
553 providers, a thorough search of at least one electronic database
554 specifically designed for locating persons, a search of the
555 Florida Putative Father Registry, and inquiries of appropriate
556 law enforcement agencies. Pursuant to s. 453 of the Social
557 Security Act, 42 U.S.C. s. 653(c)(4), the department, as the
558 state agency administering Titles IV-B and IV-E of the act,
559 shall be provided access to the federal and state parent locator
560 service for diligent search activities.

561 ~~(8)~~(7) Any agency contacted by petitioner with a request
562 for information pursuant to subsection ~~(7)~~ (6) shall release the
563 requested information to the petitioner without the necessity of
564 a subpoena or court order.

565 ~~(9)~~(8) If the inquiry and diligent search identifies a
566 prospective parent, that person must be given the opportunity to

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567 become a party to the proceedings by completing a sworn
568 affidavit of parenthood and filing it with the court or the
569 department. A prospective parent who files a sworn affidavit of
570 parenthood while the child is a dependent child but no later
571 than at the time of or before the adjudicatory hearing in the
572 termination of parental rights proceeding for the child shall be
573 considered a parent for all purposes under this section.

574 ~~(10)~~(9) If the diligent search under subsection (5) fails
575 to identify and locate a prospective parent, the court shall so
576 find and may proceed without further notice.

577 Section 8. This act shall take effect October 1, 2018.

578

579

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

581 Remove everything before the enacting clause and insert:
582 An act relating to dependency proceedings; amending s. 39.001,
583 F.S.; providing an additional purpose of ch. 39, F.S.; amending
584 s. 39.01, F.S.; revising the definition of the term "parent" and
585 defining the term "unmarried biological father"; amending s.
586 39.402 and 39.803, F.S.; revising the types of information
587 relating to the identity and location of a child's legal father
588 that fall within the scope of a court inquiry at a shelter
589 hearing or a hearing regarding a petition for termination of
590 parental rights; amending s. 39.502, F.S.; providing for certain
591 unmarried biological fathers to receive notice of dependency

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592 hearings under certain circumstances; amending ss. 39.503, F.S.;
593 revising the types of information relating to the identity and
594 location of a child's legal father that fall within the scope of
595 a court inquiry at a dependency or shelter hearing; requiring a
596 court to take certain actions if a person fails to assert
597 parental rights; providing conditions for establishing paternity
598 in a dependency proceeding; authorizing the court to order
599 certain scientific testing to determine maternity or paternity
600 of a child; providing for assessment of costs of litigation;
601 amending s. 39.801, F.S.; requiring notice of a petition for
602 termination of parental rights to be served on an unmarried
603 biological father identified under oath or by a diligent search
604 of the Florida Putative Father Registry under certain
605 circumstances; providing conditions for contesting the petition;
606 conforming cross-references; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 507 Pub. Rec./E-mail Addresses of Current Justices and Judges
SPONSOR(S): Shaw
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski 	Bond 
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill exempts from public record requirements the business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges.

The bill provides a public necessity statement as required by the Florida Constitution.

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

The effective date of the bill is July 1, 2018.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain records of e-mail addresses; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.¹

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S. guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act² provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."³ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.⁴

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature or the State Court System.⁵

Public Records and Members of the Judiciary

Currently, s. 119.071(4)(d)(2).e., F.S. exempts several types of information from ch. 119, F.S. for current or former members of the judiciary, namely:

- Their home addresses, dates of birth, and telephone numbers.
- The names, home addresses, dates of birth, telephone numbers, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

Communication with Members of the Judiciary

Due process requires that generally, when a party to a lawsuit wishes to communicate with the presiding judge or justice, the other party must be present. A communication between a party and the presiding judge or justice outside the presence of the other party is "ex parte communication" and

¹ FLA. CONST. art. I, s. 24(c).

² s. 119.15, F.S.

³ s. 119.15(6)(b), F.S.

⁴ Id.

⁵ s. 119.15(2)(b), F.S.

highly disfavored, usually resulting in a breach of the rules regulating attorneys and judges.⁶ *Ex parte* communications between parties and judges usually do not occur via telephone because judicial assistants usually receive telephone calls. E-mail communication presents a special problem in that a party to a case may send an e-mail directly to a judge, not realizing that such *ex parte* communication is prohibited and can compromise the integrity of the proceedings.

Effect of the Bill

The bill amends s. 119.071, F.S. to provide that the business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges are exempt⁷ from s. 119.07(1), F.S. and art. I, s. 24(a) of the Florida Constitution.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect business e-mail addresses of current Florida justices and judges, because public release of such addresses could result in improper *ex parte* communications necessitating recusal or other action that could negatively affect the judiciary; that the harm that may result from the release of such addresses outweighs any public benefit; and that the public can contact the judicial member via e-mail through the judicial member's judicial assistant without the need for the judicial member's business e-mail address.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 119.071, F.S. regarding the e-mail addresses of current justices and judges.
Section 2: Provides a public necessity statement.
Section 3: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

⁶ See Canon 3(B)(7), Code of Judicial Conduct (a judge generally must not "initiate, permit, or consider *ex parte* communications, or consider other communications outside the presence of the parties concerning a pending or impending proceeding . . ."); R. Regulating Fla. Bar 4-3.5(b).

⁷ There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See 85-62 Fla. Op. Att'y Gen. (1985).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have an insignificant negative fiscal impact on courts because staff responsible for complying with public records requests may require training related to the creation of the public record exemption.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement and Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for business e-mail addresses of
 5 current justices and judges; providing for future
 6 legislative review and repeal of the exemption;
 7 providing a statement of public necessity; providing
 8 an effective date.

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

11
 12 Section 1. Paragraph (d) of subsection (4) of section
 13 119.071, Florida Statutes, is amended to read:

14 119.071 General exemptions from inspection or copying of
 15 public records.—

16 (4) AGENCY PERSONNEL INFORMATION.—

17 (d)1. For purposes of this paragraph, the term "telephone
 18 numbers" includes home telephone numbers, personal cellular
 19 telephone numbers, personal pager telephone numbers, and
 20 telephone numbers associated with personal communications
 21 devices.

22 2.a. The home addresses, telephone numbers, dates of
 23 birth, and photographs of active or former sworn or civilian law
 24 enforcement personnel, including correctional and correctional
 25 probation officers, personnel of the Department of Children and

26 Families whose duties include the investigation of abuse,
 27 neglect, exploitation, fraud, theft, or other criminal
 28 activities, personnel of the Department of Health whose duties
 29 are to support the investigation of child abuse or neglect, and
 30 personnel of the Department of Revenue or local governments
 31 whose responsibilities include revenue collection and
 32 enforcement or child support enforcement; the names, home
 33 addresses, telephone numbers, photographs, dates of birth, and
 34 places of employment of the spouses and children of such
 35 personnel; and the names and locations of schools and day care
 36 facilities attended by the children of such personnel are exempt
 37 from s. 119.07(1) and s. 24(a), Art. I of the State
 38 Constitution. This sub-subparagraph is subject to the Open
 39 Government Sunset Review Act in accordance with s. 119.15 and
 40 shall stand repealed on October 2, 2022, unless reviewed and
 41 saved from repeal through reenactment by the Legislature.

42 b. The home addresses, telephone numbers, dates of birth,
 43 and photographs of current or former nonsworn investigative
 44 personnel of the Department of Financial Services whose duties
 45 include the investigation of fraud, theft, workers' compensation
 46 coverage requirements and compliance, other related criminal
 47 activities, or state regulatory requirement violations; the
 48 names, home addresses, telephone numbers, dates of birth, and
 49 places of employment of the spouses and children of such
 50 personnel; and the names and locations of schools and day care

51 facilities attended by the children of such personnel are exempt
 52 from s. 119.07(1) and s. 24(a), Art. I of the State
 53 Constitution. This sub-subparagraph is subject to the Open
 54 Government Sunset Review Act in accordance with s. 119.15 and
 55 shall stand repealed on October 2, 2021, unless reviewed and
 56 saved from repeal through reenactment by the Legislature.

57 c. The home addresses, telephone numbers, dates of birth,
 58 and photographs of current or former nonsworn investigative
 59 personnel of the Office of Financial Regulation's Bureau of
 60 Financial Investigations whose duties include the investigation
 61 of fraud, theft, other related criminal activities, or state
 62 regulatory requirement violations; the names, home addresses,
 63 telephone numbers, dates of birth, and places of employment of
 64 the spouses and children of such personnel; and the names and
 65 locations of schools and day care facilities attended by the
 66 children of such personnel are exempt from s. 119.07(1) and s.
 67 24(a), Art. I of the State Constitution. This sub-subparagraph
 68 is subject to the Open Government Sunset Review Act in
 69 accordance with s. 119.15 and shall stand repealed on October 2,
 70 2022, unless reviewed and saved from repeal through reenactment
 71 by the Legislature.

72 d. The home addresses, telephone numbers, dates of birth,
 73 and photographs of current or former firefighters certified in
 74 compliance with s. 633.408; the names, home addresses, telephone
 75 numbers, photographs, dates of birth, and places of employment

76 of the spouses and children of such firefighters; and the names
 77 and locations of schools and day care facilities attended by the
 78 children of such firefighters are exempt from s. 119.07(1) and
 79 s. 24(a), Art. I of the State Constitution. This sub-
 80 subparagraph is subject to the Open Government Sunset Review Act
 81 in accordance with s. 119.15, and shall stand repealed on
 82 October 2, 2022, unless reviewed and saved from repeal through
 83 reenactment by the Legislature.

84 e. (I) The home addresses, dates of birth, and telephone
 85 numbers of current or former justices of the Supreme Court,
 86 district court of appeal judges, circuit court judges, and
 87 county court judges; the names, home addresses, telephone
 88 numbers, dates of birth, and places of employment of the spouses
 89 and children of current or former justices and judges; and the
 90 names and locations of schools and day care facilities attended
 91 by the children of current or former justices and judges are
 92 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 93 Constitution. This sub-sub-subparagraph ~~sub-subparagraph~~ is
 94 subject to the Open Government Sunset Review Act in accordance
 95 with s. 119.15 and shall stand repealed on October 2, 2022,
 96 unless reviewed and saved from repeal through reenactment by the
 97 Legislature.

98 (II) The business e-mail addresses of current justices of
 99 the Supreme Court, district court of appeal judges, circuit
 100 court judges, and county court judges are exempt from s.

101 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 102 sub-sub-subparagraph is subject to the Open Government Sunset
 103 Review Act in accordance with s. 119.15 and shall stand repealed
 104 on October 2, 2023, unless reviewed and saved from repeal
 105 through reenactment by the Legislature.

106 f. The home addresses, telephone numbers, dates of birth,
 107 and photographs of current or former state attorneys, assistant
 108 state attorneys, statewide prosecutors, or assistant statewide
 109 prosecutors; the names, home addresses, telephone numbers,
 110 photographs, dates of birth, and places of employment of the
 111 spouses and children of current or former state attorneys,
 112 assistant state attorneys, statewide prosecutors, or assistant
 113 statewide prosecutors; and the names and locations of schools
 114 and day care facilities attended by the children of current or
 115 former state attorneys, assistant state attorneys, statewide
 116 prosecutors, or assistant statewide prosecutors are exempt from
 117 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

118 g. The home addresses, dates of birth, and telephone
 119 numbers of general magistrates, special magistrates, judges of
 120 compensation claims, administrative law judges of the Division
 121 of Administrative Hearings, and child support enforcement
 122 hearing officers; the names, home addresses, telephone numbers,
 123 dates of birth, and places of employment of the spouses and
 124 children of general magistrates, special magistrates, judges of
 125 compensation claims, administrative law judges of the Division

126 of Administrative Hearings, and child support enforcement
 127 hearing officers; and the names and locations of schools and day
 128 care facilities attended by the children of general magistrates,
 129 special magistrates, judges of compensation claims,
 130 administrative law judges of the Division of Administrative
 131 Hearings, and child support enforcement hearing officers are
 132 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 133 Constitution. This sub-subparagraph is subject to the Open
 134 Government Sunset Review Act in accordance with s. 119.15 and
 135 shall stand repealed on October 2, 2022, unless reviewed and
 136 saved from repeal through reenactment by the Legislature.

137 h. The home addresses, telephone numbers, dates of birth,
 138 and photographs of current or former human resource, labor
 139 relations, or employee relations directors, assistant directors,
 140 managers, or assistant managers of any local government agency
 141 or water management district whose duties include hiring and
 142 firing employees, labor contract negotiation, administration, or
 143 other personnel-related duties; the names, home addresses,
 144 telephone numbers, dates of birth, and places of employment of
 145 the spouses and children of such personnel; and the names and
 146 locations of schools and day care facilities attended by the
 147 children of such personnel are exempt from s. 119.07(1) and s.
 148 24(a), Art. I of the State Constitution.

149 i. The home addresses, telephone numbers, dates of birth,
 150 and photographs of current or former code enforcement officers;

151 | the names, home addresses, telephone numbers, dates of birth,
 152 | and places of employment of the spouses and children of such
 153 | personnel; and the names and locations of schools and day care
 154 | facilities attended by the children of such personnel are exempt
 155 | from s. 119.07(1) and s. 24(a), Art. I of the State
 156 | Constitution.

157 | j. The home addresses, telephone numbers, places of
 158 | employment, dates of birth, and photographs of current or former
 159 | guardians ad litem, as defined in s. 39.820; the names, home
 160 | addresses, telephone numbers, dates of birth, and places of
 161 | employment of the spouses and children of such persons; and the
 162 | names and locations of schools and day care facilities attended
 163 | by the children of such persons are exempt from s. 119.07(1) and
 164 | s. 24(a), Art. I of the State Constitution. This sub-
 165 | subparagraph is subject to the Open Government Sunset Review Act
 166 | in accordance with s. 119.15 and shall stand repealed on October
 167 | 2, 2022, unless reviewed and saved from repeal through
 168 | reenactment by the Legislature.

169 | k. The home addresses, telephone numbers, dates of birth,
 170 | and photographs of current or former juvenile probation
 171 | officers, juvenile probation supervisors, detention
 172 | superintendents, assistant detention superintendents, juvenile
 173 | justice detention officers I and II, juvenile justice detention
 174 | officer supervisors, juvenile justice residential officers,
 175 | juvenile justice residential officer supervisors I and II,

176 juvenile justice counselors, juvenile justice counselor
 177 supervisors, human services counselor administrators, senior
 178 human services counselor administrators, rehabilitation
 179 therapists, and social services counselors of the Department of
 180 Juvenile Justice; the names, home addresses, telephone numbers,
 181 dates of birth, and places of employment of spouses and children
 182 of such personnel; and the names and locations of schools and
 183 day care facilities attended by the children of such personnel
 184 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 185 Constitution.

186 1. The home addresses, telephone numbers, dates of birth,
 187 and photographs of current or former public defenders, assistant
 188 public defenders, criminal conflict and civil regional counsel,
 189 and assistant criminal conflict and civil regional counsel; the
 190 names, home addresses, telephone numbers, dates of birth, and
 191 places of employment of the spouses and children of such
 192 defenders or counsel; and the names and locations of schools and
 193 day care facilities attended by the children of such defenders
 194 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 195 the State Constitution.

196 m. The home addresses, telephone numbers, dates of birth,
 197 and photographs of current or former investigators or inspectors
 198 of the Department of Business and Professional Regulation; the
 199 names, home addresses, telephone numbers, dates of birth, and
 200 places of employment of the spouses and children of such current

201 or former investigators and inspectors; and the names and
 202 locations of schools and day care facilities attended by the
 203 children of such current or former investigators and inspectors
 204 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 205 Constitution. This sub-subparagraph is subject to the Open
 206 Government Sunset Review Act in accordance with s. 119.15 and
 207 shall stand repealed on October 2, 2022, unless reviewed and
 208 saved from repeal through reenactment by the Legislature.

209 n. The home addresses, telephone numbers, and dates of
 210 birth of county tax collectors; the names, home addresses,
 211 telephone numbers, dates of birth, and places of employment of
 212 the spouses and children of such tax collectors; and the names
 213 and locations of schools and day care facilities attended by the
 214 children of such tax collectors are exempt from s. 119.07(1) and
 215 s. 24(a), Art. I of the State Constitution. This sub-
 216 subparagraph is subject to the Open Government Sunset Review Act
 217 in accordance with s. 119.15 and shall stand repealed on October
 218 2, 2022, unless reviewed and saved from repeal through
 219 reenactment by the Legislature.

220 o. The home addresses, telephone numbers, dates of birth,
 221 and photographs of current or former personnel of the Department
 222 of Health whose duties include, or result in, the determination
 223 or adjudication of eligibility for social security disability
 224 benefits, the investigation or prosecution of complaints filed
 225 against health care practitioners, or the inspection of health

226 care practitioners or health care facilities licensed by the
 227 Department of Health; the names, home addresses, telephone
 228 numbers, dates of birth, and places of employment of the spouses
 229 and children of such personnel; and the names and locations of
 230 schools and day care facilities attended by the children of such
 231 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 232 the State Constitution. This sub-subparagraph is subject to the
 233 Open Government Sunset Review Act in accordance with s. 119.15
 234 and shall stand repealed on October 2, 2019, unless reviewed and
 235 saved from repeal through reenactment by the Legislature.

236 p. The home addresses, telephone numbers, dates of birth,
 237 and photographs of current or former impaired practitioner
 238 consultants who are retained by an agency or current or former
 239 employees of an impaired practitioner consultant whose duties
 240 result in a determination of a person's skill and safety to
 241 practice a licensed profession; the names, home addresses,
 242 telephone numbers, dates of birth, and places of employment of
 243 the spouses and children of such consultants or their employees;
 244 and the names and locations of schools and day care facilities
 245 attended by the children of such consultants or employees are
 246 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 247 Constitution. This sub-subparagraph is subject to the Open
 248 Government Sunset Review Act in accordance with s. 119.15 and
 249 shall stand repealed on October 2, 2020, unless reviewed and
 250 saved from repeal through reenactment by the Legislature.

251 q. The home addresses, telephone numbers, dates of birth,
 252 and photographs of current or former emergency medical
 253 technicians or paramedics certified under chapter 401; the
 254 names, home addresses, telephone numbers, dates of birth, and
 255 places of employment of the spouses and children of such
 256 emergency medical technicians or paramedics; and the names and
 257 locations of schools and day care facilities attended by the
 258 children of such emergency medical technicians or paramedics are
 259 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 260 Constitution. This sub-subparagraph is subject to the Open
 261 Government Sunset Review Act in accordance with s. 119.15 and
 262 shall stand repealed on October 2, 2021, unless reviewed and
 263 saved from repeal through reenactment by the Legislature.

264 r. The home addresses, telephone numbers, dates of birth,
 265 and photographs of current or former personnel employed in an
 266 agency's office of inspector general or internal audit
 267 department whose duties include auditing or investigating waste,
 268 fraud, abuse, theft, exploitation, or other activities that
 269 could lead to criminal prosecution or administrative discipline;
 270 the names, home addresses, telephone numbers, dates of birth,
 271 and places of employment of spouses and children of such
 272 personnel; and the names and locations of schools and day care
 273 facilities attended by the children of such personnel are exempt
 274 from s. 119.07(1) and s. 24(a), Art. I of the State
 275 Constitution. This sub-subparagraph is subject to the Open

276 Government Sunset Review Act in accordance with s. 119.15 and
 277 shall stand repealed on October 2, 2021, unless reviewed and
 278 saved from repeal through reenactment by the Legislature.

279 3. An agency that is the custodian of the information
 280 specified in subparagraph 2. and that is not the employer of the
 281 officer, employee, justice, judge, or other person specified in
 282 subparagraph 2. shall maintain the exempt status of that
 283 information only if the officer, employee, justice, judge, other
 284 person, or employing agency of the designated employee submits a
 285 written request for maintenance of the exemption to the
 286 custodial agency.

287 4. The exemptions in this paragraph apply to information
 288 held by an agency before, on, or after the effective date of the
 289 exemption.

290 Section 2. The Legislature finds that it is a public
 291 necessity that business e-mail addresses of the current justices
 292 of the Supreme Court, district court of appeal judges, circuit
 293 court judges, and county court judges be made exempt from s.
 294 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State
 295 Constitution. Public release of such e-mail addresses could
 296 result in e-mails from the public or parties to an action
 297 regarding pending litigation being sent directly to justices or
 298 judges, creating the risk of ex parte communications that could
 299 necessitate recusal or other action that may negatively affect
 300 judicial efficiency and court schedules. The Legislature further

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301 finds that the harm that may result from the release of such e-
302 mail addresses outweighs any public benefit that may be derived
303 from their disclosure. If the justices' and judges' business e-
304 mail addresses are exempt from public records requirements, the
305 public may still use e-mail to contact a justice or judge
306 through his or her judicial assistant.

307 Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 771 Notaries Public
SPONSOR(S): Grant
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1042

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MM MacNamara	Bond NB
2) Transportation & Tourism Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Certain documents or instruments require the presence and signature of a notary public. In order to become a notary, an individual must meet certain minimum requirements, submit a signed and sworn application, pay a fee, obtain a bond payable to any individual harmed as a result of a breach of duty by the notary, and take an oath as required by law. Among the many legal requirements of a notary, current law requires that a notary may not notarize a signature if the party executing the document or instrument is not in the physical presence of the notary at the time the signature is notarized.

The bill creates "Online Notarizations," allowing a notary public to notarize documents using audio-video communication and other technology as provided for in the bill. Specifically, the bill provides the following framework for online notarization:

- Definitions for online notarization and the required technology;
- Procedures, standards, and requirements for online notarization;
- Minimum requirements technology must meet in order to be used for online notarization;
- Allows the Department of State, the Executive Office of the Governor, and the Agency for State Technology to promulgate rules and create a list of approved technologies or minimum requirements for the technology;
- Registration requirements for online notaries;
- Requirements for an electronic journal, detailing information of online notary services performed;
- A certificate to be used by online notaries;
- Standards for supervising the witnessing of electronic records; and
- Allows an online notary to charge a fee of up to \$25 in addition to the regular notary fee.

In addition to authorizing online notarization, the bill makes the following changes to current law in order to recognize online notarization:

- Requires the clerk of court to record instruments executed using an electronic signature and certified as true and correct printouts by notaries using online notarization,
- Amends the definition of "before" as used in current law related to witnesses, records, and documents to allow for parties to appear before each other through audio-video communication technology, and
- Allows document execution and signatures related to a real estate conveyance to occur in accordance with the standards related to online notarization,

The bill may have an indeterminate fiscal impact on state government, but does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Notary Public

The law considers many instruments to be of such importance that they must be signed in the presence of a notary public. The notary's function is to authenticate signatures and administer oaths on these documents, and therefore prevent fraud. The notary public is directly responsible for determining that the person signing is who he or she states.¹ A notary is authorized by law to perform six basic duties:

- Administer oaths and affirmations
- Take acknowledgments
- Attest to photocopies of certain documents
- Solemnize marriage
- Verify vehicle identification numbers
- Certify the contents of a safe-deposit box.²

Section 117.01, F.S., sets forth the form of application for a notary public. A notary must be at least 18 years of age, maintain legal residence in the state throughout the commission, and possess the ability to read, write, and understand English. The application must be signed and sworn by the applicant and accompanied by the fee and proof of a bond required by law. The application for appointment must include a \$25 fee, a \$10 commission fee required by s. 113.01, F.S., and a \$4 surcharge, appropriated to the Executive Office of the Governor to be used for notary education and assistance.³ The bond must be for at least \$7,500, payable to any individual harmed as a result of a breach of duty by the notary.⁴

Notaries must also take an oath following the application process. As part of the oath, the applicant must swear that he or she has read the statutes relating to notaries public and knows the responsibilities, limitations, and powers of a notary public.⁵ Once appointed, a notary may serve for four years. No person may be automatically reappointed as a notary; the application process must be completed regardless of whether an applicant has previously served as a notary.⁶

When notarizing a signature, a notary public must complete a jurat or notarial certificate for an oath, affirmation, or an acknowledgment.⁷ Current law provides notaries with a form certificate, in s. 117.05(12), F.S., that a notary public must use in substantially the same form as provided for under that section. The certificate of acknowledgment must contain the following items:

- The venue stating the location of the notarization;
- The type of notarial act performed;
- That the signer personally appeared before the notary public at the time of the notarization;
- The exact date of the notarial act;
- The name of the person whose signature is being notarized;

¹ Florida Notary Association, Inc., *Important Information*, <https://www.flnotary.com/become-a-notary/important-information/> (last visited January 12, 2018).

² Florida Governor's Office, *Duties of a Notary Public*, p. 2, https://www.flgov.com/wp-content/uploads/notary/ref_manual11-22.pdf (last visited January 12, 2018).

³ ss. 117.01(2), 117.01(7), F.S.; See also FN. 1, *Notary Package*

⁴ s. 117.01(1), F.S.

⁵ s. 117.01(3), F.S.

⁶ s. 117.01(6), F.S.

⁷ s. 117.05(4), F.S.

- The type of identification the notary public is relying upon in identifying the signer, either based on personal knowledge or satisfactory evidence;
- The notary's official signature;
- The notary's name, typed, printed, or stamped below the signature; and
- The notary's official seal⁸ affixed below or to either side of the notary's signature.

A notary public may not notarize a signature on a document if the person whose signature is being notarized is not in the physical presence of the notary public at the time the signature is notarized. This prohibition applies to notary publics using a facsimile signature stamp, unless the notary public has a physical disability that limits or prohibits his or her ability to make a written signature and unless the notary public has first submitted written notice to the Department of State.⁹

A violation of this provision is a civil infraction, punishable by penalty, and constitutes malfeasance and misfeasance in the conduct of official duties.¹⁰ A notary public who violates this provision with the intent to defraud is guilty of violating the statute pertaining to false or fraudulent acknowledgments, which is a third degree felony.¹¹

Electronic Notarization and Electronic Records

Under current law, any document requiring notarization may be notarized electronically. When notarizing a document electronically, a notary public is required to use an electronic signature:

- That is unique to the notary public,
- Capable of independent verification,
- Retained under the notary public's sole control, and
- Attached to or logically associated with the electronic document in such a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

When a signature is required to be accompanied by a notary public seal, the requirement is satisfied when the electronic signature of the notary public contains the minimum information specified.¹²

The Uniform Electronic Transaction Act provides that if a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.¹³

The Florida Administrative Code defines various terms relating to electronic signatures by notaries.¹⁴ The code provides that, in performing an electronic notarial act, a notary is required to execute an electronic signature in a manner that attributes such signature to the notary public identified on the official commission. In addition, the notary must take reasonable steps to ensure the security, reliability, and uniformity of electronic notarizations, including, but not limited to, the use of an authentication procedure such as a password, token, card, or biometric to protect access to the notary's electronic signature or the means for affixing the signature.¹⁵

⁸ The notary seal must be of the rubber stamp type and include the words "Notary Public—State of Florida;" it must also include the name of the notary public, the date of expiration of the commission of the notary public, and the commission number.

⁹ s. 117.107(2), F.S.

¹⁰ s. 117.107(9), F.S.; See also Fla. AGO 92-95 (Notary may not administer an oath over the telephone to a person who is not in the presence of the notary, even where the attorneys for all parties stipulate as to the person's identity.).

¹¹ s. 117.107(9), F.S., referring to s. 117.105, F.S.

¹² s. 117.021, F.S.

¹³ s. 668.50(11)(a), F.S.

¹⁴ Fla. Admin. Code R. 1N-5.001.

¹⁵ Fla. Admin. Code R. 1N-5.002.

The Department of State developed the rules contained in the Florida Administrative Code concerning electronic notarization. The department's power and authority to adopt rules to ensure the security, reliability, and uniformity of signature and seals comes from s. 117.021(5), F.S.

Effect of Proposed Changes

The bill directs the Division of Law Revision and Information to create part I of ch. 117, F.S., consisting of ss. 117.01-117.108, F.S., to be entitled "General Provisions." Additionally, the bill creates part II of ch. 117, F.S., entitled "Online Notarizations." Lastly, the bill makes conforming changes to other provisions of state statutes to allow for the acceptance and recognition of online notarization.

Definitions, Registration and Authority for Online Notarization

In part II of ch. 117, F.S., the bill creates s. 117.201, F.S., providing definitions for online notarizations. The sections contains definitions¹⁶ for the following terms:

- **Appear before, before, appear personally before, in the presence of:** In the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person, or in a different physical location from another person but able to see, hear, and communicate with the person by means of audio-video communication technology. This term also applies to s. 92.50, F.S., related to oaths and acknowledgments for witnesses, records, and documents, as well as, s. 695.03, F.S., related to acknowledgments and proof of records of the conveyance of real estate.
- **Audio-video communication technology:** Technology approved by the Department of State or this part that enables real-time, two-way communication using electronic means in which participants are able to see, hear, and communicate with one another.
- **Credential analysis:** A process or service approved by this part in which a third party confirms the validity of a government-issued identification credential or data thereon through review of public and proprietary data sources.
- **Government-issued identity credential:** Any approved credential for verifying identity in s. 117.05(5)(b)2, F.S., related to notary signatures.
- **Identity proofing:** A process or service approved by the Department of State or this part in which a third party confirms the identity of an individual through review of public and proprietary data sources.
- **Knowledge-based authentication:** A form of identity proofing based on a set of questions formulated from public and proprietary data sources for which the principal has not provided a prior answer during the course of the identity proofing.
- **Online notarization:** The performance of an electronic notarization by means of audio-video communication technology and that meets standards in the bill.
- **Online notary public:** A notary public registered with the Executive Office of the Governor to perform online notarizations under this part or a civil law notary appointed under ch. 118, F.S..
- **Principal:** an individual whose electronic signature is acknowledged, witnessed, or attested in an online notarization or who takes an oath or affirmation from the online notary public.
- **Remote presentation:** Transmission of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to identify the individual seeking the notary's services and to perform credential analysis through audio-video communication technology.

The bill provides methods and requirements for the registration of an online notary. Specifically, a notary public can complete a registration as an online notary public with the Executive Office of the Governor by:

¹⁶ The bill states that any term defined in s. 668.50(2), F.S., the "Uniform Electronic Transaction Act," has the same meaning when used in ch. 117, F.S.

- Satisfying the qualification requirements for appointment as a notary public under part I of ch. 117, F.S.;
- Paying an online notary public application fee in the amount of \$25;
- Submitting to the Executive Office of the Governor a registration as an online notary public, signed and sworn to by the applicant; and
- Identifying the audio-video communication and identity proofing technologies the online notary public intends to use in performing online notarizations.

The bill allows an online notary public to perform any function as an online notarization authorized under ch. 117, F.S., excluding solemnizing the rites of matrimony. If a notarization requires a principal to appear before or in the presence of the online notary public, the principal is allowed to appear before the online notary public by means of audio-video communication technology that meets the requirements of this ch. 117, F.S., and any rules adopted by the Executive Office of the Governor.

The bill further provides that an online notary public can perform an online notarization, regardless of the physical location of the principal at the time of the notarial act, provided the notary public is physically located in the state while performing the online notarization. The validity of an online notarization performed by an online notary public is to be determined by applicable laws of this state, regardless of the physical location of the principal at the time of the notarial act.

An online notary public is subject to part I to the same extent as a notary public appointed and commissioned only under that part, including the provisions relating to electronic notarizations. The prohibition under s. 117.107(2), F.S., forbidding the use of a facsimile signature unless the notary has a physical disability and receives approval by the Department of State, does not apply to part II related to online notarizations.

The bill provides a form certificate that a notary must use for electronic documents. This certificate requires the notary to state his or her location at the time of notarization. Moreover, the bill amends current certificates under s. 117.05, F.S., to allow the notary to attest that the party appeared before him or her by means of physical presence or online notarization. Lastly, the bill allows an online notary to charge up to \$25 for notarizing a document online, in addition to fees allowable under part I.

Technology Standards for Online Notarization

The bill requires that the standards applicable for electronic notarization under s. 117.021, F.S., and for the newly created online notarization reflect future improvements in technology to ensure the security of both processes. The bill grants the Department of State and the Agency for State Technology the authority to adopt rules and standards necessary to institute the requirements of the bill. Specifically, the bill allows for the adoption of the following standards, with some of these standards subjected to certain minimum requirements:

- *Identity proofing*: The security characteristics, at a minimum, must present the principal with five or more questions with a minimum of five possible answer choices per question. Moreover, each question must be drawn from a third-party provider of public and proprietary data sources and be identifiable to the principal. Lastly, responses must be subjected to a two minute time constraint and the individual must answer at least 80% correct.
- *Credential analysis*: Must include a comparison of the presented government-issued identity credential and data thereon against public or proprietary data sources to confirm that one or more data elements conform to the asserted identity, or an alternative method as provided in s. 117.295(2)(b)2, F.S.
- *Tamper-evident technology*: Requirements are satisfied by the use of technology that renders any subsequent change or modification to the electronic record evident.
- *Audio-video communication technology*: The signal transmission must be secure from interception or access by anyone other than the participants communicating and the technology

must provide sufficient audio clarity and video resolution to enable the notary to communicate with the principal and to confirm the identity of the principal pursuant to s. 117.265, F.S.

- *Unauthorized interception*: No specific minimum requirements provided.
- *Remote presentation*: No specific minimum requirements provided.

The bill also states that the online notary is not responsible for the security of the systems used by principal or others to access the online notarization session.

Moreover, the bill allows the Executive Office of the Governor and the Agency for State Technology to publish lists of technologies that satisfy the standards and are approved for use in online notarization. If the Department of State and Agency for State Technology establish standards for approval of technologies pursuant to this part, the technologies selected must conform to those standards. If the technologies conform to the standards, the Department of State and Agency for State Technology are required to approve the use of the technologies. If the Department of State and Agency for State Technology have not established standards, the online notary public must then select technologies satisfying the provisions of the bill.

With respect to electronic notarization, the bill amends s. 117.255, F.S., to require a notary, retaining sole control over their electronic signature, to include access protection to that signature through use of passwords or codes under the notaries control and forbids the notary from allowing another person to use the notary's electronic journal, seal, or signature. The use of an electronic signature is limited to instances where the notary is performing an online notarization. Notaries must also take reasonable steps to ensure that any device used to create their electronic signature is current and secure.

Lastly, the bill provides that a person may not require a notary to perform a notarial act, using an electronic signature, with technology not personally selected by the notary. The bill requires the Department of State to work in collaboration with the Agency for State Technology when adopting rules pursuant to s. 117.021(5), F.S.

Procedures for Online Notarization

An online notary public is allowed to perform an online notarization that meets the requirements of part II regardless of whether the principal or any witnesses are physically located in the state at the time of the online notarization. When an online notarial act performed in accordance with ch. 117, F.S., it is deemed to have been performed within the state and is therefore governed by applicable laws of the state.

In performing an online notarization, an online notary public must verify the identity of a principal at the time that the signature is taken by using audio-video communication technology and processes and must record the entire audio-video conference session between the notary public and the principal and any subscribing witnesses. A principal is not allowed to act in the capacity of a witness for an online notarization.

In performing an online notarization for a principal not located in the state, an online notary must confirm that the principal desires for the notarial act to be performed by a Florida notary public and under the general law of the state. An online notary public is required to confirm the identity of the principal or any witness by personal knowledge, or by:

- Remote presentation of a government-issued identification credential by each individual;
- Credential analysis of each government-issued identification credential; and
- Identity proofing of each individual, in the form of knowledge-based authentication or another method of identity proofing that conforms to standards set by the Executive Office of the Governor.

If an online notary fails to satisfy the above three requirements, or if the databases consulted for identity proofing do not contain sufficient information to permit authentication, the online notary may not perform the online notarization.

An online notary public must take reasonable steps to ensure that the audio-video communication technology used in an online notarization is secure from unauthorized interception. An electronic notarial certificate for an online notarization is required to include a notation that the notarization is an online notarization. Except as expressly provided otherwise, the provisions of part I of ch. 117, F.S. apply to an online notarization and an online notary public. The failure to comply with the online notarization procedures does not impair the validity of the notarial act or the electronic record, but it may be introduced as evidence to establish violations of this chapter or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

The bill, under s. 117.285, F.S., also allows an online notary public or an official of another state authorized under the laws of that state to perform online notarization of documents to supervise the witnessing of electronic records by the same audio-video communication technology used for online notarization. Specifically, the notary or official of another state may do so as follows:

- The identity of the witness must be verified in the same manner as the identity of the principal;
- The witness may be physically present with the principal or remote from the principal provided the witness and principal are using audio-video communication technology; and
- The witness is present in either physical proximity to the principal or through audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement to the effect that the principal has signed the electronic record.

Electronic Journal and Electronic Records

The bill requires an online notary to keep a secure electronic journal of electronic records he or she has notarized. For each online notarization, the electronic journal entry must contain all of the following:

- Date and time of the notarization;
- Type of notarial act;
- Type, title, or description of the electronic record or proceeding;
- Printed name and address of each principal involved in the transaction or proceeding;
- Indication that the principal satisfactorily passed the identity proofing;
- Indication that the government-issued identity credential satisfied the credential analysis;
- A recording of the audio-video communication in which the principal and any witness appeared before the notary public, identity of each participant was confirmed, and the notarial act was performed;
- The fee, if any, charged for the online notarization; and
- Copy of the identity of each principal involved in the transaction or proceeding.

For purposes of evidence of the identity of each principal, the bill provides that this may take any of the following forms:

1. Statement that the person is personally known to the online notary public,
2. Notation of the type of identification document provided to the online notary public,
3. Copy of the government-issued identity credential provided, or
4. Copy of any other identity credential or information provided.

The bill further requires that the notary attach or logically associate the electronic signature and seal to the electronic notarial certificate of an electronic record in a manner capable of independent verification using tamper-evident technology that renders any subsequent change or modification to the electronic record evident. A notary may only use an electronic signature when performing online notarization.

The electronic journal is required to be maintained for at least 10 years after the date of the notarial act. A backup record of the electronic journal must also be maintained. Moreover, the bill provides that an omitted or incomplete entry in the electronic journal does not impair the validity of the notarial act or the electronic record which was notarized. However, this fact may be introduced as evidence to establish violations of ch. 117, F.S., or as an indication of possible fraud, forgery, or impersonation or for other evidentiary purposes.

A notary must immediately notify an appropriate law enforcement agency and the Executive Office of the Governor of theft or vandalism of the electronic journal, electronic signature, or electronic seal. An online notary public must also immediately notify the Executive Office of the Governor of the loss or use by another person of the online notary public's electronic journal, electronic signature, or electronic seal.

Upon the request by a title agent, settlement agent, or title insurer which engaged the online notary in a real estate transaction, the bill requires a notary to make electronic copies of the pertinent entries in the electronic journal and provide access to the related audio-video communication recordings. An online notary may charge a reasonable fee for making these copies.

Effect of, and Relation to, Other Laws

Chapter 28, F.S., governs the clerks of circuit courts. As part of their duties, clerks are required to record certain instruments presented to him or her, upon payment of the service charges. The bill amends s. 28.222(3), F.S., requiring that a clerk of a circuit court to record copies of any instrument originally created and executed using an electronic signature and is certified as a true and correct paper printout by a notary public in accordance with ch. 117, F.S.

The bill also amends s. 695.28, F.S., related to the validity of recorded electronic documents. Under s. 695.28, F.S., a document that is submitted to the clerk of court or county recorded is deemed validly recorded and acts as notice to persons for certain purposes. The bill provides that submission to the clerk of court or county recorded provides notice to all persons that the document was signed, witnessed, or notarized electronically or that witnessing or notarization may have been done outside the physical presence in accordance with the provisions of ch. 117 or the laws of another state regarding the notarization of documents. Alternatively, it acts as notice that the document recorded was a certified printout of a document which one or more electronic signatures have been affixed.

The bill states that s. 695.28, F.S., does not preclude a challenge to the validity or enforceability of an instrument or electronic record based upon fraud, forgery, impersonation, duress, undue influence, minority, illegality, unconscionability, or any other basis.

If a provision of law requires a signature or act to be witnessed, compliance with the witnessing standards under 117.285 satisfies this requirement. Moreover, if a provision of law requires a signature, statement, or instrument to be acknowledged, sworn, affirmed, made under oath, or subject to penalty of perjury:

- The acknowledgment or proof may be made by any of the officials listed and in the manner described in s. 695.03.
- The requirement may be satisfied by an online notarization if made in accordance with the online notarization provisions of this part or in conformance with the laws of the notary public's appointing state.

The bill additionally amends s. 689.01, F.S., related to how real estate is conveyed. The bill provides that any requirement that an instrument be signed in the presence of two subscribing witnesses is satisfied by witnesses being present and electronically signing by means of audio-video communication technology and under standards applicable to online notarization pursuant to ch. 117, F.S., or in conformance with laws in other states that authorize online notarization of instruments.

The act of witnessing an electronic signature is satisfied if a witness is present either in physical proximity to the principal or by audio-video communication technology at the time the principal affixes the electronic signature and hears the principal make a statement acknowledging that the principal has signed the electronic record. All witnesses made or taken pursuant to this subsection are validated and, upon recording, may not be denied to have provided constructive notice based on any alleged failure to have strictly complied with these requirements, as currently or previously in effect, or the laws governing notarization of instruments, including online notarization, in this or any other state.

Lastly, the bill provides that part II modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act.¹⁷ However, the bill does not modify, limit, or supersede s. 7001(c), related to consumer disclosures and consent to electronic records or the electronic delivery of any of the notices described in s. 7003(b).¹⁸

B. SECTION DIRECTORY:

Section 1: Directs the Division of Law Revision and Information to create part I of Chapter 117, Florida Statutes.

Section 2: Amends s. 117.01, F.S. relating to appointment, application, suspension, revocation, application fee, bond, and oath of notary public.

Section 3: Amends s. 117.021, F.S., relating to electronic notarization.

Section 4: Amends s. 117.05, F.S. relating to use of notary commission, unlawful use, notary fee, seal, duties, employer liability, name change, advertising, photocopies, and penalties.

Section 5: Amends s. 117.107, F.S., relating to prohibited acts.

Section 6: Creates part II of chapter 117, relating to online notarizations.

Section 7: Amends s. 28.222, F.S., relating to the clerk to be county recorder.

Section 8: Amends s. 92.50, F.S., relating to oath, affidavits, and acknowledgments; who may take or administer; requirements.

Section 9: Amends s. 95.231, F.S., relating to limitations where deed or will on record.

Section 10: Amends s. 689.01, F.S., relating to how real estate is conveyed.

Section 11: Amends s. 694.08, F.S., relating to certain instruments validated, notwithstanding lack of seals or witnesses, or defect in acknowledgement, etc.

Section 12: Amends s. 695.03, F.S., relating to acknowledgment and proof, validation of certain acknowledgments, and legalization or authentication before foreign officials.

Section 13: Amends s. 695.04, F.S., relating to requirements of certificate.

Section 14: Amends s. 695.05, F.S., relating to certain defects cured as to acknowledgments and witnesses.

Section 15: Amends s. 695.09, F.S., relating to identity of grantor.

Section 16: Amends s. 695.28, F.S., relating to validity of recorded electronic documents.

Section 17: Providing an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive recurring impact of state government revenues through the receipt of the \$25 application fee to become an online notary.

¹⁷ 15 U.S.C. ss. 7001 et seq.

¹⁸ These notices include: (1) Court orders or documents required to be executed in connection with a court proceeding; (2) The cancellation or termination of utility services; (3) Any notice of default, acceleration, repossession, foreclosure, or eviction, or the right to cure, under a credit agreement secured by, or a rental agreement for, a primary residence of an individual; (4) The cancellation or termination of health insurance or benefits or life insurance benefits; (5) The recall of a product, or material failure of a product, that risks endangering health or safety; or (6) Any document required to accompany any transportation or handling of hazardous materials, pesticides, or other toxic or dangerous materials.

2. Expenditures:

The bill may have an indeterminate recurring impact of state government expenditures as the Department of State, Executive Office of the Governor, and Agency for State Technology work to implement and promulgate rules related to online notarization.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows the act of notarization to be performed remotely, as opposed to in person. In some instances, this new method will allow businesses and professions that must use notary publics in their day-to-day work to do so without all of the parties coming together in one location. As such, these businesses and professions may see a reduction in expenditures as a result of allowing this alternative, more convenient method of notarization.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill allows the Executive Office of the Governor and the Department of State, together with the Agency of State Technology, to adopt rules and standards for the technology used by online notaries. The bill provides sufficient direction for the agency with respect to the scope of the rules and the areas of focus.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Three agencies tasked are with rulemaking authority. The Agency for State Technology is consistently used throughout the bill, but Department of State and the Executive Office of the Governor appear to have alternating responsibility for various provisions of the bill. By way of example, compare s. 117.225(4), F.S., to s. 117.295, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to notaries public; providing a
 3 directive to the Division of Law Revision and
 4 Information; amending s. 117.01, F.S.; revising
 5 provisions relating to use of office of notary public;
 6 amending s. 117.021, F.S.; requiring electronic
 7 signatures to include access protection; prohibiting a
 8 person from requiring a notary public to perform a
 9 notarial act with certain technology; authorizing the
 10 Department of State to adopt rules for certain
 11 purposes; amending s. 117.05, F.S.; revising
 12 limitations on notary fees; providing for inclusion of
 13 certain information in a jurat or notarial
 14 certificate; providing for compliance with online
 15 notarization requirements; providing for notarial
 16 certification of a printed electronic record; revising
 17 statutory forms for jurats and notarial
 18 certifications; amending s. 117.107, F.S.; providing
 19 applicability; revising prohibited acts; creating part
 20 II of ch. 117, F.S., entitled "Online Notarizations";
 21 providing definitions; authorizing online
 22 notarizations; providing an exception; providing for
 23 legal recognition; providing registration and
 24 qualification requirements; authorizing the
 25 performance of certain notarial acts; requiring a

26 notary public to keep an electronic journal of online
 27 notarizations; providing requirements for electronic
 28 journals, signatures, and seals; providing online
 29 notarization procedures; providing fees for online
 30 notarizations; authorizing a notary public to
 31 supervise the witnessing of electronic records of
 32 online notarizations; providing standards for
 33 electronic and online notarizations; authorizing the
 34 Executive Office of the Governor to adopt rules;
 35 providing construction; amending s. 28.222, F.S.;
 36 requiring the clerk of the circuit court to record
 37 certain instruments; amending s. 92.50, F.S.;
 38 providing a definition; amending s. 95.231, F.S.;
 39 providing a limitation period for certain recorded
 40 instruments; amending s. 689.01, F.S.; providing for
 41 witnessing of documents in connection with real estate
 42 conveyances; providing for validation of certain
 43 recorded documents; amending s. 694.08, F.S.;
 44 providing for validation of certain recorded
 45 documents; amending s. 695.03, F.S.; providing and
 46 revising requirements for making acknowledgments,
 47 proofs, and other documents; providing a definition;
 48 amending s. 695.04, F.S.; conforming a provision to
 49 changes made by the act; amending s. 695.05, F.S.;
 50 making an editorial change; amending s. 695.09, F.S.;

51 conforming a provision to changes made by the act;
 52 amending s. 695.28, F.S.; providing for validity of
 53 recorded documents; conforming provisions to changes
 54 made by the act; providing an effective date.

55
 56 Be It Enacted by the Legislature of the State of Florida:

57
 58 Section 1. The Division of Law Revision and Information is
 59 directed to create part I of chapter 117, Florida Statutes,
 60 consisting of ss. 117.01-117.108, Florida Statutes, to be
 61 entitled "General Provisions."

62 Section 2. Subsection (1) of section 117.01, Florida
 63 Statutes, is amended to read:

64 117.01 Appointment, application, suspension, revocation,
 65 application fee, bond, and oath.—

66 (1) The Governor may appoint as many notaries public as he
 67 or she deems necessary, each of whom shall be at least 18 years
 68 of age and a legal resident of the state. A permanent resident
 69 alien may apply and be appointed and shall file with his or her
 70 application a recorded Declaration of Domicile. The residence
 71 required for appointment must be maintained throughout the term
 72 of appointment. Notaries public shall be appointed for 4 years
 73 and may only ~~shall~~ use and exercise the office of notary public
 74 if he or she is within the boundaries of this state. An
 75 applicant must be able to read, write, and understand the

76 English language.

77 Section 3. Subsections (4) and (5) of section 117.021,
 78 Florida Statutes, are renumbered as subsections (5) and (6),
 79 respectively, paragraph (c) of subsection (2) and present
 80 subsection (5) are amended, and a new subsection (4) is added to
 81 that section, to read:

82 117.021 Electronic notarization.—

83 (2) In performing an electronic notarial act, a notary
 84 public shall use an electronic signature that is:

85 (c) Retained under the notary public's sole control and
 86 includes access protection through the use of passwords or codes
 87 under control of the notary public; and

88 (4) A person may not require a notary public to perform a
 89 notarial act with respect to an electronic record with a
 90 technology that the notary public has not selected.

91 (6)~~(5)~~ The Department of State, in collaboration with the
 92 Agency for State Technology, may adopt rules to ensure the
 93 security, reliability, and uniformity of signatures and seals
 94 authorized in this section.

95 Section 4. Subsection (1), paragraph (a) of subsection
 96 (2), paragraphs (a) and (c) of subsection (4), subsection (5),
 97 paragraph (a) of subsection (12), subsection (13), and
 98 paragraphs (c) and (e) of subsection (14) of section 117.05,
 99 Florida Statutes, are amended, and paragraph (c) is added to
 100 subsection (12) of that section, to read:

101 117.05 Use of notary commission; unlawful use; notary fee;
 102 seal; duties; employer liability; name change; advertising;
 103 photocopies; penalties.—

104 (1) No person shall obtain or use a notary public
 105 commission in other than his or her legal name, and it is
 106 unlawful for a notary public to notarize his or her own
 107 signature. Any person applying for a notary public commission
 108 must submit proof of identity to the Department of State if so
 109 requested. Any person who violates the provisions of this
 110 subsection is guilty of a felony of the third degree, punishable
 111 as provided in s. 775.082, s. 775.083, or s. 775.084.

112 (2) (a) The fee of a notary public may not exceed \$10 for
 113 any one notarial act, except as provided in ss. ~~ss.~~ 117.045 and
 114 117.275.

115 (4) When notarizing a signature, a notary public shall
 116 complete a jurat or notarial certificate in substantially the
 117 same form as those found in subsection (13). The jurat or
 118 certificate of acknowledgment shall contain the following
 119 elements:

120 (a) The venue stating the location of the notary at the
 121 time of the notarization in the format, "State of Florida,
 122 County of"

123 (c) That the signer personally appeared before the notary
 124 public at the time of the notarization either by physical
 125 presence or by means of audio-video communication technology

126 pursuant to part II of this chapter.

127 (5) A notary public may not notarize a signature on a
 128 document unless he or she personally knows, or has satisfactory
 129 evidence, that the person whose signature is to be notarized is
 130 the individual who is described in and who is executing the
 131 instrument. A notary public shall certify in the certificate of
 132 acknowledgment or jurat the type of identification, either based
 133 on personal knowledge or other form of identification, upon
 134 which the notary public is relying. In the case of an online
 135 notarization, the online notary public shall comply with the
 136 procedures set forth in part II of this chapter.

137 (12) (a) A notary public may supervise the making of a
 138 photocopy of an original document or the duplication or printing
 139 of an electronic record and attest to the trueness of the copy,
 140 provided the document is neither a vital record in this state,
 141 another state, a territory of the United States, or another
 142 country, nor a public record, if a copy can be made by the
 143 custodian of the public record.

144 (c) A notary public must use a certificate in
 145 substantially the following form in notarizing an attested copy
 146 of an electronic document:

147 STATE OF FLORIDA

148 COUNTY OF

149 On this day of, ... (year)...., I attest that the
 150 preceding or attached document is a true, exact, complete, and

151 unaltered copy duplicated before me or printed by me from an
152 electronic record presented to me by the document's custodian.
153 At the time of duplication or printing, no security features, if
154 any, present on the electronic record indicated that the record
155 had been altered since execution.

156 ...(Signature of Notary Public - State of Florida)...
157 ...(Print, Type, or Stamp Commissioned Name of Notary
158 Public)...

159 (13) The following notarial certificates are sufficient
160 for the purposes indicated, if completed with the information
161 required by this chapter. The specification of forms under this
162 subsection does not preclude the use of other forms.

163 (a) For an oath or affirmation:

164 STATE OF FLORIDA
165 COUNTY OF

166 Sworn to (or affirmed) and subscribed before me by means of
167 []) physical presence or [)] online notarization, this day of
168, ...(year)...., by ...(name of person making
169 statement)....

170 ...(Signature of Notary Public - State of Florida)...
171 ...(Print, Type, or Stamp Commissioned Name of Notary
172 Public)...

173 Personally Known OR Produced Identification

174

175 Type of Identification Produced.....

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176 (b) For an acknowledgment in an individual capacity:
177 STATE OF FLORIDA
178 COUNTY OF

179 The foregoing instrument was acknowledged before me by means of
180 [] physical presence or [] online notarization, this day of
181, ...(year)...., by ...(name of person acknowledging)....
182 ...(Signature of Notary Public - State of Florida)....
183 ...(Print, Type, or Stamp Commissioned Name of Notary Public)....
184 Personally Known OR Produced Identification
185

186 Type of Identification Produced.....

187 (c) For an acknowledgment in a representative capacity:
188 STATE OF FLORIDA
189 COUNTY OF

190 The foregoing instrument was acknowledged before me by means of
191 [] physical presence or [] online notarization, this day of
192, ...(year)...., by ...(name of person)... as ...(type of
193 authority, . . . e.g. officer, trustee, attorney in fact)...
194 for ...(name of party on behalf of whom instrument was
195 executed)....
196 ...(Signature of Notary Public - State of Florida)....
197 ...(Print, Type, or Stamp Commissioned Name of Notary Public)....
198 Personally Known OR Produced Identification
199

200 Type of Identification Produced.....

201 (14) A notary public must make reasonable accommodations
202 to provide notarial services to persons with disabilities.

203 (c) The following notarial certificates are sufficient for
204 the purpose of notarizing for a person who signs with a mark:

205 1. For an oath or affirmation:

206 ... (First Name) ... (Last Name) ...
207 ... His (or Her) Mark ...

208 STATE OF FLORIDA

209 COUNTY OF

210 Sworn to and subscribed before me by means of [] physical
211 presence or [] online notarization, this day of,
212 ... (year) ..., by ... (name of person making statement) ..., who
213 signed with a mark in the presence of these witnesses:

214 ... (Signature of Notary Public - State of Florida) ...

215 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

216 Personally Known OR Produced Identification

217

218 Type of Identification Produced

219 2. For an acknowledgment in an individual capacity:

220 ... (First Name) ... (Last Name) ...

221 ... His (or Her) Mark ...

222 STATE OF FLORIDA

223 COUNTY OF

224 The foregoing instrument was acknowledged before me by means of
225 [] physical presence or [] online notarization, this day of

226 , ... (year) ... , by ... (name of person acknowledging) ... ,
 227 who signed with a mark in the presence of these witnesses:
 228 ... (Signature of Notary Public - State of Florida) ...
 229 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 230 Personally Known OR Produced Identification
 231
 232 Type of Identification Produced.....
 233 (e) The following notarial certificates are sufficient for
 234 the purpose of notarizing for a person with a disability who
 235 directs the notary to sign his or her name:
 236 1. For an oath or affirmation:
 237 STATE OF FLORIDA
 238 COUNTY OF
 239 Sworn to (or affirmed) before me by means of [] physical
 240 presence or [] online notarization, this day of ,
 241 ... (year) ... , by ... (name of person making statement) ... , and
 242 subscribed by ... (name of notary) ... at the direction of ~~and in~~
 243 ~~the presence of~~ ... (name of person making statement) ... , and in
 244 the presence of these witnesses:
 245 ... (Signature of Notary Public - State of Florida) ...
 246 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
 247 Personally Known OR Produced Identification
 248
 249 Type of Identification Produced.....
 250 2. For an acknowledgment in an individual capacity:

251 STATE OF FLORIDA

252 COUNTY OF

253 The foregoing instrument was acknowledged before me by means of
254 [] physical presence or [] online notarization, this day of
255, ...(year)..., by ...(name of person acknowledging)...
256 and subscribed by ...(name of notary)... at the direction of ~~and~~
257 ~~in the presence of~~ ...(name of person acknowledging)..., and in
258 the presence of these witnesses:

259 ...(Signature of Notary Public - State of Florida)...

260 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

261 Personally Known OR Produced Identification

262

263 Type of Identification Produced.....

264 Section 5. Subsections (2) and (9) of section 117.107,

265 Florida Statutes, are amended to read:

266 117.107 Prohibited acts.-

267 (2) A notary public may not sign notarial certificates
268 using a facsimile signature stamp unless the notary public has a
269 physical disability that limits or prohibits his or her ability
270 to make a written signature and unless the notary public has
271 first submitted written notice to the Department of State with
272 an exemplar of the facsimile signature stamp. This subsection
273 does not apply to or prohibit the use of an electronic signature
274 and seal by a notary public performing online notarization in
275 accordance with general law.

276 (9) A notary public may not notarize a signature on a
 277 document if the person whose signature is being notarized does
 278 not appear before the notary public either by means of physical
 279 presence or audio-video communication technology pursuant to
 280 part II of this chapter ~~is not in the presence of the notary~~
 281 ~~public~~ at the time the signature is notarized. Any notary public
 282 who violates this subsection is guilty of a civil infraction,
 283 punishable by penalty not exceeding \$5,000, and such violation
 284 constitutes malfeasance and misfeasance in the conduct of
 285 official duties. It is no defense to the civil infraction
 286 specified in this subsection that the notary public acted
 287 without intent to defraud. A notary public who violates this
 288 subsection with the intent to defraud is guilty of violating s.
 289 117.105.

290 Section 6. Part II of chapter 117, Florida Statutes,
 291 consisting of sections 117.201-117.305, Florida Statutes, is
 292 created to read:

293 PART II

294 ONLINE NOTARIZATIONS

295 117.201 Definitions.—As used in this part, the term:

296 (1) (a) "Appear before," "before," "appear personally
 297 before," or "in the presence of" means:

298 1. In the same physical location as another person and
 299 close enough to see, hear, communicate with and exchange
 300 credentials with that person; or

301 2. In a different physical location from another person
 302 but able to see, hear, and communicate with the person by means
 303 of audio-video communication technology.

304 (b) This term also applies to ss. 92.50 and 695.03.

305 (2) "Audio-video communication technology" means
 306 technology approved by the Department of State or this part that
 307 enables real-time, two-way communication using electronic means
 308 in which participants are able to see, hear, and communicate
 309 with one another.

310 (3) "Credential analysis" means a process or service
 311 approved by this part in which a third party confirms the
 312 validity of a government-issued identification credential or
 313 data thereon through review of public and proprietary data
 314 sources.

315 (4) "Government-issued identity credential" means any
 316 approved credential for verifying identity in s. 117.05(5)(b)2.

317 (5) "Identity proofing" means a process or service
 318 approved by the Department of State or this part in which a
 319 third party confirms the identity of an individual through
 320 review of public and proprietary data sources.

321 (6) "Knowledge-based authentication" means a form of
 322 identity proofing based on a set of questions formulated from
 323 public and proprietary data sources for which the principal has
 324 not provided a prior answer during the course of the identity
 325 proofing.

326 (7) "Online notarization" means the performance of an
 327 electronic notarization by means of audio-video communication
 328 technology and that meets standards in this chapter.

329 (8) "Online notary public" means a notary public
 330 registered with the Executive Office of the Governor to perform
 331 online notarizations under this part or a civil law notary
 332 appointed under chapter 118.

333 (9) "Principal" means an individual whose electronic
 334 signature is acknowledged, witnessed, or attested in an online
 335 notarization or who takes an oath or affirmation from the
 336 online notary public.

337 (10) "Remote presentation" means transmission of an image
 338 of a government-issued identification credential that is of
 339 sufficient quality to enable the online notary public to
 340 identify the individual seeking the notary's services and to
 341 perform credential analysis through audio-video communication
 342 technology.

343 (11) Except where the context otherwise requires, any term
 344 defined in s. 668.50(2) shall have the same meaning when used in
 345 this chapter.

346 117.209 Authority to perform online notarizations.-

347 (1) An online notary public may perform any of the
 348 functions authorized under this chapter as an online
 349 notarization excluding solemnizing the rites of matrimony.

350 (2) If a notarial act requires a principal to appear

351 before or in the presence of the online notary public, the
 352 principal may appear before the online notary public by means of
 353 audio-video communication technology that meets the requirements
 354 of this chapter and any rules adopted by the Executive Office of
 355 the Governor under s. 117.295.

356 (3) An online notary public may perform an online
 357 notarization authorized under this chapter, regardless of the
 358 physical location of the principal at the time of the notarial
 359 act, provided the notary public is physically located in this
 360 state while performing the online notarization.

361 (4) The validity of an online notarization performed by an
 362 online notary public appointed in this state shall be determined
 363 by applicable laws of this state regardless of the physical
 364 location of the principal at the time of the notarial act.

365 117.215 Relation to other laws.-

366 (1) If a provision of law requires a signature, statement,
 367 or instrument to be acknowledged, sworn, affirmed, made under
 368 oath, or subject to penalty of perjury:

369 (a) The acknowledgement or proof may be made by any of the
 370 officials listed and in the manner described in s. 695.03.

371 (b) The requirement may be satisfied by an online
 372 notarization if made in accordance with the online notarization
 373 provisions of this part or in conformance with the laws of the
 374 notary public's appointing state.

375 (2) If a provision of law requires a signature or act be

376 witnessed, compliance with the online electronic witnessing
 377 standards under s. 117.285 satisfies that requirement.

378 117.225 Registration; qualifications.—A notary public may
 379 complete a registration as an online notary public with the
 380 Executive Office of the Governor by:

381 (1) Satisfying the qualification requirements for
 382 appointment as a notary public under part I.

383 (2) Paying an online notary public application fee in the
 384 amount of \$25.

385 (3) Submitting to the Executive Office of the Governor a
 386 registration as an online notary public, signed and sworn to by
 387 the applicant.

388 (4) Identifying the audio-video communication and identity
 389 proofing technologies the online notary public intends to use in
 390 performing online notarizations. If the Department of State and
 391 Agency for State Technology have established standards for
 392 approval of technologies pursuant to this part, the technologies
 393 selected must conform to those standards. If the technologies
 394 conform to the standards, the Department of State and Agency for
 395 State Technology shall approve the use of the technologies. If
 396 the Department of State and Agency for State Technology have not
 397 yet established such standards, the online notary public shall
 398 select technologies satisfying the provisions of this chapter.

399 117.235 Performance of notarial acts.—

400 (1) An online notary public is subject to part I to the

401 same extent as a notary public appointed and commissioned only
 402 under that part, including the provisions of s. 117.021 relating
 403 to electronic notarizations.

404 (2) An online notary public may perform notarial acts as
 405 provided by part I in addition to performing online
 406 notarizations as authorized and pursuant to the provisions of
 407 this part.

408 117.245 Electronic journal of online notarizations.-

409 (1) An online notary public shall keep a secure electronic
 410 journal of electronic records notarized by the online notary
 411 public. For each online notarization, the electronic journal
 412 entry must contain all of the following:

413 (a) Date and time of the notarization.

414 (b) Type of notarial act.

415 (c) Type, title, or description of the electronic record
 416 or proceeding.

417 (d) Printed name and address of each principal involved in
 418 the transaction or proceeding.

419 (e) Evidence of identity of each principal involved in the
 420 transaction or proceeding in any of the following forms:

421 1. Statement that the person is personally known to the
 422 online notary public.

423 2. Notation of the type of identification document
 424 provided to the online notary public.

425 3. Copy of the government-issued identity credential

426 provided.
 427 4. Copy of any other identity credential or information
 428 provided.
 429 (f) Indication that the principal satisfactorily passed
 430 the identity proofing.
 431 (g) Indication that the government-issued identity
 432 credential satisfied the credential analysis.
 433 (h) A recording of the audio-video communication in which
 434 the:
 435 1. Principal and any witnesses appeared before the notary
 436 public.
 437 2. Identity of each participant was confirmed.
 438 3. Notarial act was performed.
 439 (i) The fee, if any, charged for the online notarization.
 440 (2) The online notary public shall take reasonable steps
 441 to:
 442 (a) Ensure the integrity, security, and authenticity of
 443 online notarizations.
 444 (b) Maintain a backup record for the electronic journal
 445 required by subsection (1).
 446 (c) Protect the backup record from unauthorized use.
 447 (3) The electronic journal required by subsection (1)
 448 shall be maintained for at least 10 years after the date of the
 449 notarial act.
 450 (4) An omitted or incomplete entry in the electronic

451 journal does not impair the validity of the notarial act or the
 452 electronic record which was notarized, but may be introduced as
 453 evidence to establish violations of this chapter or as an
 454 indication of possible fraud, forgery, or impersonation or for
 455 other evidentiary purposes.

456 117.255 Use of electronic journal, signature, and seal.—An
 457 online notary public shall:

458 (1) Take reasonable steps to ensure that any registered
 459 device used to create an electronic signature is current and has
 460 not been revoked or terminated by the issuing or registering
 461 authority of the device.

462 (2) Keep the electronic journal, electronic signature, and
 463 electronic seal secure and under his or her sole control, which
 464 shall include access protection through the use of passwords or
 465 codes under control of the notary public. The online notary
 466 public may not allow another person to use the online notary
 467 public's electronic journal, electronic signature, or electronic
 468 seal.

469 (3) Use electronic signatures only for performing online
 470 notarization.

471 (4) Attach or logically associate the electronic signature
 472 and seal to the electronic notarial certificate of an electronic
 473 record in a manner capable of independent verification using
 474 tamper-evident technology that renders any subsequent change or
 475 modification to the electronic record evident.

476 (5) Immediately notify an appropriate law enforcement
 477 agency and the Executive Office of the Governor of theft or
 478 vandalism of the electronic journal, electronic signature, or
 479 electronic seal. An online notary public shall immediately
 480 notify the Executive Office of the Governor of the loss or use
 481 by another person of the online notary public's electronic
 482 journal, electronic signature, or electronic seal.

483 (6) Make electronic copies, upon request, of the pertinent
 484 entries in the electronic journal and provide access to the
 485 related audio-video communication recordings to the title agent,
 486 settlement agent, or title insurer which engaged the online
 487 notary with regard to a real estate transaction. The online
 488 notary public may charge a reasonable fee for making and
 489 delivering electronic copies of a given series of related
 490 electronic records. Such fee must be disclosed to the requestor
 491 before copies are made.

492 117.265 Online notarization procedures.-

493 (1) An online notary public physically located in this
 494 state may perform an online notarization that meets the
 495 requirements of this part regardless of whether the principal or
 496 any witnesses are physically located in this state at the time
 497 of the online notarization. An online notarial act performed in
 498 accordance with this chapter is deemed to have been performed
 499 within the state and is governed by applicable laws of this
 500 state.

501 (2) In performing an online notarization, an online notary
 502 public shall verify the identity of a principal at the time that
 503 the signature is taken by using audio-video communication
 504 technology and processes that meet the requirements of this part
 505 and record the entire audio-video conference session between the
 506 notary public and the principal and any subscribing witnesses. A
 507 principal may not act in the capacity of a witness for the
 508 online notarization.

509 (3) In performing an online notarization of a principal
 510 not located within the state, an online notary public shall
 511 confirm that the principal desires for the notarial act to be
 512 performed by a Florida notary public and under the general law
 513 of this state.

514 (4) An online notary public shall confirm the identity of
 515 the principal or any witness by:

516 (a) Personal knowledge of each such individual; or

517 (b) All of the following, as the same may be refined or
 518 supplemented in rules adopted pursuant to s. 117.295:

519 1. Remote presentation of a government-issued
 520 identification credential by each individual.

521 2. Credential analysis of each government-issued
 522 identification credential.

523 3. Identity proofing of each individual, in the form of
 524 knowledge-based authentication or another method of identity
 525 proofing that conforms to standards set by the Executive Office

526 of the Governor.

527

528 If the online notary public does not satisfy subparagraphs
 529 (b)1.-3., or if the databases consulted for identity proofing do
 530 not contain sufficient information to permit authentication, the
 531 online notary public may not perform the online notarization.

532 (5) An online notary public shall take reasonable steps to
 533 ensure that the audio-video communication technology used in an
 534 online notarization is secure from unauthorized interception.

535 (6) An electronic notarial certificate for an online
 536 notarization shall include a notation that the notarization is
 537 an online notarization.

538 (7) Except where otherwise expressly provided in this
 539 part, the provisions of part I of this chapter apply to an
 540 online notarization and an online notary public.

541 (8) Any failure to comply with the online notarization
 542 procedures of this section does not impair the validity of the
 543 notarial act or the electronic record which was notarized, but
 544 may be introduced as evidence to establish violations of this
 545 chapter or as an indication of possible fraud, forgery, or
 546 impersonation or for other evidentiary purposes.

547 117.275 Fees for online notarization.—An online notary
 548 public or employer of such online notary public may charge a
 549 fee, not to exceed \$25, for performing an online notarization in
 550 addition to any other fees authorized under part I. Fees for

551 services other than notarial acts are not governed by this
 552 section.

553 117.285 Supervising the witnessing of electronic records.-
 554 An online notary public or an official of another state
 555 authorized under the laws of that state to perform online
 556 notarization of documents may supervise the witnessing of
 557 electronic records by the same audio-video communication
 558 technology used for online notarization, as follows:

559 (1) The identity of the witness must be verified in the
 560 same manner as the identity of the principal.

561 (2) The witness may be physically present with the
 562 principal or remote from the principal provided the witness and
 563 principal are using audio-video communication technology.

564 (3) The witness is present in either physical proximity to
 565 the principal or through audio-video communication technology at
 566 the time the principal affixes the electronic signature and
 567 hears the principal make a statement to the effect that the
 568 principal has signed the electronic record.

569 117.295 Standards for electronic and online notarization;
 570 rulemaking authority.-

571 (1) The Legislature intends for the standards applicable
 572 to electronic notarization under s. 117.021 and for online
 573 notarization under this part to reflect future improvements in
 574 technology and methods of assuring the identity of principals
 575 and the security of an electronic record. Further, the Executive

576 Office of the Governor, in collaboration with the Agency for
 577 State Technology, may adopt rules and standards necessary to
 578 implement the requirements of this chapter and such other rules
 579 and standards as may be required to facilitate the integrity,
 580 security, and reliability of online notarization, including
 581 standards regarding identity proofing, credential analysis,
 582 unauthorized interception, remote presentation, tamper-evident
 583 technology, and audio-video communication technology, and may
 584 publish lists of technologies that satisfy the standards and are
 585 approved for use in online notarizations.

586 (2) Identity proofing, credential analysis, unauthorized
 587 interception, remote presentation, tamper-evident technology,
 588 and audio-video communication technology shall be governed by
 589 the following minimum standards:

590 (a) Identity proofing by means of knowledge-based
 591 authentication shall have these or greater security
 592 characteristics:

593 1. The principal must be presented with five or more
 594 questions with a minimum of five possible answer choices per
 595 question.

596 2. Each question must be drawn from a third-party provider
 597 of public and proprietary data sources and be identifiable to
 598 the principal's social security number or other identification
 599 information, or the principal's identity and historical events
 600 records.

601 3. Responses to all questions must be made within a 2-
 602 minute time constraint.

603 4. The principal must answer a minimum of 80 percent of
 604 the questions correctly.

605 5. The principal may be offered one additional attempt in
 606 the event of a failed attempt.

607 6. During the second attempt, the principal may not be
 608 presented with questions from the prior attempt.

609 (b) Credential analysis must include:

610 1. A comparison of the presented government-issued
 611 identity credential and data thereon against public or
 612 proprietary data sources to confirm that one or more data
 613 elements conform to the asserted identity; or

614 2.a. The inspection of one or more readable format
 615 features to verify that they conform to those specified by the
 616 issuing state or country.

617 b. The reading of any bar codes contained on the
 618 credential to verify that they contain data corresponding to the
 619 asserted identity information of the principal.

620 c. An attempt to verify any micro-printing contained on
 621 the credential.

622 (c) Tamper-evident technology requirements are deemed
 623 satisfied by use of technology that renders any subsequent
 624 change or modification to the electronic record evident.

625 (d) Audio-video communication technology used in

626 completing online notarizations must meet the following
 627 requirements:

628 1. The signal transmission must be secure from
 629 interception or access by anyone other than the participants
 630 communicating.

631 2. The technology must provide sufficient audio clarity
 632 and video resolution to enable the notary to communicate with
 633 the principal and to confirm the identity of the principal using
 634 identification methods described in s. 117.265.

635 (e) An online notary public is not responsible for the
 636 security of the systems used by the principal or others to
 637 access the online notarization session.

638 117.305 Relation to Electronic Signatures in Global and
 639 National Commerce Act.—This part modifies, limits and supersedes
 640 the Electronic Signatures in Global and National Commerce Act,
 641 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or
 642 supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or
 643 authorize electronic delivery of any of the notices described in
 644 s. 103(b) of that act, 15 U.S.C. s. 7003(b).

645 Section 7. Paragraph (h) of subsection (3) of section
 646 28.222, Florida Statutes, is redesignated as paragraph (i), and
 647 a new paragraph (h) is added to that subsection to read:

648 28.222 Clerk to be county recorder.—

649 (3) The clerk of the circuit court shall record the
 650 following kinds of instruments presented to him or her for

651 recording, upon payment of the service charges prescribed by
 652 law:

653 (h) Copies of any instruments originally created and
 654 executed using an electronic signature, as defined in s. 695.27,
 655 and certified to be a true and correct paper printout by a
 656 notary public in accordance with chapter 117 or by a title
 657 agency, authorized intermediary, or other approved party, if the
 658 county recorder is not prepared to accept electronic documents
 659 for recording electronically.

660 Section 8. Subsection (4) is added to section 92.50,
 661 Florida Statutes, to read:

662 92.50 Oaths, affidavits, and acknowledgments; who may take
 663 or administer; requirements.-

664 (4) DEFINITION.-As used in this section, the term "before"
 665 means:

666 (a) In the same physical location as another person and
 667 close enough to see, hear, communicate with, and exchange
 668 credentials with that person; or

669 (b) In a different physical location from another person
 670 but able to see, hear, and communicate with the person by means
 671 of audio-video communication technology.

672 Section 9. Subsection (1) of section 95.231, Florida
 673 Statutes, is amended to read:

674 95.231 Limitations where deed or will on record.-

675 (1) Five years after the recording of an instrument

676 required to be executed in accordance with s. 689.01; 5 years
 677 after the recording of a power of attorney accompanying and used
 678 for an instrument required to be executed in accordance with s.
 679 689.01; or 5 years after the probate of a will purporting to
 680 convey real property, from which it appears that the person
 681 owning the property attempted to convey, affect, or devise it,
 682 the instrument, power of attorney, or will shall be held to have
 683 its purported effect to convey, affect, or devise, the title to
 684 the real property of the person signing the instrument, as if
 685 there had been no lack of seal or seals, witness or witnesses,
 686 defect in, failure of, or absence of acknowledgment or
 687 relinquishment of dower, in the absence of fraud, adverse
 688 possession, or pending litigation. The instrument is admissible
 689 in evidence. A power of attorney validated under this subsection
 690 shall be valid only for the purpose of effectuating the
 691 instrument with which it was recorded.

692 Section 10. Section 689.01, Florida Statutes, is amended
 693 to read:

694 689.01 How real estate conveyed.—

695 (1) No estate or interest of freehold, or for a term of
 696 more than 1 year, or any uncertain interest of, in or out of any
 697 messuages, lands, tenements or hereditaments shall be created,
 698 made, granted, transferred or released in any other manner than
 699 by instrument in writing, signed in the presence of two
 700 subscribing witnesses by the party creating, making, granting,

701 conveying, transferring or releasing such estate, interest, or
 702 term of more than 1 year, or by the party's lawfully authorized
 703 agent, unless by will and testament, or other testamentary
 704 appointment, duly made according to law; and no estate or
 705 interest, either of freehold, or of term of more than 1 year, or
 706 any uncertain interest of, in, to, or out of any messuages,
 707 lands, tenements or hereditaments, shall be assigned or
 708 surrendered unless it be by instrument signed in the presence of
 709 two subscribing witnesses by the party so assigning or
 710 surrendering, or by the party's lawfully authorized agent, or by
 711 the act and operation of law. No seal shall be necessary to give
 712 validity to any instrument executed in conformity with this
 713 section. Corporations may execute any and all conveyances in
 714 accordance with the provisions of this section or ss. 692.01 and
 715 692.02.

716 (2) For purposes of this chapter:

717 (a) Any requirement that an instrument be signed in the
 718 presence of two subscribing witnesses may be satisfied by
 719 witnesses being present and electronically signing by means of
 720 audio-video communication technology as defined in s. 117.201
 721 under standards applicable to online notarization pursuant to
 722 chapter 117 or in conformance with laws in other states that
 723 authorize online notarization of instruments.

724 (b) The act of witnessing an electronic signature is
 725 satisfied if a witness is present either in physical proximity

726 to the principal or by audio-video communication technology at
 727 the time the principal affixes the electronic signature and
 728 hears the principal make a statement acknowledging that the
 729 principal has signed the electronic record.

730 (3) All witnesses heretofore made or taken pursuant to
 731 subsection (2) are hereby validated and, upon recording, may not
 732 be denied to have provided constructive notice based on any
 733 alleged failure to have strictly complied with this section, as
 734 currently or previously in effect, or the laws governing
 735 notarization of instruments, including online notarization, in
 736 this or any other state.

737 Section 11. Subsection (1) of section 694.08, Florida
 738 Statutes, is amended to read:

739 694.08 Certain instruments validated, notwithstanding lack
 740 of seals or witnesses, or defect in acknowledgment, etc.—

741 (1) Whenever any power of attorney has been executed and
 742 delivered, or any conveyance has been executed and delivered to
 743 any grantee by the person owning the land therein described, or
 744 conveying the same in an official or representative capacity,
 745 and has, for a period of 7 years or more been spread upon the
 746 records of the county wherein the land therein described has
 747 been or was at the time situated, and one or more subsequent
 748 conveyances of said land or parts thereof have been made,
 749 executed, delivered and recorded by parties claiming under such
 750 instrument or instruments, and such power of attorney or

751 conveyance, or the public record thereof, shows upon its face a
 752 clear purpose and intent of the person executing the same to
 753 authorize the conveyance of said land or to convey the said
 754 land, the same shall be taken and held by all the courts of this
 755 state, in the absence of any showing of fraud, adverse
 756 possession, or pending litigation, to have authorized the
 757 conveyance of, or to have conveyed, the fee simple title, or any
 758 interest therein, of the person signing such instruments, or the
 759 person in behalf of whom the same was conveyed by a person in an
 760 official or representative capacity, to the land therein
 761 described as effectively as if there had been no defect in,
 762 failure of, or absence of the acknowledgment or the certificate
 763 of acknowledgment, if acknowledged, or the relinquishment of
 764 dower, and as if there had been no lack of the word "as"
 765 preceding the title of the person conveying in an official or
 766 representative capacity, of any seal or seals, or of any witness
 767 or witnesses, and shall likewise be taken and held by all the
 768 courts of this state to have been duly recorded so as to be
 769 admissible in evidence;

770 Section 12. Section 695.03, Florida Statutes, is amended
 771 to read:

772 695.03 Acknowledgment and proof; validation of certain
 773 acknowledgments; legalization or authentication before foreign
 774 officials.—

775 (1) To entitle any instrument concerning real property to

776 | be recorded, the execution must be acknowledged by the party
 777 | executing it, proved by a subscribing witness to it, or
 778 | legalized or authenticated by a civil-law notary or notary
 779 | public who affixes her or his official seal, before the officers
 780 | and in the form and manner following:

781 | (a)~~(1)~~ WITHIN THIS STATE.—An acknowledgment or proof made
 782 | within this state may be made before a judge, clerk, or deputy
 783 | clerk of any court; a United States commissioner or magistrate;
 784 | or a notary public or civil-law notary of this state, and the
 785 | certificate of acknowledgment or proof must be under the seal of
 786 | the court or officer, as the case may be. ~~All affidavits and~~
 787 | ~~acknowledgments heretofore made or taken in this manner are~~
 788 | ~~hereby validated.~~

789 | (b)~~(2)~~ WITHOUT THIS STATE BUT WITHIN THE UNITED STATES.—An
 790 | acknowledgment or proof of a person located outside ~~made out~~ of
 791 | this state but within the United States may be made before a
 792 | notary public or a civil-law notary ~~of this state~~ or by a
 793 | commissioner of deeds appointed by the Governor of this state; a
 794 | judge or clerk of any court of the United States or of any
 795 | state, territory, or district; a United States commissioner or
 796 | magistrate; or a notary public, justice of the peace, master in
 797 | chancery, or registrar or recorder of deeds of any state,
 798 | territory, or district having a seal, and the certificate of
 799 | acknowledgment or proof must be under the seal of the court or
 800 | officer, as the case may be. If the acknowledgment or proof is

801 made before a notary public who does not affix a seal, it is
 802 sufficient for the notary public to type, print, or write by
 803 hand on the instrument, "I am a Notary Public of the State of
 804 ...(state)..., and my commission expires on ...(date)...."

805 (c)~~(3)~~ WITHIN FOREIGN COUNTRIES.—If the acknowledgment,
 806 affidavit, oath, legalization, authentication, or proof of a
 807 person is made in a foreign country, it may be made before a
 808 commissioner of deeds appointed by the Governor of this state to
 809 act in such country; before a notary public of such foreign
 810 country or a civil-law notary of this state or of such foreign
 811 country who has an official seal; before an ambassador, envoy
 812 extraordinary, minister plenipotentiary, minister, commissioner,
 813 charge d'affaires, consul general, consul, vice consul, consular
 814 agent, or other diplomatic or consular officer of the United
 815 States appointed to reside in such country; or before a military
 816 or naval officer authorized by the Laws or Articles of War of
 817 the United States to perform the duties of notary public, and
 818 the certificate of acknowledgment, legalization, authentication,
 819 or proof must be under the seal of the officer. A certificate
 820 legalizing or authenticating the signature of a person executing
 821 an instrument concerning real property and to which a civil-law
 822 notary or notary public of that country has affixed her or his
 823 official seal is sufficient as an acknowledgment. For the
 824 purposes of this section, the term "civil-law notary" means a
 825 civil-law notary as defined in chapter 118 or an official of a

826 foreign country who has an official seal and who is authorized
 827 to make legal or lawful the execution of any document in that
 828 jurisdiction, in which jurisdiction the affixing of her or his
 829 official seal is deemed proof of the execution of the document
 830 or deed in full compliance with the laws of that jurisdiction.

831 (d) All affidavits, oaths, acknowledgments, legalizations,
 832 authentications, or proofs made or taken in any of the manners
 833 in paragraphs (a)-(c) are validated and upon recording shall not
 834 be denied to have provided constructive notice based on any
 835 alleged failure to have strictly complied with this section, as
 836 currently or previously in effect, or the laws governing
 837 notarization of instruments in chapter 117 or in the place where
 838 such notary public or other authorized person is commissioned or
 839 authorized to act.

840
 841 ~~All affidavits, legalizations, authentications, and~~
 842 ~~acknowledgments heretofore made or taken in the manner set forth~~
 843 ~~above are hereby validated.~~

844 (2) As used in this section, the term "before" means:

845 (a) In the same physical location as another person and
 846 close enough to see, hear, communicate with, and exchange
 847 credentials with that person; or

848 (b) In a different physical location from another person
 849 but able to see, hear, and communicate with the person by means
 850 of audio-video communication technology.

851 Section 13. Section 695.04, Florida Statutes, is amended
 852 to read:

853 695.04 Requirements of certificate.—The certificate of the
 854 officer before whom the acknowledgment or proof is taken, except
 855 for a certificate legalizing or authenticating the signature of
 856 a person executing an instrument concerning real property
 857 pursuant to s. 695.03(1)(c) ~~s. 695.03(3)~~, shall contain and set
 858 forth substantially the matter required to be done or proved to
 859 make such acknowledgment or proof effectual as set forth in s.
 860 117.05.

861 Section 14. Section 695.05, Florida Statutes, is amended
 862 to read:

863 695.05 Certain defects cured as to acknowledgments and
 864 witnesses.—All deeds, conveyances, bills of sale, mortgages or
 865 other transfers of real or personal property within the limits
 866 of this state, heretofore or hereafter made and received bona
 867 fide and upon good consideration by any corporation, and
 868 acknowledged for record by ~~before~~ some officer, stockholder or
 869 other person interested in the corporation, grantee, or
 870 mortgagee as a notary public or other officer authorized to take
 871 acknowledgments of instruments for record within this state,
 872 shall be held, deemed and taken as valid as if acknowledged by
 873 the proper notary public or other officer authorized to take
 874 acknowledgments of instruments for record in this state not so
 875 interested in said corporation, grantee or mortgagee; and said

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876 instrument whenever recorded shall be deemed notice to all
 877 persons; provided, however, that this section shall not apply to
 878 any instrument heretofore made, the validity of which shall be
 879 contested by suit commenced within 1 year of the effective date
 880 of this law.

881 Section 15. Section 695.09, Florida Statutes, is amended
 882 to read:

883 695.09 Identity of grantor.—No acknowledgment or proof
 884 shall be taken, except as set forth in s. 695.03(1)(c) ~~or~~
 885 ~~695.03(3)~~, by any officer within or without the United States
 886 unless the officer knows, or has satisfactory proof, that the
 887 person making the acknowledgment is the individual described in,
 888 and who executed, such instrument or that the person offering to
 889 make proof is one of the subscribing witnesses to such
 890 instrument.

891 Section 16. Section 695.28, Florida Statutes, is amended
 892 to read:

893 695.28 Validity of recorded electronic documents.—

894 (1) A document that is otherwise entitled to be recorded
 895 and that was or is submitted to the clerk of the court or county
 896 recorder by electronic or other means and accepted for
 897 recordation is deemed validly recorded and provides notice to
 898 all persons notwithstanding:

899 (a) That the document was received and accepted for
 900 recordation before the Department of State adopted standards

901 implementing s. 695.27; ~~or~~

902 (b) Any defects in, deviations from, or the inability to
903 demonstrate strict compliance with any statute, rule, or
904 procedure relating to electronic signatures, electronic
905 witnesses, electronic notarization, online notarization, or for
906 submitting or recording to submit or record an electronic
907 document in effect at the time the electronic document was
908 executed or was submitted for recording;

909 (c) That the document was signed, witnessed, or notarized
910 electronically or that witnessing or notarization may have been
911 done outside the physical presence of the notary public or
912 principal in accordance with the provisions of chapter 117 or
913 the laws of another state regarding the notarization of
914 documents; or

915 (d) That the document recorded was a certified printout of
916 a document to which one or more electronic signatures have been
917 affixed.

918 (2) This section does not alter the duty of the clerk or
919 recorder to comply with s. 28.222 or s. 695.27 or rules adopted
920 pursuant to those sections ~~that section.~~

921 (3) This section does not preclude a challenge to the
922 validity or enforceability of an instrument or electronic record
923 based upon fraud, forgery, impersonation, duress, undue
924 influence, minority, illegality, unconscionability, or any other
925 basis not in the nature of those matters described in subsection

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926 | (1).

927 | Section 17. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
 2 Subcommittee
 3 Representative Grant, J. offered the following:
 4

Amendment (with title amendment)

5
 6 Remove lines 354-355 and insert:
 7 of this chapter and any rules adopted by the Department of State
 8 under s. 117.295.

9 Remove lines 525-526 and insert:
 10 proofing that conforms to standards set by the Department of
 11 State and the Agency for State Technology.

12 Remove lines 575-576 and insert:
 13 and the security of an electronic record. Further, the
 14 Department of State, in collaboration with the Agency for
 15

16 -----



Amendment No.

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

17
18
19
20

Remove line 34 and insert:
Department of State and the Agency for State Technology to adopt
rules;



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
 2 Subcommittee
 3 Representative Diamond offered the following:

Amendment (with title amendment)

Remove line 349 and insert:

notarization, excluding:

(a) Solemnizing the rites of matrimony;

(b) A notarial act in connection with the creation and
 execution of a testamentary instrument, including a will,
 codicil, or revocable trust; and

(c) A contract, agreement, or waiver subject to ss. 732.701
 and 732.702.

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



Amendment No.

17 | Remove line 22 and insert:
18 | notarizations; providing exceptions; providing for



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
 2 Subcommittee

3 Representative Diamond offered the following:

4

5 **Amendment**

6 Remove line 365 and insert:

7 117.215 Relation to other laws.- Other than those laws
 8 governing the creation and execution of testamentary instruments
 9 including wills, codicils, revocable trusts, or contracts,
 10 agreements or waivers subject to ss. 732.701 and 732.702:



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
 2 Subcommittee

3 Representative Diamond offered the following:

4

5 **Amendment (with title amendment)**

6 Between lines 926 and 927, insert:

7 Section 17. Subsection (1) of section 709.2202, Florida
 8 Statutes, is amended to read:

9 709.2202 Authority that requires separate signed
 10 enumeration.—

11 (1) Notwithstanding s. 709.2201, an agent may exercise the
 12 following authority only if the principal signed or initialed
 13 next to each specific enumeration of the authority, the exercise
 14 of the authority is consistent with the agent's duties under s.
 15 709.2114, the power of attorney was witnessed and notarized in
 16 person without the use of the online electronic witnessing



Amendment No.

17 provisions of s. 117.285 or the online notarization provisions
18 of part II of chapter 117, and the exercise is not otherwise
19 prohibited by another agreement or instrument:

- 20 (a) Create an inter vivos trust;
- 21 (b) With respect to a trust created by or on behalf of the
22 principal, amend, modify, revoke, or terminate the trust, but
23 only if the trust instrument explicitly provides for amendment,
24 modification, revocation, or termination by the settlor's agent;
- 25 (c) Make a gift, subject to subsection (4);
- 26 (d) Create or change rights of survivorship;
- 27 (e) Create or change a beneficiary designation;
- 28 (f) Waive the principal's right to be a beneficiary of a
29 joint and survivor annuity, including a survivor benefit under a
30 retirement plan; or
- 31 (g) Disclaim property and powers of appointment.

32
33 Nothing in this subsection invalidates a power of attorney or
34 any authority granted therein to an agent, other than a power
35 described in paragraphs (a) through (g), where such authority is
36 granted in a power of attorney witnessed and notarized through
37 the use of the online electronic witnessing provisions of s.
38 117.285 or the online notarization provisions of part II of
39 chapter 117.

40
41 -----



Amendment No.

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

42
43 Remove line 54 and insert:
44 made by the act; amending s. 709.2202, F.S.; providing that
45 certain trust instruments with testamentary effect may not be
46 signed with an online notarization; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875 Limitations of Actions Other Than for the Recovery of Real Property
SPONSOR(S): Leek
TIED BILLS: None **IDEN./SIM. BILLS:** SB 536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski	Bond WB
2) Agriculture & Property Rights Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The Rules of Civil Procedure require a party to assert all counterclaims, cross-claims, and third-party claims within 20 days of the pleading triggering the claim. Should an applicable statute of limitations expire in those 20 days, a compulsory counterclaim, a cross-claim, or third-party claim that arises from the same conduct or occurrence will not be barred, although a permissive counterclaim will be barred.

HB 875 extends the statute of limitations for a construction defect to allow counterclaims, cross-claims, and third-party claims up to 45 days in actions founded on the design, planning, or construction of an improvement to real property, even if such claim would otherwise be time barred.

One point for the beginning of limitations periods is "completion of the contract." The bill provides that, once a governmental authority issues a certificate of completion or certificate of occupancy, any action by the contractor to correct defects or deficiencies, or to complete punch list work or warranty obligations, does not thereby extend the time for beginning the running of the statute of limitations or statute of repose.

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

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Statutes of Limitations and Repose

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A law creating a statute of limitations specifies when the time period begins, how long the limitations period runs, and circumstances by which the running of the statutes may be tolled (suspended). A statute of limitations usually begins to run when a cause of action accrues (generally, when the harm occurs).

A statute of repose is similar to a statute of limitations. A statute of repose bars a suit after a fixed period of time after the defendant acts in some way, even if this period ends before the plaintiff has suffered any injury. Although phrased in similar language, a statute of repose is not a true statute of limitations because it begins to run from an established or fixed event, such as the delivery of a product or the completion of work, which is unrelated to accrual of the cause of action.¹

Unlike a statute of limitations, a statute of repose eliminates the underlying substantive right of action, not just the remedy available to the plaintiff, upon expiration of the period specified in the statute of repose.² Courts construe a cause of action rescinded by a statute of repose as if the right to sue never existed. Statutes of repose are designed to encourage diligence in the prosecution of claims, eliminate the potential of abuse from a stale claim, and foster certainty and finality in liability.³

Current law provides that actions founded on the design, planning, or construction of an improvement to real property are subject to a four-year statute of limitations. The four-year time period of the statute of limitations begins to run from the latest date of the following events:⁴

- Actual possession by the owner;
- Issuance of a certificate of occupancy;
- Abandonment of construction if not completed; or
- Completion or termination of the contract between the professional engineer, registered architect, or licensed contractor and his or her employer.

However, in actions involving a latent defect, the four-year statute of limitations does not begin to run until the defect is discovered or should have been discovered with the exercise of due diligence.⁵ Latent defects are generally considered to be hidden or concealed defects which are not discoverable by reasonable and customary inspection, and of which the owner has no knowledge.⁶

In addition to this four-year statute of limitations, there is a 10-year statute of repose for an action founded on the design, planning, or construction of an improvement to real property. Such actions must be commenced, regardless of the time the cause of action accrued, within 10 years after the date of the above listed events, whichever is latest.⁷ Thus, the statute of repose may bar an action even though the injured party is unaware of the existence of the cause of action.

¹ *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992).

² *Beach v. Great Western Bank*, 692 So.2d 146 (Fla. 1997).

³ See, e.g., *Lamb By and Through Donaldson v. Volkswagenwerk Aktiengesellschaft*, 631 F. Supp. 1144, 1148 (S.D. Fla. 1986), judgment aff'd, 835 F.2d 1369 (11th Cir. 1988).

⁴ S. 95.11(3)(c), F.S.

⁵ Id.

⁶ *Alexander v. Suncoast Builders, Inc.*, 837 So. 2d 1056, 1058 (Fla. 3d DCA 2003).

⁷ S. 95.11(3)(c), F.S.

Counterclaims, Cross-claims, and Third-party Claims

A counterclaim is a claim for relief asserted against an opposing party after an original claim has been made.⁸ A counterclaim may be either compulsory or permissive. A compulsory counterclaim is any claim which at the time of serving the pleading the pleader has against any opposing party, provided it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.⁹ Generally, failure to assert a compulsory counterclaim in the original action waives the ability to assert it later in a separate action.¹⁰ A permissive counterclaim is any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.¹¹ A permissive counterclaim is not waived if a party fails to assert the claim in the original action.

A cross-claim is a claim for relief asserted against a co-party arising out of the transaction or occurrence that is the subject matter of either the original action or a counterclaim, or relating to any property that is the subject matter of the original action.¹²

A third-party claim is a claim against a person not a party to the original action who is or may be liable to the defendant for all or part of the plaintiff's claim against the defendant, and may assert any other claim that arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim.¹³ A plaintiff may also have a third-party claim because of a counterclaim against them.

Generally, all counterclaims, cross-claims, and third-party claims must be made within 20 days of the pleading triggering the claim.¹⁴ The statute of limitations does not bar the filing of a compulsory counterclaim,¹⁵ but it is well settled that a permissive counterclaim will be barred if it is filed beyond the statute of limitations.¹⁶ Cross-claims and third-party claims (in certain circumstances), are also not barred by the statute of limitations as they are said to 'relate back' to the original complaint due to the fact that they all arise from the same conduct, transaction or occurrence.¹⁷

Definition of "Completion of the Contract"

As noted above, one trigger for the start of the statute of limitations and statute of repose pursuant to current law is the completion of the contract. Current law defines "completion of the contract" as the later of the date of final performance of all the contracted services or the date that final payment for such services becomes due without regard to the date final payment is made.¹⁸ Current law may be unclear regarding what day is considered the final day of performance under the contract.

An issue arises regarding the definition of final performance, namely whether punch list and warranty work performed by the contractor has the effect of extending the time of final performance to the date that the punch list or warranty work is completed. The term punch list is commonly used to refer to a list of repairs required to complete a construction project. The

⁸ Black's Law Dictionary (10th Ed. 2014), counterclaim.

⁹ Fla. R. Civ. Pro. 1.170(a).

¹⁰ Supra, fn 8.

¹¹ Fla. R. Civ. Pro. 1.170(b).

¹² Fla. R. Civ. Pro. 1.170(g).

¹³ Fla. R. Civ. Pro. 1.180(a).

¹⁴ Fla. R. Civ. Pro. 1.140 (a)(1); Fla. R. Civ. Pro. 1.180(a);

¹⁵ See *Allie v. Ionata*, 503 So.2d 1237 (Fla.1987)

¹⁶ See *DuBreuil v. James*, 365 So.2d 184 (Fla. 3d DCA 1978)

¹⁷ Fla. R. Civ. Pro 1.190(c); See *Caduceus Properties, LLC v. Graney*, 137 So.3d 987, 992-93 (Fla. 2014).

¹⁸ Supra, FN 7

punch list items are often cosmetic or minor in nature, and commonly are completed in the first few days or weeks after occupancy. The term warranty work refers to the common term in a construction contract that requires the contractor to warrant, or assure, that all work performed will be free from defects in materials or workmanship for some fixed period of time.

The Florida Building Commission requires that no building or structure be released for use or connected to a utility system until a certificate of completion has been issued and that no building can be occupied until a building official has issued a certificate of occupancy.¹⁹

Effect of Proposed Changes

HB 875 amends s. 95.11(3)(c), F.S., to extend the statute of limitations and statute of repose in actions founded on the design, planning, or construction of an improvement to real property by up to 45 days for the purpose of filing a counterclaim, cross-claim, or third-party claims up to 45 days after service of process on the party. These claims must be the basis for an action previously brought and arise out of the same transaction or occurrence.

The bill provides that, once a governmental authority issues a certificate of completion or certificate of occupancy, any action by the contractor to correct defects or deficiencies, or to complete punch list work or warranty obligations, does not thereby extend the time for beginning the running of the statute of limitations or statute of repose.

The bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.

Section 2: Provides and effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁹ S. 111, 2017 Fl. Building Code, 6th Edition, available at: <https://codes.iccsafe.org/public/document/FBC2017/chapter-1-scope-and-administration> (last accessed January 7, 2018).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to limitations of actions other than
3 for the recovery of real property; amending s. 95.11,
4 F.S.; authorizing the commencement, within a specified
5 timeframe, of counterclaims, cross-claims, and third-
6 party claims that arise out of the same transaction or
7 occurrence and are the basis for an action previously
8 brought; providing that the correction of defects and
9 deficiencies or the performance of certain types of
10 work do not extend the period of time within which an
11 action must be commenced; providing an effective date.

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

14
15 Section 1. Paragraph (c) of subsection (3) of section
16 95.11, Florida Statutes, is amended to read:

17 95.11 Limitations other than for the recovery of real
18 property.—Actions other than for recovery of real property shall
19 be commenced as follows:

20 (3) WITHIN FOUR YEARS.—

21 (c) An action founded on the design, planning, or
22 construction of an improvement to real property, with the time
23 running from the date of actual possession by the owner, the
24 date of the issuance of a certificate of occupancy, the date of
25 abandonment of construction if not completed, or the date of

26 completion of the contract or termination of the contract
 27 between the professional engineer, registered architect, or
 28 licensed contractor and his or her employer, whichever date is
 29 latest; except that, when the action involves a latent defect,
 30 the time runs from the time the defect is discovered or should
 31 have been discovered with the exercise of due diligence. In any
 32 event, the action must be commenced within 10 years after the
 33 date of actual possession by the owner, the date of the issuance
 34 of a certificate of occupancy, the date of abandonment of
 35 construction if not completed, or the date of completion of the
 36 contract or termination of the contract between the professional
 37 engineer, registered architect, or licensed contractor and his
 38 or her employer, whichever date is latest. However,
 39 counterclaims, cross-claims, and third-party claims that arise
 40 out of the same transaction or occurrence and are the basis for
 41 an action previously brought may be commenced up to 45 days
 42 after service of process upon the party asserting such claims,
 43 even if such claims would otherwise be time barred.

44
 45 For purposes of this paragraph, the term "completion of the
 46 contract" ~~Completion of the contract~~ means the later of the date
 47 of final performance of all the contracted services or the date
 48 that final payment for such services becomes due without regard
 49 to the date final payment is made. Once a certificate of
 50 completion or occupancy has been issued by a governmental

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51 | authority, the correction of defects or deficiencies, punch list
52 | work, and warranty work do not extend the time within which an
53 | action must be commenced.

54 | Section 2. This act shall take effect July 1, 2018.



Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice & Claims
2 Subcommittee

3 Representative Leek offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (c) of subsection (3) of section
8 95.11, Florida Statutes, is amended to read:

9 95.11 Limitations other than for the recovery of real
10 property.—Actions other than for recovery of real property shall
11 be commenced as follows:

12 (3) WITHIN FOUR YEARS.—

13 (c) An action founded on the design, planning, or
14 construction of an improvement to real property, with the time
15 running from the date of actual possession by the owner, the
16 date of the issuance of a certificate of occupancy, the date of



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17 abandonment of construction if not completed, or the date of
18 completion of the contract or termination of the contract
19 between the professional engineer, registered architect, or
20 licensed contractor and his or her employer, whichever date is
21 latest; except that, when the action involves a latent defect,
22 the time runs from the time the defect is discovered or should
23 have been discovered with the exercise of due diligence. In any
24 event, the action must be commenced within 10 years after the
25 date of actual possession by the owner, the date of the issuance
26 of a certificate of occupancy, the date of abandonment of
27 construction if not completed, or the date of completion of the
28 contract or termination of the contract between the professional
29 engineer, registered architect, or licensed contractor and his
30 or her employer, whichever date is latest. Completion of the
31 contract means the later of the date of final performance of all
32 the contracted services or the date that final payment for such
33 services becomes due without regard to the date final payment is
34 made. However, counterclaims, cross-claims, and third-party
35 claims that arise out of the conduct, transaction or occurrence
36 set out or attempted to be set out in a pleading may be
37 commenced up to one year after the pleading to which such claims
38 relate, even if such claims would otherwise be time barred.

39
40 With respect to actions founded on construction of an
41 improvement to real property where the subject construction is

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42 effected pursuant to a duly issued building permit, and where a
43 local enforcement agency, state enforcement agency or special
44 inspector, as defined in ss. 553.71(5), 553.71(9), or
45 553.71(10), has issued a final certificate of occupancy or
46 certificate of completion, then as to the construction which is
47 within the scope of such building permit and certificate, the
48 correction of defects to completed work or repair of completed
49 work identified on a punch-list provided to the owner at the
50 time the corrective work or repairs are performed, whether
51 effected under warranty or otherwise, does not extend the time
52 within which an action must be commenced, provided that notice
53 in substantially the following form is given to the owner of the
54 subject property at the time the corrective or repair work is
55 performed:

56
57 "WARNING. THE PERFORMANCE OF WARRANTY OR CORRECTIVE WORK
58 DOES NOT EXTEND THE TIME TO BRING A CLAIM FOUNDED ON THE
59 DESIGN, PLANNING, OR CONSTRUCTION OF AN IMPROVEMENT TO REAL
60 PROPERTY. - FLORIDA LAW HAS STRICT TIME LIMITS TO BRING
61 CLAIMS. -"

62
63 Such notice shall be in conspicuous type of at least 14 points.

64 Section 2. This act applies to causes of action that
65 accrue on or after July 1, 2019.

66 Section 3. This act shall take effect July 1, 2019.

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

Remove everything before the enacting clause and insert:
An act relating to limitations of actions other than for the
recovery of real property; amending s. 95.11, F.S.; authorizing
the commencement, within a specified timeframe, of
counterclaims, cross-claims, and third-party claims after the
pleading to which such claims relate; providing that the
correction of defects and deficiencies or the performance of
certain types of work do not extend the period of time within
which an action must be commenced after a certificate of
occupancy or completion has been issued; requiring and
specifying notice of such; limiting application to causes of
action after a certain date; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 993 Service of Process
SPONSOR(S): Killebrew
TIED BILLS: IDEN./SIM. BILLS:

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

SUMMARY ANALYSIS

The term "service of process" refers to the due process requirement to serve notice on a person to inform him or her of a pending court action or to summon the person as a witness to a court proceeding.

Service of process is outlined in statute, which details who may serve process and how to serve process generally, as well as on specific individuals and entities. Currently, all process must be served by the sheriff of the county where the person to be served is found, except initial non-enforceable civil process, criminal summonses, and criminal witness subpoenas, which may be served by a special process server appointed by the sheriff or a certified process server as approved by the chief judge of the circuit court. Any person authorized by the Florida Rules of Civil Procedure may also serve civil witness subpoenas.

HB 993 updates service of process laws to:

- Remove the requirement that a party request service upon their spouse before the spouse can be served for that party, and provides that such service on a spouse is allowed in any county, not just the county of residence;
- Allow out-of-state service to be effectuated by any person authorized by that state, not just a state officer;
- Remove the requirement that the local sheriff authorize use of electronic signatures on a private return of service; and
- Expand the authority of certified process servers to serve *any* non-enforceable civil process, not just *initial* non-enforceable civil process.

The bill does not appear to have a fiscal impact on state government. There may be an indeterminate impacts on county sheriffs.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of Process

"Process" refers to a legal document that commands a person to do or not to do an act.¹ Original process normally consists of a summons to appear in court, and thus is the first notice to a party of a lawsuit.² "Service of process" is the formal delivery of a writ, summons, or other legal process or notice and may be classified as actual or substituted.³ Substituted service means any method of service allowed by law in place of actual service, such as service on another person, service by mail, or service by publication.⁴

Service of process is outlined in ch. 48, F.S. The chapter details who may serve process,⁵ how to serve process generally⁶ as well as on specific individuals and entities, such as minors,⁷ state prisoners,⁸ limited liability companies,⁹ and the state.¹⁰ Service of process may be categorized as enforceable or non-enforceable. "Enforceable service of process involves a court order requiring the sheriff to take action (i.e., eviction, seizure of property)" and "[n]on-enforceable service of process is designed to place another party on notice that he or she must take action (i.e., civil complaint, summons to appear, or witness subpoena)."¹¹

Current Situation - Special and Certified Process Servers

Traditionally, only the sheriff could serve process. Under current law, all process must still be served by the sheriff, except that private special process servers appointed by the sheriff and private certified process servers approved by the chief judge of the circuit court may serve the following:

- Initial non-enforceable civil process;
- Criminal summonses;
- Criminal witness subpoenas;¹²

Furthermore, any person authorized by the Florida Rules of Civil Procedure may serve civil witness subpoenas.¹³

Effect of Bill - Certified Process Servers

HB 993 expands the authority of certified process servers approved by circuit court judges to serve *any* non-enforceable civil process, not just *initial* non-enforceable civil process.

¹ 41A Fla. Jur.2d Process s. 1; "The term 'process' is not limited to 'summons.' In its broadest sense[,] it is equivalent to, or synonymous with, 'procedure,' or 'proceeding.'" Black's Law Dictionary (10th ed. 2014).

² 41A Fla. Jur.2d Process s. 1

³ Id.

⁴ Black's Law Dictionary (10th ed. 2014), service.; This may also be termed "Constructive service"

⁵ s. 48.021, F.S.

⁶ s. 48.031, F.S.

⁷ s. 48.041, F.S.

⁸ s. 48.051, F.S.

⁹ s. 48.062, F.S.

¹⁰ s. 48.121, F.S.

¹¹ Florida Senate, Committee on Justice Appropriations, *Sheriff Costs – Service of Process*, Interim Project Report 2006-144, (August 2005).

¹² S. 48.021(1), F.S.; s. 48.29, F.S.

¹³ Section 48.021(1), F.S. Rule 1.070, Florida Rules of Civil Procedure, provides that service of process may be made by a person appointed by court order, known as an elisor.

Substituted Service

Current law allows substituted service on the spouse of a person to be served at any place in the county if the spouse requests such service, the cause of action is not adversarial between the spouse and the person to be served, and the spouse and the person being served reside together in the same dwelling.¹⁴

The law also allows substituted service on person by leaving a copy of the process with the person in charge of a private mailbox, virtual office,¹⁵ or an executive office or mini suite¹⁶ if the only discoverable address for a person to be served is a private mailbox, virtual office, or executive office or mini suite.¹⁷

Effect of Bill - Substituted Service

HB 993 updates service of process laws to remove the requirement that a party to be served must request substituted service upon their spouse and allows substituted service on a spouse in any county, not just the county of residence.

The bill also adds "virtual office and "executive office or mini suite" to the list of locations that a registered agent may receive substituted service of process for a limited liability company.

Return of Execution of Process

Once service of process has been performed by a process server, that process server must note on a return-of-service form¹⁸ the date and time the process was served, the manner of service, the name of the person to whom it was served, and if the person served is in a representative capacity, the position occupied by that person.¹⁹ The return-of-service form must list all pleadings served and be signed by the person who performs the service of process.²⁰ Currently, only persons employed by a sheriff are authorized to sign a return-of-process form using an electronic signature certified by the sheriff.²¹

Effect of Bill - Return of Execution of Process

HB 993 removes requirement that only a person employed by a sheriff is authorized to use electronic signatures on return of service forms, thereby allowing all process servers to use electronic signatures. The bill also removes the requirement for the sheriff's certification of such signature.

Personal Service Outside State

To serve process on persons outside of Florida, the service must be made in the same manner as within Florida, by only an "officer" authorized to serve process in the state where the person is served. An affidavit of the officer who served process must be filed, stating the time, manner, and place of service.²² By use of the term "officer", out-of-state private process servers are not authorized to serve process and only local sheriffs and police may serve process.

¹⁴ s. 48.031(2)(a), F.S.

¹⁵ "Virtual office" means an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space and all communication is routed through a common receptionist (s. 48.031(6)(b), F.S.).

¹⁶ "Executive Office or mini suite" means an office that provides communications services, such as telephone and facsimile services, a dedicated office space, and other support services and all communications is routed through a common receptionist (s. 48.031(6)(b), F.S.).

¹⁷ s. 48.031(6)(a), F.S.

¹⁸ s. 48.29(6), F.S.; This subsection does not create a standardized return of service form but requires all return of service be made on a form which has been reviewed and approved by the court. For example, the First Judicial Circuit (<https://www.firstjudicialcircuit.org/document-library/process-server-return-service-form>).

¹⁹ s. 48.21(1), F.S.

²⁰ Id.

²¹ Id.

²² s. 48.194, F.S.

Effect of Bill - Personal Service Out of State

HB 993 allows service in another state by any person authorized to serve process by that state, not just an officer of that state. The bill also removes the requirement to file an affidavit, allowing a court to consider the return-of-service form or any other competent evidence in determining whether proper service was made.

The bill also makes conforming and non-substantive changes to grammar and style.

The bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 48.021, F.S., relating to process, by whom served.

Section 2: Amends s. 48.031, F.S., relating to service of process generally; service of witness subpoenas.

Section 3: Amends s. 48.062, F.S., relating to service on a limited liability company.

Section 4: Amends s. 48.194, F.S., relating to personal service outside state.

Section 5: Amends s. 48.21, F.S., relating to return of execution of process.

Section 6: Amends s. 48.27, F.S., relating to certified process servers.

Section 7: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There may be an indeterminate negative fiscal impact on local sheriff's office revenue as certified process servers may now serve more non-enforceable civil process.

2. Expenditures:

There may be an indeterminate positive fiscal impact on local sheriff's office expenditures to the extent fewer duties are required of the sheriff's office as certified process servers serve more non-enforceable civil process.

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 affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to service of process; amending s.
 3 48.021, F.S.; revising authority of special process
 4 servers; revising a cross-reference; requiring that
 5 civil witness subpoenas be served by certain persons;
 6 amending s. 48.031, F.S.; revising requirements for
 7 substituted service on the spouse of the person to be
 8 served; revising requirements for documenting service
 9 of process; conforming terminology; amending s.
 10 48.062, F.S.; revising requirements for service on
 11 limited liability companies; amending s. 48.194, F.S.;
 12 revising provisions specifying who may serve process
 13 outside of the state; revising requirements for
 14 documenting that service has been properly made
 15 outside the state; amending s. 48.21, F.S.; revising
 16 requirements for return-of-service forms; authorizing
 17 certain persons to electronically sign return-of-
 18 service forms; amending s. 48.27, F.S.; revising
 19 authority of certified process servers; conforming
 20 terminology; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Subsection (1) of section 48.021, Florida
 25 Statutes, is amended to read:

26 48.021 Process; by whom served.—

27 (1) All process shall be served by the sheriff of the
 28 county where the person to be served is found, except initial
 29 nonenforceable civil process, criminal witness subpoenas, and
 30 criminal summonses may be served by a special process server
 31 appointed by the sheriff as provided ~~for~~ in this section or by a
 32 certified process server as provided ~~for~~ in s. 48.27 ~~ss. 48.25-~~
 33 ~~48.31~~. Civil witness subpoenas shall ~~may~~ be served by any person
 34 authorized by rules of civil procedure.

35 Section 2. Subsections (2) and (5) and paragraph (a) of
 36 subsection (6) of section 48.031, Florida Statutes, are amended
 37 to read:

38 48.031 Service of process generally; service of witness
 39 subpoenas.—

40 (2)(a) Substituted ~~Substitute~~ service ~~may be made~~ on the
 41 spouse of the person to be served may be made at any place in a
 42 ~~the~~ county by an individual authorized under s. 48.021 or s.
 43 48.27 to serve process in that county, if the cause of action is
 44 not an adversarial ~~adversary~~ proceeding between the spouse and
 45 the person to be served, ~~if the spouse requests such service,~~
 46 and ~~if~~ the spouse and person to be served reside ~~are residing~~
 47 together in the same dwelling, regardless of whether such
 48 dwelling is located in the county where substituted service is
 49 made.

50 (b) Substituted ~~Substitute~~ service may be made on an

51 individual doing business as a sole proprietorship at his or her
 52 place of business, during regular business hours, by serving the
 53 person in charge of the business at the time of service if two
 54 attempts to serve the owner are ~~have been~~ made at the place of
 55 business.

56 (5) A person serving process shall place, on the first
 57 page only of at least one of the processes served, the date and
 58 time of service, his or her initials, and, if applicable, his or
 59 her identification number ~~and initials for all service of~~
 60 ~~process. The person serving process shall list on the return of~~
 61 ~~service form all initial pleadings delivered and served along~~
 62 ~~with the process.~~ The person requesting service or the person
 63 authorized to serve the process shall file the return-of-service
 64 form with the court.

65 (6)(a) If the only address for a person to be served which
 66 is discoverable through public records is a private mailbox, a
 67 virtual office, or an executive office or mini suite,
 68 substituted ~~substitute~~ service may be made by leaving a copy of
 69 the process with the person in charge of the private mailbox,
 70 virtual office, or executive office or mini suite, but only if
 71 the process server determines that the person to be served
 72 maintains a mailbox, a virtual office, or an executive office or
 73 mini suite at that location.

74 Section 3. Subsection (4) of section 48.062, Florida
 75 Statutes, is amended to read:

76 48.062 Service on a limited liability company.—
 77 (4) If the address ~~provided~~ for the registered agent,
 78 member, or manager is a residence, a ~~or~~ private mailbox, a
 79 virtual office, or an executive office or mini suite, service on
 80 the domestic or foreign limited liability company, ~~domestic or~~
 81 ~~foreign,~~ may be made by serving the registered agent, member, or
 82 manager in accordance with s. 48.031.

83 Section 4. Subsection (1) of section 48.194, Florida
 84 Statutes, is amended to read:

85 48.194 Personal service outside state.—

86 (1) Except as otherwise provided herein, service of
 87 process on persons outside of this state shall be made in the
 88 same manner as service within this state by any person ~~officer~~
 89 authorized to serve process in the state where the person is
 90 served. No order of court is required. ~~An affidavit of the~~
 91 ~~officer shall be filed, stating the time, manner, and place of~~
 92 ~~service.~~ A The court may consider the return-of-service form
 93 described in s. 48.21 affidavit, or any other competent
 94 evidence, in determining whether service has been properly made.
 95 Service of process on persons outside the United States may be
 96 required to conform to the provisions of the Hague Convention on
 97 the Service Abroad of Judicial and Extrajudicial Documents in
 98 Civil or Commercial Matters.

99 Section 5. Subsection (1) of section 48.21, Florida
 100 Statutes, is amended to read:

101 48.21 Return of execution of process.-

102 (1) Each person who effects service of process shall note
 103 on a return-of-service form attached thereto, the date and time
 104 when it comes to hand, the date and time when it is served, the
 105 manner of service, the name of the person on whom it was served,
 106 and, if the person is served in a representative capacity, the
 107 position occupied by the person. The return-of-service form must
 108 list all pleadings served and be signed by the person who
 109 effects the service of process. However, a person who is
 110 authorized under this chapter to serve process and ~~employed by a~~
 111 ~~sheriff~~ who effects such ~~the~~ service of process may sign the
 112 return-of-service form using an electronic signature ~~certified~~
 113 ~~by the sheriff.~~

114 Section 6. Paragraph (a) of subsection (2) of section
 115 48.27, Florida Statutes, is amended to read:

116 48.27 Certified process servers.-

117 (2)(a) The addition of a person's name to the list
 118 authorizes him or her to serve ~~initial~~ nonenforceable civil
 119 process on a person found within the circuit where the process
 120 server is certified when a civil action is ~~has been~~ filed
 121 against such person in the circuit court or in a county court in
 122 the state. Upon filing an action in circuit or county court, a
 123 person may select from the list for the circuit where the
 124 process is to be served one or more certified process servers to
 125 serve ~~initial~~ nonenforceable civil process.

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126

Section 7. This act shall take effect July 1, 2018.