



Civil Justice & Claims Subcommittee

**Wednesday, November 8, 2017
1:30 PM – 3:30 PM
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, November 08, 2017 01:30 pm

End Date and Time: Wednesday, November 08, 2017 03:30 pm

Location: Sumner Hall (404 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 89 Actions Against Contractors Without Required Insurance Coverage by Spano

HB 167 Victims of Human Trafficking by Spano

HB 169 Trust Funds/Creation/Trust Fund for Victims of Human Trafficking and Prevention/FDLE by Spano

HB 271 Bankruptcy Matters in Foreclosure Proceedings by Rommel

HB 307 Florida Commission on Human Relations by Antone

HB 335 Marriage of Minors by Nuñez, White

HB 6021 Guardian Ad Litem Direct-Support Organization by Stevenson

HB 6509 Relief/C.M.H./Department of Children and Families by Grant, J.

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, November, 7, 2017.

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, November 7, 2017.

NOTICE FINALIZED on 11/01/2017 4:19PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 89 Actions Against Contractors Without Required Insurance Coverage

SPONSOR(S): Spano

TIED BILLS: None **IDEN./SIM. BILLS:** SB 604

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MM MacNamara	Bond <i>WB</i>
2) Careers & Competition Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law establishes licensing procedures and regulatory duties for the construction industry. A construction contractor is allowed to operate and perform work in the construction industry as a business organization. A characteristic of a business organization is that the owners, members, or agents are generally not personally liable for damages related to work performed by the organization.

The license law requires a contractor, whether operating personally or as a business organization, to carry public liability insurance and property damage insurance. Where an organization fails to carry the required insurance policy, a claim for damages related to work that would have been covered under such policy must be pursued against the business organization. In some circumstances, that business organization may lack sufficient assets to pay damages.

The bill provides that when a construction contractor operating as a business entity is required to carry public liability insurance and property damage insurance but fails to do so, the individual contractor is personally liable for any damage that would have otherwise been covered under the required policy, up to the limits of what the insurance would have covered.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Contractors, Insurance, and Liability

Part I of ch. 489, F.S., regulates the construction industry. Notably, it establishes licensing procedures and regulatory duties for the construction industry and prohibits contractors from engaging in business without being certified or registered as provided for in current law. Ch. 489, F.S., allows contractors to operate and perform work under a business organization, such as a partnership, a corporation, or a limited liability company (LLC).¹

If the contractor proposes to engage in contracting as a business organization, the business organization must apply for certification or registration through a qualifying agent.² Any business organization engaging in contracting under this provision must provide the Construction Industry Licensing Board with the name and license number of each registered or certified contractor employed by the business organization to supervise its contracting activities.

Under s. 489.115(5), F.S., a licensed contractor is required to carry public liability insurance and property damage insurance as a prerequisite to the initial issuance of, or the renewal of, a certificate or registration. Public liability insurance covers a contractor or business if someone other than an employee is injured in the course of performing work or if damage is caused to third party property. Conversely, property damage insurance covers damage to tangible property that may result in the course of performing work. Insurance, however, does not cover ordinary contract disputes regarding the quality of the work.

General and building contractors are required to carry \$300,000 of liability coverage and \$50,000 of property damage coverage. All other specialty contractors are required to carry \$100,000 of liability coverage and \$25,000 of property damage coverage.³

In addition to evidence of insurance, as a prerequisite to the initial issuance of a certificate, the applicant must furnish evidence of financial responsibility, credit, and business reputation of either himself or herself personally or the business organization he or she desires to qualify.⁴ The Construction Licensing Board must refuse to qualify an applicant or business organization if they fail to provide a current consumer credit report that discloses any unsatisfied judgment or liens against the applicant.⁵

Current law provides for criminal penalties where a contractor or business organization:

- Enters into an agreement whereby a certification number or registration number is used by a person who is not certified or registered, or used by a business organization that is not duly qualified to engage in the business.
- Knowingly allows their certification number or registration number to be used by a person who is not certified or registered, or used by a business organization that is not qualified to engage in the business.

¹ Fla. Admin. Code 61G4-15.0021(1); See also s. 489.105(13), F.S.

² S. 489.119(2), F.S.

³ Fla. Admin. Code 69B-221.055. These amounts are set by the Construction Industry Licensing Board. s. 489.115(5)(a). F.S.

⁴ S. 489.115(5)(b), F.S.

⁵ Fla. Admin. Code 61G4-15.006.

- Applies for or obtains a building permit for construction prior to entering into a contract to perform the work specified in the permit.⁶

In addition to criminal penalties, current law provides for civil remedies, administrative remedies and fines⁷ and disciplinary action by the Construction Industry Licensing Board under various circumstances.⁸ Under s. 768.0425, F.S., a consumer is entitled to three times the actual compensatory damages that result from a contractor's negligence, malfeasance, or misfeasance when the contractor is neither certified nor licensed as required by law.

Qualifying agents and contractors may not be held individually liable for a breach of the duty created by the statutes pertaining to the certification or registration of business organizations and qualifying agents' responsibilities.⁹

Business Organizations and Liability

A business organization such as a corporation or LLC is a separate legal entity. One feature of a business organization is that the employees, agents, or owners of the organization are generally shielded from liability for actions that occurred in the course of operating the organization.¹⁰ Disregarding the separate legal status of a corporation or LLC and imposing individual liability is referred to as "piercing the corporate veil."

Before the general rule of limited shareholder liability can be disregarded under Florida law, the party seeking to pierce the corporate veil must establish by a preponderance of the evidence that:

- The shareholder dominated and controlled the corporation to such an extent that the corporation had no independent existence;
- The corporate form was used fraudulently or for an improper purpose; and
- The fraudulent or improper use of the corporate form caused injury to the claimant.¹¹

When the corporate veil is pierced, any acts committed by either the business organization or a member of the organization are treated as the acts of both and either may be subject to liability.¹² However, courts will only disregard this general rule and allow personal liability to be imposed on an employee, agent or owner of a business organization in exceptional circumstances.¹³

Members of a corporation or LLC are also protected from individual liability following the dissolution of the business organization. While contracts entered into at the time of dissolution are not terminated as a result of dissolution¹⁴, actions based on these contracts would still be brought against the business organization itself. Because dissolution of a corporation or LLC requires the distribution of remaining assets, any damages against a business organization that has dissolved may be uncollectable as the organization may lack sufficient assets to pay.

⁶ S. 489.127, F.S. A person who violates any of these prohibitions commits a misdemeanor of the first degree and if the violation occurs after the person has previously been found guilty of such a violation, the person commits a felony of the third degree.

⁷ S. 489.132(1), F.S.

⁸ S. 489.129(1)(a)-(q), F.S.

⁹ *Murthy v. N. Sinha Corp.*, 644 So. 2d 983 (Fla. 1994).

¹⁰ See e.g. s. 607.0831, F.S. (Directors of corporations may not be held personally liable for monetary damages); s. 605.0304(1), F.S. (A debt, obligation, or other liability of a LLC is solely the debt, obligation, or other liability of the company).

¹¹ *Dania Jai-Alai Palace, Inc., v. Sykes*, 450 So.2d 1114 (Fla. 1984).

¹² *Id.*

¹³ See *Molinos Valle Del Cibao, C por A. v. Lama*, 633 F.3d 1330, 1349 (11th Cir. 2011) (applying Florida law).

¹⁴ *In re Southern Cinemas, Inc.*, 256 B.R. 520 (Bankr. M.D. Fla. 2000).

Effect of Bill

The bill provides that when a contractor who is required to carry public liability insurance and property damage insurance fails to do so, the contractor is personally liable for any damage that would have otherwise been covered under the required insurance policy.

The ability to hold the contractor personally liable extends to any contractor, regardless of the organizational form of the contractor's business. As such, if the business organization has dissolved or has insufficient assets left to pay the damages, a party may nonetheless seek redress against the contractor in their individual capacity.

B. SECTION DIRECTORY:

Section 1: Creates s. 768.0426, F.S., related to damages in actions against contractors without the required insurance coverage.

Section 2: 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:

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to actions against contractors without
 3 required insurance coverage; creating s. 768.0426,
 4 F.S.; providing that a contractor who fails to carry
 5 required insurance may be personally liable for
 6 damages that would have been covered by such
 7 insurance; providing an effective date.

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

10
 11 Section 1. Section 768.0426, Florida Statutes, is created
 12 to read:

13 768.0426 Damages in actions against contractors without
 14 required insurance coverage.-A contractor required to carry
 15 public liability insurance and property damage insurance under
 16 s. 489.115 who fails to carry such insurance, or who knowingly
 17 carries a policy that excludes such required coverage, shall,
 18 notwithstanding the organizational form of the contractor's
 19 business, be personally liable for damages to a consumer that
 20 otherwise would have been covered under such a required policy.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 167 Victims of Human Trafficking
SPONSOR(S): Spano
TIED BILLS: HB 169 **IDEN./SIM. BILLS:** SB 338

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

SUMMARY ANALYSIS

Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person.

Florida has enacted several laws to address human trafficking. Current law creates criminal penalties for traffickers; a limited civil cause of action for a victim of human trafficking who was injured as a part of a pattern, enterprise, or conspiracy of human trafficking; civil forfeiture to local law enforcement agencies of property used by a human trafficker; and a Statewide Council on Human Trafficking (council) to assist in combating human trafficking.

The bill creates a new civil cause of action for a victim of human trafficking that may be brought against a trafficker or a "facilitator" of human trafficking. The bill defines a facilitator as a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker that assist or enable the trafficker to carry out human trafficking.

If successful, a victim is entitled to recover economic and noneconomic damages, punitive damages, reasonable attorney fees, and investigative costs and expenses. In addition to the damages available, the bill requires the court to impose a \$100,000 civil penalty for the benefit of the fund and a \$50,000 civil penalty provided to a law enforcement agency in the event the agency rescued a victim or located the property where the trafficking occurred.

The bill also provides an affirmative defense for an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability. The owner or operator must prove by a preponderance of the evidence that it:

- Required certain employees, within 30 days of hiring, to complete a training program on the identification and reporting of suspected human trafficking;
- Had in place a protocol or code of conduct to detect and report suspected human trafficking; and
- Took reasonable steps, prior to the first incident giving rise to an action, to ensure that any employees allegedly involved in human trafficking activities complied with the recommendations and practices covered in any training, protocols, or policies.

A tied bill creates the Trust Fund for Victims of Human Trafficking and Prevention. The trust fund will be funded in part from recoveries in these civil actions. The funds will be used to educate the public, assist authorities, and provide compensation for victims.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is a form of modern-day slavery. Human trafficking is the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploitation of that person.¹

Victims of human trafficking are young children, teenagers, men, and women, who are often subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor.² The International Labor Organization, the United Nations agency charged with addressing labor standards, employment, and social protection issues, estimates that as many as 27 million adults and children are in forced labor, bonded labor, and commercial sexual servitude at any given time.³ The federal government has estimated that the number of persons trafficked into the United States each year ranges from 14,500 to 17,500.⁴

It is also estimated that as many as 300,000 American youth are currently at risk of becoming victims of commercial sexual exploitation.⁵ The majority of American victims of commercial sexual exploitation tend to be runaway youth living on the streets. They generally come from homes where they have been abused or from families that have abandoned them.⁶ These children often become involved in prostitution as a way to support themselves financially.⁷ The average age at which girls first become victims of prostitution is 12 to 14 years old; for boys and transgender youth it is 11 to 13 years old.⁸

Currently, a person who knowingly, or in reckless disregard of the facts, engages in human trafficking may be subject to the criminal penalties as provided for under s. 787.06(3), F.S. This section also applies to persons who attempt to engage in human trafficking, recklessly disregard facts of human trafficking, or benefit financially from participating in a human trafficking venture.

According to the Department of Law Enforcement, there have been 278 human trafficking related arrest events since 2014.⁹ The Department of Corrections reports since FY 2013-14, eighteen individuals

¹ S. 787.06(2)(d), F.S.

² U.S. Department of Health and Human Services, Administration for Children and Families, *About Human Trafficking*. <http://www.acf.hhs.gov/trafficking/about/index.html#>

³ See U.S. Department of State, *The 2013 Trafficking in Persons (TIP) Report*, June 2013. <http://www.state.gov/j/tip/rls/tiprpt/2013/index.htm>

⁴ Sonide Simon, *Human Trafficking and Florida Law Enforcement*, Florida Criminal Justice Executive Institute, pg. 2, March 2008, <http://www.fdle.state.fl.us/Content/getdoc/e77c75b7-e66b-40cd-ad6e-c7f21953b67a/Human-Trafficking.aspx>

⁵ *OJP Fact Sheet*, Office of Justice Programs, U.S. Department of Justice, December 2011, http://ojp.gov/newsroom/factsheets/ojpfs_humantrafficking.html

⁶ Tamar R. Birkhead, *The "Youngest Profession": Consent, Autonomy, and Prostituted Children*, 88 WASH. U.L. REV. 1055, 1092, n193 (2011).

⁷ Human trafficking in Florida proliferates through illegal industries such as prostitution. Chapter 796, F.S., defines prostitution as "the giving or receiving of the body for sexual activity for hire but excludes sexual activity between spouses."

⁸ See FN 5.

⁹ Email from Ronald E. Draa, Jr., Director of External Affairs, Florida Department of Law Enforcement, March 31, 2017, (on file with Justice Appropriations Subcommittee).

have received a prison sentence and an additional three individuals have been placed on probation for charges relating to human trafficking.¹⁰

Statewide Council on Human Trafficking

The state created the Statewide Council on Human Trafficking for the purpose of enhancing the development and coordination of law enforcement agencies and social services responders to fight commercial sexual exploitation as a form of human trafficking and to support victims.¹¹ The council is within the Department of Legal Affairs.¹² Each member serves a 4-year term. The duties of the council include:

- Developing recommendations for comprehensive programs and services for victims of human trafficking, including recommendations for certification criteria for safe houses and safe foster homes.
- Making recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Hosting an annual statewide policy summit in conjunction with an institution of higher learning in this state.
- Working with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, and using that information to determine how to maximize existing resources and address unmet needs and emerging trends.
- Developing policy recommendations that advance the duties of the council and further the efforts to combat human trafficking in Florida.

Additionally, the council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing its accomplishments during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.¹³

Civil Causes of Action

In general, a victim of human trafficking may have a common law cause of action against a trafficker for theft, false imprisonment, or intentional infliction of emotional distress. Additionally, there is a federal cause of action at 18 U.S.C. § 1595, which may be brought against any perpetrator who knowingly benefits from the trafficking of a victim.

Victims of human trafficking also have a state civil cause of action under ch. 772, F.S., related to civil remedies for criminal practices. Section 772.103, F.S., provides that it is unlawful for any person:

- Who has with criminal intent received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- To employ, or associate with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.

¹⁰ Email from Chris Taylor, Legislative Analyst, Florida Department of Corrections, March 30, 2017, (on file with Justice Appropriations Subcommittee).

¹¹ See s. 16.617, F.S.

¹² S. 16.617(1), F.S.

¹³ S. 16.617(5), F.S.

- To conspire or endeavor to violate any of the actions listed above.

Section 772.104(2), F.S., provides a cause of action for victims of human trafficking where the victim has been injured by reason of a violation of s. 772.103, F.S. The cause of action allows for damages threefold the amount gained from the sex trafficking or human trafficking and reasonable attorney's fees and court costs in the trial and appellate courts. The standard of proof for such actions is by clear and convincing evidence.

The statute of limitations for a common law tort action against a trafficker is 4 years. The statute of limitations for an action pursuant to 18 U.S.C. § 1595 is 10 years. The statute of limitations for an action pursuant to s. 772.104(2), F.S., is 5 years.

Effect of the Bill

The bill creates the "Civil Action for Human Trafficking and Prevention of Human Trafficking Act." The bill makes the following findings:

The legislature finds that, to achieve the goals of the state relating to human trafficking in s. 787.06(1)(d), it is necessary to provide a civil cause of action for the recovery of compensatory and punitive damages and costs.

Civil Cause of Action

The bill creates a cause of action for a victim of human trafficking against the trafficker or facilitator who victimized him or her. The term facilitator is defined as "a person who knowingly, or in willful blindness, assists or provides goods or services to a trafficker which assist or enable the trafficker to carry out human trafficking." The definition does not include a person who facilitates human trafficking as a result of "force, threat, or coercion." With respect to facilitating human trafficking through willful blindness, the bill provides:

"Willful blindness" exists when a person has knowledge of information that would raise suspicions in a reasonable person and he or she deliberately refrains from obtaining confirmation of or acting on the information because he or she wants to remain in ignorance, such that knowledge of the facts avoided can reasonably and fairly be imputed to the person who avoided confirming it.

A victim may recover economic and noneconomic damages, penalties, punitive damages, reasonable attorney fees, reasonable investigative expenses, and costs in bringing the action. The bill provides for the measurement of economic damages. If the victim was forced into lawful labor, the victim is entitled to recover the fair market value of the labor or the amount realized by the trafficker, whichever is greater. A victim is also entitled to reimbursement for the time in captivity, payable at the same rate as one is paid by the state for wrongful incarceration (currently \$50,000 a year).¹⁴

The bill provides that economic damages also include past and future medical and mental health expenses; repatriation expenses, when a victim elects repatriation; and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking. Noneconomic damages are calculated the same as in a tort action.

The proof required is a preponderance of the evidence. The remedies provided in the Act are in addition to other legal and administrative remedies available to victims of human trafficking, except that a victim may not recover under both the Act and a civil cause of action brought under s. 772.104(2), F.S.

¹⁴ See s. 961.06(1)(a)
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In addition to the damages stated above, if the victim prevails, the court must impose a \$100,000 civil penalty against the trafficker. If a law enforcement agency rescued the victim or located the property upon which the trafficking was taking place, the court must impose an additional \$50,000 penalty for the benefit of the law enforcement agency to be used in future efforts combating human trafficking. The penalties are in addition to any punitive damages award. The bill provides that any punitive damages awarded must be equally divided between the victim and the trust fund.

There is no statute of limitations for the civil cause of action created by this bill. Moreover, the bill grants the court specific authority to consolidate civil actions for the same trafficker or facilitator for the purpose of case resolution.

Vicarious Liability Defense

Vicarious liability allows a party to be held liable for the actions of an employee or agent; liability is based on the legal imputation of responsibility for another party's acts.¹⁵ An affirmative defense is an assertion of facts or law by the defendant that, if true, would avoid liability.¹⁶

The bill provides an affirmative defense for an owner or operator of a public lodging establishment when an action is brought against them based on a claim of vicarious liability. In actions alleging a violation of the Act against the owner or operator of a public lodging establishment based on vicarious liability, the owner or operator may avoid liability by proving, by a preponderance of the evidence, it:

- Required employees of the establishment reasonably expected to routinely interact with guests to complete an educational program designed to effectively train such employees in the identification and reporting of suspected human trafficking within 30 days of hiring or by July 1, 2019, whichever occurs later.
- Had in place an employee protocol or employee code of conduct to detect and report suspected human trafficking; and
- Took reasonable steps, before the first incident giving rise to such action, to ensure that any employees alleged in the action to have been facilitators of, or otherwise participants in, human trafficking, complied with the recommendations and practices suggested or required in the training, protocols, or policies.

Application to Civil Actions under s. 772.104, F.S.

The bill amends s. 772.104, F.S., to provide that the requirements and limitations of a civil action under s. 772.104, F.S. do not apply to the cause of action created by this bill.

B. SECTION DIRECTORY:

Section 1: Creating a short title.

Section 2: Creating s. 787.061, F.S., relating to civil actions by victims of human trafficking.

Section 3: Amending s. 772.104, F.S., relating to a civil cause of action.

Section 4: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁵ See generally, *National R.R. Passenger Corp. (Amtrak) v. Rountree Transport and Rigging, Inc.*, 422 F.3d 1275 (11th Cir. 2005).

¹⁶ See *Custer Medical Center v. United Auto Ins. Co.*, 62 So.3d 1086 (Fla. 2010).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may provide an increase in local government revenues as it provides for a \$50,000 civil penalty to be awarded in favor of a law enforcement agency that rescued a victim or located the property upon which the abuse or exploitation of a victim occurred.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A business or entity seeking to avoid liability will have to educate employees and take other steps necessary to avoid liability through the affirmative defense provided in the bill. The estimated cost is unknown.

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to victims of human trafficking;
 3 providing a short title; creating s. 787.061, F.S.;
 4 providing legislative findings; providing definitions;
 5 providing a civil cause of action for victims of human
 6 trafficking against a trafficker or facilitator;
 7 providing procedures and requirements for bringing a
 8 claim; providing for damages, punitive damages, and
 9 costs; requiring a court to impose civil penalties in
 10 certain circumstances; providing for distribution of
 11 civil penalties; providing for the distribution of
 12 punitive damages; providing that such actions are not
 13 subject to a statute of limitations; providing an
 14 affirmative defense for public lodging establishments
 15 under certain circumstances; amending s. 772.104,
 16 F.S.; specifying that certain provisions concerning
 17 civil actions for criminal practices do not apply to
 18 actions that may be brought under s. 787.061, F.S.;
 19 providing an effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. This act may be cited as the "Civil Action for
 24 Victims of Human Trafficking and Prevention of Human Trafficking
 25 Act."

26 Section 2. Section 787.061, Florida Statutes, is created
 27 to read:

28 787.061 Civil actions by victims of human trafficking.-

29 (1) FINDINGS.-The Legislature finds that, to achieve the
 30 goals of the state relating to human trafficking in s.

31 787.06(1)(d), it is necessary to provide a civil cause of action
 32 for the recovery of compensatory and punitive damages and costs.

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

34 (a) "Facilitator" means a person who knowingly, or in
 35 willful blindness, assists or provides goods or services to a
 36 trafficker which assist or enable the trafficker to carry out
 37 human trafficking. The term does not include a person who
 38 facilitates human trafficking as a result of force, threat, or
 39 coercion.

40 (b) "Human trafficking" has the same meaning as provided
 41 in s. 787.06.

42 (c) "Trafficker" means any person who knowingly engages in
 43 human trafficking, attempts to engage in human trafficking, or
 44 benefits financially by receiving anything of value from
 45 participation in a venture that has subjected a person to human
 46 trafficking.

47 (d) "Trust fund" means the Trust Fund for Victims of Human
 48 Trafficking and Prevention created in s. 787.0611.

49 (e) "Venture" means any group of two or more individuals
 50 associated in fact, whether or not a legal entity.

51 (f) "Victim of human trafficking" means a person subjected
 52 to coercion, as defined in s. 787.06, for the purpose of being
 53 used in human trafficking, a child under 18 years of age
 54 subjected to human trafficking, or an individual subjected to
 55 human trafficking as defined by federal law.

56 (g) "Willful blindness" exists when a person has knowledge
 57 of information that would raise suspicions in a reasonable
 58 person and he or she deliberately refrains from obtaining
 59 confirmation of or acting on the information because he or she
 60 wants to remain in ignorance, such that knowledge of the facts
 61 avoided can reasonably and fairly be imputed to the person who
 62 avoided confirming it.

63 (3) CIVIL CAUSE OF ACTION.—

64 (a) A victim of human trafficking has a civil cause of
 65 action against the trafficker or facilitator who victimized her
 66 or him and may recover damages as provided in this section.

67 (b) The action may be brought in any court of competent
 68 jurisdiction, and the standard of proof is a preponderance of
 69 the evidence.

70 (c) A victim who prevails in any such action is entitled
 71 to recover economic and noneconomic damages, penalties, punitive
 72 damages, reasonable attorney fees, reasonable investigative
 73 expenses, and costs.

74 1. The measure of economic damages for services or labor
 75 coerced from the victim of human trafficking is the greater of

76 the fair market value of the labor or services provided or the
 77 amount realized by the trafficker. For purposes of this
 78 subparagraph, the terms "services" and "labor" have the same
 79 meanings as provided in s. 787.06.

80 2. The measure of economic damages for every day that the
 81 human trafficking was ongoing shall be calculated as a daily
 82 amount of the compensation payable to a person under s.
 83 961.06(1)(a).

84 3. Economic damages also include past and future medical
 85 and mental health expenses; repatriation expenses, when a victim
 86 elects repatriation; and all other reasonable costs and expenses
 87 incurred by the victim in the past or estimated to be incurred
 88 by the victim in the future as a result of the human
 89 trafficking.

90 4. Noneconomic damages are nonfinancial losses that would
 91 not have occurred but for the victimization, and include pain
 92 and suffering, inconvenience, physical impairment, mental
 93 anguish, disfigurement, loss of capacity for enjoyment of life,
 94 and other nonfinancial losses.

95 (d) The remedies provided in this section are in addition
 96 to and cumulative with other legal and administrative remedies
 97 available to victims of human trafficking, except that a victim
 98 may not recover under both this section and s. 772.104(2). If a
 99 parent or legal guardian knowingly or through willful blindness
 100 trafficked the victim, facilitated such trafficking, or

101 otherwise participated in the human trafficking of the victim,
 102 such parent or legal guardian is not entitled to damages or
 103 distributions under this section.

104 (e) If a victim prevails in an action under this section,
 105 in addition to any other award imposed, the court shall assess a
 106 civil penalty against the defendant in the amount of \$100,000.
 107 This penalty is in addition to and not in lieu of any other
 108 damage award. The civil penalty must be assessed by the court
 109 and may not be disclosed to the jury. Proceeds from this civil
 110 penalty shall be deposited into the trust fund.

111 (f) If one or more law enforcement agencies rescued the
 112 victim or located the property where the abuse or exploitation
 113 of a victim or victims occurred, the court must impose a civil
 114 penalty against the defendant in the amount of \$50,000 and award
 115 the penalty to the law enforcement agencies to fund future
 116 efforts to combat human trafficking. The court must equitably
 117 distribute this civil penalty among the law enforcement
 118 agencies.

119 (g) The court shall have specific authority to consolidate
 120 civil actions for the same trafficker or facilitator for the
 121 purpose of case resolution and aggregate jurisdiction.

122 (h) Notwithstanding any other law to the contrary, the
 123 amount of punitive damages awarded under this section shall be
 124 equally divided between the victim and the trust fund.

125 (4) STATUTE OF LIMITATIONS.—There is no statute of

126 limitations for actions brought under this section.

127 (5) AFFIRMATIVE DEFENSE.—In any action brought under this
 128 section against the owner or operator of a public lodging
 129 establishment based on a claim of vicarious liability, it is an
 130 affirmative defense against such claim if the owner or operator
 131 proves by a preponderance of evidence that it:

132 (a) Required employees of the establishment reasonably
 133 expected to routinely interact with guests to complete an
 134 educational program designed to effectively train such employees
 135 in the identification and reporting of suspected human
 136 trafficking within 30 days of hiring or by July 1, 2019,
 137 whichever occurs later.

138 (b) Had in place an employee protocol or employee code of
 139 conduct to detect and report suspected human trafficking; and

140 (c) Took reasonable steps, before the first incident
 141 giving rise to such action, to ensure that any employees alleged
 142 in the action to have been facilitators of, or otherwise
 143 participants in, human trafficking, complied with the
 144 recommendations and practices suggested or required in the
 145 training, protocols, or policies required in this subsection.

146 Section 3. Subsection (4) is added to section 772.104,
 147 Florida Statutes, to read:

148 772.104 Civil cause of action.—

149 (4) This section does not apply to a cause of action that
 150 may be brought under s. 787.061.

HB 167

2018

151 | Section 4. This act shall take effect July 1, 2018. |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 169 Trust Funds/Creation/Trust Fund for Victims of Human Trafficking and Prevention/FDLE

SPONSOR(S): Spano

TIED BILLS: HB 167 **IDEN./SIM. BILLS:** SB 342

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

SUMMARY ANALYSIS

Article III, Section 19(f), of the Florida Constitution governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The bill creates the Trust Fund for Victims of Human Trafficking and Prevention in the Department of Law Enforcement. The trust fund will consist of funds obtained from civil actions brought on behalf of victims of human trafficking, from penalties imposed by the courts, and funds received from any other sources including legislative appropriations.

The fund is to be administered by the Statewide Council on Human Trafficking (council). The bill provides the following authorized purposes for the trust fund:

- Educating the public about the recruitment, trafficking, and exploitation of persons through human trafficking;
- Assisting with preventing the recruitment of minors in Florida schools;
- Establishing a survivors' resource center to make legal services, social services, safe harbors, safe houses and language services available to survivors of human trafficking;
- Advertising the National Human Trafficking Resource Center hotline telephone number and the BeFree Textline in diverse venues;
- Assisting in the coordination between law enforcement agencies and service providers;
- Assisting in vacating the convictions of persons who were victims of human trafficking; and
- Distributing compensation to victims of human trafficking, including but not limited to, medical and mental health examinations and treatment, living expenses, lost wages, and repatriation.

The trust fund does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018, if HB 167 takes effect, and provides for a termination date of no later than July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trust Funds

The creation, recreation and termination of trust funds is governed by provisions in both the Florida Constitution and Florida Statutes. Article III, s. 19(f), Fla. Const. governs the creation of trust funds. It provides that no trust fund of the state or other public body may be created without a three-fifths vote of the membership of each house of the Legislature in a separate bill for that purpose only.

The Florida Constitution also specifies that state trust funds must terminate not more than 4 years after the effective date of the act authorizing the initial creation of the trust fund, unless the Legislature by law sets forth a shorter time period. Specified trust funds are exempted from this provision.

Statewide Council on Human Trafficking

The state has created the Statewide Council on Human Trafficking (council) for the purpose of enhancing the development and coordination of state and local law enforcement and social services responses to fight commercial sexual exploitation as a form of human trafficking and to support victims.¹ The council is housed within the Department of Legal Affairs.

The membership of the council is established by statute, with each member serving a 4-year term. The duties of the council include:

- Developing recommendations for comprehensive programs and services for victims of human trafficking, including recommendations for certification criteria for safe houses and safe foster homes.
- Making recommendations for apprehending and prosecuting traffickers and enhancing coordination of responses.
- Hosting an annual statewide policy summit in conjunction with an institution of higher learning in this state.
- Working with the Department of Children and Families to create and maintain an inventory of human trafficking programs and services in each county, including, but not limited to, awareness programs and victim assistance services, and use that information to determine how to maximize existing resources and address unmet needs and emerging trends.
- Developing policy recommendations that advance the duties of the council and further efforts to combat human trafficking in Florida.

Additionally, the council is required to submit a report to the President of the Senate and the Speaker of the House of Representatives summarizing the accomplishments of the council during the preceding fiscal year and making recommendations regarding the development and coordination of state and local law enforcement and social services responses to fight human trafficking and support victims.

Effect of Bill

The bill creates the Trust Fund for Victims of Human Trafficking and Prevention in the Department of Law Enforcement. The Statewide Council on Human Trafficking will administer the fund. The trust fund will consist of funds: obtained under s. 787.061, F.S., from civil actions brought on behalf of victims of

human trafficking, from penalties imposed by the courts, and funds received from any other sources, including legislative appropriations.

The bill provides the following authorized purposes for the trust fund:

- Educating the public about the recruitment, trafficking, and exploitation of persons through human trafficking,
- Assisting with preventing the recruitment of minors for exploitation in Florida schools,
- Establishing a survivors' resource center to make legal services, social services, safe harbors, safe houses and language services available to survivors of human trafficking,
- Advertising the National Human Trafficking Resource Center hotline telephone number and the BeFree Textline in diverse venues,
- Assisting in the coordination between law enforcement agencies and service providers,
- Assisting in vacating the convictions of persons who were victims of human trafficking, and
- Distributing compensation to victims of human trafficking under s. 787.061, F.S., including but not limited to, medical and mental health examinations and treatment, living expenses, lost wages, and repatriation.

The bill provides an effective date of July 1, 2018, if HB 167 takes effect, and provides for a termination date of no later than July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Creates s. 787.0611, F.S., relating to Trust Fund for Victims of Human Trafficking and Prevention.

Section 2: Provides that the bill will take effect on the same day as HB 167 or similar legislation, if such legislation is adopted in the same legislative session, and only if the bill is enacted by three-fifths vote of the membership of each house of the Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Pursuant to s. 215.20, F.S, a service charge of 8 percent is appropriated from income deposited into the fund. This 8 percent represents the estimated pro rata share of the cost of general government paid from the General Revenue Fund. It is unknown at this time, however, how much income will be generated by the fund.

2. Expenditures:

None.

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:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to trust funds; creating s. 787.0611,
 3 F.S.; creating the Trust Fund for Victims of Human
 4 Trafficking and Prevention within the Department of
 5 Law Enforcement; providing the purposes of, and
 6 funding sources for, the trust fund; providing for
 7 administration of the fund; providing for future
 8 review and termination or re-creation of the trust
 9 fund; providing a contingent effective date.

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

12
 13 Section 1. Section 787.0611, Florida Statutes, is created
 14 to read:

15 787.0611 The Trust Fund for Victims of Human Trafficking
 16 and Prevention.-

17 (1) There is created within the Department of Law
 18 Enforcement the Trust Fund for Victims of Human Trafficking and
 19 Prevention.

20 (2) The trust fund shall consist of funds obtained under
 21 s. 787.061 and funds received from any other source, including
 22 legislative appropriations.

23 (3) (a) The department shall administer the trust fund and
 24 must use its funds in a manner that ensures that they are used
 25 for victims of human trafficking including, but not limited to,

26 medical and mental health examinations and treatment, living
 27 expenses, lost wages, and repatriation of such victims.

28 (b) The trust fund moneys may also be used for the
 29 following purposes:

30 1. Educating the public about the recruitment,
 31 trafficking, and exploitation of persons through human
 32 trafficking.

33 2. Assisting in the prevention of recruitment of minors
 34 for exploitation in schools in this state.

35 3. Establishing a survivors' resource center to make legal
 36 services, social services, safe harbors, safe houses, and
 37 language services available to survivors of human trafficking.

38 4. Advertising the National Human Trafficking Resource
 39 Center hotline telephone number and the BeFree Textline in
 40 diverse venues.

41 5. Assisting in the coordination between law enforcement
 42 agencies and service providers.

43 6. Assisting in vacating the convictions of victims of
 44 human trafficking, whose offenses were the result of the force,
 45 duress, or coercion of a human trafficker.

46 (4) In accordance with s. 19(f)(2), Art. III of the State
 47 Constitution, the trust fund shall, unless terminated sooner, be
 48 terminated on July 1, 2022. Before its scheduled termination,
 49 the trust fund shall be reviewed as provided in s. 215.3206(1)
 50 and (2).

HB 169

2018



51 Section 2. This act shall take effect on the same date
52 that HB 167 or similar legislation takes effect, if such
53 legislation is adopted in the same legislative session or an
54 extension thereof and becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 271 Bankruptcy Matters in Foreclosure Proceedings

SPONSOR(S): Rommel

TIED BILLS: None **IDEN./SIM. BILLS:** SB 220

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

SUMMARY ANALYSIS

A mortgage foreclosure is an action by a lender against a borrower to force the sale of the real property that secures the loan as a means of enforcing the debt. Often, a borrower subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action plus a discharge of the mortgage debt.

In bankruptcy, a debtor may claim property as exempt from the bankruptcy estate. A debtor may also choose to exempt an additional \$4,000 in personal property should the debtor agree to surrender the homestead property to the lender. In some cases, however, debtors have stated an intention to surrender real property in bankruptcy proceedings but then later have actively contested the completion of foreclosure proceedings in state court.

This bill provides that a lienholder in a mortgage foreclosure case may use any document filed under penalty of perjury in bankruptcy court as an admission by the defendant. The bill provides that the lienholder's submission of a document the defendant filed in the defendant's bankruptcy case that evidences intention to surrender the property to the lienholder, together with the submission of a final order entered in the bankruptcy case, creates a rebuttable presumption in favor of the lienholder that the defendant has waived any defense to the foreclosure. The bill allows the court to take judicial notice of the final order in a bankruptcy case. A debtor/defendant may still raise a defense based on actions taken by the lienholder after the filing of the document in the bankruptcy case that evidenced the defendant's intention to surrender the property to the lienholder.

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

The bill has an effective date of October 1, 2018, and applies to any mortgage foreclosure filed on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mortgage Foreclosure

A foreclosure is initiated by the lender or servicer, known as the mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an "acceleration clause," which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction.

The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint,¹ which must allege that the plaintiff is the present owner and holder of the note and mortgage,² contain a copy of the note and mortgage,³ and allege a statement of default,⁴ along with a filing fee⁵ and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.⁶
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.⁷
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.⁸
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file for a motion of summary judgment or proceed to trial, however the vast majority of plaintiffs file a motion for summary judgment.⁹
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing and if he or she finds in the favor of the plaintiff, the court renders a final judgment.¹⁰
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.¹¹
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.¹²
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least five days prior to the sale.¹³

¹ Fla. R. Civ. P. 1.944.

² *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

³ Fla. R. Civ. P. 1.130(a).

⁴ *Siahpoosh v. Nor Props.*, 666 So. 2d 988, 989 (Fla. 4th DCA 1996).

⁵ The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(c), F.S.

⁶ s. 48.23, F.S.

⁷ Fla. R. Civ. P. 1.070(j). See also chs. 48 and 49, F.S.

⁸ Fla. R. Civ. P. 1.500.

⁹ Fla. R. Civ. P. 1.510(a).

¹⁰ s. 45.031, F.S.

¹¹ s. 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.

¹² s. 45.031(1)(a), F.S.

¹³ s. 45.031(2), F.S.

- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.¹⁴
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.¹⁵
- After the 10 days has expired with no objection, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure,¹⁶ and the court may, in its discretion, enter a deficiency decree for the difference between the fair market value of the security received and the amount of the debt.¹⁷
- Also after the 10 days has expired, the clerk may issue a writ of possession giving possession of the real property to the purchaser and directing the sheriff to assist that purchaser with obtaining possession. Up to the point that a writ of possession is served on the property, the debtor who was foreclosed has the legal right to stay in possession of the real property.

Bankruptcy Proceedings

In general, the two purposes of bankruptcy are to convert the estate of the debtor into cash and distribute it among creditors, and to give the debtor a fresh start with such exemptions and rights as the bankruptcy statute leaves untouched.¹⁸ The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including foreclosure.¹⁹ The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless sooner lifted by the bankruptcy court.

There are two primary forms of bankruptcy an individual may file.²⁰ In a proceeding under Chapter 7 of the bankruptcy code, the debtor surrenders his or her assets to a trustee who then liquidates the assets and distributes proceeds to the creditors.²¹ A petition filed pursuant to Chapter 7 of the bankruptcy code is used when the rehabilitative chapters of the code would not be applicable, such as there being no nonexempt property to protect.²² A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.²³

In Chapter 7 bankruptcy, the debtor must file a statement of intention regarding secured property. A debtor has three options: surrender the property and be discharged of the debt; reaffirm the debt, meaning the debtor keeps the property but is liable for the debt in the future (the debt is not discharged by bankruptcy); or redeem the property by paying cash to pay off the security interest.²⁴ The statement of intention is made under penalty of perjury. It must be filed by the debtor within 30 days of the filing of the Chapter 7 petition or on or before the date of the meeting of the creditors to appoint a trustee for the estate, whichever date is earlier.²⁵ Within 30 days after the first set date for the meeting of the creditors, the debtor must perform his intention with respect to each piece of secured property.²⁶

In Chapter 13 bankruptcy, the debtor must create a plan to restructure and repay his debt.²⁷ For this plan to be confirmed by the court, the plan must describe how the debtor is responding to each secured claim.²⁸ The debtor must make a plan for the secured property that the holder of the claim accepts; or the debtor must surrender the property securing the claim to the claim holder; or the plan must provide

¹⁴ s. 45.031(8), F.S.

¹⁵ *Id.*

¹⁶ s. 45.031, F.S.

¹⁷ s. 702.06, F.S.

¹⁸ 9 Am Jur 2d Bankruptcy § 5.

¹⁹ 11 U.S.C. § 362(a)(4).

²⁰ An individual can file a petition under Chapter 11, but it is rare.

²¹ 11 U.S.C. §§ 704 & 726.

²² 9 Am Jur 2d Bankruptcy § 68.

²³ 9 Am Jur 2d Bankruptcy § 72.

²⁴ 11 U.S.C. § 521(a)(2)(A).

²⁵ *Id.*

²⁶ 11 U.S.C. § 521(a)(2)(B).

²⁷ 11 U.S.C. §§ 1321 & 1322.

²⁸ 11 U.S.C. § 1325(a)(5).

for the holder of the claim to retain the lien securing the claim and provide that the value of property to be distributed on account of such claim is not less than the allowed amount of such claim.²⁹

In either a Chapter 7 or Chapter 13 bankruptcy, a debtor may claim certain property as exempt from the bankruptcy estate.³⁰ States may opt out of certain exemptions listed in the bankruptcy code, and Florida has chosen to do so.³¹ When a resident of Florida files for bankruptcy, Florida law provides exemptions from the bankruptcy estate, including a base \$1,000 in personal property. A debtor may exempt an additional \$4,000 of personal property "if the debtor does not claim or receive the benefits of a homestead exemption,"³² which applies to tenants and to a debtor who surrenders the homestead to his or her lender. In other words, a debtor who is in foreclosure may elect to either save the home with a \$1,000 general personal property exemption, or may surrender the homestead property and have a \$5,000 personal property exemption.

After the debtor has fulfilled his or her duties to the bankruptcy estate, the debtor may receive a discharge.³³ This discharge voids any dischargeable debt of the debtor, including a deficiency judgment that might otherwise be obtained after surrender of secured property to a creditor.³⁴

Recent Cases Regarding Surrender of Real Property in Bankruptcy

Recent federal cases have dealt with the connection between federal bankruptcy law and state foreclosure law regarding what it means for a debtor to "surrender" real property. In several cases, debtors have declared an intention to surrender their home to the mortgage servicer, but then later (after discharge and the lifting of the automatic stay) actively contested a foreclosure action regarding that property.³⁵ In May 2015, the Bankruptcy Court for the Middle District of Florida held that "at a minimum, 'surrender' under the Bankruptcy Code §§ 521 and 1325, means a debtor cannot take an overt act that impedes a secured creditor from foreclosing its interest in secured property."³⁶ In October 2016, the 11th Circuit Court of Appeals, which covers Georgia, Florida, and Alabama, heard an appeal from another Florida case where the debtors surrendered the home in bankruptcy but contested the subsequent foreclosure by the lender.³⁷ The panel held that "[i]n bankruptcy, as in life, a person does not get to have his cake and eat it too.... Having chosen to surrender, the debtor must drop his opposition to the creditor's subsequent foreclosure action" or lose the benefit of the discharge.³⁸

Florida Evidence Code

The Florida Evidence Code governs what evidence may be used in court actions in the state courts.³⁹ The Florida Evidence Code provides that a court may take judicial notice of certain facts.⁴⁰ Judicial notice is a tool of evidence that allows a judge to accept a fact without proof because the fact is already known to him or her or is so readily ascertainable that it does not need to be proven.⁴¹ A court may take judicial notice of records of any court of this state or any court of record of the United States.⁴²

²⁹ *Id.*

³⁰ 11 U.S.C. § 522.

³¹ 11 U.S.C. § 522(b)(3)(A) & (d); s. 222.20, F.S.

³² s. 222.25(4), F.S.

³³ 11 U.S.C. § 727 & 1328.

³⁴ 11 U.S.C. § 524(a)(1).

³⁵ See, e.g., *In re Meltzer*, Case No. 8:12-bk-16792-MGW (Bankr. M.D. Fla. 2015); *In re Patel*, 8:13-bk-09736-MGW (Bankr. M.D. Fla. 2015); *In re Failla*, 838 F. 3d 1170 (11th Cir. 2016).

³⁶ *In re Meltzer*, Case No. 8:12-bk-16792-MGW (Bankr. M.D. Fla. 2015); *In re Patel*, 8:13-bk-09736-MGW (Bankr. M.D. Fla. 2015).

³⁷ *In re Failla*, 838 F. 3d 1170 (11th Cir. 2016).

³⁸ *Id.* at 1178.

³⁹ s. 90.103, F.S.

⁴⁰ ss. 90.201 & 90.202, F.S.

⁴¹ *Mitchum v. State*, 251 So. 2d 298, 300 (1st DCA 1971).

⁴² s. 92.202(6), F.S.

The Florida Evidence Code generally prohibits hearsay testimony.⁴³ An exception to the hearsay prohibition is the testimony or written admission of an opposing party.⁴⁴ A party to an action may prove the contents of writings of the opposing party by the testimony of that opposing party or that party's written admission.⁴⁵

Effect of the Bill

The bill creates s. 702.12, F.S., relating to mortgage foreclosures, to allow a lienholder in a foreclosure action to submit any document the defendant filed under penalty of perjury in a bankruptcy case as an admission by the defendant.

The bill creates a rebuttable presumption in favor of the lienholder that a defendant who has filed in his or her bankruptcy case an intent to surrender the property has waived any defenses to the foreclosure. The presumption is achieved by submitting a document that evidences the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure and a final order entered in the bankruptcy case that discharged the defendant's debt or confirms the defendant's repayment plan.

The bill also allows the lienholder to request that the court in the foreclosure action take judicial notice of any final order entered in a bankruptcy case.

The bill does not preclude the defendant from raising a defense based on actions taken by the lienholder after the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the property to the lienholder.

The statute applies to any mortgage foreclosure filed on or after October 1, 2018.

B. SECTION DIRECTORY:

Section 1 creates s. 702.12, F.S., relating to mortgage foreclosures.

Section 2 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:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁴³ s. 90.802, F.S.

⁴⁴ s. 90.957, F.S.

⁴⁵ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lead to faster resolution of certain foreclosure cases and thus may reduce litigation costs for the parties involved.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to bankruptcy matters in foreclosure
 3 proceedings; creating s. 702.12, F.S.; authorizing
 4 lienholders to use certain documents as an admission
 5 in an action to foreclose a mortgage; providing that
 6 submission of certain documents in a foreclosure
 7 action creates a rebuttable presumption that the
 8 defendant has waived any defenses to the foreclosure;
 9 requiring a court to take judicial notice of orders
 10 entered in bankruptcy cases under certain
 11 circumstances; providing construction; providing
 12 applicability; providing an effective date.

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

15
 16 Section 1. Section 702.12, Florida Statutes, is created to
 17 read:

18 702.12 Actions in foreclosure.—

19 (1) (a) A lienholder, in an action to foreclose a mortgage,
 20 may submit any document the defendant filed under penalty of
 21 perjury in the defendant's bankruptcy case for use as an
 22 admission by the defendant.

23 (b) A rebuttable presumption that the defendant has waived
 24 any defense to the foreclosure is created if a lienholder
 25 submits documents filed in the defendant's bankruptcy case

26 which:

27 1. Evidence the defendant's intention to surrender to the
 28 lienholder the property that is the subject of the foreclosure;

29 2. Have not been withdrawn by the defendant; and

30 3. Show that a final order has been entered in the
 31 defendant's bankruptcy case which discharges the defendant's
 32 debts or confirms the defendant's repayment plan that provides
 33 for the surrender of the property.

34 (2) Pursuant to s. 90.203, a court shall take judicial
 35 notice of an order entered in a bankruptcy case upon the request
 36 of a lienholder.

37 (3) This section does not preclude the defendant in a
 38 foreclosure action from raising a defense based upon the
 39 lienholder's action or inaction subsequent to the filing of the
 40 document filed in the bankruptcy case which evidenced the
 41 defendant's intention to surrender the mortgaged property to the
 42 lienholder.

43 (4) This section applies to any foreclosure action filed
 44 on or after October 1, 2018.

45 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 307 Florida Commission on Human Relations

SPONSOR(S): Antone

TIED BILLS: None **IDEN./SIM. BILLS:** SB 300

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

SUMMARY ANALYSIS

The Florida Commission on Human Relations (Commission) administers the state's civil rights laws and serves as a resource for businesses, individuals, and groups to prevent costly and damaging discriminatory activities. Complaints of discrimination related to employment, housing, certain public accommodations, and state employee whistle-blower retaliation are handled by the Commission.

The bill:

- Changes quorum requirements for the Commission to be based on the number of currently appointed commissioners;
- Authorizes the Commission to recommend up to 10 nominees for the Florida Civil Rights Hall of Fame;
- Specifies the applicable statute of limitations for bringing a cause of action pursuant to the Florida Civil Rights Act;
- Deletes the registration requirements for facilities and communities claiming the housing for older persons exemption and eliminating related forms, fees, and fines;
- Deletes the investigation requirement for the Commission after receiving a complaint of discrimination by certain public accommodations; and
- Aligns time periods in state employee whistle-blower cases with time periods in other cases investigated by the Commission.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Florida Commission on Human Relations

Chapter 760, F.S., provides a forum for all individuals in Florida to be protected against discrimination in areas of employment, housing, certain public accommodations and other opportunities based on race, color, religion, sex, national origin, age, handicap, marital, or familial status. Part I of Chapter 760, F.S., creates the Florida Civil Rights Act of 1992; Part II creates the Florida Fair Housing Act.

The Florida Commission on Human Relations (Commission) is authorized to carry out the purposes of chapter 760, F.S.¹ The Commission is housed in the Department of Management Services.² The department does not exercise any control or supervision over the Commission.

The Commission is comprised of 12 individuals who are appointed by the Governor and confirmed by the Senate. The membership of the Commission is broadly representative of various racial, religious, ethnic, social, economic, political, and professional groups in Florida. At least one member of the Commission, as required by law, must be 60 years of age or older. The Commission is empowered to receive, initiate, investigate, conciliate, and hold hearings concerning complaints of discrimination and act upon complaints alleging any discriminatory practice.³

Quorum for Commission Meeting

The Commission is comprised of 12 members.⁴ Currently, the Commission has 8 commissioners serving on its board.⁵ Of these 8 commissioners, only 2 are in terms that have not yet expired; the other 6 commissioners are continuing to serve until they are either reappointed or until their seats are filled by another appointment.

Current law provides that seven members constitute a quorum for the Commission to conduct business.⁶ Due to the low number of commissioners currently serving, the Commission has difficulty in meeting the seven member quorum requirement and continually cancels and reschedules meetings. If 2 members were to resign, the Commission could no longer conduct official business at all. Other government entities and commissions may satisfy their quorum requirements with a majority of their currently appointed members.⁷

Effect of Bill: Quorum for Commission Meeting

The bills amends s. 760.03, F.S., to provide that a quorum for a Commission meeting consists of a majority of the currently appointed members. At the current time, this would allow the Commission to conduct business with 5 members present, rather than 7 members. The bill also provides that the panels created by the Commission would be able to establish a quorum to conduct business with three members of the panel.

¹ s. 760.03, F.S.

² s. 760.04, F.S.

³ s. 760.06, F.S.

⁴ s. 760.03(1), F.S.

⁵ *Meet the Commissioners*, Florida Commission on Human Relations, http://fchr.state.fl.us/about_us/meet_the_commissioners (last accessed October 25, 2017).

⁶ s. 760.03(5), F.S.

⁷ Among others, ss. 43.291(6) (Judicial Nominating Commissions), 265.003(3)(b) (Florida Veterans' Hall of Fame), 455.207(3) (Boards and Commissions within DBPR), 456.011(3) (Boards and Commissions within DOH), and 472.007(4)(a) (Board of Professional Surveyors and Mappers), F.S.

Florida Civil Rights Hall of Fame

The Florida Civil Rights Hall of Fame was created by the Florida Legislature in 2010.⁸ The purpose of the program is to recognize those persons, living or deceased, who have made significant contributions to the state as leaders in the struggle for equality and justice for all persons.⁹ The Commission oversees and administers the Hall of Fame. The Commission must accept nominations every year and submit 10 recommendations to the Governor, who then selects up to three members for induction.¹⁰ An eligible nominee must:

- Be at least 18 years of age;
- Have been born in Florida or adopted Florida as his or her home state and base of operations; and
- Have made a significant contribution and provided exemplary leadership toward Florida's progress and achievements in civil rights.¹¹

With its limited resources, the Commission has struggled to make the minimum number of 10 recommendations each year. Since its inception, the Commission has received:

- 2012- 21 nominations
- 2013- 20 nominations
- 2014- 6 nominations
- 2015- 9 nominations
- 2016- 9 nominations
- 2017- 12 nominations

Effect of Bill: Florida Civil Rights Hall of Fame

The bill amends s. 760.065(3)(a), F.S., to provide that the Commission may recommend up to 10 nominees each year for the Governor's consideration. This change prevents the Commission from violating the law when it submits less than 10 recommendations due to a lack of nominees.

Florida Civil Rights Act

A person aggrieved by a violation of ss. 760.01-760.10, F.S., may file a complaint with the Commission pursuant to the Florida Civil Rights Act.¹² The complaint must be filed within 365 days and name the employer, employment agency, labor organization, joint labor-management committee, or person responsible for the violation and describe the violation.¹³ The Commission must determine within 180 days whether or not reasonable cause exists to believe that a discriminatory practice occurred.¹⁴

If the Commission makes a "reasonable cause" determination, the claimant may then bring a civil action or request an administrative hearing.¹⁵ A civil action must be commenced no later than one year after the date of determination of reasonable cause by the Commission.¹⁶ If the Commission does not find reasonable cause, the claimant may still request an administrative hearing, but is precluded from

⁸ s. 760.065, F.S.

⁹ *Id.*

¹⁰ s. 760.065(3)(a), F.S.

¹¹ s. 760.065(3)(b), F.S.

¹² s. 760.11(1), F.S.

¹³ *Id.*

¹⁴ s. 760.11(3), F.S.

¹⁵ s. 760.11(4), F.S.

¹⁶ s. 760.11(5), F.S.

commencing a civil action.¹⁷ If the Commission fails to make a determination within 180 days, the claimant may proceed as though the Commission made a reasonable cause determination.¹⁸

In *Joshua v. City of Gainesville*, the Florida Supreme Court examined the interplay between these parts of the Florida Civil Rights Act.¹⁹ The court stated that the "[a]ct...does not provide clear and unambiguous guidance to those who file complaints under its provisions nor to those who are brought into court on allegations of violating its terms."²⁰ The court held that the one-year statute of limitations for filing civil actions in s. 760.11(5), F.S., does not apply if the Commission fails to make a determination within 180 days. The court held that the four-year statute of limitations for a cause of action based on statutory liability²¹ applies when the Commission fails to make a determination.²²

Effect of Bill: Florida Civil Rights Act

The bill amends s. 760.11(8), F.S., to provide that a cause of action filed pursuant to this subsection is subject to a four-year statute of limitations, consistent with the ruling in *Joshua v. City of Gainesville*.²³ This statute of limitations begins to run on the date of the alleged discriminatory act.

Florida Fair Housing Act

Part II of ch. 760, F.S., constitutes the Florida Fair Housing Act.²⁴ It is the state's policy to provide for fair housing throughout the state.²⁵ The Fair Housing Act provides that any person who claims to have been injured by a discriminatory housing practice or who believes that he or she will be injured by a discriminatory housing practice that is about to occur may file a complaint with the Commission.²⁶ The complainant must file the complaint within 1 year after the alleged discriminatory practice has occurred.²⁷ The Commission has 100 days after receipt of the complaint to complete its investigation and issue a determination.²⁸ The Commission may attempt to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.²⁹

The provisions of the Florida Fair Housing Act apply to all housing and housing-related entities (realtors, brokers, mortgage companies, financial institutions) in Florida. In 2001, the Legislature created exemptions for which charges of housing discrimination do not apply.³⁰ For example, a single-family house sold or rented by its owner is exempted, as well as rooms or units in dwellings that provide housing for four or less families.³¹ Certain housing for older persons is also exempt from charges of discrimination based on familial status.³²

Housing for older persons is any housing intended for and solely occupied by persons 62 years of age or older, or, if occupancy is by persons 55 years of age or older, at least 80 percent of the units are occupied by at least one person age 55 years or older. The housing facility or community must also adhere to senior housing policies and procedures and comply with rules developed by the U.S.

¹⁷ s. 760.11(7), F.S.

¹⁸ s. 760.11(8), F.S.

¹⁹ 768 So.2d 432 (Fla. 2000).

²⁰ *Id.* at 434-435.

²¹ s. 95.11(3)(f), F.S.

²² 768 So.2d at 439.

²³ 768 So.2d 432 (Fla. 2000).

²⁴ ss. 760.20-760.37, F.S.

²⁵ s. 760.21, F.S.

²⁶ s. 760.34(1), F.S.

²⁷ s. 760.34(2), F.S.

²⁸ s. 760.34(1), F.S.

²⁹ *Id.*

³⁰ s. 760.29, F.S.

³¹ ss. 760.29(1)(a)1 and 2, F.S.

³² s. 760.29(4), F.S.

Department of Housing and Urban Development pursuant to 24 C.F.R. 100. These facilities and communities must register with the Commission and renew such registration every two years and pay a \$20 fee for registration and renewal.³³ The Commission may impose an administrative fine of up to \$500 for submission of false information,³⁴ but there is no penalty for failure to register with the Commission. Failure to register does not prohibit a community from claiming the exemption and the Commission does not actively seek out entities that are not registered.

The Commission has not charged a fee to register or renew facilities and communities since 2015. The Commission reports that the "registration program does not enhance or benefit the Commission in implementing its statutory requirements or carrying out its mission-critical responsibilities."³⁵ The registry is not determinative as to whether the community actually qualifies from the housing for older persons exemption under the Florida Fair Housing Act. A facility or community that registers is still subject to an investigation if a complaint were filed against it and would have to prove that it meets the exemption. The same is true of a facility or community that has not registered.

Effect of Bill: Florida Fair Housing Act

The bill deletes s. 760.29(4)(c), F.S., thereby repealing the requirement that a facility or community that claims the exemption as housing for older persons must register with the Commission. This deletion includes the provisions for the registration and renewal fee and administrative fine for submission of false information to the Commission.

The bill also amends s. 760.31(5), F.S., relating to the powers and duties of the Commission. The bill deletes language requiring the Commission to create forms and procedures and setting the fee for the registration of facilities and communities claiming the housing for older persons exemption. The language is no longer needed as the registration requirement is being deleted.

Discriminatory Practices in Certain Clubs

As part of the Florida Civil Rights Act, the Legislature prohibits certain clubs from discriminating against individuals based on race, color, religion, gender, national origin, handicap, age (above the age of 21), or marital status in evaluating an application for membership.³⁶ This prohibition only applies to clubs that have more than 400 members, provide regular meal service, and receive payment for dues, fees, use of space, facilities, services, meals, or beverages from non-members for business purposes.³⁷ The law also prohibits the publication, circulation, issuance, display, posting, or mailing of any advertisement, notice, or solicitation that contains a statement denying use and access to the club for a discriminatory purpose.³⁸

Any person who has been discriminated against by a club meeting these specifications may file a complaint with the Commission or with the Attorney General's Office of Civil Rights.³⁹ Upon receipt, the Commission or the Attorney General must provide a copy of the complaint to the club and, within 30 days, investigate the alleged discrimination and inform the complainant of its intention to resolve the complaint.⁴⁰ If the Commission or the Attorney General decides to resolve the complaint, it must attempt to eliminate or correct the alleged discriminatory practices of a club by the informal methods of conference, conciliation, and persuasion.⁴¹

³³ s. 760.29(4)(c), F.S.

³⁴ *Id.*

³⁵ *SB 1716/HB 1255- Florida Civil Rights and Discrimination Cases- Chapter 760 Changes*, p. 6, Florida Commission on Human Relations. A copy of the document is on file with the Civil Justice & Claims Subcommittee.

³⁶ s. 760.60(1), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ s. 760.60(2), F.S.

⁴⁰ *Id.*

⁴¹ *Id.*

If the Commission or Attorney General fails to give notice of its intent to eliminate or correct the alleged discriminatory practices of a club within 30 days, or if the Commission or Attorney General fails to resolve the complaint within 30 days after giving such notice, the person or the Attorney General on behalf of the person filing the complaint may commence a civil action against the club, its officers, or its members to enforce this section.⁴² If the court finds a discriminatory practice has occurred at the club, the court may enjoin the club, its officers, or its members from engaging in such practice or may order other appropriate action.⁴³

Effect of Bill: Discriminatory Practices in Certain Clubs

The bill amends s. 760.60, F.S., to delete the requirement that the Commission or Attorney General investigate the public accommodation discrimination complaint. This allows the Commission or Attorney General to immediately enter into the informal methods of conference, conciliation, and persuasion after giving notice to the club of the discrimination complaint. The bill also extends the time for the Commission or Attorney General to resolve the dispute by informal methods to 45 days, bringing the time period in line with the time allowance in other mediation activities that the Commission undertakes.

State Employee Whistle-Blower Retaliation

The Commission is authorized to investigate any allegation of an adverse action against a state employee, former employee, applicant for employment, or an employee of a contractor with the state in retaliation for exposing gross mismanagement, fraud, wrongful act, or other violations by state government. If a person is retaliated against, he or she can file a written complaint with either the Commission or the Office of the Chief Inspector General (CIG) in the Executive Office of the Governor within 60 days after the adverse action.⁴⁴

Within 3 days, the Commission or the CIG must acknowledge receiving the complaint and provide copies of the complaint to the parties.⁴⁵ The Commission must then complete the fact finding process within 90 days after receiving the complaint and provide the agency head and the complainant a report that may include recommendations or a proposed resolution.⁴⁶

If the Commission is unable to resolve a complaint within 60 days after receipt of the fact-finding report, the Commission must terminate the investigation. The Commission must then notify the complainant and agency head of the termination of the investigation, provide a summary of relevant facts found during the investigation, and state the reasons for terminating the investigation.⁴⁷

If an agency does not implement the recommended action of the Commission in 20 days, the Commission must terminate its investigation and notify the complainant of the right to appeal to the Public Employees Relations Commission or petition the agency for corrective action.⁴⁸ A complainant may file a complaint against the employer-agency with the Public Employees Relations Commission after the termination of an investigation by the Commission.⁴⁹ This complaint must be filed within 60 days after receipt of a notice of termination of the investigation from the Commission.⁵⁰

⁴² s. 760.60(3), F.S.

⁴³ *Id.*

⁴⁴ s. 112.31895(1)(a), F.S.

⁴⁵ s. 112.31895(1)(b), F.S.

⁴⁶ s. 112.31895(2)(a), F.S.

⁴⁷ s. 112.31895(3)(d), F.S.

⁴⁸ s. 112.31895(3)(e)3, F.S.

⁴⁹ s. 112.31895(4)(a), F.S.

⁵⁰ *Id.*

Effect of Bill: State Employee Whistle-Blower Retaliation

The bill amends s. 112.31895, F.S., to amend a number of the time periods related to investigations by the Commission. The bill provides that a complainant must file a complaint no later than 365 days after the prohibited personnel action. The bill provides that the Commission or CIG must respond within five working days after receiving a complaint, instead of three working days. The bill deletes language requiring the Commission to further notify the complainant that their complaint has been received within 15 days of receiving the complaint. The bill also amends the time for the Commission to provide a fact-finding report from 90 days to 180 days after receiving the complaint.

The bill standardizes the times before the Commission must terminate an investigation pursuant to s. 112.31895(3)(d) and (e), F.S., to 35 days. The bill also shortens the time to appeal a decision to terminate an investigation to the Public Employees Relations Commission to 21 days. These changes bring most of the timeframes in line with complaints filed with the Commission pursuant to s. 760.11, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 760.03, F.S., relating to the Commission on Human Relations and staffing.

Section 2: Amends s. 760.065, F.S., relating to the Florida Civil Rights Hall of Fame.

Section 3: Amends s. 760.11, F.S., relating to administrative and civil remedies.

Section 4: Amends s. 760.29, F.S., relating to exemptions.

Section 5: Amends s. 760.31, F.S., relating to powers and duties of the commission.

Section 6: Amends s. 760.60, F.S., relating to prohibited discriminatory practices of certain clubs and remedies.

Section 7: Amends s. 112.31895, F.S., relating to investigative procedures in response to prohibited personnel actions.

Section 8: 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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

There would appear to be an indeterminate negative fiscal impact on Florida Commission on Human Relations by eliminating the registration and renewal fees for facilities claiming housing for older

persons exemptions and the administrative fine for submitting false information to the Commission in these exemptions. However, the Commission has indicated that it stopped collecting these fees and fines in 2015. As such, the impact to the operation of the Commission would likely be minimal.

Likewise, there would appear to be an indeterminate positive impact on facilities claiming housing for older persons exemptions since they no longer are subject to a fee to register. However, there would likely be little impact on the private sector because this fee has not been collected since 2015.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill eliminates rulemaking authority relating to forms and fees for facilities and communities to register as housing for older persons.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the Florida Commission on Human
 3 Relations; amending s. 760.03, F.S.; providing quorum
 4 requirements for the Commission on Human Relations and
 5 its panels; amending s. 760.065, F.S.; revising the
 6 number of persons the commission may recommend for the
 7 Florida Civil Rights Hall of Fame; amending s. 760.11,
 8 F.S.; providing a limitation on the time a civil
 9 action may be filed after an alleged violation of the
 10 Florida Civil Rights Act; amending s. 760.29, F.S.;
 11 deleting a requirement that a facility or community
 12 that provides housing for older persons register with
 13 and submit a letter to the commission; amending s.
 14 760.31, F.S.; conforming a provision; amending s.
 15 760.60, F.S.; deleting the requirement for the
 16 commission or Attorney General to investigate a
 17 complaint of discrimination in evaluating an
 18 application for club membership; revising the length
 19 of time the commission or Attorney General has to
 20 resolve such a complaint; amending s. 112.31895, F.S.;
 21 revising the timeline relating to a complaint alleging
 22 a prohibited personnel action; deleting a requirement
 23 that the commission notify a complainant upon receipt
 24 of the complaint; providing an effective date.
 25

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

27

28 Section 1. Subsection (5) of section 760.03, Florida
 29 Statutes, is amended to read:

30 760.03 Commission on Human Relations; staff.—

31 (5) A quorum is necessary for the conduct of official
 32 business. Unless otherwise provided by law, a quorum consists of
 33 a majority of the currently appointed commissioners. ~~Seven~~
 34 ~~members shall constitute a quorum for the conduct of business;~~
 35 ~~however,~~ The commission may establish panels of not less than
 36 three of its members to exercise its powers under the Florida
 37 Civil Rights Act of 1992, subject to such procedures and
 38 limitations as the commission may provide by rule.
 39 Notwithstanding this subsection, three appointed members serving
 40 on panels shall constitute a quorum for the conduct of official
 41 business of the panel.

42 Section 2. Paragraph (a) of subsection (3) of section
 43 760.065, Florida Statutes, is amended to read:

44 760.065 Florida Civil Rights Hall of Fame.—

45 (3) (a) The commission shall annually accept nominations
 46 for persons to be recommended as members of the Florida Civil
 47 Rights Hall of Fame. The commission shall recommend up to 10
 48 persons from which the Governor shall select up to 3 hall-of-
 49 fame members.

50 Section 3. Subsection (8) of section 760.11, Florida

51 Statutes, is amended to read:

52 760.11 Administrative and civil remedies; construction.—

53 (8) ~~If In the event that~~ the commission fails to
 54 conciliate or determine whether there is reasonable cause on any
 55 complaint under this section within 180 days of the filing of
 56 the complaint, an aggrieved person may proceed under subsection
 57 (4), as if the commission determined that there was reasonable
 58 cause, except that any civil action filed under this section
 59 shall commence no later than 4 years following the date the
 60 alleged discriminatory act occurred.

61 Section 4. Subsection (4) of section 760.29, Florida
 62 Statutes, is amended to read:

63 760.29 Exemptions.—

64 (4) (a) Any provision of ss. 760.20-760.37 regarding
 65 familial status does not apply with respect to housing for older
 66 persons.

67 (b) As used in this subsection, the term "housing for
 68 older persons" means housing:

69 1. Provided under any state or federal program that the
 70 commission determines is specifically designed and operated to
 71 assist elderly persons, as defined in the state or federal
 72 program;

73 2. Intended for, and solely occupied by, persons 62 years
 74 of age or older; or

75 3. Intended and operated for occupancy by persons 55 years

76 of age or older that meets the following requirements:
 77 a. At least 80 percent of the occupied units are occupied
 78 by at least one person 55 years of age or older.
 79 b. The housing facility or community publishes and adheres
 80 to policies and procedures that demonstrate the intent required
 81 under this subparagraph. If the housing facility or community
 82 meets the requirements of sub-subparagraphs a. and c. and the
 83 recorded governing documents provide for an adult, senior, or
 84 retirement housing facility or community and the governing
 85 documents lack an amendatory procedure, prohibit amendments, or
 86 restrict amendments until a specified future date, then that
 87 housing facility or community shall be deemed housing for older
 88 persons intended and operated for occupancy by persons 55 years
 89 of age or older. If those documents further provide a
 90 prohibition against residents 16 years of age or younger, that
 91 provision shall be construed, for purposes of the Fair Housing
 92 Act, to only apply to residents 18 years of age or younger, in
 93 order to conform with federal law requirements. Governing
 94 documents which can be amended at a future date must be amended
 95 and properly recorded within 1 year after that date to reflect
 96 the requirements for consideration as housing for older persons,
 97 if that housing facility or community intends to continue as
 98 housing for older persons.
 99 c. The housing facility or community complies with rules
 100 made by the Secretary of the United States Department of Housing

101 and Urban Development pursuant to 24 C.F.R. part 100 for
 102 verification of occupancy, which rules provide for verification
 103 by reliable surveys and affidavits and include examples of the
 104 types of policies and procedures relevant to a determination of
 105 compliance with the requirements of sub-subparagraph b. Such
 106 surveys and affidavits are admissible in administrative and
 107 judicial proceedings for the purposes of such verification.

108 (c) Housing shall not fail to be considered housing for
 109 older persons if:

110 1. A person who resides in such housing on or after
 111 October 1, 1989, does not meet the age requirements of this
 112 subsection, provided that any new occupant meets such age
 113 requirements; or

114 2. One or more units are unoccupied, provided that any
 115 unoccupied units are reserved for occupancy by persons who meet
 116 the age requirements of this subsection.

117 (d) A person shall not be personally liable for monetary
 118 damages for a violation of this subsection if such person
 119 reasonably relied in good faith on the application of the
 120 exemption under this subsection relating to housing for older
 121 persons. For purposes of this paragraph, a person may show good
 122 faith reliance on the application of the exemption only by
 123 showing that:

124 1. The person has no actual knowledge that the facility or
 125 the community is ineligible, or will become ineligible, for such

126 exemption; and

127 2. The facility or community has stated formally, in
 128 writing, that the facility or community complies with the
 129 requirements for such exemption.

130 ~~(e) A facility or community claiming an exemption under~~
 131 ~~this subsection shall register with the commission and submit a~~
 132 ~~letter to the commission stating that the facility or community~~
 133 ~~complies with the requirements of subparagraph (b)1.,~~
 134 ~~subparagraph (b)2., or subparagraph (b)3. The letter shall be~~
 135 ~~submitted on the letterhead of the facility or community and~~
 136 ~~shall be signed by the president of the facility or community.~~
 137 ~~This registration and documentation shall be renewed biennially~~
 138 ~~from the date of original filing. The information in the~~
 139 ~~registry shall be made available to the public, and the~~
 140 ~~commission shall include this information on an Internet~~
 141 ~~website. The commission may establish a reasonable registration~~
 142 ~~fee, not to exceed \$20, that shall be deposited into the~~
 143 ~~commission's trust fund to defray the administrative costs~~
 144 ~~associated with maintaining the registry. The commission may~~
 145 ~~impose an administrative fine, not to exceed \$500, on a facility~~
 146 ~~or community that knowingly submits false information in the~~
 147 ~~documentation required by this paragraph. Such fines shall be~~
 148 ~~deposited in the commission's trust fund. The registration and~~
 149 ~~documentation required by this paragraph shall not substitute~~
 150 ~~for proof of compliance with the requirements of this~~

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151 ~~subsection. Failure to comply with the requirements of this~~
 152 ~~paragraph shall not disqualify a facility or community that~~
 153 ~~otherwise qualifies for the exemption provided in this~~
 154 ~~subsection.~~

155
 156 A county or municipal ordinance regarding housing for older
 157 persons may not contravene the provisions of this subsection.

158 Section 5. Subsection (5) of section 760.31, Florida
 159 Statutes, is amended to read:

160 760.31 Powers and duties of commission.—The commission
 161 shall:

162 (5) Adopt rules necessary to implement ss. 760.20-760.37
 163 and govern the proceedings of the commission in accordance with
 164 chapter 120. Commission rules shall clarify terms used with
 165 regard to handicapped accessibility, exceptions from
 166 accessibility requirements based on terrain or site
 167 characteristics, and requirements related to housing for older
 168 persons. ~~Commission rules shall specify the fee and the forms~~
 169 ~~and procedures to be used for the registration required by s.~~
 170 ~~760.29(4)(e).~~

171 Section 6. Subsections (2) and (3) of section 760.60,
 172 Florida Statutes, are amended to read:

173 760.60 Discriminatory practices of certain clubs
 174 prohibited; remedies.—

175 (2) A person who has been discriminated against in

176 violation of this act may file a complaint with the Commission
177 on Human Relations or with the Attorney General's Office of
178 Civil Rights. A complaint must be in writing and must contain
179 such information and be in such form as the commission requires.
180 Upon receipt of a complaint, the commission or the Attorney
181 General shall provide a copy to the person who represents the
182 club. Within 30 days after receiving a complaint, the commission
183 or the Attorney General shall ~~investigate the alleged~~
184 ~~discrimination~~ and give notice in writing to the person who
185 filed the complaint if it intends to resolve the complaint. If
186 the commission or the Attorney General decides to resolve the
187 complaint, it shall attempt to eliminate or correct the alleged
188 discriminatory practices of a club by informal methods of
189 conference, conciliation, and persuasion.

190 (3) If the commission or the Attorney General fails,
191 within 30 days after receiving a complaint filed pursuant to
192 subsection (2), to give notice of its intent to eliminate or
193 correct the alleged discriminatory practices of a club, or if
194 the commission or the Attorney General fails to resolve the
195 complaint within 45 ~~30~~ days after giving such notice, the person
196 or the Attorney General on behalf of the person filing the
197 complaint may commence a civil action in a court against the
198 club, its officers, or its members to enforce this section. If
199 the court finds that a discriminatory practice occurs at the
200 club, the court may enjoin the club, its officers, or its

201 members from engaging in such practice or may order other
 202 appropriate action.

203 Section 7. Subsections (1) and (2), paragraphs (d) and (e)
 204 of subsection (3), and paragraph (a) of subsection (4) of
 205 section 112.31895, Florida Statutes, are amended to read:

206 112.31895 Investigative procedures in response to
 207 prohibited personnel actions.—

208 (1) (a) If a disclosure under s. 112.3187 includes or
 209 results in alleged retaliation by an employer, the employee or
 210 former employee of, or applicant for employment with, a state
 211 agency, as defined in s. 216.011, that is so affected may file a
 212 complaint alleging a prohibited personnel action, which
 213 complaint must be made by filing a written complaint with the
 214 Office of the Chief Inspector General in the Executive Office of
 215 the Governor or the Florida Commission on Human Relations, no
 216 later than 60 days after the prohibited personnel action.

217 (b) Within five ~~three~~ working days after receiving a
 218 complaint under this section, the office or officer receiving
 219 the complaint shall acknowledge receipt of the complaint and
 220 provide copies of the complaint and any other preliminary
 221 information available concerning the disclosure of information
 222 under s. 112.3187 to each of the other parties named in
 223 paragraph (a), which parties shall each acknowledge receipt of
 224 such copies to the complainant.

225 (2) FACT FINDING.—The Florida Commission on Human

226 Relations shall:

227 (a) Receive any allegation of a personnel action
 228 prohibited by s. 112.3187, including a proposed or potential
 229 action, and conduct informal fact finding regarding any
 230 allegation under this section, to the extent necessary to
 231 determine whether there are reasonable grounds to believe that a
 232 prohibited personnel action under s. 112.3187 has occurred, is
 233 occurring, or is to be taken.

234 ~~(b) Notify the complainant, within 15 days after receiving~~
 235 ~~a complaint, that the complaint has been received by the~~
 236 ~~department.~~

237 (b) ~~(e)~~ Within 180 ~~90~~ days after receiving the complaint,
 238 provide the agency head and the complainant with a fact-finding
 239 report that may include recommendations to the parties or
 240 proposed resolution of the complaint. The fact-finding report
 241 shall be presumed admissible in any subsequent or related
 242 administrative or judicial review.

243 (3) CORRECTIVE ACTION AND TERMINATION OF INVESTIGATION.—

244 (d) If the Florida Commission on Human Relations is unable
 245 to conciliate a complaint within 35 ~~60~~ days after receipt of the
 246 fact-finding report, the Florida Commission on Human Relations
 247 shall terminate the investigation. Upon termination of any
 248 investigation, the Florida Commission on Human Relations shall
 249 notify the complainant and the agency head of the termination of
 250 the investigation, providing a summary of relevant facts found

251 during the investigation and the reasons for terminating the
 252 investigation. A written statement under this paragraph is
 253 presumed admissible as evidence in any judicial or
 254 administrative proceeding but is not admissible without the
 255 consent of the complainant.

256 (e)1. The Florida Commission on Human Relations may
 257 request an agency or circuit court to order a stay, on such
 258 terms as the court requires, of any personnel action for 45 days
 259 if the Florida Commission on Human Relations determines that
 260 reasonable grounds exist to believe that a prohibited personnel
 261 action has occurred, is occurring, or is to be taken. The
 262 Florida Commission on Human Relations may request that such stay
 263 be extended for appropriate periods of time.

264 2. If, in connection with any investigation, the Florida
 265 Commission on Human Relations determines that reasonable grounds
 266 exist to believe that a prohibited action has occurred, is
 267 occurring, or is to be taken which requires corrective action,
 268 the Florida Commission on Human Relations shall report the
 269 determination together with any findings or recommendations to
 270 the agency head and may report that determination and those
 271 findings and recommendations to the Governor and the Chief
 272 Financial Officer. The Florida Commission on Human Relations may
 273 include in the report recommendations for corrective action to
 274 be taken.

275 3. If, after 35 ~~20~~ days, the agency does not implement the

276 recommended action, the Florida Commission on Human Relations
 277 shall terminate the investigation and notify the complainant of
 278 the right to appeal under subsection (4), or may petition the
 279 agency for corrective action under this subsection.

280 4. If the Florida Commission on Human Relations finds, in
 281 consultation with the individual subject to the prohibited
 282 action, that the agency has implemented the corrective action,
 283 the commission shall file such finding with the agency head,
 284 together with any written comments that the individual provides,
 285 and terminate the investigation.

286 (4) RIGHT TO APPEAL.—

287 (a) Not more than 21 ~~60~~ days after receipt of a notice of
 288 termination of the investigation from the Florida Commission on
 289 Human Relations, the complainant may file, with the Public
 290 Employees Relations Commission, a complaint against the
 291 employer-agency regarding the alleged prohibited personnel
 292 action. The Public Employees Relations Commission shall have
 293 jurisdiction over such complaints under ss. 112.3187 and
 294 447.503(4) and (5).

295 Section 8. This act shall take effect July 1, 2018.



Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3 Representative Diamond offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 56-60 and insert:

7 the complaint:7

8 (a) An aggrieved person may proceed under subsection (4)7
 9 as if the commission determined that there was reasonable cause.

10 (b) The commission shall promptly notify the aggrieved
 11 person of the failure to conciliate or determine whether there
 12 is reasonable cause. The notice shall provide the options
 13 available to the aggrieved person under subsection (4) and
 14 inform the aggrieved person that a civil action is prohibited if
 15 not filed within 1 year after the date the commission certifies
 16 that the notice was mailed.



Amendment No.1

17 (c) Any civil action brought by an aggrieved person under
18 this section must be commenced within 1 year after the date the
19 commission certifies that the notice was mailed pursuant to
20 paragraph (b).

21

22

23

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

24

Remove line 8 and insert:

25

F.S.; requiring the commission to provide notice to an aggrieved

26

person under specified circumstances; providing notice

27

requirements; providing a limitation on the time a civil

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 335 Marriage of Minors
SPONSOR(S): Nuñez and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 140

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

SUMMARY ANALYSIS

To obtain a marriage license, single individuals must appear before a county court judge or clerk of the circuit court and submit an application for a marriage license. Generally, applicants must be at least 18 years of age to obtain a marriage license. However, there are exceptions:

- A county court judge or clerk *must* issue a marriage license to a minor 16 or 17 years of age with consent of the minor's parents; where both parents are deceased; or the minor has been married previously;
- A county court judge *may*, at his or her discretion, issue a marriage license to a minor of *any age* if both parties swear under oath that they are the parents of a child; or
- If a pregnancy is verified by a written statement of a licensed physician, a county court judge *may*, at his or her discretion, issue a marriage license to:
 - A minor of *any age* upon application of both parties sworn under oath that they are the expectant parents; or
 - Any female under 18 years of age and any male over 18 years of age upon the female's application sworn under oath that she is an expectant parent.

The bill prohibits a county court judge or clerk of the circuit court from issuing a marriage license to any person under the age of 18, thus allowing only persons 18 years of age or older to marry.

The bill will have an insignificant negative fiscal impact on state and local government.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Marriage Licenses

The authority to issue a marriage license is vested solely in a county court judge or clerk of the circuit court.¹ No one may marry without a validly issued marriage license.² To obtain a marriage license, the single individuals must appear before the judge or clerk together and in person, bring valid government issued identification and social security numbers, and complete a marriage license application.

Generally, applicants must be at least 18 years of age to obtain a marriage license. However, there are exceptions under which a minor may be issued a license to marry.

Parental Consent for Applicants Who are 16 or 17 Years of Age

If an applicant for a marriage license is 16 or 17 years of age, he or she may obtain a marriage license if both of his or her parents (or a guardian) provide consent to the marriage. However, parental consent is not required if the minor's parents are deceased or if the minor was married previously. The written consent must be acknowledged before a person authorized by law to take acknowledgments and administer oaths.³

Judicial Discretion in Cases of Pregnancy or Parentage

A minor applicant may receive a marriage license without parental consent in limited circumstances that depend upon the discretion of a county court judge. A county court judge may, in his or her discretion, issue a marriage license to a minor if both parties swear under oath that they are the parents of a child.⁴ Additionally, if a pregnancy is verified in writing by a licensed physician, a county court judge may issue a marriage license to:

- Any male or female younger than 18 years of age where the parties swear under oath that they are expecting a child; or
- Any female younger than 18 years of age and a male older than 18 years of age if the female provides a sworn application that she is expecting a child.⁵

The statutes do not set a minimum age requirement for a marriage license when the applicants for a license have a child together or are expecting a child.⁶

¹ S. 741.01, F.S.

² S. 741.08, F.S.

³ S. 741.0405(1), F.S.

⁴ S. 741.0405(2), F.S.

⁵ S. 741.0405(3), F.S.

⁶ See s. 741.0405(4), F.S.

Marriage Statistics

According to the Bureau of Vital Statistics, 1,828 marriage licenses were issued in the last 5 years to a couple in which at least one party was a minor.⁷ During that 5 year period:⁸

- 132 licenses were issued to a couple in which both parties were minor;
- Five licenses were issued in which one party was 10-14 years old;
- 29 licenses were issued in which one party was 15 years old; and
- 1,807 licenses were issued in which one party was 16 or 17 years old.

Effect of Bill

The bill prohibits any person under 18 years of age to marry or receive a marriage license. The current law allowing certain minors to marry with parental consent or without parental consent when the couple has a child or is expecting a child are repealed.

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

B. SECTION DIRECTORY:

- Section 1:** Amends s. 741.0405, F.S., relating to when a marriage license may be issued to persons under 18 years.
- Section 2:** Amends s. 741.04, F.S., relating to marriage licenses.
- Section 3:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues

The bill may have an insignificant negative impact on state revenue due to the reduction of marriage license fees collected for marriages involving minors. The current total fee for a marriage license is \$86, \$54 of which is split between General Revenue and various state entities.⁹ Given an average of 366 marriages per year involving minors,¹⁰ this would result in a reduction of approximately \$19,764.

2. Expenditures:

The bill does not appear to have an effect on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have an insignificant negative impact on local revenue due to the reduction of marriage license fees collected for marriages involving minors. The current total fee for a marriage license is

⁷ Email from Bryan P Wendel, Government Analyst II with the Office of Legislative Planning, Florida Department of Health, RE: SB 140 - Statistics (10/23/2017); *Marriages Under 18 (Years 2012-2016)*, Email attachment supplied by Gary Sammet, Bureau of Vital Statistics, Department of Health (Oct. 25, 2017) (on file with the Civil Justice & Claim Subcommittee).

⁸ The sum of these categories, 1,841, exceeds the total number of licenses issued, 1828, because 13 minors are represented in more than one category when one minor married another minor.

⁹ \$25 - Domestic Violence Trust Fund, \$25 - General Revenue, and \$4 - Department of Health; Florida Court Clerks & Comptrollers, Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording, available at: http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017_Distribution_Schedule_7.pdf (last accessed 11/1/17).

¹⁰ 1,828 marriages over the past 5 years.

\$86, \$32 of which is kept by the county clerk.¹¹ Given an average of 366 marriages per year involving minors, this would result in a reduction of approximately \$13,176.

2. Expenditures:

The bill does not appear to have an effect on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The Due Process clause of the United States Constitution prohibits the government from infringing a fundamental right unless such is necessary to further a compelling governmental interest. The Supreme Court of the United States has held the "freedom to marry . . . resides with the individual, and cannot be infringed by the State,"¹² that "[T]he decision to marry is a fundamental right."¹³ and most recently, "the Court has long held the right to marry is protected by the Constitution."¹⁴ However, there is no case law challenging or overturning current age-based restrictions on marriage.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

¹¹ \$30 for a certified copy and a \$2 license fee to the clerk or judge; Florida Court Clerks & Comptrollers, Distribution Schedule of Court-Related Filing Fees, Service Charges, Costs and Fines, Including a Fee Schedule for Recording, available at: http://c.ymcdn.com/sites/www.flclerks.com/resource/resmgr/publicationsanddocuments/2017_Distribution_Schedule_7.pdf (last accessed 11/1/17).

¹² *Loving v. Virginia*, 87 S.Ct. 1817, 1824 (1967).

¹³ *Turner v. Safley*, 107 S. Ct. 2254, 2265 (1987)

¹⁴ *Obergefell v. Hodges*, 135 S.Ct. 2584, 2589 (2015)

1 A bill to be entitled
 2 An act relating to marriage of minors; amending s.
 3 741.0405, F.S.; prohibiting the issuance of a marriage
 4 license to any person under the age of 18 years;
 5 amending s. 741.04, F.S.; conforming a provision to
 6 changes made by the act; providing an effective date.

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

9
 10 Section 1. Section 741.0405, Florida Statutes, is amended
 11 to read:

12 741.0405 ~~When~~ Marriage license may not be issued to
 13 persons under 18 years.—

14 ~~(1) If either of the parties shall be under the age of 18~~
 15 ~~years but at least 16 years of age, the county court judge or~~
 16 ~~clerk of the circuit court shall issue a license for the~~
 17 ~~marriage of such party only if there is first presented and~~
 18 ~~filed with him or her the written consent of the parents or~~
 19 ~~guardian of such minor to such marriage, acknowledged before~~
 20 ~~some officer authorized by law to take acknowledgments and~~
 21 ~~administer oaths. However, the license shall be issued without~~
 22 ~~parental consent when both parents of such minor are deceased at~~
 23 ~~the time of making application or when such minor has been~~
 24 ~~married previously.~~

25 ~~(2) The county court judge of any county in the state may,~~

26 ~~in the exercise of his or her discretion, issue a license to~~
 27 ~~marry to any male or female under the age of 18 years, upon~~
 28 ~~application of both parties sworn under oath that they are the~~
 29 ~~parents of a child.~~

30 ~~(3) When the fact of pregnancy is verified by the written~~
 31 ~~statement of a licensed physician, the county court judge of any~~
 32 ~~county in the state may, in his or her discretion, issue a~~
 33 ~~license to marry:~~

34 ~~(a) To any male or female under the age of 18 years upon~~
 35 ~~application of both parties sworn under oath that they are the~~
 36 ~~expectant parents of a child; or~~

37 ~~(b) To any female under the age of 18 years and male over~~
 38 ~~the age of 18 years upon the female's application sworn under~~
 39 ~~oath that she is an expectant parent.~~

40 ~~(4) A No license to marry may not ~~shall~~ be issued granted~~
 41 ~~to any person under the age of 18 ~~16~~ years, with or without the~~
 42 ~~consent of the parents, except as provided in subsections (2)~~
 43 ~~and (3).~~

44 Section 2. Subsection (1) of section 741.04, Florida
 45 Statutes, is amended to read:

46 741.04 Marriage license issued.—

47 (1) A No county court judge or clerk of the circuit court
 48 in this state may not ~~shall~~ issue a license for the marriage of
 49 any person unless there is ~~shall be~~ first presented and filed
 50 with him or her an affidavit in writing, signed by both parties

51 to the marriage, providing the social security numbers or any
52 other available identification numbers of each party, made and
53 subscribed before some person authorized by law to administer an
54 oath, reciting the true and correct ages of such parties; unless
55 both ~~such~~ parties shall be over the age of 18 years, ~~except as~~
56 ~~provided in s. 741.0405;~~ and unless one party is a male and the
57 other party is a female. Pursuant to the federal Personal
58 Responsibility and Work Opportunity Reconciliation Act of 1996,
59 each party is required to provide his or her social security
60 number in accordance with this section. The state has a
61 compelling interest in promoting not only marriage but also
62 responsible parenting, which may include the payment of child
63 support. Any person who has been issued a social security number
64 shall provide that number. Disclosure of social security numbers
65 or other identification numbers obtained through this
66 requirement shall be limited to the purpose of administration of
67 the Title IV-D program for child support enforcement. Any person
68 who is not a citizen of the United States may provide either a
69 social security number or an alien registration number if one
70 has been issued by the United States Bureau of Citizenship and
71 Immigration Services. Any person who is not a citizen of the
72 United States and who has not been issued a social security
73 number or an alien registration number is encouraged to provide
74 another form of identification. Nothing in this subsection shall
75 be construed to mean that a county court judge or clerk of the

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76 | circuit court in this state shall not issue a marriage license
77 | to individuals who are not citizens of the United States if one
78 | or both of the parties are unable to provide a social security
79 | number, alien registration number, or other identification
80 | number.



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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6021 Guardian Ad Litem Direct-Support Organization

SPONSOR(S): Stevenson

TIED BILLS: None **IDEN./SIM. BILLS:** SB 222

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

SUMMARY ANALYSIS

A direct-support organization is a non-profit organization authorized by statute to carry out specific tasks in support of a public entity or public cause. In 2014, the Legislature established transparency and reporting requirements for direct-support organizations, including the requirement that the authorization for the organization must repeal on October 1 of the 5th year after enactment, unless reviewed and reenacted by the Legislature. In that bill, a number of existing direct-support organizations were scheduled for future repeal unless reviewed and reenacted by the Legislature. The Guardian ad Litem Foundation's authorization is set to repeal on October 1, 2018.

The bill removes the scheduled repeal date for the Guardian ad Litem Foundation, the direct-support organization for the Statewide Guardian ad Litem Office.

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

The effective date of the bill is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Direct-Support Organizations

A direct-support organization (DSO) is a non-profit organization¹ authorized by statute to carry out specific tasks in support of a public entity or public cause. The function and purpose of a DSO is detailed in the enacting statute and a written contract with the agency the DSO was created to support.²

DSO Transparency and Reporting Requirements

In 2014, the Legislature created s. 20.058, F.S., establishing transparency and reporting requirements for DSOs.³ Specifically, the law requires each DSO submit annually the following information to the appropriate agency by August 1:⁴

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent Internal Revenue Service (IRS) Form 990.⁵

Additionally, the information submitted annually by a DSO must be available on the respective agency's website along with a link to the DSO's website, if one exists.⁶ Any contract between an agency and a DSO must be contingent upon the DSO submitting the required information to the agency and posting the information on the agency's website.⁷ The contract must include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.⁸ If a DSO fails to submit the required information to the agency for two consecutive years, the agency head must terminate its contract with the DSO.⁹

By August 15 of each year, the agency must report to the Governor, President of the Senate, Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information submitted by each DSO along with the agency's recommendation and supporting rationale to continue, terminate, or modify the agency's association with the DSO.¹⁰

Any law creating, or authorizing the creation of a DSO must provide that the authorization for the organization is repealed on October 1 of the 5th year after enactment unless reviewed and reenacted by the Legislature. A list of DSOs in existence prior to July 1, 2014 are scheduled for repeal in 2017,

¹ Ch. 617, F.S.

² See generally ss. 14.29(9)(a), 16.616(1), and 258.015(1), F.S. See also Rules of the Florida Auditor General, *Audits of Certain Nonprofit Organizations* (effective June 30, 2017), Rule 10.720(1)(b) and (d), available at: https://flauditor.gov/pages/pdf_files/10_700.pdf (last accessed October 25, 2017).

³ S. 3, Ch. 2014-96, L.O.F.

⁴ S. 20.058(1), F.S.

⁵ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501. 26 C.F.R. 1.6033-2.

⁶ S. 20.058(2), F.S.

⁷ S. 20.058(4), F.S.

⁸ Ch. 2017-75, L.O.F.

⁹ S. 20.058(4), F.S.

¹⁰ S. 20.058(3), F.S.

2018, and 2019.¹¹ Current law requires all DSOs in existence prior to July 1, 2014 must be reviewed by the Legislature by July 1, 2019.¹²

DSO Audit Requirements

Section 215.981, F.S., requires each DSO with annual expenditures in excess of \$100,000 to provide for an annual financial audit of its accounts and records.¹³ The audit must be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General and the state agency that created, approved, or administers the DSO. The audit report must be submitted within nine months after the end of the fiscal year to the Auditor General and to the state agency the DSO supports. Additionally, the Auditor General may, pursuant to his or her own authority, or at the direction of the Legislative Auditing Committee, conduct audits or other engagements of a DSO accounts and records.¹⁴

The Guardian ad Litem Program

Florida's Guardian ad Litem Program (GAL Program) advocates for the best interests of children alleged to be abused, neglected, or abandoned and who are involved in dependency proceedings. The GAL Program uses a collaborative approach to represent children in the dependency system involving GAL volunteers, Child Advocacy Managers and GAL Program attorneys.¹⁵ Currently the GAL Program advocates for more than 10,000 children in the dependency system. Over the last 35 years the GAL Program has had over 30,000 volunteers who have represented more than 250,000 children.¹⁶

Current law requires that a guardian ad litem (GAL) be appointed at the earliest possible time in an abuse or neglect proceeding.¹⁷ The GAL is required to review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court.¹⁸

The Guardian ad Litem Foundation

The GAL Program established the Florida Guardian ad Litem Foundation (Foundation) as its direct-support organization in 2007. The executive director of the Statewide GAL Office appoints the members of the board of directors. The board of directors serves at the pleasure of the executive director in carrying out the mission of the DSO to provide additional resources for the GAL Program, its volunteers, and its affiliated circuit nonprofit organizations¹⁹ in order to promote Guardian ad Litem representation for abused, neglected and abandoned children in Florida's dependency system.²⁰ The DSO is scheduled to repeal on October 1, 2018 unless reviewed and saved from repeal by the Legislature.²¹

According to the Statewide GAL Program the Foundation continues to provide support to the GAL Program and serves the critical function of soliciting and receiving grants and resources from private

¹¹ Supra, FN 3.

¹² S. 20.058(5), F.S.

¹³ The independent audit requirement does not apply to a DSO for a university, district board of trustees of a community college, or district school board. Additionally, the expenditure threshold for an independent audit is \$300,000 for a DSO for the Department of Environmental Protection and the Department of Agriculture and Consumer Services.

¹⁴ S. 11.45(3), F.S.

¹⁵ Florida Guardian ad Litem Program, Annual Report, 2016, *A Voice Heard: Visualizing a Hopeful Future*, available at: <http://guardianadlitem.org/wp-content/uploads/2014/08/GAL-Annual-Report-for-Print4.pdf>. (last accessed October 27, 2017).

¹⁶ *Id.*

¹⁷ S. 39.822(1), F.S.

¹⁸ S. 39.822(4), F.S.

¹⁹ Many of Florida's judicial circuits have non-profit organizations that raise money and sponsor activities for the local Guardian ad Litem program. Those include, Northwest Guardian ad Litem Foundation, Guardian ad Litem Foundation of Florida's First Coast, Child Advocates II of Tallahassee, and Voices for Children.

²⁰ Guardian ad Litem Foundation, *Bylaws 2016*, available at: <http://flgal.org/about/> (last accessed October 25, 2017).

²¹ S. 39.8298, F.S.

and philanthropic organizations for the Program and the children it represents. In addition, the Foundation conducts the following activities that further the Program's mission:²²

- Developing statewide partnerships;
- Publicizing the Program's mission to represent the best interests of children;
- Coordinating with and serving as a resource to the twenty non-profit organizations affiliated with the local GAL Programs;
- Enhancing opportunities for recruitment and retention of volunteers; and
- Offering supplemental training opportunities for volunteers.

For the tax period beginning July 1, 2016 and ending June 30, 2017, the Foundation reported total revenue of \$178,092 and total expenditures of \$153,467.²³

Effect of the Bill

The bill removes the scheduled repeal date for the Guardian ad Litem Foundation, the direct-support organization for the Statewide Guardian ad Litem Office.

The effective date of the bill is upon becoming law.

B. SECTION DIRECTORY:

Section 1 amends s. 39.8298, F.S., relating to Guardian ad Litem direct-support organization.

Section 2 provides an effective date.

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.

²² Florida Statewide Guardian ad Litem Program, *Annual Report of the Florida Guardian ad Litem Foundation*, August 10, 2017, available at: <http://flgal.org/wp-content/uploads/2017/07/GAL-Program-Report-to-Governor-re-Foundation-FINAL.pdf>. (last accessed October 28, 2017).

²³ Internal Revenue Service, Form 990, Return of Organization Exempt From Income Tax, 2016 (on file with Civil Justice & Claims subcommittee staff).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The Statewide Guardian ad Litem Program has stated that without the Foundation, the GAL Program would have fewer opportunities to educate, advocate, and support the needs of dependent children. The Program recommends the continuation of the Foundation as its Direct Support Organization.²⁴ The Foundation appears to meet all of the statutory requirements.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

²⁴ *Id.*

1 A bill to be entitled
 2 An act relating to the guardian ad litem direct-
 3 support organization; amending s. 39.8298, F.S.;
 4 abrogating the future repeal of provisions related to
 5 the guardian ad litem direct-support organization;
 6 providing an effective date.

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

9
 10 Section 1. Subsection (8) of section 39.8298, Florida
 11 Statutes, is amended, and subsections (1) through (7) of that
 12 section are republished, to read:

13 39.8298 Guardian ad litem direct-support organization.—

14 (1) AUTHORITY.—The Statewide Guardian Ad Litem Office
 15 created under s. 39.8296 is authorized to create a direct-
 16 support organization.

17 (a) The direct-support organization must be a Florida
 18 corporation not for profit, incorporated under the provisions of
 19 chapter 617. The direct-support organization shall be exempt
 20 from paying fees under s. 617.0122.

21 (b) The direct-support organization shall be organized and
 22 operated to conduct programs and activities; raise funds;
 23 request and receive grants, gifts, and bequests of moneys;
 24 acquire, receive, hold, invest, and administer, in its own name,
 25 securities, funds, objects of value, or other property, real or

26 | personal; and make expenditures to or for the direct or indirect
 27 | benefit of the Statewide Guardian Ad Litem Office.

28 | (c) If the executive director of the Statewide Guardian Ad
 29 | Litem Office determines the direct-support organization is
 30 | operating in a manner that is inconsistent with the goals and
 31 | purposes of the Statewide Guardian Ad Litem Office or not acting
 32 | in the best interest of the state, the executive director may
 33 | terminate the contract and thereafter the organization may not
 34 | use the name of the Statewide Guardian Ad Litem Office.

35 | (2) CONTRACT.—The direct-support organization shall
 36 | operate under a written contract with the Statewide Guardian Ad
 37 | Litem Office. The written contract must, at a minimum, provide
 38 | for:

39 | (a) Approval of the articles of incorporation and bylaws
 40 | of the direct-support organization by the executive director of
 41 | the Statewide Guardian Ad Litem Office.

42 | (b) Submission of an annual budget for the approval by the
 43 | executive director of the Statewide Guardian Ad Litem Office.

44 | (c) The reversion without penalty to the Statewide
 45 | Guardian Ad Litem Office, or to the state if the Statewide
 46 | Guardian Ad Litem Office ceases to exist, of all moneys and
 47 | property held in trust by the direct-support organization for
 48 | the Statewide Guardian Ad Litem Office if the direct-support
 49 | organization ceases to exist or if the contract is terminated.

50 | (d) The fiscal year of the direct-support organization,

51 | which must begin July 1 of each year and end June 30 of the
 52 | following year.

53 | (e) The disclosure of material provisions of the contract
 54 | and the distinction between the Statewide Guardian Ad Litem
 55 | Office and the direct-support organization to donors of gifts,
 56 | contributions, or bequests, as well as on all promotional and
 57 | fundraising publications.

58 | (3) BOARD OF DIRECTORS.—The executive director of the
 59 | Statewide Guardian Ad Litem Office shall appoint a board of
 60 | directors for the direct-support organization. The executive
 61 | director may designate employees of the Statewide Guardian Ad
 62 | Litem Office to serve on the board of directors. Members of the
 63 | board shall serve at the pleasure of the executive director.

64 | (4) USE OF PROPERTY AND SERVICES.—The executive director
 65 | of the Statewide Guardian Ad Litem Office:

66 | (a) May authorize the use of facilities and property other
 67 | than money that are owned by the Statewide Guardian Ad Litem
 68 | Office to be used by the direct-support organization.

69 | (b) May authorize the use of personal services provided by
 70 | employees of the Statewide Guardian Ad Litem Office. For the
 71 | purposes of this section, the term "personal services" includes
 72 | full-time personnel and part-time personnel as well as payroll
 73 | processing.

74 | (c) May prescribe the conditions by which the direct-
 75 | support organization may use property, facilities, or personal

76 services of the office.

77 (d) Shall not authorize the use of property, facilities,
 78 or personal services of the direct-support organization if the
 79 organization does not provide equal employment opportunities to
 80 all persons, regardless of race, color, religion, sex, age, or
 81 national origin.

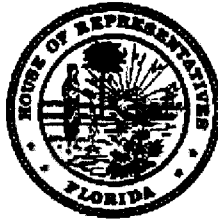
82 (5) MONEYS.—Moneys of the direct-support organization may
 83 be held in a separate depository account in the name of the
 84 direct-support organization and subject to the provisions of the
 85 contract with the Statewide Guardian Ad Litem Office.

86 (6) ANNUAL AUDIT.—The direct-support organization shall
 87 provide for an annual financial audit in accordance with s.
 88 215.981.

89 (7) LIMITS ON DIRECT-SUPPORT ORGANIZATION.—The direct-
 90 support organization shall not exercise any power under s.
 91 617.0302(12) or (16). No state employee shall receive
 92 compensation from the direct-support organization for service on
 93 the board of directors or for services rendered to the direct-
 94 support organization.

95 ~~(8) REPEAL. This section is repealed October 1, 2018,~~
 96 ~~unless reviewed and saved from repeal by the Legislature.~~

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



STORAGE NAME: h6509a.CJC
DATE: 11/6/2017

November 6, 2017

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6509 - Representative Grant, J.
Relief/C.M.H./Department of Children and Families

THIS IS AN EXCESS JUDGMENT CLAIM FOR \$5,076,543.08, BASED ON A JURY VERDICT AWARDING DAMAGES TO C.M.H. FOR PHYSICAL AND SEXUAL ABUSE CAUSED BY THE NEGLIGENT FOSTER PLACEMENT OF A KNOWN SEXUALLY AGGRESSIVE CHILD BY THE DEPARTMENT OF CHILDREN AND FAMILIES ("DCF"). DCF HAS PAID \$100,000 OF THE JUDGMENT PURSUANT TO SECTION 768.28, F.S. DCF DOES NOT OPPOSE THIS CLAIM.

FINDINGS OF FACT:

Summary

On September 6, 2002, the Department of Children and Families ("DCF") placed J.W.—a 10-year-old foster child with a history of mental illness and sexually aggressive behavior towards younger children—in the home of Christopher and Theresa Hann, who had an eight-year-old son, C.M.H. This was done even though DCF knew of J.W.'s troubling history. Over the next few years, J.W. sexually abused C.M.H. as well as another four-year-old child who visited the home. J.W. also pulled a knife on C.M.H., squeezed to death C.M.H.'s pet mouse in front of C.M.H., and caused a tremendous strain on the Hann family in the midst of Mrs. Hann's stage four cancer diagnosis. The negligent placement of J.W. resulted in the physical, emotional, and sexual abuse of C.M.H. by J.W. To this day, C.M.H. continues to suffer the ill effects of DCF's negligent placement of J.W. in the Hann household.

DCF's placement of J.W. in the Hann home directly contradicted prior recommendations by DCF providers that J.W. should not have unsupervised access to young children, and that his caregivers should be informed about his sexual issues and be able to provide adequate supervision. The placement also departed from DCF's own operating procedures and rules regarding the placement of foster children who have been sexually abused or who are sexually aggressive.¹

The Hanns were not licensed or trained foster parents and had no expertise in providing therapeutic services to a child with pervasive social, emotional, psychological, or psychiatric behavioral problems. Despite DCF's knowledge that J.W. had been sexually abused and had been sexually abusive towards younger children, DCF failed to provide the Hanns—who shared the home with their own two children—with crucial information regarding J.W.'s psychosocial, behavioral, and sexual history.

Background of J.W. and History of DCF Involvement

J.W. was born in 1992 to a teenage single mother with a history of mental illness and homelessness. She did not receive prenatal care and attempted suicide by inhaling butane during the third month of her pregnancy with J.W.

While in his mother's care and custody, J.W. was subjected to extreme abuse. According to one evaluation, J.W. "had been sexually victimized and abused . . . since approximately age one."² J.W. began to exhibit symptoms of post-traumatic stress disorder ("PTSD") related to his repeated abuse and neglect.

When he was four years old, due to ongoing abuse, J.W. was removed from his mother's home by DCF and placed in foster care. There is evidence in the record that while he was in foster care, J.W. was sexually assaulted by another foster child. At age 5½, J.W. was returned to his mother. He began setting fires—even burning himself on at least one occasion—and intentionally running into the path of oncoming cars. J.W. was diagnosed with psychosis, major depression with psychotic features, adjustment disorder with mixed disorder of conduct and emotion, and attention deficit hyperactivity disorder. He was treated with anti-psychotic medication.

After receiving a report that J.W. had again been sexually abused by one of his mother's male friends, DCF placed J.W. back in foster care.

Initial Exhibitions of Sexually Aggressive Behavior by J.W.

After several years, J.W. was returned to his mother. In 2002, at the age of ten, he began to exhibit sexually aggressive behavior

¹ See DCF Operating Procedure 175-88 (Mar. 8, 1999).

² See Chrysalis Center Psychosexual Evaluation of J.W. (Sept. 18, 2003).

towards other children, even to the point of allegedly "perform[ing] anal penetration on [a] neighborhood girl."³

On June 14, 2002, a Family Services Counselor for DCF ("DCF Counselor") referred J.W. to Camelot Community Care, a DCF provider of child welfare and behavioral health services, for intensive therapeutic in-home services. Realizing the severity of his behavioral and mental disturbances, in a note to Camelot on June 24, 2002, the DCF Counselor noted that J.W. needed to be in a treatment center "ASAP." Camelot agreed to provide in-home mental health services to J.W. as an "emergency temporary solution while DCF [sought] residential placement," concluding that J.W. was "a danger" in the home.

On July 5, 2002, J.W.'s mother informed Camelot that J.W. had engaged in inappropriate sexual behavior with his two-year-old sister. A July 12, 2002, child safety determination conducted by Camelot found that a sibling was likely to be in danger if J.W. was not supervised. Camelot recommended that J.W.'s parents should keep him separated from younger siblings at night to prevent inappropriate touching and that they should provide eye contact during the day whenever J.W. interacted with siblings. In August of 2002, DCF removed J.W. from his mother's custody after she abandoned her children at a friend's home. J.W. was temporarily sheltered in the home of a family friend.

On August 30, 2002, a Comprehensive Behavioral Health Assessment of J.W. conducted at the DCF's request found that J.W.'s issues had begun more than two years earlier and remained generally consistent over time. The assessment concluded that J.W. "should not have unsupervised access to . . . any younger, or smaller children wherever he resides." Crucially, the assessment stated that "[J.W.]'s caregivers must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization. These issues should be strongly considered in terms of making decisions about both temporary and long term care and supervision of [J.W]."

Inappropriate placement with Hanns

One week later, on September 6, 2002, the DCF Counselor removed J.W. from his temporary placement with the family friend due to allegations that J.W. had been sexually abused by a member of the household.⁴ He was then immediately placed with Christopher and Theresa Hann.⁵

³ See *id.*

⁴ The DCF Counselor apparently failed to report the abuse allegation as required by section 39.201, Florida Statutes (2002). The perpetrator later confessed to and was convicted of child molestation.

⁵ There is no indication from the record that DCF ever sought or obtained court approval for the non-relative placement of J.W. in the Hann home, in apparent violation of DCF's own administrative rule. See Rule 65C-11.004(3), F.A.C. (2002) ("In cases under court ordered supervision, the court must be advised of any plan to place a child with a non-relative and give its approval of such placement").

The Hanns were former neighbors of J.W. and his natural family. The couple lived with their children, including an eight-year-old son, C.M.H. They were not licensed or trained foster parents but had developed a profound empathy for J.W. The natural mother of J.W. advocated to have him placed with the Hanns.

DCF's placement of J.W. with the Hanns directly contradicted previous recommendations by DCF providers, in that J.W. was put in a home with an eight-year-old child after DCF had received a warning from Camelot two months earlier that a sibling would be in danger in a home with J.W. The Comprehensive Behavioral Health Assessment completed just one week prior to the placement also recommended that J.W. should not have unsupervised access to younger children. Due to his history of sexual abuse and warnings by DCF providers, DCF was prohibited by its own operating procedures from placing J.W. in a home with a younger child.⁶

Moreover, DCF failed to provide the Hanns with important information regarding J.W.'s background and troubling history of child-on-child sexual abuse. DCF later admitted during litigation that no evidence of a child resource record was found for J.W.

The Hanns, without knowledge of J.W.'s ongoing inappropriate sexual behavior with younger children, allowed J.W. to share a bedroom with their son, C.M.H. DCF operating procedures explicitly prohibited placing a sexually aggressive child in a bedroom with another child.⁷ The DCF Counselor knew of the planned sleeping arrangements prior to placing J.W. in the Hann home and did not convey the prohibition to the Hanns.

Inappropriate Behavior of J.W. in the Hann Home

Within a few weeks of J.W.'s placement with the Hann family, Mrs. Hann reported to Camelot that J.W. was violently lashing out at her. Camelot recommended to the DCF Counselor that the Hanns place a one-way monitor in the bedroom the boys shared. The DCF Counselor agreed and promised to pass the recommendation along to the Hanns. It is unclear whether the Hanns were ever informed of the recommendation or obtained the monitor.

On October 24, 2002, after having a physical altercation with C.M.H., J.W. pulled a knife on C.M.H. but was prevented from further assaulting C.M.H. by Mr. Hann. Mr. Hann immediately informed Camelot of the incident, and J.W. again underwent a mental health assessment. The DCF Counselor later acknowledged that at this point in time, she should have considered removing J.W. from the Hann home because of the immediate danger he posed to himself, the Hanns, and C.M.H.

⁶ DCF Operating Procedure 175-88.

⁷ *Id.*

A week later, J.W. engaged in inappropriate sexual behavior with a four-year-old child who was visiting the Hann home. Mrs. Hann reported the incident to DCF. At this time, DCF was again required by its operating procedures to give immediate consideration to the safety of C.M.H.⁸ In spite of the inability of the Hanns—who both worked outside of the home—to adequately supervise J.W. and his access to young children, DCF did not remove J.W. from the home.

Camelot began pressuring the DCF Counselor to set up a psychosexual evaluation for J.W.⁹ Camelot reiterated to the DCF Counselor that “[J.W.] needed specific sexual counseling by a specialist in this area.” In the absence of any action by the DCF Counselor, Camelot advised Mr. Hann that a new safety plan would be implemented prohibiting the boys from sharing a room and requiring that J.W. be under close adult supervision when other children were present. Further, Mr. Hann, apparently still without knowledge of J.W.’s extensive history of sexual abuse as a victim and aggressor, informed Camelot that the family disagreed with and would not follow the safety plan.

By November of 2002, C.M.H. was exhibiting behavioral problems which Camelot directly attributed to J.W.’s presence in the home. In one school year C.M.H.’s grades dropped significantly. The Hann family, overwhelmed with the number of providers involved in J.W.’s care and the disruption to the family, canceled Camelot’s services in December of 2002. On its discharge form, signed by the DCF Counselor, Camelot recommended that J.W. be placed in a residential treatment center. DCF did not initiate any change in placement.

In mid-2003, J.W. began expressing sexually inappropriate behavior towards C.M.H. Following escalation in J.W.’s behavior, now directed towards C.M.H., DCF secured a psychosexual evaluation for J.W. The evaluation, dated September 18, 2003, found as follows:

- J.W. “fit[s] the profile of a sexually aggressive child due to the fact that he continues to engage in extensive sexual behaviors and with children younger than himself.”
- J.W. “presents a risk of potentially becoming increasingly more aggressive” and “continuing sexually inappropriate behaviors.”
- J.W. “may potentially seek out victims who are children and coerce them to engage in sexual activity.”

⁸ See DCF Operating Procedure 175-88 (“If a . . . child-on-child sexual abuse incident occurred or is suspected to have occurred, immediate consideration will be given to the safety of all children residing in the placement” (emphasis in original)).

⁹ This was something the DCF Counselor should have done earlier pursuant to DCF operating procedures. See *id.* (“If any child in substitute care has been identified as being a victim of sexual abuse or has a history of being sexually aggressive, but has not had a clinical consultation with a professional trained in childhood sexual abuse, a referral will be *initiated* by the assigned family services counselor or their supervisor *within three working days* (of the child being identified)”) (emphasis in original).

- J.W. should receive sexual counseling, and his caregivers should be appropriately trained.¹⁰

In October 2003, the Hann family, feeling unequipped to provide J.W. with the appropriate care, requested that J.W. be placed in a therapeutic treatment facility. Therapeutic placement was authorized for J.W. and he was referred to a care facility. However, the Hanns were told that if J.W. was removed from their home, they might not be able to visit him. This was a source of anguish for the Hanns, who did not want to be the next in a series of parental figures who abandoned J.W. Ultimately, the Hanns decided to keep J.W. in their home and requested additional services to treat his ongoing issues. They also began training to become therapeutic foster parents.

Meanwhile, C.M.H.'s problems at school continued. From late 2003 to early 2004, C.M.H. began to act out and have more conflicts at school. In January 2004, he received a discipline referral for behavioral problems in the classroom. He also gained excessive weight between 2004 and 2006.

Closure of DCF Dependency Case

On March 3, 2004, Theresa Hann was diagnosed with terminal, stage four cancer. In turn, Christopher Hann contacted DCF to stop the process of having J.W. placed with the family as long-term non-relative caregivers and asked that he be placed elsewhere. The DCF Counselor visited the home within 24 hours and said, "We'll get on it."

However, nothing was done, and contrary to the express wishes of the Hanns and without their knowledge, on April 12, 2004, DCF had the Hanns declared as long-term non-relative caregivers of J.W. DCF closed J.W.'s dependency case, leaving him in the care and custody of the Hanns. Because the Hanns were not a part of the foster care system, once DCF closed its dependency case, the Hann family lost approximately 50% of the services and counseling that had been provided to the family.

J.W.'s sexual abuse of C.M.H.; Removal from Hann home

The Hanns, left with little support from DCF, grew desperate and more hopeless as they grappled with Mrs. Hann's illness and J.W.'s continuing deviant behavior.

C.M.H.'s troubles also continued. An April 2005 treatment plan noted that C.M.H. had begun to have nightmares and was frustrated at the slightest inconveniences. The treatment plan also indicated that Mrs. Hann's cancer diagnosis and chemotherapy treatments were contributing to C.M.H.'s grief issues and increasing separation anxiety related to his mother. C.M.H. was diagnosed with PTSD.

¹⁰ The Chrysalis Center Psychosexual Evaluation of J.W. (Sept. 18, 2003).

In spring 2005, Mr. Hann requested an emergency hearing to move J.W. to residential placement. He explained that although they were doing all they could for J.W., they could no longer cope. He described his wife's diagnosis of terminal cancer and J.W.'s escalating sexual behaviors. Mr. Hann's request was ignored, and J.W. remained in the Hann home.

A June 16, 2005, Child and Family Connections report noted the following:

- J.W. had a high risk of sexual behavior problems and increasing aggression. He was masturbating excessively, rubbing up against Mrs. Hann, seeking out younger children, lying, and refusing to take responsibility for his actions.
- The Hanns had been told that it was not a matter of whether J.W. would perpetrate on their son again, but a matter of when he would do so.
- J.W. was in need of a more restrictive setting with intensive services specializing in sexual treatment.
- J.W.'s therapists recommended a full-time group home facility specializing in sexual treatment.
- J.W.'s condition was "so severe and the situation so urgent that treatment [could not] be safely attempted in the community."

On or about July 29, 2005, C.M.H., then ten years old, revealed to his parents that about two years earlier, in August of 2003, J.W. had forced him to engage in a sex act while the boys were at a sleepover. Mr. Hann demanded that J.W. be removed from the Hann home immediately, and later that day, DCF removed J.W. from the home.

LITIGATION HISTORY:

On April 14, 2006, Christopher and Theresa Hann, individually, and as natural parents and legal guardians of C.M.H., filed a negligence action against DCF, Father Flanagan's Boys' Home, Camelot Care Centers, Inc., and Camelot Community Care, Inc., in the Palm Beach County Circuit Court, based upon the physical, sexual, and psychological abuse sustained by C.M.H. at the hands of J.W.

The parties litigated the action for nearly eight years, during which time Theresa Hann passed away from cancer. Shortly before trial, Christopher Hann and C.M.H. settled with Father Flanagan's Boys' Home for \$340,000.

After a four week jury trial in October and November of 2013, the jury found that DCF and Christopher and Theresa Hann were each negligent and that such negligence was a legal cause of injury to Christopher Hann and C.M.H. The jury assessed 50% of the fault to Christopher Hann and Theresa Hann and 50% of the fault to DCF. The jury found no negligence by Camelot Community Care or Father Flanagan's Boys' Home.

The jury determined that total damages to Christopher Hann were \$0 and that total damages to C.M.H. were as follows:

Future Medical Expenses	\$ 250,000.00
Lost Earning Ability	\$ 250,000.00
Past Pain & Suffering	\$ 6,000,000.00
<u>Future Pain & Suffering</u>	<u>\$ 3,500,000.00</u>
TOTAL DAMAGES	<u>\$ 10,000,000.00</u>

Reduced to reflect DCF's proportionate share of 50% liability, a final judgment was entered against DCF for \$5,000,000 (including post judgment interest¹¹) on November 8, 2013. The court entered a final cost judgment for \$176,543.08.

DCF appealed the final cost judgment to the Fourth DCA. The appeal was dismissed on March 10, 2014. No further appeals were taken, and the time for review has expired.

DCF has paid \$100,000 of the final judgment pursuant to the cap on liability imposed by section 768.28, Florida Statutes.

CLAIMANT'S POSITION:

Claimant asserts Respondent was negligent and directly liable for the injuries suffered by C.M.H. as a result of the sexual abuse due to placing J.W., a known sexually aggressive child, in the Hann home and failing to remove J.W. when Respondent was aware that placement was inappropriate and dangerous.

RESPONDENT'S POSITION:

Respondent does not oppose the claim bill and requests that any amount awarded be taken from the General Revenue Fund.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or a settlement agreement, every claim bill against the State must be reviewed de novo in light of the standard elements of negligence.

Duty & Breach

From a de novo review of the evidence, I find that DCF breached the following duties:

- The duty to provide the Hanns, as caregivers of J.W.—a known child sexual aggressor—with written, detailed, complete information of J.W.'s history to help prevent the reoccurrence of child-on-child sexual abuse. This breach violated Florida law and DCF operating procedures.¹²

¹¹ Since DCF cannot pay this claim until the claim bill becomes a law, it is generally legislative policy not to award post-judgment interest.

¹² See s. 409.145(7), F.S. (2002) ("Whenever any child is placed by the department in a shelter home, foster home, or other residential placement, the department shall make available to the operator of the shelter home, foster home, other residential placement, or other caretaker as soon thereafter as is practicable, all relevant information concerning the child's demographic, social, and medical history"); Rule 65C-13.015, F.A.C. (2002) ("Caregivers must be given detailed and complete information so they can understand the circumstances of the

- The duty to exercise reasonable care when placing J.W., a child aggressor involved in child-on-child sexual abuse and sexual assault, with the Hanns. DCF breached this duty and violated its own operating procedures when it placed J.W. with the Hanns in spite of specific recommendations by DCF providers that J.W. should not have access to young children.¹³
- The duty to ensure the Hanns were properly trained and equipped to meet J.W.'s serious needs, which DCF breached in contravention of its own policies.¹⁴
- The duty to establish appropriate safeguards and strategies to provide a safe living environment for all children living in the Hann home with J.W., a child sexual aggressor. DCF breached this duty most notably by allowing a situation where C.M.H. and J.W. ultimately shared a bedroom.¹⁵
- The duty to exercise reasonable care, as appropriate under the circumstances, during crucial time periods after J.W. was placed with the Hanns. DCF breached this duty most notably when it failed to remove J.W. from the Hann home after it had become clear that the placement was inappropriate and dangerous to C.M.H.

Causation

I find that the sexual, physical, and emotional abuse suffered by C.M.H. was the direct and proximate result of DCF's failure to fulfill its duties relating to a known sexually aggressive child.

Damages

I find that the amount of damages for \$5,000,000 is reasonable under the circumstances and supported by the evidence.

C.M.H. was diagnosed with PTSD in 2005, and the diagnosis

maltreatment in order to avoid an unwilling replication of those circumstances"); DCF Operating Procedure 175-88 (stating that caregivers must be provided with "written, detailed and complete information related to sexual abuse victims and aggressors placed with them so they can prevent the reoccurrence of child-on-child sexual abuse incidents").

¹³ See DCF Operating Procedure 175-88 ("Older sexual abuse victims shall not be placed with younger children, if treatment agents or therapists indicate in writing that it is not safe to do so"); Comprehensive Behavioral Health Assessment of J.W. at 11 ("In view of [J.W.]'s recent sexual acting out behavior with his younger sister, [J.W.] should not have unsupervised access to her, or to any younger, or smaller children wherever he resides").

¹⁴ See DCF Operating Procedure 175-88 ("Substitute caregivers for sexually abused and sexually aggressive children must be given specific information and strategies to provide a safe living environment for all of the children living in their home") (emphasis in original); Comprehensive Behavioral Health Assessment of J.W. at 11 ("[J.W.]'s caregivers must be informed about these issues and must be able to demonstrate that they can provide adequate levels of supervision in order to prevent further victimization").

¹⁵ See DCF Operating Procedure 175-88 ("[Every] effort must be made to place sexually aggressive children in homes where there are no other children. A sexually aggressive child shall never be placed in a bedroom with another child") (emphasis in original).

was reaffirmed in 2011. The psychological report indicated that contributing factors to the PTSD were "the sexual abuse and extended mental anguish associated with said abuse" and issues related to C.M.H.'s mother's cancer diagnosis. In 2006, C.M.H. was seen for encopresis, a condition involving fecal incontinence. He also underwent a psychiatric evaluation which found that he had serious temper issues and anxiety.

C.M.H. was reevaluated by Dr. Stephen Alexander in October 2014. Dr. Alexander found that C.M.H. suffers from PTSD and major depression. Dr. Alexander stated C.M.H.'s psychological trauma was caused by the illness and death of his mother and J.W.'s presence in the home (including J.W.'s general disruptive presence and J.W.'s sexual inappropriateness towards C.M.H.).

A life care continuum was formulated by Comprehensive Rehabilitation Consultants, Inc., to determine the funds necessary to provide for the counseling and support C.M.H. needs. It was determined that the cost for medical care, psychotherapies, educational and support services, transportation, and housing, would total \$1,881,010.22 over C.M.H.'s life.

ATTORNEY'S/
LOBBYING FEES:

Claimant's attorneys have agreed to take a fee of 25% of Claimant's total recovery. Of that percentage, 22% will be allocated as attorneys' fees, and 3% will be allocated as lobbyists' fees.

LEGISLATIVE HISTORY:

This is the fourth session this claim has been presented to the Legislature. Last session, CS/CS/HB 6525 (2017) passed the House by a vote of 112-4, but it later died in Senate Appropriations.

RECOMMENDATION:

Accordingly, I recommend that House Bill 6509 be reported **FAVORABLY**.

Respectfully submitted,



JORDAN JONES

House Special Master

cc: Representative James Grant, House Sponsor
Senator Braynon, Senate Sponsor
Tom Cibula, Senate Special Master

1 A bill to be entitled
2 An act for the relief of C.M.H.; providing an
3 appropriation to compensate C.M.H. for injuries and
4 damages sustained as a result of the negligence of the
5 Department of Children and Families, formerly known as
6 the Department of Children and Family Services;
7 requiring certain funds to be placed into an
8 irrevocable trust; providing a limitation on attorney
9 fees; providing an effective date.

10
11 WHEREAS, beginning at a very young age, J.W. was subjected
12 to incidents of physical and sexual abuse, which caused him to
13 become sexually aggressive, and

14 WHEREAS, on September 5, 2002, J.W., then in the custody of
15 the Department of Children and Families (DCF), formerly known as
16 the Department of Children and Family Services, was placed into
17 the home of C.M.H., whose parents volunteered to have J.W. live
18 in their home, and

19 WHEREAS, prior to the placement of J.W. with the family,
20 DCF obtained a comprehensive behavioral health assessment that
21 stated that J.W. was sexually aggressive and that recommended
22 specific precautions and training for potential foster parents,
23 which C.M.H.'s parents did not receive, and

24 WHEREAS, the testimony of the DCF caseworker confirmed that
25 DCF was aware that then-10-year-old J.W. and then-8-year-old

26 C.M.H. were sharing a bedroom, and
 27 WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-
 28 year-old child who was visiting C.M.H.'s home, and
 29 WHEREAS, although DCF knew that J.W. was sexually
 30 aggressive, the agency did not remove him from the home, and
 31 WHEREAS, after November 2002, J.W.'s behavioral problems
 32 escalated, and he deliberately squeezed C.M.H.'s pet mouse to
 33 death in front of C.M.H. and made physical threats toward
 34 C.M.H., and
 35 WHEREAS, C.M.H.'s parents began to discuss adopting J.W.,
 36 whom they considered a part of their family, and
 37 WHEREAS, in January 2004, the family began taking
 38 therapeutic parenting classes to better meet J.W.'s needs, and
 39 WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed
 40 with Stage 4, terminal, metastatic colon cancer, which had
 41 spread to her liver, C.M.H.'s father requested that DCF stop the
 42 process of having the family designated as "long-term
 43 nonrelative caregivers," and
 44 WHEREAS, in April 2004, DCF closed out J.W.'s dependency
 45 file, leaving J.W. in the custody of the family, and
 46 WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the
 47 juvenile judge assigned to the case to request help in placing
 48 J.W. in a residential treatment facility, and
 49 WHEREAS, on July 28, 2005, after a physical altercation
 50 between J.W. and C.M.H., C.M.H. disclosed to his parents that

51 J.W. had sexually assaulted him, and J.W. was immediately
 52 removed from the home, and

53 WHEREAS, C.M.H. sustained severe and permanent psychiatric
 54 injuries, including posttraumatic stress disorder, as a result
 55 of the sexual and emotional abuse perpetrated by J.W., and

56 WHEREAS, the sexual assault of C.M.H. by J.W. was
 57 predictable and preventable, and

58 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA
 59 003727, was filed in the 15th Judicial Circuit in and for Palm
 60 Beach County on behalf of C.M.H., by and through his parents,
 61 alleging negligence on the part of DCF and its providers which
 62 allowed the perpetration of sexual abuse against and the
 63 victimization of C.M.H. by J.W., and

64 WHEREAS, a mutually agreeable settlement could not be
 65 reached, and a jury trial was held in Palm Beach County, and

66 WHEREAS, on January 2, 2014, after a jury trial and
 67 verdict, the court entered a judgment against DCF for
 68 \$5,176,543.08, including costs, and

69 WHEREAS, the Division of Risk Management of the Department
 70 of Financial Services paid the family of C.M.H. \$100,000, the
 71 statutory limit at that time under s. 768.28, Florida Statutes,
 72 and

73 WHEREAS, C.M.H., now a young adult, is at a vulnerable
 74 stage in his life and urgently needs to recover the balance of
 75 the judgment awarded him so that his psychiatric injuries may be

76 | addressed and he may lead a normal life, and

77 | WHEREAS, the balance of the judgment is to be paid into an
78 | irrevocable trust through the passage of this claim bill in the
79 | amount of \$5,076,543.08, NOW, THEREFORE,

80 |

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

82 |

83 | Section 1. The facts stated in the preamble to this act
84 | are found and declared to be true.

85 | Section 2. There is appropriated from the General Revenue
86 | Fund to the Department of Children and Families the sum of
87 | \$5,076,543.08 for the relief of C.M.H. for the personal injuries
88 | and damages he sustained. After payment of attorney fees and
89 | costs, lobbying fees, and other similar expenses relating to
90 | this claim, the remaining funds shall be placed into an
91 | irrevocable trust created for C.M.H. for his exclusive use and
92 | benefit.

93 | Section 3. The Chief Financial Officer is directed to draw
94 | a warrant in favor of C.M.H. in the sum of \$5,076,543.08 upon
95 | funds of the Department of Children and Families in the State
96 | Treasury, and the Chief Financial Officer is directed to pay the
97 | same out of such funds in the State Treasury.

98 | Section 4. The amount paid by the Department of Children
99 | and Families pursuant to s. 768.28, Florida Statutes, and the
100 | amount awarded under this act are intended to provide the sole

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101 compensation for all present and future claims arising out of
 102 the factual situation described in the preamble to this act
 103 which resulted in the personal injuries and damages to C.M.H.
 104 The total amount of attorney fees relating to this claim may not
 105 exceed 25 percent of the amount awarded under this act.

106 Section 5. This act shall take effect upon becoming a law.

AFFIDAVIT OF FEES AND COSTS

BEFORE ME, the undersigned authority, duly authorized to take oaths and acknowledgments, personally appeared Stephan LeClainche (“Affiant”), who, being first duly sworn upon oath, deposes and states as follows:

1. My name is Stephan LeClainche, and this affidavit is based upon my personal knowledge.

2. At all times relevant hereto, I was a partner in the law firm of Babbitt, Johnson, Osborne & LeClainche, P.A. which was counsel in the case of CHRISTOPHER HANN, individually and C.M.H., individually and in his own capacity, vs. CAMELOT COMMUNITY CARE, INC., AND FLORIDA DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Circuit Case No.: 502006CA003727XXXXMB AN, in Palm Beach County, Florida.

3. The total attorneys’ fees for representation of CMH in the Circuit Court proceedings and lobbying SB was and is 25% of any recovery.

4. The attorneys and lobbying fees shall be divided as follows:

- a. 8.8% - Babbitt, Johnson, Osborne & LeClainche, P.A.;
- b. 8.8% - Talenfeld Law Group, PLLC d/b/a Talenfeld Law;
- c. 4.4% - Colodny Fass, P.A.; and
- d. 3.0% - Corcoran & Associates, Inc. d/b/a Corcoran & Johnston.

5. Since November 29, 2016, the following payments to Comprehensive Rehabilitation Consultants, Inc., totaling \$1,642.16, have been disbursed, for assessment of CMH’s current status and future needs:

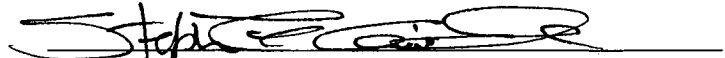
- a. \$366.48 – Invoice 44185 (Previously identified in the Affidavit of Fees and Costs dated Sept. 30, 2015).
- b. The following were previously identified in the Affidavit of Fees and Costs dated Nov. 29, 2016):

- i. \$120.23 – Invoice 45750
- ii. \$244.76 – Invoice 45866
- iii. \$910.69 – Invoice 47165

6. We anticipate there may be additional costs, such as expert fees, if necessary, travel costs or other reasonably necessary costs.

7. I have reviewed the foregoing legal costs provided in connection with lobbying this legislation and affirm that the itemized legal costs were actually incurred and were reasonably necessary for this claims bill process.

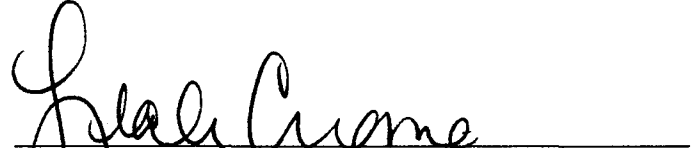
FURTHER AFFIANT SAYETH NOT.


 Stephan LeClainche

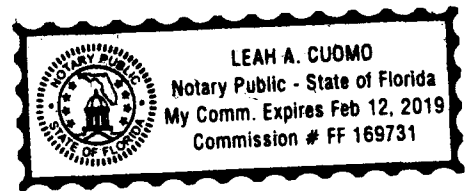
STATE OF FLORIDA)
)
 COUNTY OF Palm Beach)

The foregoing Affidavit of Fees and Costs was subscribed and sworn to before me this 2nd day of October 2017, by Stephan LeClainche, who is personally known to me.

My Commission Expires:


 Signature of Acknowledger

Printed Name of Acknowledger
 NOTARY PUBLIC, STATE OF FLORIDA





Amendment No.1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment

Remove lines 14-49 and insert:

WHEREAS, on September 6, 2002, J.W., then in the custody of
 the Department of Children and Families (DCF), formerly known as
 the Department of Children and Family Services, was placed into
 the home of C.M.H., whose parents volunteered to have J.W. live
 in their home, and

WHEREAS, prior to the placement of J.W. with the family,
 DCF obtained a comprehensive behavioral health assessment that
 stated that J.W. was sexually aggressive and that recommended
 specific precautions and training for potential foster parents,
 which C.M.H.'s parents did not receive, and



Amendment No.1

17 WHEREAS, the testimony of the DCF caseworker confirmed that
18 DCF was aware that then-10-year-old J.W. and then-8-year-old
19 C.M.H. were sharing a bedroom, and

20 WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-
21 year-old child who was visiting C.M.H.'s home, and

22 WHEREAS, although DCF knew that J.W. was sexually
23 aggressive, the agency did not remove him from the home, and

24 WHEREAS, after November 2002, J.W.'s behavioral problems
25 escalated, and he deliberately squeezed C.M.H.'s pet mouse to
26 death in front of C.M.H. and made physical threats toward
27 C.M.H., and

28 WHEREAS, C.M.H.'s parents began to discuss adopting J.W.,
29 whom they considered a part of their family, and

30 WHEREAS, in January 2004, the family began taking
31 therapeutic parenting classes to better meet J.W.'s needs, and

32 WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed
33 with Stage 4, terminal, metastatic colon cancer, which had
34 spread to her liver, C.M.H.'s father requested that DCF stop the
35 process of having the family designated as "long-term
36 nonrelative caregivers," and

37 WHEREAS, in April 2004, DCF closed out J.W.'s dependency
38 file, leaving J.W. in the custody of the family, and

39 WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the
40 juvenile judge assigned to the case to request help in placing
41 J.W. in a residential treatment facility, and

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Amendment No.1

42 WHEREAS, in July 2005, after a physical altercation



Amendment No.2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3 Representative Grant, J. offered the following:

4

5 **Amendment**

6 Remove lines 104-105 and insert:

7 Of the amount awarded under this act, the total amount paid for
 8 attorney fees may not exceed \$1,116,839.48, the total amount
 9 paid for lobbyist fees may not exceed \$152,296.29, and the total
 10 amount paid for costs and other similar expenses relating to
 11 this claim may not exceed \$1,642.16.