



Civil Justice Subcommittee

Friday, April 1, 2011

8:45 AM

404 HOB

**Dean Cannon
Speaker**

**Eric Eisnagle
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time: Friday, April 01, 2011 08:45 am

End Date and Time: Friday, April 01, 2011 11:30 am

Location: 404 HOB

Duration: 2.75 hrs

Consideration of the following bill(s):

HJR 47 Judicial Qualifications by Porth

HB 59 Service of Process by Julien

HB 387 Child Visitation by Steube

HB 621 Child Custody by Renuart

HB 661 Nursing Home Litigation Reform by Gaetz, Harrison

HB 1111 Uniform Interstate Family Support Act by Mayfield


HB 1393 Sovereign Immunity by Artiles, Nuñez

HB 1475 Alimony by Stargel

NOTICE FINALIZED on 03/30/2011 16:17 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 47 Judicial Qualifications
SPONSOR(S): Porth
TIED BILLS: None IDEN./SIM. BILLS: CS/SJR 140

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

SUMMARY ANALYSIS

The Florida Constitution requires that a person must have been a member in good standing of the Florida Bar for the previous 5 years to be eligible for election or appointment to the office of circuit court judge or county judge. In a county of a population of 40,000 or less, however, a candidate for county judge simply must be a member of the Florida Bar.

The joint resolution proposes an amendment to the Florida Constitution that would change the requirement from 5 years to 10 years of membership in the Florida Bar to be eligible for the office of circuit court or county court judge. The amendment would also delete the exception for a county with 40,000 people or less.

If this joint resolution is passed by a three-fifths vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2012.

This proposed committee bill appears to require a nonrecurring expense payable from General Revenue in FY 2012-13 for required advertising estimated at \$50,000. This proposed committee bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Judicial Qualifications Generally

Most state constitutions and general laws prescribe qualifications to serve as a judicial officer, including residence, age, and legal experience. In some states, the judicial qualifications may vary depending on the court on which the judge serves, and a judge may be required to meet more stringent qualifications if he or she is serving on an appellate court.¹ For example, in New Mexico, a trial court judge must have six years of active legal practice in New Mexico, while an appellate judge must have 10 years of legal practice in New Mexico or be a current state judge.² In other states, the same legal experience is required for both trial and appellate judges.³ A few states only require that the judge be a member of or licensed with the state bar.⁴

Florida Qualifications for Judicial Office

Florida has no minimal age requirement for circuit judges, but does preclude a judge from serving after attaining 70 years of age.⁵ The Florida Constitution requires that a judge must be an elector of the state and reside in the territorial jurisdiction of the court.⁶ With regard to legal experience, a person is eligible for the office of circuit court judge only if he or she is a member of The Florida Bar for the preceding five years.⁷ The constitutional requirement for eligibility relating to bar membership refers to eligibility at the time of assuming office and not at the time of qualification or election to office.⁸

Identical to circuit court judges, there is no minimal age requirement for county court judges, and county court judges are precluded from serving after attaining 70 years of age.⁹ The county court judge must also be an elector of the state and reside in the territorial jurisdiction of the court.¹⁰ The Florida Constitution provides that, unless otherwise provided by general law, a person is eligible for the office of county court judge only if he or she is a member of The Florida Bar and has been for the preceding five years.¹¹ The Florida Constitution also provides that, unless otherwise provided by general law, in counties having populations of 40,000 or fewer, a person is eligible for election or appointment to the office of county court judge if he or she is a member in good standing of The Florida Bar.¹²

Article V Task Force

A legislatively created task force – the Article V Task Force – examined judicial qualifications in preparation for the 1997-98 Constitution Revision Commission.¹³ The task force recommended an increase in the experience level for circuit and county judges, to 10 years from 5 years.

¹ G. Alan Tarr, *Symposium on Rethinking Judicial Selection: A Critical Appraisal of Appointive Selection for State Court Judges*, 34 *FORDHAM URB. L.J.* 291, 308 (Jan. 2007).

² N. M. CONST. art. VI, ss. 8 and 14.

³ California, Hawaii, Idaho, and New York, among other states, all require 10 years of membership in the state bar or active practice for both trial and appellate judges. CAL. CONST. art. VI, s. 15; HAW. CONST. art. VI, s. 3; IDAHO CODE s. 1-2404 (2); N.Y. CONST. art. VI, s. 20.

⁴ Alabama requires that a judge be a “licensed” attorney. ALA. CONST. art. VI, amend. 328, s. 6.07. Missouri and Pennsylvania require that the judge be a member of the state bar. MO. CONST. art. V, s. 21; PA. CONST. art. V, s. 12.

⁵ FLA. CONST. art. V, s. 8.

⁶ *Id.*

⁷ *Id.*

⁸ *In re Advisory Opinion to the Governor*, 192 So. 2d 757 (Fla. 1966).

⁹ FLA. CONST. art. V, s. 8.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ The task force was created by the Florida Legislature in ch. 94-138, Laws of Fla., to review the judicial article of the Constitution.

Effect of the Bill

House Joint Resolution 47 proposes an amendment to art. V, s. 8, of the State Constitution to increase the period of time that a person must be a member of The Florida Bar before becoming eligible for the offices of circuit court or county court judge. The resolution, if adopted by the voters, would increase the number of years a person must be a bar member before serving as a circuit court or county court judge to 10 years from 5 years. This change would make the circuit and county court judicial requirements the same as the requirements for District Court of Appeal judges and Supreme Court justices.

The resolution also deletes the provision allowing a member of The Florida Bar to serve as a county court judge regardless of the number of years of membership in a county having a population of 40,000 or fewer. As a result, the 10-year requisite experience would apply to all county court judges.

The joint resolution is silent regarding an effective date for the constitutional amendment. Therefore, in accordance with art. XI, s. 5, of the state Constitution, it would take effect on the first Tuesday after the first Monday in January following the election at which it was approved by the electorate.

B. SECTION DIRECTORY:

n/a

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The State Constitution requires the proposed amendment to be published, once in the tenth week and once in the sixth week immediately preceding the week of the election, in one newspaper of general circulation in each county where a newspaper is published.¹⁴ The Department of State executes the publication of the Joint Resolution if placed on the ballot. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs \$106.14 per word. At approximately 467 words, the amendment would require an estimated expenditure of \$49,567.38. These funds must be spent regardless of whether the amendment passes, and would be payable in FY 2012-2013 from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

¹⁴ Article XI, s. 5(d), FLA. CONST.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. A mandate analysis is inapplicable as this bill is a proposed constitutional amendment.

2. Other:

Article XI of the Florida Constitution sets forth various methods for proposing amendments to the constitution, along with the methods for approval or rejection of proposals. One method by which constitutional amendments may be proposed is by joint resolution agreed to by three-fifths of the membership of each house of the Legislature.¹⁵ Any such proposal must be submitted to the electors, either at the next general election held more than 90 days after the joint resolution is filed with the Secretary of State, or, if pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the Legislature and limited to a single amendment or revision, at an earlier special election held more than 90 days after such filing.¹⁶ If the proposed amendment is approved by a vote of at least 60 percent of the electors voting on the measure, it becomes effective as an amendment to the Florida Constitution on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.¹⁷

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although constitutional amendments are generally applied prospectively, unless expressly stated otherwise,¹⁸ the eligibility of circuit and county court judges satisfying the present qualifications may be questioned. Furthermore, it is unclear whether a current circuit or county court judge satisfying the current qualifications could seek re-election if he or she does not satisfy the new requirements at the time of the election. The amendment may also prohibit a person elected in the same election as the ballot amendment from taking office if he or she has not been a member of the bar for the last ten years. The Legislature could consider providing a definitive effective date at a future time after the election and expressly stating that the amendment may not be construed to affect any circuit court or county court judge in office on the effective date of the amendment, or the judge's ability to seek re-election in the future.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

¹⁵ FLA. CONST. art. XI, s. 1.

¹⁶ FLA. CONST. art. XI, s. 5(a).

¹⁷ FLA. CONST. art. XI, s. 5(e).

¹⁸ *In re Advisory Opinion to the Governor-Terms of County Court Judges*, 750 So. 2d 610 (Fla.1999) (advising that constitutional amendments are given prospective effect only, unless the text of the amendment or the ballot statement clearly indicates otherwise).

House Joint Resolution

A joint resolution proposing an amendment to Section 8 of Article V of the State Constitution to increase the period of time that a person must be a member of The Florida Bar before becoming eligible for the office of circuit court or county court judge.

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

That the following amendment to Section 8 of Article V of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V
JUDICIARY

SECTION 8. Eligibility.—No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court. No justice or judge shall serve after attaining the age of seventy years except upon temporary assignment or to complete a term, one-half of which has been served. No person is eligible for the office of justice of the supreme court, ~~or~~ judge of a district court of appeal, circuit court judge, or county court judge unless the person is, and has been for the preceding ten years, a member of the bar of Florida. ~~No person is eligible for the office of circuit judge unless the person is, and has been for the preceding five years, a member of the~~

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29 ~~bar of Florida. Unless otherwise provided by general law, no~~
 30 ~~person is eligible for the office of county court judge unless~~
 31 ~~the person is, and has been for the preceding five years, a~~
 32 ~~member of the bar of Florida. Unless otherwise provided by~~
 33 ~~general law, a person shall be eligible for election or~~
 34 ~~appointment to the office of county court judge in a county~~
 35 ~~having a population of 40,000 or less if the person is a member~~
 36 ~~in good standing of the bar of Florida.~~

37 BE IT FURTHER RESOLVED that the following statement be
 38 placed on the ballot:

39 CONSTITUTIONAL AMENDMENT

40 ARTICLE V, SECTION 8

41 INCREASING THE QUALIFICATIONS FOR THE OFFICES OF CIRCUIT
 42 COURT AND COUNTY COURT JUDGES.—The State Constitution currently
 43 prohibits a person from serving as a circuit court judge unless
 44 the person is, and has been for the proceeding 5 years, a member
 45 of The Florida Bar. This same prohibition applies to county
 46 court judges, except in counties having a population of 40,000
 47 or fewer, where a person need only be a member in good standing
 48 of The Florida Bar. This proposed amendment increases to 10
 49 years the period of time that a person must be a member of The
 50 Florida Bar before serving as a circuit court judge or a county
 51 court judge in any county.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HJR 47 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Porth offered the following:

3
4 **Amendment (with schedule, ballot and title amendments)**

5 Remove lines 23-36 and insert:

6 eligible for the office of justice of the supreme court or judge
7 of a district court of appeal unless the person is, and has been
8 for the preceding ten years, a member of the bar of Florida. No
9 person is eligible for the office of circuit judge unless the
10 person is, and has been for the preceding eight ~~five~~ years, a
11 member of the bar of Florida. Unless otherwise provided by
12 general law, no person is eligible for the office of county
13 court judge unless the person is, and has been for the preceding
14 eight ~~five~~ years, a member of the bar of Florida. Unless
15 otherwise provided by general law, a person shall be eligible
16 for election or appointment to the office of county court judge
17 in a county having a population of 40,000 or less if the person
18 is a member in good standing of the bar of Florida.

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19 SECTION 21. Qualifications of Circuit and County Court
20 Judges.—The amendment to Section 8 changing the qualifications
21 of circuit judges and county court judges shall take effect
22 January 9, 2013. The amendment does not affect any judge in
23 office on the effective date of the amendment. Any judge
24 qualified to hold office and in office on January 8, 2013, shall
25 remain in office and shall be eligible to seek reelection to
26 such judicial office in the future regardless of whether such
27 judge has been a member of bar of Florida for the previous eight
28 years.

31 -----
32 **S C H E D U L E A M E N D M E N T**

33 Remove line 10 and insert:

34 That the following amendment to Section 8 of Article V, and
35 the creation of Section 21 of Article V, of

36 -----
37
38 **B A L L O T A M E N D M E N T**

39 Remove lines 48-51 and insert:

40
41 of the Florida Bar. This proposed amendment increases to 8 years
42 the period of time that a person must be a member of The Florida
43 Bar before serving as a circuit court judge or a county court
44 judge in any county. The increased qualifications do not apply
45 to county court or circuit court judges in office on January 8,

Amendment No. 1

46 2013, or to persons seeking to be elected to the office of
47 county court or circuit court judge during this election.

48

49

50

51

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

52

Remove lines 2-6 and insert:

53

A joint resolution proposing an amendment to Section 8 of

54

Article V, and the creation of Section 21 of Article V, of the

55

State Constitution to increase the period of time that a person

56

must be a member of The Florida Bar before becoming eligible for

57

the office of circuit court or county court judge; providing

58

that judges in office are not affected by the increase.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 59 Service of Process
SPONSOR(S): Julien
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier <i>LMB</i>	Bond <i>NB</i>
2) Judiciary Committee			

SUMMARY ANALYSIS

Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. This bill also requires that a process server must be granted access to the common areas of condominiums, gated communities, or any secured area where a defendant or witness resides. Current law requires a process server to document on the copy served the date and time of service, the process server's identification number, and the process server's initials. This bill requires that a process server place this information on the front page of the copy served.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of Process

Under Florida Rule of Civil Procedure 1.070(b), any person who is authorized by law to complete service of process may do so in accordance with applicable Florida law for the execution of legal process. Chapter 48, F.S., identifies three classes that may serve process in civil cases. Process may be served by the sheriff in the county where the defendant is located.¹ The sheriff may appoint special process servers who meet specified statutory minimum requirements.² The chief judge of the circuit court may establish an approved list of certified process servers.³ Additionally, each trial judge has the authority to appoint a special process server in any particular case.

Authorized process servers serve the complaint or petition a defendant or a respondent in a civil case so that the court may acquire personal jurisdiction over the person who receives service. Strict compliance with the statutory provisions of service of process is required in order for the court to obtain jurisdiction over a party and to assure that a defendant or respondent receives notice of the proceedings filed.⁴ Because strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms renders that service defective, resulting in a failure to acquire jurisdiction over the defendant or respondent.⁵

The law specifies the manner and methods that service of process must be executed by process servers. Service of original process and most witness subpoenas is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.⁶ Each process server must document all service of process by placing the date and time of service and the process server's identification number and initials on the copy served.⁷

Service of Process in Gated Residential Communities

The growth in the number of gated residential communities (communities composed of multifamily residences and single-family residences that have entrances locked or otherwise restrict physical access to their dwellings) have presented a challenge to litigants' efforts to provide service of process to party defendants living in these residences.⁸ In *Luckey v. Thompson*, the court noted the difficulty in serving a defendant who "secreted himself from the world and lived in isolation in a high security apartment refusing to answer the telephone or even to open the mail."⁹ In *Boatfloat LLC v. Golia*, the court noted the challenge of successfully serving a company's registered agent when the only address is a gated residential community and the company does not have regular business hours open to the public.¹⁰ In *Delancy v. Tobias*, 26 So.3d 77, 80-81 (Fla. 3d DCA 2010), the court allowed substituted service in part because the process server was barred from accessing the defendant due to his gated residence.

¹ Section 48.021, F.S.

² Section 48.021, F.S.

³ Section 48.27, F.S.

⁴ *Vidal v. SunTrust Bank*, 41 So 3d 401, 402-03 (Fla. 4th DCA 2010).

⁵ Section 48.031, F.S.; *Vidal*, 41 So.3d at 402-04 (holding that the process server's failure to note the time of service of the bank's complaint on the copy of the complaint that was served on the debtor rendered the service of the complaint defective).

⁶ Sections 48.031(1), (3), F.S.

⁷ Sections 48.29 and 48.031(5), F.S.

⁸ See *Luckey v. Thompson*, 343 So.2d 53 (Fla. 3d DCA 1977); *Boatfloat LLC v. Golia*, 915 So.2d 288 (Fla. 4th DCA 2005).

⁹ *Luckey*, 343 So.2d at 54.

¹⁰ *Boatfloat*, 915 So.2d at 289-90.

Condominiums

Condominiums are regulated under chapter 718, F.S. Condominium property that is not located within the boundaries of individual condominium units and is jointly owned by all condominium unit owners in a condominium is defined as common elements.¹¹

Effect of Proposed Changes:

This bill requires that a process server must be granted unannounced access to the common areas, both general and limited, of condominiums, gated communities, or any secured residential areas where a defendant resides or is known to be.

This bill also requires a process server to document the date and time of service and the process server's identification number and initials on the front page of the copy served.

The bill provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 48.031, F.S., related to service of process.

Section 2 amends s. 48.29, F.S., related to certification of process servers.

Section 3 provides an effective date of July 1, 2011.

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. This 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

When changes are made to laws related to condominiums, a similar change is often made to laws relating to cooperatives. This bill does not address cooperatives although cooperatives could be covered pursuant to the provision requiring access to "any secured residential areas."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to service of process; amending s. 48.031,
 3 F.S.; specifying where a process server must record
 4 certain information concerning service; granting
 5 authorized process servers unannounced access to specified
 6 residential areas where a defendant or witness resides or
 7 is known to be; amending s. 48.29, F.S.; conforming
 8 provisions to changes made by the act; providing an
 9 effective date.

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

12
 13 Section 1. Subsection (5) of section 48.031, Florida
 14 Statutes, is amended, and subsection (7) is added to that
 15 section, to read:

16 48.031 Service of process generally; service of witness
 17 subpoenas.—

18 (5) A person serving process shall place, on the front
 19 page of the copy served, the date and time of service and his or
 20 her identification number and initials for all service of
 21 process.

22 (7) A person authorized to serve process shall be granted
 23 unannounced access to the common areas, both general and
 24 limited, of condominiums, gated communities, or any secured
 25 residential areas where a defendant or witness resides or is
 26 known to be.

27 Section 2. Subsection (6) of section 48.29, Florida
 28 Statutes, is amended to read:

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29 48.29 Certification of process servers.—
30 (6) A certified process server shall place the information
31 provided in s. 48.031(5) on the front page of the copy served.
32 Return of service shall be made by a certified process server on
33 a form which has been reviewed and approved by the court.
34 Section 3. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Paragraph (d) of subsection (1) and subsection
7 (3) of section 30.231, Florida Statutes, are amended to read:

8 30.231 Sheriffs' fees for service of summons, subpoenas,
9 and executions.—

10 (1) The sheriffs of all counties of the state in civil
11 cases shall charge fixed, nonrefundable fees for docketing and
12 service of process, according to the following schedule:

13 (d) Executions:

14 1. Forty dollars for processing ~~docketing and indexing~~
15 each writ of execution, regardless of the number of persons
16 involved.

17 2. Fifty dollars for each levy.

18 a. A levy is considered made when any property or any
19 portion of the property listed or unlisted in the instructions

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20 for levy is seized, or upon demand of the sheriff the writ is
21 satisfied by the defendant in lieu of seizure. Seizure requires
22 that the sheriff take actual possession, if practicable, or,
23 alternatively, constructive possession of the property by order
24 of the court.

25 b. When the instructions are for levy upon real property,
26 a levy fee is required for each parcel described in the
27 instructions.

28 c. When the instructions are for levy based upon personal
29 property, one fee is allowed, unless the property is seized at
30 different locations, conditional upon all of the items being
31 advertised collectively and the sale being held at a single
32 location. However, if the property seized cannot be sold at one
33 location during the same sale as advertised, but requires
34 separate sales at different locations, the sheriff is then
35 authorized to impose a levy fee for the property and sale at
36 each location.

37 3. Forty dollars for advertisement of sale under process.

38 4. Forty dollars for each sale under process.

39 5. Forty dollars for each deed, bill of sale, or
40 satisfaction of judgment.

41 (3) ~~It shall be the responsibility of~~ The party requesting
42 service of process must ~~to~~ furnish to the sheriff the original
43 process, or a certified copy of the process, or an electronic
44 copy of the process, which was signed and certified by the clerk
45 of court, and sufficient copies to be served on the parties
46 receiving the service of process. The party requesting service
47 of process shall provide the sheriff with the best known address

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 59 (2011)

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48 where the person may be served. Failure to perfect service at
49 the address provided does not excuse the sheriff from his or her
50 duty to exercise due diligence in locating the person to be
51 served.

52 Section 2. Subsection (5) of section 48.031, Florida
53 Statutes, is amended, and subsection (7) is added to that
54 section, to read:

55 48.031 Service of process generally; service of witness
56 subpoenas.-

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

65 (7) A gated residential community, including a condominium
66 association or a cooperative, shall grant unannounced entry into
67 the community, including its common areas and common elements,
68 to a person who is attempting to serve process on a defendant or
69 witness who resides within or is known to be within the
70 community.

71 Section 3. Paragraph (a) of subsection (3) of section
72 48.081, Florida Statutes, is amended to read:

73 48.081 Service on corporation.-

74 (3)(a) As an alternative to all of the foregoing, process
75 may be served on the agent designated by the corporation under

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 59 (2011)

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76 s. 48.091. However, if service cannot be made on a registered
77 agent because of failure to comply with s. 48.091, service of
78 process shall be permitted on any employee at the corporation's
79 principal place of business or on any employee of the registered
80 agent. A person attempting to serve process pursuant to this
81 paragraph may serve the process on any employee of the
82 registered agent during the first attempt at service even if the
83 registered agent is temporarily absent from his or her office.

84 Section 4. Section 48.21, Florida Statutes, is amended to
85 read:

86 48.21 Return of execution of process.-

87 (1) Each person who effects service of process shall note
88 on a return-of-service form attached thereto, the date and time
89 when it comes to hand, the date and time when it is served, the
90 manner of service, the name of the person on whom it was served
91 and, if the person is served in a representative capacity, the
92 position occupied by the person. The return-of-service form must
93 be signed by the person who effects the service of process.
94 However, a person employed by a sheriff who effects the service
95 of process may sign the return-of-service form using an
96 electronic signature certified by the sheriff.

97 (2) A failure to state the foregoing facts or to include
98 the signature required by subsection (1) invalidates the
99 service, but the return is amendable to state the facts or to
100 include the signature truth at any time on application to the
101 court from which the process issued. On amendment, service is as
102 effective as if the return had originally stated the omitted
103 facts or included the signature. A failure to state all the

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104 facts in or to include the signature on the return shall subject
105 the person effecting service to a fine not exceeding \$10, in the
106 court's discretion.

107 Section 5. Subsection (6) of section 48.29, Florida
108 Statutes, is amended to read:

109 48.29 Certification of process servers.--

110 (6) A certified process server shall place the information
111 required ~~provided~~ in s. 48.031(5) on the first page of at least
112 one of the processes ~~copy~~ served. Return of service shall be
113 made by a certified process server on a form which has been
114 reviewed and approved by the court.

115 Section 6. This act shall take effect July 1, 2011.

116

117

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

118 Remove the entire title and insert:

119 A bill to be entitled

120 An act relating to service of process; amending s.
121 30.231, F.S.; authorizing a sheriff to charge a fee
122 for processing a writ of execution; authorizing a
123 person to provide the sheriff with an electronic copy
124 of a process for service; amending s. 48.031, F.S.;
125 directing a process server to place required
126 information on the first page of at least one of the
127 processes served; requiring a process server to list
128 all initial pleadings delivered and served along with
129 the process on the return-of-service form; requiring
130 the person issuing the process to file the return-of-
131

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 59 (2011)

Amendment No. 1

132 service form with the court; granting authorized
133 process servers unannounced access to specified
134 residential areas where a defendant or witness resides
135 or is known to be; amending s. 48.081, F.S.;
136 authorizing a person attempting to serve process on
137 the registered agent of a corporation to serve the
138 process, in specified circumstances, on any employee
139 of the registered agent during the first attempt at
140 service even if the registered agent is temporarily
141 absent from his or her office; amending s. 48.21,
142 F.S.; requiring a process server to sign the return-
143 of-service form; authorizing an employee of a sheriff
144 to sign a return-of-service form electronically;
145 providing that the failure to sign a return-of-service
146 form invalidates the service and subjects the process
147 server to a fine; amending s. 48.29, F.S.; directing a
148 process server to place required information on the
149 first page of at least one of the processes served;
150 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 387 Child Visitation
SPONSOR(S): Steube
TIED BILLS: None IDEN./SIM. BILLS: CS/SB 504

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn <i>W</i>	Bond <i>YB</i>
2) Health & Human Services Access Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In 2007, the Legislature created the Keeping Children Safe Act (Act) to keep children in the custody of the Department of Children and Family Services (DCF or department) or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or some related criminal conduct. The bill amends the Keeping Children Safe Act to provide that:

- A finding of probable cause of sexual abuse by a parent or caregiver is needed in order to create a presumption of detriment to a child.
- Persons meeting specified criteria may not visit or have contact with a child without a hearing and order by the court, and in order to begin or resume contact with the child, there must be an evidentiary hearing to determine whether contact is appropriate.
- The court must conduct a hearing within seven business days of finding out that a person is attempting to influence the testimony of the child. The purpose of the hearing is to determine whether visitation with the person who is alleged to have influenced the testimony of the child is in the best interest of the child.

This bill also amends the legislative intent of the Act to provide that it is the intent to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding under the laws of this state.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Keeping Children Safe Act

In 2007, the Legislature created the Keeping Children Safe Act (Act)¹ to keep children in the custody of the Department of Children and Family Services (DCF or department) or its contractors safe during visitation or other contact with an individual who is alleged to have committed sexual abuse or some related criminal conduct. The declared purpose of the act is:

To protect children and reduce the risk of further harm to children who have been sexually abused or exploited by a parent or other caregiver...²

The statute places additional requirements on judicial determinations related to visitation and other contact. One of the additional requirements is a "presumption of detriment." The presumption of detriment provides that a rebuttable presumption of detriment to a child is created when a parent or caregiver:

1. Has been the subject of a report to the child abuse hotline³ alleging sexual abuse of any child.⁴
2. Has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to certain specified crimes,⁵ or
3. Has been determined by the court to be a sexual predator.⁶

If a person meets any of these criteria then he or she may visit or have contact with the child only after a hearing and an order by the court that allows the visitation or other contact.⁷ The presumption that is established in s. 39.0139(3)(a), F.S., may be rebutted if the court finds the person proved by clear and convincing evidence that the safety, well-being, and physical, mental and emotional health of the child is not endangered by such visitation or other contact.⁸ The statute also provides that:

If a party or participant, based on communication with the child or other firsthand knowledge, informs the court that a person is attempting to influence the testimony of a child, the court shall immediately suspend visitation or other contact.⁹

The court must then hold a hearing to determine whether it is in the best interests of the child to prohibit or restrict visitation or other contact. The statute also provides that if a child is in therapy and the child's therapist reports that the visitation or other contact is impeding the child's therapeutic progress, the court must convene a hearing within seven days to review the terms of the visitation.¹⁰

¹ Ch. 2007-109, s. 1, Laws of Fla.

² Section 39.0139(2)(b), F.S.

³ The Florida Department of Children and Families maintains a child abuse hotline. The hotline allows a concerned party to submit a report of abuse via the telephone, fax or on-line. For more information see (last visited March 7, 2011).

⁴ Section 39.0139(3)(a)1., F.S.

⁵ Section 39.0139(3)(a)2., F.S.

⁶ Section 39.0139(3)(a)3., F.S.

⁷ Section 39.0139(4), F.S.

⁸ Section 39.0139(4)(c), F.S.

⁹ Section 39.0139(6)(a), F.S.

¹⁰ Section 39.0139(6)(b), F.S.

Applicability of the Keeping Children Safe Act

Since the passage of the Keeping Children Safe Act in 2007, there have been questions as to the applicability of s. 39.0139, F.S. In *Protecting Children from Sexual Abuse by Those Entrusted with Their Care*, the authors argue that the statute is applicable to situations other than dependency proceedings.¹¹ The authors argue that the statute should apply to other proceedings involving child victims including ch. 61, F.S. (Dissolution of Marriage) and ch. 742, F.S. (Determination of Parentage), proceedings since the statute itself does not specify that it only applies to ch. 39, F.S., proceedings.

The Florida First District Court of Appeal ruled that s. 39.0139, F.S. does not apply in dissolution of marriage proceedings.¹² In the case, husband and wife were in the midst of a divorce. The wife denied the husband visitation of the children because of suspected sexual abuse of their children and reported the husband to a child abuse hotline. The wife then filed within the dissolution proceedings a motion for a hearing pursuant to s. 39.0139, F.S. The wife's reporting of the husband to the abuse hotline created the circumstance where the presumption of detriment would apply.¹³

The court held that s. 39.0139, F.S., did not apply to dissolution of marriage proceedings. The court reasoned that since the focus of s. 39.0139, F.S., is "to protect children 'who are abused, abandoned, or neglected'" and those terms have specific meaning pursuant to ch. 39, F.S., the section should only apply to proceedings pursuant to ch. 39, F.S.¹⁴ The court further reasoned that since "court," pursuant to s. 39.01(20), F.S., means "the circuit court assigned to exercise jurisdiction *under this chapter*,...unless otherwise expressly stated," a court assigned for a dissolution of marriage proceedings would not qualify to hear a s. 39.0139, F.S., complaint.¹⁵ The court also ruled:

Given these broad powers to protect children under Chapter 61 and the Family Law Rules, section 39.0139 should not be read to supplant a due process oriented, comprehensive, balanced approach with provisions that change case dynamics based on a phone call to an abuse hotline.¹⁶

Section 39.0139, F.S., and Sexual Abuse Hotlines

Since the passage of the Keeping Children Safe Act, several articles have been published expressing concerns regarding the creation of a presumption of detriment if a parent or caregiver is reported to a sexual abuse hotline.¹⁷ In *Florida Statute §39.0139: Limiting the Risk of Serious Harm to Children*, Judge Robbins notes that:

All the KCSA requires is that the parent or caregiver have 'been the subject of a report to the child abuse hotline alleging sexual abuse of any child as defined in s. 39.01.' A report to the abuse hotline requires only that a person 'knows, or has reasonable cause to suspect, that a child is abused...' There are no limitations as to date, and there is no requirement that the parent or caregiver have been an adult when the report was made. There is no requirement that the report be found to have been true, or even that it be subject to a finding of probable cause before the rebuttable presumption arises. A report that was made in the distant past and closed following an investigation with no indicators of abuse nevertheless triggers the application of the KCSA¹⁸

Thus, there is a possibility that a fraudulent or unfounded report, or a case that has been closed in the past, will trigger the presumption under s. 39.0139(3)(a), F.S., and the person reported to the hotline

¹¹ Caballero and Anderson, *Protecting Children from Sexual Abuse by Those Entrusted with Their Care*, Fla. B.J. Vol. 83 No. 2 (March 2008).

¹² *Mahmood v. Mahmood*, 15 So.3d 1 (Fla. 1st DCA 2009).

¹³ *Id.* at 2.

¹⁴ *Id.* at 4. (The court refers to the definitions in s. 39.01, F.S.).

¹⁵ *Id.*

¹⁶ *Id.* at 5.

¹⁷ See s. 39.0139(3)(a)1., F.S.

¹⁸ Robbins, *Florida Statute §39.0139: Limiting the Risk of Serious Harm to Children*, Fla. B.J. Vol. 82 No. 5, pg 46 (May 2008).

would then have to rebut the presumption by proving, by clear and convincing evidence, that he or she is not a danger to the well-being of the child.¹⁹

Effect of the Bill

The bill amends s. 39.0139, F.S., the Keeping Children Safe Act, to provide that a rebuttable presumption of detriment is created when a court finds probable cause that a person sexually abused a child. The bill provides that if a person meets certain criteria as set out in law, that person may not visit or have contact with a child without a hearing and order by the court. If visitation or contact is denied and the person wishes to begin or resume contact with the child victim, there must be an evidentiary hearing to determine whether contact is appropriate. The bill provides that, the court must appoint a guardian ad litem or attorney ad litem for the child prior to the hearing.

The bill also provides that at the hearing, the court may receive evidence, to the extent of its probative value, such as recommendations from the child protective team, the child's therapist, or the child's guardian ad litem or attorney ad litem, even if the evidence may not be admissible under the rules of evidence. Regardless of whether the court finds that the person did or did not rebut the presumption of detriment, the court must enter a written order setting forth findings of fact.

The bill provides that once a rebuttable presumption of detriment has arisen or if visitation has already been ordered and a party or participant informs the court that a person is attempting to influence the testimony of the child, the court must hold a hearing within seven business days to determine whether it is in the best interests of the child to prohibit or restrict visitation with the person who is alleged to have influenced the testimony of the child.

The bill also amends the legislative intent of the Act to provide that it is the intent of the Act to protect children who have been sexually abused or exploited by a parent or caregiver by placing additional requirements on judicial determinations related to contact between a parent or caregiver who meets certain criteria and a child victim in any proceeding under the laws of this state.

The bill provides an effective date of July 1, 2011

B. SECTION DIRECTORY:

Section 1 amends s. 39.0139, F.S., regarding the "Keeping Children Safe Act."

Section 2 provides an effective date of July 1, 2011.

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.

¹⁹ See s. 39.0139(4)(c), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to 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 child visitation; amending s. 39.0139,
 3 F.S.; revising legislative intent; requiring probable
 4 cause of sexual abuse in order to create a presumption of
 5 detriment; providing that persons meeting specified
 6 criteria may not visit or have contact with a child
 7 without a hearing and court order; revising requirements
 8 for hearing seeking to rebut a presumption of detriment;
 9 revising provisions relating to hearings on whether to
 10 prohibit or restrict visitation or other contact with the
 11 person who is alleged to have influenced a child's
 12 testimony; providing an effective date.

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

15
 16 Section 1. Paragraph (b) of subsection (2) and subsections
 17 (3), (4), and (6) of section 39.0139, Florida Statutes, are
 18 amended to read:

19 39.0139 Visitation or other contact; restrictions.—

20 (2) LEGISLATIVE FINDINGS AND INTENT.—

21 (b) It is the intent of the Legislature to protect
 22 children and reduce the risk of further harm to children who
 23 have been sexually abused or exploited by a parent or other
 24 caregiver by placing additional requirements on judicial
 25 determinations related to contact between a parent or caregiver
 26 who meets the criteria under paragraph (3) (a) and a child victim
 27 in any proceeding under the laws of this state ~~visitation and~~
 28 ~~other contact.~~

29 (3) PRESUMPTION OF DETRIMENT.--

30 (a) A rebuttable presumption of detriment to a child is
 31 created when ~~a parent or caregiver~~:

32 1. A court of competent jurisdiction has found probable
 33 cause exists that a parent or caregiver has sexually abused a
 34 child ~~Has been the subject of a report to the child abuse~~
 35 ~~hotline alleging sexual abuse of any child~~ as defined in s.
 36 39.01;

37 2. A parent or caregiver has been found guilty of,
 38 regardless of adjudication, or has entered a plea of guilty or
 39 nolo contendere to, charges under the following statutes or
 40 substantially similar statutes of other jurisdictions:

41 a. Section 787.04, relating to removing minors from the
 42 state or concealing minors contrary to court order;

43 b. Section 794.011, relating to sexual battery;

44 c. Section 798.02, relating to lewd and lascivious
 45 behavior;

46 d. Chapter 800, relating to lewdness and indecent
 47 exposure;

48 e. Section 826.04, relating to incest; or

49 f. Chapter 827, relating to the abuse of children; or

50 3. A court of competent jurisdiction has ~~been~~ determined a
 51 parent or caregiver ~~by a court~~ to be a sexual predator as
 52 defined in s. 775.21 or a parent or caregiver has received a
 53 substantially similar designation under laws of another
 54 jurisdiction.

55 (b) For purposes of this subsection, "substantially
 56 similar" has the same meaning as in s. 39.806(1)(d)2.

57 | (c) A person who meets any of the criteria set forth in
 58 | paragraph (a) may not visit or have contact with a child without
 59 | a hearing and order by the court.

60 | (4) HEARINGS.—A person who meets any of the criteria set
 61 | forth in paragraph (3)(a) who seeks to begin or resume contact
 62 | with the child victim shall have the right to an evidentiary
 63 | hearing to determine whether contact is appropriate ~~may visit or~~
 64 | ~~have other contact with a child only after a hearing and an~~
 65 | ~~order by the court that allows the visitation or other contact.~~
 66 | ~~At such a hearing:~~

67 | (a) Prior to the hearing, the court shall ~~The court must~~
 68 | appoint an attorney ad litem or a guardian ad litem for the
 69 | child if one has not already been appointed. Any attorney ad
 70 | litem or guardian ad litem appointed shall have special training
 71 | in the dynamics of child sexual abuse.

72 | (b) At the hearing, the court may receive and rely upon
 73 | any relevant and material evidence submitted to the extent of
 74 | its probative value, including written and oral reports or
 75 | recommendations from the child protective team, the child's
 76 | therapist, the child's guardian ad litem, or the child's
 77 | attorney ad litem, ~~to the extent of its probative value in its~~
 78 | ~~effort to determine the action to be taken with regard to the~~
 79 | ~~child,~~ even if these reports, recommendations, and evidence may
 80 | not be admissible under the rules of evidence ~~competent in an~~
 81 | ~~adjudicatory hearing.~~

82 | (c) If the court finds the person proves by clear and
 83 | convincing evidence that the safety, well-being, and physical,
 84 | mental, and emotional health of the child is not endangered by

85 | such visitation or other contact, the presumption in subsection
 86 | (3) is rebutted and the court may allow visitation or other
 87 | contact. The court shall enter a written order setting forth
 88 | findings of fact and specifying any conditions it finds
 89 | necessary to protect the child.

90 | (d) If the court finds the person did not rebut the
 91 | presumption established in subsection (3), the court shall enter
 92 | a written order setting forth findings of fact and prohibiting
 93 | or restricting visitation or other contact with the child.

94 | (6) ADDITIONAL CONSIDERATIONS.—

95 | (a) Once a rebuttable presumption of detriment has arisen
 96 | under subsection (3) or if visitation is ordered under
 97 | subsection (4) and ~~If~~ a party or participant, based on
 98 | communication with the child or other firsthand knowledge,
 99 | informs the court that a person is attempting to influence the
 100 | testimony of the child, the court shall hold a hearing within 7
 101 | business days to ~~immediately suspend visitation or other~~
 102 | ~~contact. The court shall then hold a hearing and~~ determine
 103 | whether it is in the best interests of the child to prohibit or
 104 | restrict visitation or other contact with the person who is
 105 | alleged to have influenced the testimony of the child.

106 | (b) If a child is in therapy as a result of any finding of
 107 | ~~the allegations~~ or conviction ~~convictions~~ contained in paragraph
 108 | (3)(a) and the child's therapist reports that the visitation or
 109 | other contact is impeding the child's therapeutic progress, the
 110 | court shall convene a hearing within 7 business days to review
 111 | the terms, conditions, or appropriateness of continued
 112 | visitation or other contact.

HB 387

2011

113

Section 2. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 387 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Steube offered the following:

3

4 **Amendment**

5 Remove line 27 and insert:

6 in any proceeding pursuant to this chapter ~~visitation and~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621 Child Custody
SPONSOR(S): Renuart
TIED BILLS: None IDEN./SIM. BILLS: SB 1650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn <i>ON</i>	Bond <i>NB</i>
2) Community & Military Affairs Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Where the parents of a minor child are living apart, the parents must develop a parenting plan to be approved by the court. The plan outlines the responsibilities and time-sharing arrangements of the parents. In general, a change in the parenting plan requires a parent to show a substantial, material, and unanticipated change in circumstances and that the modification is in the best interests of the child. However, there is special exception for a parent who is deployed pursuant to military service commitments.

When a parent is unable to comply with a time-sharing schedule because of military service, courts are precluded from modifying the judgment or order as it existed on the date the parent left for service. The court may, however, enter a temporary modification order only if there is clear and convincing evidence that such modification is in the best interests of the child. If the deployment will be over 90 days the parent has the option of designating a family member to exercise the time-sharing with the child on the parent's behalf. The court is required to reinstate the order previously in effect upon the military parent's return from service.

The bill provides that the activation, deployment, or temporary assignment to military service cannot be the sole factor in the court's decision to grant a temporary modification in the parenting plan. The bill also provides that within 10 days of notification from the parent of his or her return from duty, the court must reinstate the time-sharing order in effect prior to the deployment unless the court finds the original order is no longer in the best interest of the child.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Time-Sharing After Dissolution of Marriage

Chapter 61, F.S., is titled "Dissolution of Marriage; Support; Time-Sharing." The purposes of the chapter are described as follows:

- To preserve the integrity of marriage and to safeguard meaningful family relationships;¹
- To promote the amicable settlement of disputes that arise between parties to a marriage;² and
- To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage.³

Where the parents of a minor child are living apart, the parents must develop a parenting plan to be approved by the court.⁴ The parenting plan must, at a minimum, describe in adequate detail:

- How the parents will share and be responsible for the daily tasks associated with the upbringing of the child;
- The time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
- A designation of who will be responsible for any and all forms of health care, school-related matters, including the address to be used for school-boundary determination and registration, and other activities; and
- The methods and technologies that the parents will use to communicate with the child.⁵

Once the parenting plan and time-sharing schedule are approved by the court, modification requires a parent to show a substantial, material, and unanticipated change in circumstances and that the modification is in the best interests of the child.⁶

The Legislature has stated that it is the public policy of this state that each minor child have frequent and continuing contact with both parents after the parents separate or the marriage of the parents is dissolved.⁷ It is also articulated public policy to encourage parents to share the rights and responsibilities, and joys, of childrearing.⁸ There is no presumption in Florida for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.⁹ Florida courts determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child.¹⁰ To determine the best interests of the child, the court will consider a list of factors that is enumerated in statute, but is not exhaustive. Some of the factors include: 1) capacity of each parent to have a close parent-child relationship; 2) length of time the child has lived in a stable environment; 3) moral fitness of the parents; 4) reasonable preference of the child; 5) evidence of violence, abuse, or neglect; and 6) developmental stages and needs of the child.¹¹

¹ Section 61.001(2)(a), F.S.

² Section 61.001(2)(b), F.S.

³ Section 61.001(2)(c), F.S.

⁴ Section 61.13(2)(b), F.S. There are a variety of circumstances that initiate a court proceeding to establish a parenting plan, including: divorce, separation, establishment of paternity, and establishment of child support.

⁵ *Id.*

⁶ Section 61.13(3), F.S.

⁷ Section 61.13(2)(c)1., F.S.

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 61.13(3), F.S.

¹¹ *See s. 61.13(3)(a)-(t), F.S.*

Time-Sharing and Military Parents

In addition to the numerous factors that Florida courts take into account in every time-sharing determination, the Legislature has recognized the need to consider the unique circumstances of parents serving in the military regarding modification of time-sharing.¹² When a parent is unable to comply with a time-sharing schedule because of military service, courts are precluded from modifying the judgment or order as it existed on the date the parent left for service.¹³ The court may, however, enter a temporary modification order only if there is clear and convincing evidence that such modification is in the best interests of the child.¹⁴ Before entering a temporary order for modification, courts are required to consider and provide for as much contact between the military parent and his or her child and to permit liberal time-sharing periods during leave from military service.¹⁵ Additionally, if a parent cannot comply with time-sharing because he or she is away for military service in excess of 90 days, the parent has the option to designate a family member to exercise time-sharing with the child on the parent's behalf.¹⁶

In the event that a temporary order to modify the time-sharing agreement is issued, the court is required to reinstate the order previously in effect upon the military parent's return from service. If good cause is shown, the court will hold an expedited hearing in custody and visitation matters and allow the military parent to appear remotely if military duties preclude him or her from appearing in person.¹⁷

Effect of the Bill

This bill provides that a parent's activation, deployment, or temporary assignment to military service and the resulting temporary disruption to the child may not be the sole factor in a court's decision to grant a petition for or modification of time-sharing and parental responsibility.

The bill further provides that if such a temporary order is issued, the court must reinstate the time-sharing order previously in effect before the military parent's activation, deployment, or temporary assignment to military service within 10 days after notification by that parent of his or her return from service. However, if the court finds that resumption of the original order is no longer in the child's best interest, the court does not have to restore the previous order. In such case, the nonmilitary parent has the burden of proving that the original order is no longer in the child's best interest.

B. SECTION DIRECTORY:

Section 1 amends s. 61.13002, F.S., regarding child visitation

Section 2 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

¹² Section 61.13002, F.S.

¹³ Section 61.13002(1), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 61.13002(2), F.S.

¹⁷ Section 61.13002(5), F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to 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

A bill to be entitled

An act relating to child custody; amending s. 61.13002, F.S.; providing that a parent's activation, deployment, or temporary assignment to military service and the resultant temporary disruption to the child may not be the sole factor in granting a petition for or modification of time-sharing and parental responsibility; providing that a time-sharing and parental responsibility order in effect before a temporary change due to a parent's military service shall automatically be reinstated after a specified period after return and notice by the returning parent; providing an exception; specifying burden of proof for the exception; providing an effective date.

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

Section 1. Subsections (1) and (4) of section 61.13002, Florida Statutes, are amended to read:

61.13002 Temporary time-sharing modification and child support modification due to military service.--

(1) If a supplemental petition or a motion for modification of time-sharing and parental responsibility is filed because a parent is activated, deployed, or temporarily assigned to military service and the parent's ability to comply with time-sharing is materially affected as a result, the court may not issue an order or modify or amend a previous judgment or order that changes time-sharing as it existed on the date the parent was activated, deployed, or temporarily assigned to

29 military service, except that a court may enter a temporary
 30 order to modify or amend time-sharing if there is clear and
 31 convincing evidence that the temporary modification or amendment
 32 is in the best interests of the child. However, a parent's
 33 activation, deployment, or temporary assignment to military
 34 service and the resultant temporary disruption to the child may
 35 not be the sole factor in a court's decision to grant a petition
 36 for or modification of time-sharing and parental responsibility.
 37 When entering a temporary order under this section, the court
 38 shall consider and provide for, if feasible, contact between the
 39 military servicemember and his or her child, including, but not
 40 limited to, electronic communication by webcam, telephone, or
 41 other available means. The court shall also permit liberal time-
 42 sharing during periods of leave from military service, as it is
 43 in the child's best interests to maintain the parent-child bond
 44 during the parent's military service.

45 (4) If a temporary order is issued under this section, the
 46 court shall reinstate the time-sharing order previously in
 47 effect before the military parent's activation, deployment, or
 48 temporary assignment to military service, within 10 days after
 49 notification by that parent of his or her ~~upon the servicemember~~
 50 parent's return from active military service, deployment, or
 51 temporary assignment, unless the court finds that resumption of
 52 the original order is no longer in the child's best interest.
 53 The nonmilitary parent bears the burden of proving that
 54 resumption of the original order is no longer in the child's
 55 best interest.

56 Section 2. This act shall take effect July 1, 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Renuart offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove lines 36-55 and insert:

6 for or modification of permanent time-sharing and parental
7 responsibility. When entering a temporary order under this
8 section, the court shall consider and provide for, if feasible,
9 contact between the military servicemember and his or her child,
10 including, but not limited to, electronic communication by
11 webcam, telephone, or other available means. The court shall
12 also permit liberal time-sharing during periods of leave from
13 military service, as it is in the child's best interests to
14 maintain the parent-child bond during the parent's military
15 service.

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Amendment No. 1

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D I R E C T O R Y A M E N D M E N T

Remove lines 17-18 and insert:

Section 1. Subsection (1) of section 61.13002, Florida Statutes, is amended to read:

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

Remove lines 6-13 and insert:

factor in granting a petition for or modification of permanent time-sharing and parental responsibility; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 661 Nursing Home Litigation Reform
SPONSOR(S): Gaetz, Harrison and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1396

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

SUMMARY ANALYSIS

This bill affects nursing home litigation. Specifically, this bill:

- Provides a cap of \$250,000 on noneconomic damages in any claim for wrongful death in nursing home lawsuits, regardless of the number of claimants or defendants;
- Requires the court to hold an evidentiary hearing to determine if there is a reasonable basis to find that an officer, director or owner of a nursing home acted outside the scope of duties in order for a lawsuit to proceed against an officer, director, or owner of a nursing home;
- Requires a claimant to bring a lawsuit pursuant to either the statute relating to nursing home civil enforcement or the statute relating to abuse of vulnerable adults;
- Requires a claimant to elect survival damages or wrongful death damages not later than 60 days before trial;
- Changes statutes defining the elements in nursing home litigation cases and punitive damage cases against nursing homes;
- Requires the court to hold an evidentiary hearing before allowing a claim for punitive damages to proceed;
- Changes the method for calculating attorney fees in punitive damage cases and provides more situations where the punitive damages claim will be split between the claimant and the state; and
- Limits the use of federal and state survey reports in nursing home litigation.

This bill could have a positive fiscal impact on the state's Quality of Long-term Care Facility Improvement Trust Fund. This bill does not appear to have a fiscal impact on local governments. This bill could might limit recovery amounts for claimants and their attorneys for noneconomic damages and for punitive damages, and correspondingly may lower insurance costs paid by nursing homes.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Nursing Home Litigation

This bill revises numerous provisions of law related to litigation against nursing homes. Section 400.022, F.S., enumerates various rights of residents of nursing homes. Section 400.023, F.S., provides for civil enforcement of the rights of nursing home residents. Section 400.023, F.S., was substantially amended in 2001 as an attempt to deal with the perception of a lack of affordable insurance for nursing homes.¹

Section 400.023, F.S., provides that any resident whose rights are violated by a nursing home has a cause of action against the nursing home.² If the action alleges a claim for resident's rights or for negligence that caused the death of the resident, the claimant³ is required to elect either survival damages pursuant to s. 46.021, F.S.,⁴ or wrongful death damages pursuant to s. 768.21, F.S. If the action alleges a claim for resident's rights or for negligence that did not cause the death of the resident, the resident or personal representative of the estate may recover damages for the negligence that caused injury or death to the resident. To prevail in an action pursuant to s. 400.023, a claimant must show negligence by the defendant or a violation of resident's rights.⁵ A claimant may also recover punitive damages in some situations and the claimant's attorney may recover attorney fees in some situations.

Prior to bringing an action, a claimant must provide a notice of intent to initiate litigation. The notice of intent tolls the statute of limitations and allows the claimant and prospective defendants to engage in presuit discovery and mediation. If the case is not settled in this presuit stage, a claimant may file a lawsuit.⁶

The Agency for Health Care Administration provided information on the number of notices of intent filed:

FY 2009-2010 - 403 notices filed
FY 2008-2009 - 320 notices filed
FY 2007-2008 - 357 notices filed
FY 2006-2007 - 337 notices filed
FY 2005-2006 - 440 notices filed
FY 2004-2005 - 471 notices filed
FY 2003-2004 - 737 notices filed
FY 2002-2003 - 927 notices filed
FY 2001-2002 - 1153 notices filed.

This bill makes changes to various provisions of ch. 400, F.S., relating to nursing home litigation. Generally, this bill changes the requirements for suits against officers and directors, changes the distribution of punitive damage awards, provides restrictions on the use of certain evidence in nursing home cases, provides a cap on noneconomic damages in wrongful death actions and requires a more

¹ See ch. 2001-62, L.O.F. See also Senate Staff Analysis and Economic Impact Statement for CS/CS/SB 1202, April 12, 2001, at pp. 1-5.

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

³ Depending on the circumstances, a claimant can be the resident, the estate of the resident, or a family member of the resident.

⁴ Section 46.021, F.S., provides that no cause of action dies with a person. If a plaintiff dies during the litigation, the action can continue and the estate can collect damages.

⁵ See s. 400.023(2), F.S.

⁶ See s. 400.0233, F.S.

involved evidentiary hearing before the court can allow a claim for punitive damages to proceed. The specific changes are discussed below.

Named Defendants and Causes of Action in Nursing Home Cases

Background and Effect of the Bill

Section 400.023, F.S., provides that "any resident whose rights as specified in this part are violated shall have a cause of action." It does not limit who can be named as a defendant. This bill provides that any resident who alleges negligence or a violation of rights has a cause of action against the "licensee or its management company, as specifically identified in the application for nursing home licensure" and its direct caregiver employees.

Current law provides that ss. 400.023 - 400.0238, F.S., provide the exclusive remedy for a cause of action for personal injury or death of a nursing home resident or a violation of the resident's rights. It further provides that s. 400.023, F.S., "does not preclude theories of recovery not arising out of negligence or s. 400.022 which are available to the resident or to the agency." This bill removes that provision. This bill would provide that ss. 400.023 - 400.0238, F.S., provide the exclusive remedy in resident rights cases and cases involving the personal injury or wrongful death of resident. Any other claims would have to be brought outside of ss. 400.023 - 400.0238, F.S.

Liability of Employees, Officers, Directors, or Owners

Background

In *Estate of Canavan v. National Healthcare Corp.*, 889 So.2d 825 (Fla. 2d DCA 2004), the court considered whether the managing member of a limited liability company could be held personally liable for damages suffered by a resident in a nursing home. The claimant argued the managing member, Friedbauer, could be held liable:

[Claimant] argues that the concept of piercing the corporate veil does not apply in the case of a tort and that it presented sufficient evidence of Friedbauer negligence, by act or omission, for the jury to reasonably conclude that Friedbauer caused harm to Canavan. [Claimant] argues that Friedbauer had the responsibility of approving the budget for the nursing home. He also functioned as the sole member of the "governing body" of the nursing home, and pursuant to federal regulation, the governing body is legally responsible for establishing and implementing policies regarding the management and operation of the facility and for appointing the administrator who is responsible for the management of the facility. Friedbauer was thus required by federal mandate to create, approve, and implement the facility's policies and procedures. Because he ignored complaints of inadequate staffing while cutting the operating expenses, and because the problems Canavan suffered, pressure sores, infections, poor hygiene, malnutrition and dehydration, were the direct result of understaffing, [claimant] argues that a reasonable jury could have found that Friedbauer's elevation of profit over patient care was negligent.⁷

The trial court granted a directed verdict in favor of Friedbauer, finding that there was no basis upon which a corporate officer could be held liable. On appeal, the court reversed:

We conclude that the trial court erred in granting the directed verdict because there was evidence by which the jury could have found that Friedbauer's negligence in ignoring the documented problems at the facility contributed to the harm suffered by Canavan. This was not a case in which the plaintiffs were required to pierce the corporate veil in order to establish individual liability because Friedbauer's alleged negligence constituted

⁷ *Estate of Canavan v. National Healthcare Corp.*, 889 So.2d 825, 826 (Fla. 2d DCA 1994).

tortious conduct, which is not shielded from individual liability. We, therefore, reverse the order granting the directed verdict and remand for a new trial against Friedbauer.⁸

Effect of this Bill

This bill provides that a cause of action cannot be asserted against an "employee,⁹ officer, director, owner, including any designated as having a 'controlling interest'¹⁰ on the application for nursing home licensure, or agent of licensee or management company" unless the court determines there is a reasonable basis that:

- (1) The officer, director, owner, or agent breached, failed to perform, or acted outside the scope of duties as an officer, director, owner, or agent; and
- (2) The breach, failure to perform, or conduct outside the scope of duties is a legal cause of the damage.

The court must make this finding at an evidentiary hearing after considering evidence in the record and evidence proffered by the claimant.

"Scope of duties as an officer, director, owner, or agent" is not defined by this bill. The parties would have to present evidence on what the "scope of duties" as an officer, director, owner, or agent are in each case and the trial judge would have to determine whether there is a reasonable basis for the jury to conclude that there was a breach of duty and damage to the claimant.

Limitations on Causes of Action for Violations of Criminal Statutes

Background

Section 415.111, F.S., provides criminal penalties for failing to report abuse of a vulnerable adult, for making certain confidential information public, for refusing to grant access to certain records, and for filing false reports relating to abuse of a vulnerable adult. Section 415.111, F.S., does not specifically provide for a civil cause of action while s. 415.1111, F.S., provides for a civil cause of action in some situations.

Section 415.1111, F.S., provides a cause of action where a vulnerable adult¹¹ who has been abused, neglected, or exploited has a cause of action and can recover damages, punitive damages, and attorney fees. However, any action brought against a licensee or entity that establishes, controls, manages, or operates a nursing home must be brought under s. 400.023, F.S.

One court has specifically held that no civil cause of action exists for failing to report abuse of vulnerable adult pursuant to s. 415.111.¹² The court explained:

It is evident that the legislature considered both civil and criminal penalties under this statute, but subjected only actual perpetrators of abuse to civil penalties. This is strong

⁸ *Estate of Canavan v. National Healthcare Corp.*, 889 So.2d 825, 826-827 (Fla. 2d DCA 1994)(citations omitted).

⁹ See Section III.C. "Drafting Issues and Other Comments" of this analysis.

¹⁰ Section 400.071, F.S., governs applications for licensure for nursing homes. It references s. 408.803, F.S., where "controlling interest" is defined. "Controlling interest" means: "(a) The applicant or licensee; (b) A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the applicant or licensee; or (c) A person or entity that serves as an officer of, is on the board of directors of, or has a 5-percent or greater ownership interest in the management company or other entity, related or unrelated, with which the applicant or licensee contracts to manage the provider. The term does not include a voluntary board member." s. 408.803(7), F.S.

¹¹ "Vulnerable adult" means "means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging." Section 415.102(27), F.S.

¹² See *Mora v. South Broward Hosp. Dist.*, 710 So.2d 633 (Fla. 4th DCA 1998).

evidence of a legislative intent not to provide a civil cause of action for victims against those who fail to report the abuse as required by this act.¹³

Effect of this Bill

This bill provides that if a cause of action is brought by or on behalf of a resident under Part II of ch. 400, F.S., then a cause of action may not be asserted under s. 415.111, F.S., against an employee, officer, director, owner, or agent of the licensee or management company.¹⁴

Election of Damages

Background

Section 400.023, F.S., requires that in cases where the action alleges a claim for resident's rights or for negligence that caused the death of the resident, a claimant must elect either survival damages¹⁵ or wrongful death damages.¹⁶ The statute does not provide a time certain for a claimant to make an election. In *In re Estate of Trollinger*, 9 So.3d 667 (Fla. 2d DCA 2009), the trial court forced a claimant to make an election at the time of the initial complaint and the appellate court held that certiorari review was not available because any error could be corrected by a subsequent appeal. The court noted that s. 400.023(1), F.S., is "silent as to whether the election of remedies must be made at the pleading stage or at the end of trial."¹⁷

Judge Altenbernd argued that the claimant should not have to make an election with the initial pleading:

[The statute] requires the personal representative to elect to receive only one of the two different measures of damages that are available in such a case. The statute does not require the personal representative to choose to pursue only one of the two different causes of action available to the personal representative. It certainly does not state that the election must be made in the complaint...

Even if one assumes that section 400.023(1) requires a plaintiff to elect one cause of action, this election of a claim would not logically occur at the pleading stage. If the plaintiff is required to elect one measure of damages, there is little reason why this election cannot take place after the jury returns its verdict. Election of remedies is a somewhat complex theory, but it is generally designed to prevent a double recovery, which can be avoided in this case even if the jury is presented with a verdict form containing both theories.

The personal representative's two theories are factually and legally distinct. One theory requires proof that negligence caused only injury and the other theory requires proof that negligence caused death. In Florida, a standard verdict form asks the jury to decide whether there was negligence on the part of the defendant which was a legal cause of damage to the plaintiff. If the jury is instructed on only one of the causes of action and the damages appropriate under that theory, there is nothing in the verdict form to demonstrate that the verdict forecloses an action on the other theory for the damages available under the other theory. In other words, if a jury were to find that an act of negligence did not cause wrongful death damages, that verdict would not prevent another jury from finding that an act of negligence caused survivorship damages. Thus,

¹³ *Mora v. South Broward Hosp. Dist.*, 710 So.2d 633, 634 (Fla. 4th DCA 1998).

¹⁴ See Section III.C. "Drafting Issues and Other Comments" of this analysis.

¹⁵ Section 46.021, F.S., provides that no cause of action dies with the person. Accordingly, if a resident brings a claim for a violation of resident's rights or negligence and dies during the pendency of the claim, the action may continue and the resident's estate may recover the damages that the resident could have recovered if the resident had lived until the end of the litigation.

¹⁶ Section 768.21, F.S., provides for damages that may be recovered by the estate of a resident and the resident's family in a wrongful death action.

¹⁷ *In re Estate of Trollinger*, 9 So.3d 667, 668 (Fla. 2d DCA 2009).

whichever theory is tried first, the trial court is likely to be called upon to try the second theory later.¹⁸ (internal citations omitted).

Effect of this Bill

This bill amends s. 400.023(1), F.S., to require the claimant to choose between survival damages under s. 46.021, F.S., or wrongful death damages under s. 768.21, F.S., at the end of discovery but not later than 60 days before trial.¹⁹ As *Trollinger* indicates, current law is unclear. It might allow such an election to be made at the end of trial or might allow the trial court to require an election be made with the complaint.²⁰ This bill requires that the election be made at a time certain before trial.

Cap on Noneconomic Damages

Background

Current law provides no cap on the recovery of noneconomic damages in wrongful death actions brought under s. 400.023, F.S. "Economic" damages are damages such as loss of earnings, loss of net accumulations, medical expenses, and funeral expenses.²¹ "Noneconomic damages" are damages for which there is no exact standard for fixing compensation such as mental pain and suffering and loss of companionship or protection.²²

Effect of this Bill

This bill provides a cap of \$250,000 on noneconomic damages in any claim for wrongful death brought under s. 400.023, F.S., regardless of the number of claimants or defendants.²³ This bill does not cap noneconomic damages in negligence cases that do not involve a wrongful death brought under s. 400.023, F.S.

Attorney Fees in Actions for Injunctive Relief

Background and Effect of this Bill

A resident may bring an action seeking injunctive relief in court or bring an administrative action to force a licensee to take an action or cease taking some action. Current law provides that a resident is entitled to attorney fees not to exceed \$25,000, and costs if the resident prevails when seeking injunctive relief. This bill provides that a resident "may" recover attorney fees and costs if the resident prevails.

Elements in a Civil Actions Under s. 400.023, F.S.

Background

Section 400.023(2), F.S., provides that in any claim alleging a violation of resident's rights or alleging that negligence caused injury to or the death of a resident, the claimant must prove, by a preponderance of the evidence:

- (a) The defendant owed a duty to the resident;
- (b) The defendant breached the duty to the resident;

¹⁸ *In re Estate of Trollinger*, 9 So.3d 667, 669 (Fla. 2d DCA 2009)(Altenbernd, J., concurring).

¹⁹ See Section III.A.2., Constitutional Issues, of this analysis.

²⁰ The *Trollinger* court did not hold that the election must be made at the pleading stage. It held that certiorari review, a high standard, was not available. There is no subsequent appellate court decision resolving the issue left open in *Trollinger*.

²¹ See generally Florida Standard Jury Instructions in Civil Cases, s. 502.2. (accessed at http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500).

²² See generally Florida Standard Jury Instructions in Civil Cases, s. 502.2. (accessed at http://www.floridasupremecourt.org/civ_jury_instructions/instructions.shtml#500).

²³ See Section III.A.2., Constitutional Issues, of this analysis.

- (c) The breach of the duty is a legal cause of loss, injury, death, or damage to the resident; and
- (d) The resident sustained loss, injury, death, or damage as a result of the breach.

The Florida Supreme Court has set forth the elements of a negligence action:

1. A duty, or obligation, recognized by the law, requiring the [defendant] to conform to a certain standard of conduct, for the protection of others against unreasonable risks.
2. A failure on the [defendant's] part to conform to the standard required: a breach of the duty....
3. A reasonably close causal connection between the conduct and the resulting injury. This is what is commonly known as "legal cause," or "proximate cause," and which includes the notion of cause in fact.
4. **Actual loss** or damage...²⁴ (emphasis added).

Current law provides in any claim brought pursuant to s. 400.023, F.S., a licensee, person, or entity has the duty to exercise "reasonable care" and nurses have the duty to exercise care "consistent with the prevailing professional standard of care."²⁵ Standards of care are set forth in current law. Section 400.023(3), F.S., provides that a licensee, person, or entity shall have a duty to exercise reasonable care.²⁶ Nurses have the duty to "exercise care consistent with the prevailing professional standard of care for a nurse."²⁷

Effect of this Bill

This bill provides:

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

- (a) The defendant **breached the applicable standard of care; and**
- (b) The breach is a legal cause of **actual** loss, injury, death, or damage to the resident. (emphasis added).

This bill provides that a claimant bringing a claim pursuant to ch. 400, F.S., must show the defendant breached the applicable standard of care and that the breach is the legal cause of actual loss, injury, death, or damage. The "actual" loss addition to the statute is from Florida Supreme Court case law.

Punitive Damages

Current law provides for recovery of punitive damages by a claimant. Punitive damages "are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence."²⁸ Punitive damages are generally limited to three times the amount of compensatory damages or \$1 million, whichever is greater.²⁹ Damages can exceed \$1 million if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high

²⁴ *United States v. Stevens*, 994 So.2d 1062, 1066 (Fla. 2008).

²⁵ See s. 400.023(1), F.S.

²⁶ "Reasonable care" is defined as "that degree of care which a reasonably careful licensee, person, or entity would use under like circumstances." Section 400.023(3), F.S.

²⁷ "The prevailing professional standard of care for a nurse shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar nurses." s. 400.023(4), F.S.

²⁸ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).

²⁹ See s. 400.0238(1)(a), F.S.

likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant.³⁰ If the jury finds that the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is be no cap on punitive damages.³¹

Background - Evidentiary Requirements to Bring a Punitive Damages Claims

Section 400.0237(1), F.S., provides:

In any action for damages brought under this part, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

A court discussed how a claimant can make a proffer to assert a punitive damage claim:

[A] 'proffer' according to traditional notions of the term, connotes merely an 'offer' of evidence and neither the term standing alone nor the statute itself calls for an adjudication of the underlying veracity of that which is submitted, much less for countervailing evidentiary submissions. Therefore, a proffer is merely a representation of what evidence the defendant proposes to present and is not actual evidence. A reasonable showing by evidence in the record would typically include depositions, interrogatories, and requests for admissions that have been filed with the court. Hence, an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated by the statute in order to determine whether a reasonable basis has been established to plead punitive damages.^{32 33}

Punitive damages claims are often raised after the initial complaint has been filed. Once a claimant has discovered enough evidence that the claimant believes justifies a punitive damage claim, the claimant files a motion to amend the complaint to add a punitive damage action. The trial judge considers the evidence presented and proffered by the claimant to determine whether the claim should proceed.

Effect of this Bill - Evidentiary Requirements to Bring a Punitive Damages Claims

This bill provides that a claimant may not bring a claim for punitive damages unless there is a showing of admissible evidence proffered by the parties that provides a reasonable basis for recovery of punitive damages. This bill requires the trial judge to conduct an evidentiary hearing. The trial judge must find there is reasonable basis to believe the claimant will be able to demonstrate, by clear and convincing evidence, that the recovery of punitive damages is warranted. The effect of these requirements is (1) to limit the trial judge's consideration to admissible evidence. Current law does not require a showing of admissibility at this stage of the proceedings; and (2) to provide that the claimant and defendant may present evidence and have the trial judge weigh the evidence to make its determination. Current law contemplates that the claimant will proffer evidence and the court, considering the proffer in the light

³⁰ See s. 400.0238(1)(b), F.S.

³¹ See s. 400.0238(1)(c), F.S.

³² *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 642 (Fla. 5th DCA 2005)(internal citations omitted).

³³ The *Despain* court was discussing a prior version of the punitive damages statute relating to nursing home litigation but the language in that statute is the same in that statute and current law.

most favorable to the claimant, will determine whether there is a reasonable basis to allow the claimant's punitive damages case to proceed.^{34 35}

Current law provides that the rules of civil procedure are to be liberally construed to allow the claimant discovery of admissible evidence on the issue of punitive damages. This bill removes that provision from statute. Discovery in civil cases is governed by the Florida Rules of Civil Procedure. Since the rules govern discovery, it is not clear what effect, if any, removing this provision from statute would have on current practice.

Background - Individual Liability for Punitive Damages

Section 400.0237(2), F.S., provides:

A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct³⁶ or gross negligence.³⁷

Effect of this Bill - Individual Liability for Punitive Damages

This bill provides that a defendant, including the licensee or management company against whom punitive damages is sought, may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that "a specific individual or corporate defendant actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence and contributed to the loss, damages, or injury" suffered by the claimant.

The current standard jury instructions provide for punitive damages if the defendant was "personally guilty of intentional misconduct."³⁸ This bill requires that the defendant "actively and knowingly participated in intentional misconduct."

Background - Vicarious Liability for Punitive Damages

Punitive damages claims are sometimes brought under a theory of vicarious liability where an employer is held responsible for the acts of an employee. Section 400.0273(3), F.S., provides:

In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2)³⁹ and:

- (a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;
- (b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity condoned, ratified, or consented to such conduct; or
- (c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.

³⁴ See *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 644 (Fla. 5th DCA 2005).

³⁵ See Section III.A.2., Constitutional Issues, of this analysis.

³⁶ "Intentional misconduct" is actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant will result and, despite that knowledge, intentionally pursuing a course of conduct that results in injury or damage. See s. 400.0237(2)(a), F.S.

³⁷ "Gross negligence" is conduct that is reckless or wanting in care such that it constitutes a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct. See s. 400.0237(2)(b), F.S.

³⁸ Standard Jury Instructions in Civil Cases, 503.1, Punitive Damages - Bifurcated Procedure.

³⁹ Criteria are whether the defendant was personally guilty of intentional misconduct or gross negligence.

Effect of this Bill - Vicarious Liability for Punitive Damages

This bill provides that in the case of vicarious liability of an employer, principal, corporation, or other legal entity, punitive damages may not imposed for the conduct of an employee or agent unless:

- A specifically identified employee or agent actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence and contributed to the loss, damages, or injury suffered by the claimant; and
- An officer, director, or manager of the actual employer, corporation, or legal entity condoned, ratified, or consented to the specific conduct alleged.

Background - Attorney Fees in Punitive Damages Actions

Current law provides that to the extent a claimant's attorney's fees are based on punitive damages, the attorney fees are calculated based on the final judgment for punitive damages.^{40, 41} The amount of punitive damages awarded is divided equally between the Quality of Long-Term Care Facility Improvement Trust Fund⁴² and the claimant.⁴³ The statute also provides for a split of any settlement by the parties that is reached after the verdict.⁴⁴

Current law does require that any portion of a punitive damages settlement that is reached before a verdict to be divided with the Quality of Long-Term Care Facility Improvement Trust Fund. According to the Agency for Health Care Administration, no money has been collected for the Fund pursuant to s. 400.0238, F.S.

Effect of this Bill - Attorney Fees in Punitive Damages Actions

This bill changes how attorney fees are calculated in punitive damages actions. It requires that attorney fees be calculated based on the claimant's share of punitive damages rather than the final judgment for punitive damages. This bill provides that if a claimant receives a final judgment for punitive damages or settles a case in which the claimant was granted leave to amend the complaint to add a punitive damages claim, the punitive award is divided equally between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund. The award is divided before any distribution to the claimant or claimant's counsel.

This bill further provides that if the parties enter into a settlement agreement at any point after the claimant is allowed to amend the agreement⁴⁵ to add a count for punitive damages, 50% of the total settlement amount is considered to be the punitive award. This bill provides that the punitive award is divided equally between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund before any distribution for attorney fees and costs. This bill prohibits the parties from altering the allocation by agreement.

This bill provides that settlement of a claim after the claimant has been allowed to amend the complaint to add a punitive damages count is not an admission of liability and is not governed by s. 400.0238, F.S.⁴⁶

⁴⁰ Section 400.0238(2), F.S.

⁴¹ A final judgment is an order entered by the trial judge after a jury verdict or a trial before the judge.

⁴² Section 400.0239(1), F.S., creates the "Quality of Long-Term Care Facility Improvement Trust Fund." The Fund supports activities and programs directly related to improvement of the care of nursing home and assisted living facility residents.

⁴³ Section 400.0238(4), F.S.

⁴⁴ Section 400.0238(4)(b), F.S.

⁴⁵ See Section III.C. "Drafting Issues and Other Comments" of this analysis.

⁴⁶ See Section III.C. "Drafting Issues and Other Comments" of this analysis.

Background - Nursing Home Surveys

Section 400.23, F.S., requires the Agency for Health Care Administration ("AHCA") to promulgate and enforce rules relating to the safety and care of nursing home residents. AHCA is required to evaluate all facilities at least every 15 months.⁴⁷ AHCA is specifically required to adopt rules relating to minimum staffing requirements.⁴⁸ Such requirements include a minimum weekly average of certified nursing assistant and licensed nursing staffing, a minimum daily staffing of certified nursing assistants, specified staffing ratios, and specific amounts of care per resident per day.⁴⁹

When AHCA does a survey to determine whether a nursing home is violating statutes or rules, it is required to classify the deficiencies according to the nature and scope of the deficiency.⁵⁰ The classifications are as follows:

- A class I deficiency is a deficiency that the agency determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility.
- A class II deficiency is a deficiency that the agency determines has compromised the resident's ability to maintain or reach his or her highest practicable physical, mental, and psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class III deficiency is a deficiency that the agency determines will result in no more than minimal physical, mental, or psychosocial discomfort to a resident or has the potential to compromise a resident's ability to maintain or reach his or her highest practical physical, mental, or psychosocial well-being, as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
- A class IV deficiency is a deficiency that the agency determines has the potential for causing no more than a minor negative impact on the resident. If the class IV deficiency is isolated, no plan of correction is required.⁵¹

AHCA can cite violators and impose penalties including fines or revocation of licenses for violations.

Evidence of understaffing is sometimes used to show negligence and show an entitlement to punitive damages.⁵²

Effect of this Bill - Use of Survey Reports in Punitive Damages Actions

This bill provides that state or federal survey reports may not be used to establish an entitlement to punitive damages.

⁴⁷ Section 400.23(7), F.S.

⁴⁸ Section 400.23(3), F.S.

⁴⁹ Section 400.23(3), F.S.

⁵⁰ Section 400.023(8), F.S.

⁵¹ Section 400.023(8), F.S.

⁵² See e.g. *Estate of Despain v. Avante Group, Inc.*, 900 So.2d 637, 645 (Fla. 5th DCA 2005) ("As to the vicarious liability of the corporate entities, the record evidence and proffer shows that the facility was not adequately staffed, which contributed to the inability to provide the decedent with proper care, and that numerous records regarding the decedent's care were incomplete, missing, or had been fabricated, which made assessment, treatment, and referrals of the decedent much more difficult. We believe that this showing established a reasonable basis to conclude that the corporate entities were negligent. Accordingly, Despain established a reasonable basis to plead a claim for punitive damages based on the theory of vicarious liability).

Evidence Relating to Compliance with Staffing Requirements

Effect of this Bill

This bill provides that if the licensee demonstrates compliance with the minimum staffing requirements, the licensee is entitled to a presumption that appropriate staffing was provided and the claimant is not permitted to present any testimony or other evidence of understaffing. The testimony or other evidence is only permissible for days which it can be demonstrated that the licensee was not in compliance with the minimum staffing requirements.

This bill further provides that evidence that the licensee was staffed by an insufficient number of nursing assistants or licensed nurses may not be qualified or admitted on behalf of a resident who makes a claim, unless the licensee received a class I, class II, or uncorrected class III deficiency from AHCA for failure to comply with the minimum staffing requirements and the claimant resident was identified by AHCA as having suffered actual harm because of that failure.

Deficiencies Found in Nursing Home Surveys

Effect of this Bill

This bill provides that a deficiency identified by the agency in a nursing home survey is generally not admissible in nursing home negligence litigation. However, this bill also provides an exception and allows the introduction of a survey if the survey cites the resident on whose behalf the action is brought and AHCA determines the resident sustained actual harm as a result of the deficiency.

This bill also provides that a survey may be admitted if a claimant was a member of a survey resident roster or otherwise was the subject of any survey by AHCA and AHCA did not allege or determine that any deficiency occurred with respect to that claimant during that survey. The absence of a deficiency may be used by the licensee to refute an allegation of neglect or noncompliance with regulatory standards.

Effective Date

This bill takes effect on July 1, 2011, and applies to causes of action arising on or after that date.

B. SECTION DIRECTORY:

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

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

Section 3 amends s. 400.0238, F.S., relating to punitive damages; limitation.

Section 4 amends s. 400.23, F.S., relating to rules; evaluation and deficiencies; licensure status.

Section 5 provides that this bill takes effect on July 1, 2011, and applies to causes of action accruing on or after that date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill provides that the punitive damages portion of settlements in cases involving punitive damages must be divided equally, before any distribution to claimant's counsel for costs and fees, between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund. Since

current law does not require such a distribution in all cases, the Quality of Long-Term Care Facility Improvement Trust Fund could see an increase in revenues. The amount of revenues, if any, is not known.

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:

Claimants could see smaller awards in settlements of punitive damages cases because a greater portion of the settlement will be distributed to the Quality of Long-Term Care Facility Improvement Trust Fund. Attorneys could see lower attorney fees in such punitive damage cases. The fiscal impact is not known.

The Agency for Health Care Administration provided the following comments:

The fiscal impact to the Agency will arise out of the use of survey deficiencies to prove adequate staffing issues (see page 11, lines 281-296 of bill) and the use of survey results to prove or rebut negligence (see page 12, lines 319-331). Currently, the Agency already experiences complaints filed to bolster claims. Under this bill, Agency findings are a prerequisite to staffing claims and evidence for or against other negligence. It can be easily anticipated that complaints requiring surveyor time and expense will be filed for litigation purposes. It is also certain that in the case where such deficiencies might be settled by the Agency without formal hearing, litigating parties will require discovery and testimony in the civil actions from Agency surveyors to substantiate the survey findings. Additionally, virtually all presuit investigation will include a public records request. These will result in expense to the Agency. The fiscal impact cannot be determined at this time as the Agency cannot say with surety how many more complaints, public records requests or requests for surveyors to testify in civil cases will be received as a result of this legislation.⁵³

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
Not Applicable. This bill does not appear to affect county or municipal governments.
2. Other:

⁵³ See Agency for Health Care Administration 2011 Bill Analysis & Economic Impact Statement at pp. 1-2 (on file with the Civil Justice Subcommittee).

Authority of the Supreme Court to Adopt Court Rules

Article V, s. 2(a), Fla. Const., provides that the Supreme Court shall adopt rules of practice and procedure in the courts.

Lines 66-77 of this bill require the claimant to elect "at the end of discovery but not later than 60 days before trial" whether to claim survival damages or wrongful death damages. It can be argued that requiring a claimant to make an election at a time certain encroaches on the court's authority to make rules. However, one court has addressed the current law on election of remedies and indicated the Legislature might be able to set a time certain for election:

Section 400.023(1) is silent as to whether the election of remedies must be made at the pleading stage or at the end of trial, and this appears to be an issue of first impression.⁵⁴

While the court did not consider the constitutionality of the statute in that case, it did imply that the Legislature could address the issue in statute.

Section 2 of this bill requires the trial court to hold an evidentiary hearing relating to the issues of punitive damages. It can be argued this bill requires the court to adopt a specific procedure. However, requirements that trial judges hold hearings on punitive damage claims have been in law since at least 2001 and to date no court has held those provisions unconstitutional.

Section 4 of this bill contains provisions related the admissibility of evidence such as evidence of understaffing and evidence of survey deficiencies. The Florida Supreme Court has held that portions of the Florida Evidence Code are substantive and portions are procedural. To the extent the exclusion of evidence in this bill is procedural, a court could hold the restriction violates art. V, s. 2(a), Fla. Const.

Access to Courts

Lines 69-71 of this bill provides a cap on noneconomic damages in wrongful death actions brought under section 400.023, F.S. Caps on noneconomic damages are subject to review under art. I, s. 21, Fla. Const. The constitution provides that the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay. In *Kluger v. White*, 281 So.2d 1 (Fla. 1973), the Florida Supreme Court held that:

[w]here a right of access to the courts for redress for a particular injury has been provided...the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.⁵⁵

The Florida Supreme Court in *Kluger* invalidated a statute that required a minimum of \$550 in property damages arising from an automobile accident before a lawsuit could be brought. Based upon the *Kluger* test, the Florida Supreme Court has also invalidated a portion of a tort reform statute that placed a cap on all noneconomic damages because the statute did not provide claimants with a commensurate benefit.⁵⁶ Thus, the Legislature cannot restrict damages by either enacting a minimum damage amount or a monetary cap on damages without meeting the *Kluger* test.

The caps on noneconomic damages in medical malpractice cases, found in ss. 766.207 and 766.209, F.S., have been found by the Florida Supreme Court to meet the *Kluger* test and are not violative of the access to courts provision in the Florida Constitution. In *University of Miami v.*

⁵⁴ *Estate of Trollinger*, 9 So.3d 667, 668 (Fla. 2d DCA 2009).

⁵⁵ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

⁵⁶ *See Smith v. Dept. of Insurance*, 507 So.2d 1080 (Fla. 1987).

Echarte, 618 So.2d 189 (Fla. 1993), the court ruled that the arbitration scheme met both prongs of the *Kluger* test. First, the court held that the arbitration scheme provided claimants with a commensurate benefit for the loss of the right to fully recover noneconomic damages as the claimant has the opportunity to receive prompt recovery without the risk and uncertainty of litigation or having to prove fault in a civil trial. Additionally, the claimant benefits from: reduced costs of attorney and expert witness fees which would be required to prove liability; joint and several liability of multiple defendants; prompt payment of damages after determination by the arbitration panel; interest penalties against the defendant for failure to promptly pay the arbitration award; and limited appellate review of the arbitration award.

Second, the court in *Echarte* ruled that, even if the medical malpractice arbitration statutes did not provide a commensurate benefit, the statutes satisfied the second prong of *Kluger* which requires a legislative finding that an overpowering public necessity exists, and further that no alternative method of meeting such public necessity can be shown. The court found that the Legislature's factual and policy findings of a medical malpractice crisis constituted an overpowering public necessity. The court also ruled that the record supported the conclusion that no alternative or less onerous method existed for meeting the public necessity of ending the medical malpractice crisis. The court explained, "...it is clear that both the arbitration statute, with its conditional limits on recovery of noneconomic damages, and the strengthened regulation of the medical profession are necessary to meet the medical malpractice insurance crisis."⁵⁷

This bill limits the recovery of noneconomic damages. If the cap is challenged, the court would scrutinize this limitation based on the rulings in *Kluger* and its progeny. Accordingly, the court would have to determine whether this bill provided a claimant with a reasonable alternative to the right to recover full noneconomic damages. If not, the courts would look to see whether this bill was a response to an overpowering public necessity and that no alternative method of meeting such public necessity could have been shown.

Right to a Jury Trial

Article I, s. 22, Fla. Const., provides for right to a trial by jury. This bill contains provisions that limit the admissibility of certain evidence unless AHCA has made certain findings. Specifically, lines 295 and 296 provide that evidence of understaffing cannot be admitted unless AHCA makes a finding that the claimant suffered harm due to a deficiency and lines 323-324 provide that certain evidence cannot be admitted unless AHCA finds that the claimant suffered actual harm. In *National Airlines, Inc. v. Florida Equipment Co. of Miami*, 71 So.2d 741, 744 (Fla. 1954), the Florida Supreme Court warned that it "peculiarly within the province of the jury" to draw inferences from facts and determine the ultimate facts. It could be argued that these provisions make AHCA, rather than the jury, the ultimate finder of fact if the issue in the case is whether the claimant suffered actual harm.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 42 says that a cause of action may not be asserted against an "employee" unless the "officer, director, owner, or agent breached, failed to perform, or acted outside the scope of duties as an officer, director, owner, or agent." This appears to limit causes of action against employees to situations only to situations where another party is responsible for the harm.

Lines 55-58 of this bill provide that if a cause of action is brought by or on behalf of a resident under Part II of Chapter 400, F.S., then a cause of action may not be asserted under s. 415.111, F.S., against an employee, officer, director, owner, or agent of the licensee or management company. The limitation applies to everyone who might bring a cause of action and not just causes of action by or on behalf of a nursing home resident. Since "cause of action" usually refers to civil cases and not criminal cases, it is

⁵⁷ *University of Miami v. Echarte*, 618 So.2d 189, 195-197 (Fla. 1993).

not clear if this bill would limit criminal prosecutions in situations where a civil action has been filed. Further, as previously discussed, one court has held that no civil cause of action exists under s. 415.111, F.S. It is possible that the reference to s. 415.111, F.S., in this bill is a typographical error. Section 415.1111, F.S., creates civil causes of action under ch. 415, F.S.

On line 250, the use of the word "agreement" appears to be a typographical error. This bill appears to be referring to "complaint" rather than "agreement."

Lines 261-265 provide that the settlement of a claim before a verdict is not an admission of liability and "is not governed by this section." Much of section 3 of this bill is providing for allocation of punitive damages in cases that settle before a verdict. Lines 264-265 could be interpreted to exempt such settlements from this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to nursing home litigation reform;
 3 amending s. 400.023, F.S.; specifying conditions under
 4 which a nursing home resident has a cause of action
 5 against a licensee or management company; requiring the
 6 trial judge to conduct an evidentiary hearing before a
 7 claimant can assert a claim against certain interested
 8 parties; providing a timeframe for a claimant to elect
 9 survival damages or wrongful death damages; providing a
 10 limitation on recovery; amending s. 400.0237, F.S.;
 11 requiring evidence of the basis for punitive damages;
 12 requiring the trial judge to conduct an evidentiary
 13 hearing before a claimant can assert a claim for punitive
 14 damages; permitting a licensee or management company to be
 15 held liable for punitive damages under certain
 16 circumstances; providing criteria for awarding of punitive
 17 damages in a case of vicarious liability of certain
 18 entities; amending s. 400.0238, F.S.; providing additional
 19 conditions for settlements involving claims for punitive
 20 damages; amending s. 400.23, F.S.; providing limitations
 21 for admissibility of survey and licensure reports and the
 22 presentation of testimony or other evidence of staffing
 23 deficiencies; providing applicability; providing an
 24 effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:
 27

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

30 400.023 Civil enforcement.—

31 (1) Any resident who alleges negligence or a violation of
 32 ~~whose~~ rights as specified in this part ~~has~~ are violated ~~shall~~
 33 ~~have~~ a cause of action against the licensee or its management
 34 company, as specifically identified in the application for
 35 nursing home licensure, and its direct caregiver employees.

36 Sections 400.023-400.0238 provide the exclusive remedy against a
 37 licensee or management company for a cause of action for
 38 recovery of damages for the personal injury or death of a
 39 nursing home resident arising out of negligence or a violation
 40 of residents' rights specified in s. 400.022.

41 (2) A cause of action may not be asserted individually
 42 against an employee, officer, director, owner, including any
 43 designated as having a "controlling interest" on the application
 44 for nursing home licensure, or agent of a licensee or management
 45 company under this part unless, following an evidentiary
 46 hearing, the court determines there is sufficient evidence in
 47 the record or proffered by the claimant that establishes a
 48 reasonable basis for a finding that:

49 (a) The officer, director, owner, or agent breached,
 50 failed to perform, or acted outside the scope of duties as an
 51 officer, director, owner, or agent; and

52 (b) The breach, failure to perform, or conduct outside the
 53 scope of duties is a legal cause of actual loss, injury, death,
 54 or damage to the resident.

55 (3) If an action is brought by or on behalf of a resident

56 | under this part, a cause of action under s. 415.111 may not be
 57 | asserted against an employee, officer, director, owner, or agent
 58 | of a licensee or management company.

59 | (4) The action may be brought by the resident or his or
 60 | her guardian, by a person or organization acting on behalf of a
 61 | resident with the consent of the resident or his or her
 62 | guardian, or by the personal representative of the estate of a
 63 | deceased resident regardless of the cause of death. If the
 64 | action alleges a claim for the resident's rights or for
 65 | negligence that caused the death of the resident, the claimant
 66 | shall be required to elect, at the end of discovery but not
 67 | later than 60 days before trial, either survival damages
 68 | pursuant to s. 46.021 or wrongful death damages pursuant to s.
 69 | 768.21. In any claim for wrongful death brought under this
 70 | section, noneconomic damages may not exceed a total of \$250,000,
 71 | regardless of the number of claimants or defendants.

72 | (5) If the action alleges a claim for the resident's
 73 | rights or for negligence that did not cause the death of the
 74 | resident, the personal representative of the estate may recover
 75 | damages for the negligence that caused injury to the resident.
 76 | The action may be brought in any court of competent jurisdiction
 77 | to enforce such rights and to recover actual and punitive
 78 | damages for any violation of the rights of a resident or for
 79 | negligence.

80 | (6) Any resident who prevails in seeking injunctive relief
 81 | or a claim for an administrative remedy may ~~is entitled to~~
 82 | recover the costs of the action, and a reasonable attorney's fee
 83 | assessed against the defendant not to exceed \$25,000. Fees shall

84 be awarded solely for the injunctive or administrative relief
 85 and not for any claim or action for damages whether such claim
 86 or action is brought ~~together~~ with a request for an injunction
 87 or administrative relief or as a separate action, except as
 88 provided under s. 768.79 or the Florida Rules of Civil
 89 Procedure. ~~Sections 400.023-400.0238 provide the exclusive~~
 90 ~~remedy for a cause of action for recovery of damages for the~~
 91 ~~personal injury or death of a nursing home resident arising out~~
 92 ~~of negligence or a violation of rights specified in s. 400.022.~~
 93 ~~This section does not preclude theories of recovery not arising~~
 94 ~~out of negligence or s. 400.022 which are available to a~~
 95 ~~resident or to the agency. The provisions of Chapter 766 does ~~de~~~~
 96 not apply to any cause of action brought under ss. 400.023-
 97 400.0238.

98 ~~(7)(2)~~ In any claim brought under ~~pursuant to~~ this part
 99 alleging a violation of resident's rights or negligence causing
 100 injury to or the death of a resident, the claimant has ~~shall~~
 101 ~~have~~ the burden of proving, by a preponderance of the evidence,
 102 that:

- 103 (a) The defendant breached the applicable standard of
 104 care; and owed a duty to the resident;
- 105 ~~(b) The defendant breached the duty to the resident;~~
- 106 ~~(b)(c)~~ The breach ~~of the duty~~ is a legal cause of actual
 107 loss, injury, death, or damage to the resident; ~~and~~
- 108 ~~(d) The resident sustained loss, injury, death, or damage~~
 109 ~~as a result of the breach.~~

110 (8) Nothing in this part shall be interpreted to create
 111 strict liability. A violation of the rights set forth in s.

112 400.022 or in any other standard or guidelines specified in this
 113 part or in any applicable administrative standard or guidelines
 114 of this state or a federal regulatory agency shall be evidence
 115 of negligence but shall not be considered negligence per se.

116 (9)~~(3)~~ In any claim brought pursuant to this section, a
 117 licensee, person, or entity shall have a duty to exercise
 118 reasonable care. Reasonable care is that degree of care which a
 119 reasonably careful licensee, person, or entity would use under
 120 like circumstances.

121 (10)~~(4)~~ In any claim for resident's rights violation or
 122 negligence by a nurse licensed under part I of chapter 464, such
 123 nurse shall have the duty to exercise care consistent with the
 124 prevailing professional standard of care for a nurse. The
 125 prevailing professional standard of care for a nurse shall be
 126 that level of care, skill, and treatment which, in light of all
 127 relevant surrounding circumstances, is recognized as acceptable
 128 and appropriate by reasonably prudent similar nurses.

129 (11)~~(5)~~ A licensee shall not be liable for the medical
 130 negligence of any physician rendering care or treatment to the
 131 resident except for the administrative services of a medical
 132 director as required in this part. Nothing in this subsection
 133 shall be construed to protect a licensee, person, or entity from
 134 liability for failure to provide a resident with appropriate
 135 observation, assessment, nursing diagnosis, planning,
 136 intervention, and evaluation of care by nursing staff.

137 (12)~~(6)~~ The resident or the resident's legal
 138 representative shall serve a copy of any complaint alleging in
 139 whole or in part a violation of any rights specified in this

140 part to the Agency for Health Care Administration at the time of
 141 filing the initial complaint with the clerk of the court for the
 142 county in which the action is pursued. The requirement of
 143 providing a copy of the complaint to the agency does not impair
 144 the resident's legal rights or ability to seek relief for his or
 145 her claim.

146 ~~(13)(7)~~ An action under this part for a violation of
 147 rights or negligence recognized herein is not a claim for
 148 medical malpractice, and ~~the provisions of s. 768.21(8) does de~~
 149 not apply to a claim alleging death of the resident.

150 Section 2. Subsections (1), (2), and (3) of section
 151 400.0237, Florida Statutes, are amended to read:

152 400.0237 Punitive damages; pleading; burden of proof.—

153 (1) In any action ~~for damages~~ brought under this part, a
 154 ~~ne~~ claim for punitive damages may not be brought shall be
 155 permitted unless there is a reasonable showing of admissible by
 156 evidence that has been in the record or proffered by the parties
 157 and provides claimant which would provide a reasonable basis for
 158 recovery of such damages when the criteria set forth in this
 159 section are applied. The claimant may move to amend her or his
 160 complaint to assert a claim for punitive damages as allowed by
 161 the rules of civil procedure. The trial judge shall conduct an
 162 evidentiary hearing and weigh the admissible evidence proffered
 163 by all parties to ensure that there is a reasonable basis to
 164 believe that the claimant, at trial, will be able to demonstrate
 165 by clear and convincing evidence that the recovery of such
 166 damages is warranted. ~~The rules of civil procedure shall be~~
 167 ~~liberally construed so as to allow the claimant discovery of~~

168 ~~evidence which appears reasonably calculated to lead to~~
 169 ~~admissible evidence on the issue of punitive damages. No A~~
 170 ~~discovery of financial worth~~ may not shall proceed until ~~after~~
 171 the pleading on concerning punitive damages is approved
 172 permitted.

173 (2) A defendant, including the licensee or management
 174 company against whom punitive damages is sought, may be held
 175 liable for punitive damages only if the trier of fact, based on
 176 clear and convincing evidence, finds that a specific individual
 177 or corporate defendant actively and knowingly participated in
 178 intentional misconduct or engaged in conduct that constituted
 179 gross negligence and contributed to the loss, damages, or injury
 180 suffered by the claimant ~~the defendant was personally guilty of~~
 181 ~~intentional misconduct or gross negligence~~. As used in this
 182 section, the term:

183 (a) "Intentional misconduct" means that the defendant
 184 against whom punitive damages are sought had actual knowledge of
 185 the wrongfulness of the conduct and the high probability that
 186 injury or damage to the claimant would result and, despite that
 187 knowledge, intentionally pursued that course of conduct,
 188 resulting in injury or damage.

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

193 (3) In the case of vicarious liability of an employer,
 194 principal, corporation, or other legal entity, punitive damages
 195 may not be imposed for the conduct of an employee or agent

196 unless only if the conduct of a specifically identified the
 197 employee or agent meets the criteria specified in subsection (2)
 198 and an officer, director, or manager of the actual employer,
 199 corporation, or legal entity condoned, ratified, or consented to
 200 the specific conduct as alleged in subsection (2). A state or
 201 federal survey report of nursing facilities may not be used to
 202 establish an entitlement to punitive damages under this
 203 section.÷

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

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

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

213 Section 3. Subsections (2) and (4) of section 400.0238,
 214 Florida Statutes, are amended to read:

215 400.0238 Punitive damages; limitation.—

216 (2) The claimant's attorney's fees, if payable from the
 217 judgment, are, to the extent that the fees are based on the
 218 punitive damages, calculated based on the claimant's share of
 219 ~~final judgment for~~ punitive damages. This subsection does not
 220 limit the payment of attorney's fees based upon an award of
 221 damages other than punitive damages.

222 (4) Notwithstanding any other law to the contrary, if a
 223 claimant has received a final judgment for the amount of

224 | punitive damages or there is a settlement of a case in which the
 225 | claimant was granted leave to amend his or her complaint to add
 226 | a claim for punitive damages, the punitive award ~~awarded~~
 227 | ~~pursuant to this section~~ shall be equally divided, before any
 228 | distribution to the claimant's counsel for fees or costs,
 229 | between the claimant and the Quality of Long-Term Care Facility
 230 | Improvement Trust Fund, in accordance with the following
 231 | provisions:

232 | (a) In the event of a judgment, the clerk of the court
 233 | shall transmit a copy of the jury verdict to the Chief Financial
 234 | Officer by certified mail. In the final judgment, the court
 235 | shall order the percentages of the award, payable as provided
 236 | herein. In the event of a settlement, the parties shall transmit
 237 | by certified mail to the Chief Financial Officer a statement of
 238 | the proportionate share due to the Quality of Long-Term Care
 239 | Facility Improvement Trust Fund.

240 | (b) A settlement agreement entered into between the
 241 | original parties to the action after a verdict has been returned
 242 | must provide a proportionate share payable to the Quality of
 243 | Long-Term Care Facility Improvement Trust Fund specified herein.
 244 | For purposes of this paragraph, a proportionate share is a 50-
 245 | percent share of that percentage of the settlement amount which
 246 | the punitive damages portion of the verdict bore to the total of
 247 | the compensatory and punitive damages in the verdict.

248 | (c) For a settlement agreement entered into between the
 249 | parties to the action, at any time after a claimant is permitted
 250 | by the court to amend the agreement to add a count for punitive
 251 | damages, but before a final judgment on the issue, 50 percent of

252 | the total settlement amount shall be the punitive award. The
 253 | punitive award shall be equally divided, before any distribution
 254 | to the claimant's counsel for fees or costs, between the
 255 | claimant and the Quality of Long-Term Care Facility Improvement
 256 | Trust Fund. The amount of the punitive award and the allocation
 257 | of that award provided for in this subsection may not be altered
 258 | in any way by agreement of the parties after the claimant has
 259 | been granted leave to amend his or her complaint to include a
 260 | claim for punitive damages.

261 | (d) Settlement of a claim before a verdict by a defendant
 262 | in which a claimant was permitted at any time to amend the claim
 263 | to add a count for punitive damages is not an admission of
 264 | liability for conduct described in subsection (2) and is not
 265 | governed by this section.

266 | (e)-(e) The Department of Financial Services shall collect
 267 | or cause to be collected all payments due the state under this
 268 | section. Such payments are made to the Chief Financial Officer
 269 | and deposited in the appropriate fund specified in this
 270 | subsection.

271 | (f)-(d) If the full amount of punitive damages awarded
 272 | cannot be collected, the claimant and the other recipient
 273 | designated pursuant to this subsection are each entitled to a
 274 | proportionate share of the punitive damages collected.

275 | Section 4. Paragraph (d) is added to subsection (3) and
 276 | paragraph (e) is added to subsection (8) of section 400.23,
 277 | Florida Statutes, to read:

278 | 400.23 Rules; evaluation and deficiencies; licensure
 279 | status.—

280 (3)

281 (d) In any action brought under ss. 400.023-400.0238, if

282 the licensee demonstrates compliance with the minimum staffing

283 requirements under this part, the licensee is entitled to a

284 presumption that appropriate staffing was provided and the

285 claimant may not be permitted to present any testimony or other

286 evidence of understaffing. The testimony or other evidence is

287 only permissible for days on which it can be demonstrated that

288 the licensee was not in compliance with the minimum staffing

289 requirements under this part. Evidence that the licensee was

290 staffed by an insufficient number of nursing assistants or

291 licensed nurses may not be qualified or admitted on behalf of a

292 resident who makes a claim, unless the licensee received a class

293 I, class II, or uncorrected class III deficiency for failure to

294 comply with the minimum staffing requirements under this part

295 and the claimant resident was identified by the agency as having

296 suffered actual harm because of that failure.

297 (8) The agency shall adopt rules pursuant to this part and

298 part II of chapter 408 to provide that, when the criteria

299 established under subsection (2) are not met, such deficiencies

300 shall be classified according to the nature and the scope of the

301 deficiency. The scope shall be cited as isolated, patterned, or

302 widespread. An isolated deficiency is a deficiency affecting one

303 or a very limited number of residents, or involving one or a

304 very limited number of staff, or a situation that occurred only

305 occasionally or in a very limited number of locations. A

306 patterned deficiency is a deficiency where more than a very

307 limited number of residents are affected, or more than a very

308 | limited number of staff are involved, or the situation has
 309 | occurred in several locations, or the same resident or residents
 310 | have been affected by repeated occurrences of the same deficient
 311 | practice but the effect of the deficient practice is not found
 312 | to be pervasive throughout the facility. A widespread deficiency
 313 | is a deficiency in which the problems causing the deficiency are
 314 | pervasive in the facility or represent systemic failure that has
 315 | affected or has the potential to affect a large portion of the
 316 | facility's residents. The agency shall indicate the
 317 | classification on the face of the notice of deficiencies as
 318 | follows:

319 | (e) A deficiency identified by the agency in a nursing
 320 | home survey is not admissible for any purpose in an action under
 321 | ss. 400.023-400.0238. However, a survey deficiency citing a
 322 | resident on whose behalf the action is brought may be introduced
 323 | as evidence of negligence if the agency has determined that the
 324 | resident sustained actual harm as a result thereof. If a
 325 | claimant in an action under ss. 400.023-400.0238 was a member of
 326 | a survey resident roster or otherwise was the subject of any
 327 | survey by the agency and the agency did not allege or determine
 328 | that any deficiency occurred with respect to that claimant
 329 | during that survey, the licensee may introduce the absence of a
 330 | deficiency citation to refute an allegation of neglect or
 331 | noncompliance with regulatory standards.

332 | Section 5. This act shall take effect July 1, 2011, and
 333 | shall apply to all causes of action that accrue on or after that
 334 | date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 661 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3

4 **Amendment**

5 Remove line 42 and insert:

6 against an officer, director, owner, including any

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 661 (2011)

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 Subcommittee
2 Representative(s) Gaetz offered the following:

3

4 **Amendment**

5 Remove line 56 and insert:

6 under this part, a cause of action under s. 415.1111 may not be

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 661 (2011)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3

4 **Amendment**

5 Remove line 250 and insert:

6 by the court to amend the complaint to add a count for punitive

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 661 (2011)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3
4 **Amendment**

5 Remove lines 263-265 and insert:
6 to add a count for punitive damages is not an admission or
7 finding of liability for conduct described in subsection (2).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 661 (2011)

Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3

4 **Amendment**

5 Remove line 70 and insert:

6 section, noneconomic damages may not exceed \$250,000 per
7 resident,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 661 (2011)

Amendment No. 6

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Gaetz offered the following:

3
4 **Amendment**

5 Remove lines 281-296 and insert:

6 (d) In any action brought under ss. 400.023-400.0238, if
7 the license demonstrates compliance with the minimum staffing
8 requirements under this part, the licensee is entitled to a
9 rebuttable presumption that appropriate staffing was provided.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1111 Uniform Interstate Family Support Act

SPONSOR(S): Mayfield

TIED BILLS: None IDEN./SIM. BILLS: CS/SB 1622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Woodburn <i>W</i>	Bond <i>MB</i>
2) Health & Human Services Access Subcommittee			
3) Government Operations Appropriations Subcommittee			
4) Judiciary Committee			

SUMMARY ANALYSIS

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) to the current version of UIFSA, which was amended in 2008 and for which implementing legislation is pending approval by Congress, to be eventually adopted in each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law currently has uniform standards for interstate enforcement of support orders, but not international enforcement.

This bill may have a conditional fiscal impact on state government. See fiscal comments. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Hague Convention¹

With the rise of globalization, many families form and extend across national boundaries. In the United States, family law has traditionally been a subject of local or state concern, generating significant conflict of laws problems between states. Global movement further complicates the regulation of family relationships. The United States has a large and mobile population, with an estimated 6.6 million private citizens living abroad, and many of these Americans will face challenging international family law problems. National and local laws are inadequate to manage transnational family issues, especially in cases of international adoption or parental abduction but also in ordinary custody, child support or child protection matters. As the scale and frequency of global movement has increased, family and children's issues have also taken on a new relevance in foreign relations. The Hague Conference on Private International Law (the Conference) has responded to the new realities of globalized families with a series of treaties that foster international cooperation in cases involving children. The Conference is an intergovernmental organization, funded and governed by its members.² Its traditional purpose has been to work for the progressive unification of the rules of private international law, including family and children's law. The United States signed the 2007 Hague Convention on the International Recovery of Child Support and Other Family Maintenance (Hague Convention), and implementing legislation is proceeding toward adoption.³

Uniform Interstate Family Support Act

The Uniform Interstate Family Support Act (UIFSA) was originally enacted in 1996 (and amended subsequently) to address complications in enforcing child support orders across state lines.⁴ In response to a congressional mandate,⁵ all states enacted the original 1996 version of UIFSA. After the United States signed the Hague Convention in 2007, establishing numerous provisions of uniform procedure for the processing international child support cases, the National Conference of Commissioners on Uniform State Laws (NCCUSL) amended the 2001 version of UIFSA, which serves as the implementing language for the Hague Convention throughout the states.⁶ The UIFSA provides universal and uniform rules for the enforcement of family support orders by:

- Setting jurisdictional standards for state courts;
- Determining the basis for a state to exercise continuing exclusive jurisdiction over child support proceedings;
- Establishing rules to determine which state will issue the controlling order if there are proceedings in multiple jurisdictions; and
- Providing rules to modify or refuse to modify another state's child support order.⁷

The 2008 UIFSA amendments were made to fully incorporate the provisions of the Hague Convention that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention.⁸

¹ Background on the Hague Convention was taken from the article by Ann Laquer Estin, *Families Across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States*, 62 FLA. L. REV. 47 (2010).

² The Conference was founded as a permanent organization in 1955. Statute of the Hague Conference on Private International Law, July 15, 1955, T.I.A.S. No. 5710, 2997 U.N.T.S. 123.

³ *Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance*, reprinted in 47 I.L.M. (2008).

⁴ National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 2 (2008).

⁵ 42 U.S.C. s. 666.

⁶ National Conference of Commissioners of Uniform State Laws, *Interstate Family Support Act Amendments (2008) Summary*, available at [http://www.nccusl.org/ActSummary.aspx?title=Interstate Family Support Act Amendments \(2008\)](http://www.nccusl.org/ActSummary.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)) (last visited Mar. 16, 2011).

⁷ *Id.*

State Adoption of Amended UIFSA

Federal implementing legislation pending approval by Congress will require that the 2008 amended version of UIFSA be enacted in every jurisdiction as a condition for federal funds for state child support programs.⁹ To date, Maine, Tennessee, Wisconsin, North Dakota and Nevada are the only states that have enacted the current version of UIFSA.¹⁰ In addition to Florida, several states have introduced UIFSA enacting legislation this year. Those states are: Hawaii, Missouri, New Mexico, Utah, and Washington.¹¹

Florida's UIFSA Statute

Along with the rest of the states, Florida enacted the original 1996 version of the UIFSA, which was codified in ch. 88, F.S., and remains current law. Its provisions provide the infrastructure to enforce child support laws uniformly among states to prevent parents from crossing state lines to avoid their support obligations. Some of the main concepts of UIFSA, as codified under Florida law, are outlined below.

Jurisdiction

Personal jurisdiction is the power of a court over the person of a defendant in contrast to the jurisdiction of a court over a person's property or property interest.¹² Under UIFSA, when a Florida tribunal is exercising personal jurisdiction over a nonresident, that tribunal may apply special rules of evidence to receive evidence from another state and assistance with discovery to obtain discovery through a tribunal of another state.¹³ There are also provisions for Florida courts to exercise jurisdiction to issue a support order during simultaneous proceedings in another state.¹⁴ If support orders are issued by more than one state, there is a process to determine which one controls.¹⁵

General Application

Initiating tribunals have the duty to forward copies of the petition to establish a support order and its accompanying documents to the responding tribunal.¹⁶ When acting as a responding tribunal, courts are directed to apply the procedural and substantive law generally applicable to similar proceedings originating in that state¹⁷ and determine the duty of support and the amount payable in accordance with the law and support guidelines of that state.¹⁸

Establishment of Support Order

If a support order entitled to recognition under UIFSA has not been issued, a responding tribunal may issue a support order under certain conditions.¹⁹

⁸ *Id.*

⁹ *Id.*; see also Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).

¹⁰ Uniform Law Commission, *Interstate Family Support Act Amendments (2008): Enactment Status Map*, available at [http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20\(2008\)](http://www.nccusl.org/Act.aspx?title=Interstate%20Family%20Support%20Act%20Amendments%20(2008)) (last visited Mar. 16, 2011).

¹¹ *Id.*

¹² BLACK'S LAW DICTIONARY 1144 (7th ed. 1990).

¹³ Sections 88.2011, 88.2021, 88.3161, and 88.3181, F.S.

¹⁴ Section 88.2041, F.S.

¹⁵ Section 88.2071, F.S.

¹⁶ Section 88.3041, F.S.

¹⁷ Section 88.3031(1), F.S.

¹⁸ Section 88.3031(2), F.S.

¹⁹ Section 88.4011, F.S.

Direct Enforcement of Income Withholding

An obligor is an individual who owes a duty of support and is liable under a support order.²⁰ An obligor may have his or her income withheld in order to make up for unpaid support. Employers are required to treat income-withholding orders from another state as if it had been issued by the state where he or she lives.²¹

Modification

After a child support order has been issued in one state, another state has the ability to modify the order if certain conditions are met.²²

Determination of Parentage

A state court may serve as an initiating or responding tribunal in a proceeding to determine whether a petitioner or a respondent is the parent of a particular child.²³

Grounds for Rendition

The Governor has the ability to demand that the Governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to pay child support.²⁴

Effect of this Bill

This bill conforms Florida's Uniform Interstate Family Support Act (UIFSA) under ch. 88, F.S., to the current version of UIFSA, which was amended in 2008 and is pending ratification in Congress to be adopted by each state. The 2008 UIFSA amendments were made to fully incorporate the provisions promulgated by the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention) that impact existing state laws, including guidelines for the registration, recognition, enforcement, and modification of foreign support orders from other countries that are parties to the Hague Convention. Florida law accounts for interstate enforcement of support orders, but not international enforcement. Following is a section-by-section analysis of the bill.

General Provisions

Section 1 amends s. 88.1011, F.S., containing definitions, to redefine or delete a number of existing terms to conform to the most current version of UIFSA and to include foreign countries in addition to states and also define the following new terms: "Convention"; "Foreign country"; "Foreign support order"; "Foreign tribunal"; "Issuing foreign country"; "Person"; "Record"; and "United States Central Authority."

Section 2 amends s. 88.1021, F.S., to designate the Department of Revenue as the support enforcement agency of the state.

Section 3 amends s. 88.1031, F.S., to specify that the act does not provide the exclusive method of establishing or enforcing a support order or grant authority to render judgment relating to child custody.

Section 4 creates s. 88.1041, F.S., to apply the act to foreign proceedings.

²⁰ Section 88.1011(13)(a)-(c), F.S.

²¹ Section 88.50211, F.S.

²² Section 88.6111, F.S.

²³ Section 88.7011, F.S.

²⁴ Section 88.8011, F.S.

Jurisdiction

Section 5 amends s. 88.2011, F.S., relating to bases for jurisdiction over a nonresident, to provide that personal jurisdiction under the section does not extend to the modification of child support orders unless specified conditions are met. Sections 5 and 6 both assert what is commonly described as long-arm jurisdiction over a nonresident respondent for purposes of establishing a support order or determining parentage. To sustain a support order, the tribunal must be able to assert personal jurisdiction over the parties.²⁵

Section 6 amends s. 88.2021, F.S., relating to jurisdiction over a nonresident, to specify that personal jurisdiction under the act continues as long as a tribunal has continuing jurisdiction to enforce its order.

Section 7 amends s. 88.2031, F.S., relating to forwarding proceedings between initiating and responding tribunals, to also refer to proceedings initiated in foreign countries.

Section 8 amends s. 88.2041, F.S., relating to simultaneous proceedings in another state, to include foreign countries.

Section 9 amends s. 88.2051, F.S., relating to continuing exclusive jurisdiction, to specify that except in very narrowly defined circumstances, the issuing tribunal retains continuing, exclusive jurisdiction over a child support order.²⁶

Section 10 amends s. 88.2061, F.S., relating to continuing jurisdiction, to make adjustments that are the correlative of the continuing, exclusive jurisdiction described in the previous section. It makes the distinction between the jurisdiction “to modify a support order” established in the previous section and the “continuing jurisdiction to enforce” established in this section.²⁷

Section 11 amends s. 88.2071, F.S., relating to controlling child support orders, to provide a procedure to identify one order that will be enforced in every state. It declares that if only one child support order exists, it is to be denominated the controlling order, irrespective of when and where it was issued and whether any of the individual parties or the child continues to reside in the issuing state. It also establishes the priority scheme for recognition and prospective enforcement of a single order among existing multiple orders regarding the same obligor, obligee, and child.²⁸

Section 12 amends s. 88.2081, F.S., relating to child support orders for two or more obligees, to specify that it also applies to foreign countries.

Section 13 amends s. 88.2091, F.S., relating to credit for payments, to specify that the issuing tribunal is responsible for the overall control of the enforcement methods employed and for accounting for the payments made on its order from multiple sources.²⁹

Section 14 creates s. 88.2101, F.S., relating to the application to a nonresident subject to personal jurisdiction, to specify that upon obtaining personal jurisdiction the tribunal may receive evidence from outside the state, communicate with a tribunal outside the state, and obtain discovery outside the state. In other respects, the tribunal will apply the law of the forum.

Section 15 creates s. 88.2111, F.S., relating to jurisdiction to modify spousal orders, to specify that the restriction on modification of an out-of-state spousal support order extends to foreign countries. It also

²⁵ National Conference of Commissioners of Uniform State Laws, *2008 Amendments to the Uniform Interstate Family Support Act*, 20 (2008).

²⁶ *Id.* at 27.

²⁷ *Id.* at 29.

²⁸ *Id.* at 32.

²⁹ *Id.* at 35.

provides that the question of continuing, exclusive jurisdiction is to be resolved under the law of the issuing tribunal.³⁰

Civil Provisions of General Application

Section 16 amends s. 88.3011, F.S., relating to proceedings under this act, to specify that all proceedings under this act also apply to foreign support orders.

Sections 17 and 18 amend ss. 88.3021 and 88.3031, F.S., to make technical changes.

Section 19 amends s. 88.3041, F.S., relating to the duties of the initiating tribunal, to facilitate enforcement even with states that have not implemented the updated version of UIFSA and with foreign countries.³¹

Section 20 amends s. 88.3051, F.S., relating to the duties and powers of the responding tribunal, to establish updated duties relating to responding tribunals.

Section 21 amends s. 88.3061, F.S., relating to inappropriate tribunals, to make a technical change.

Section 22 amends s. 88.3071, F.S., relating to the duties of the support enforcement agency, to specify that the obligee or the obligor may request services, and that request may be in the context of the establishment of an initial child support order, enforcement or review and adjustment of an existing child support order, or a modification of that order. It also directs the Department of Revenue, as the support enforcement agency, to make reasonable efforts to ensure that the order to be registered is the controlling one.³²

Section 23 amends s. 88.3081, F.S., relating to the duty of the Governor and Cabinet, to allow the Governor and Cabinet to make reciprocal child support determinations regarding foreign countries.

Section 24 amends s. 88.3101, F.S., relating to the duties of the state information agency, to make technical changes and add a reference to foreign countries.

Section 25 amends s. 88.3111, F.S., to establish the requirements for drafting and filing interstate pleadings.³³

Section 26 amends s. 88.3121, F.S., relating to pleadings and accompanying documents, to create an exception for providing certain information in the pleadings if its disclosure is likely to harm a party or child.

Sections 27 and 28 amend ss. 88.3131 and 88.3141, F.S., to make technical changes.

Section 29 amends s. 88.3161, F.S., relating to special rules of evidence, to make technical changes and specify that a voluntary acknowledgment of paternity is admissible to establish parentage.

Sections 30 and 31 amend ss. 88.3171 and 88.3181, F.S., to make technical changes.

Section 32 amends s. 88.3191, F.S., relating to receipt and disbursement of payments, to require that when all parties reside in this state, the Department of Revenue or a tribunal must direct support payments in another state if necessary and send an income-withholding order to the obligor's employer.

³⁰ *Id.* at 37.

³¹ *Id.* at 41.

³² *Id.* at 47.

³³ *Id.* at 51.

Establishment of Support Order

Section 33 amends s. 88.4011, F.S., relating to support order establishment, to authorize a responding tribunal of this state to issue temporary and permanent support orders binding on an obligor over whom the tribunal has personal jurisdiction when the person or entity requesting the order is "outside this state" (i.e., anywhere else in the world). It also specifies circumstances relating to parentage that make a support order appropriate.³⁴

Section 34 directs the Division of Statutory Revision to redesignate part V of chapter 88 as "Enforcement of Support Order of Another State without Registration."

Section 36 amends s. 88.50211, F.S., relating to the designation of payment of funds as directed by the withholding order.

Direct Enforcement

Sections 35 and 37 amend ss. 88.5011 and 88.5031, F.S., to add more specific language to provisions regarding income-withholding orders.

Sections 38 and 39 amend ss. 88.5041, and 88.5051 F.S., to make technical changes to apply the sections to foreign countries.

Section 40 amends s. 88.5061, F.S., relating to a contest by the obligor, to provide more specific instructions for a contest by the obligor.

Section 42 directs the Division of Statutory Revision to redesignate part VI of chapter 88, as "Registration, Enforcement, and Modification of Support Order."

Sections 41 and 43 amend ss. 88.5071 and 88.6011, F.S., to make technical changes to apply the sections to foreign countries.

Enforcement and Modification

Section 44 amends s. 88.6021, F.S., relating to procedure to register an order for enforcement, to provide cross references and specify a process to be followed by a person requesting registration when two or more orders are in effect.

Section 45 amends s. 88.6031, F.S., relating to effect of registration for enforcement, to apply the section to foreign countries.

Section 46 amends s. 88.6041, F.S., relating to choice of law, to modify the conditions under which the law of the issuing state governs.

Section 47 amends s. 88.6051, F.S., relating to notice of registration of an order, to make technical changes applying the section to foreign countries and specify notice requirements when two or more orders are in effect.

Section 48 amends s. 88.6061, F.S., relating to the procedure to contest validity or enforcement of a registered order, to provide cross references and make technical changes.

Sections 49 and 50 amend ss. 88.6071 and 88.6081 F.S., to make technical changes.

Section 51 amends s. 88.6091, F.S., to provide a technical change for a statutory cross-reference.

³⁴ *Id.* at 61.

Section 52 amends s. 88.6111, F.S., relating to modification of a child support order of another state, to provide cross references and create an exception relating to jurisdiction to modify an order when the parties and the child no longer reside in the issuing state and one party resides outside the United States.

Section 53 amends s. 88.6121, F.S., relating to recognition of an order modified in another state, to make technical changes.

Section 54 creates s. 88.6151, F.S., to provide standards of jurisdiction to modify a child support order of a foreign country.

Section 55 creates s. 88.6161, F.S., to specify a procedure to register a child support order of a foreign country for modification.

Section 56 directs the Division of Statutory Revision to redesignate part VII of chapter 88 as "Support Proceeding under Convention."

Section 57 repeals s. 88.7011, F.S., relating to a proceeding to determine parentage.

Section 58 creates s. 88.70111, F.S., providing definitions for; "Application;" "Central authority;" "Convention support order;" "Direct request;" "Foreign central authority;" "Foreign support agreement;" and "United States central authority."

Provisions Specific to Foreign Countries

Section 59 creates s. 88.7021, F.S., providing that the section applies only to a support proceeding involving a foreign country in which the Hague Convention is in force with respect to the United States.

Section 60 creates s. 88.7031, F.S., to define the relationship between the Department of Revenue (department) and the United States Central Authority. It recognizes the department as the agency designated by the United States Central Authority to perform specific functions under the Hague Convention.

Section 61 creates s. 88.7041, F.S., relating to the initiation by a governmental entity of support proceedings subject to the Hague Convention, to provide a list of requirements in such proceedings, and to list which support proceedings are available to an obligor under the Hague Convention. It also lists which support proceedings are available to an obligor against whom there is an existing support order.

Section 62 creates s. 88.7051, F.S., to specify provisions for a petitioner to file a direct request in a tribunal in this state seeking the establishment or modification of a support order or determination of parentage. The law of the state will apply in these proceedings. In direct request for enforcement of foreign support orders, an obligee or obligor who has benefitted from free legal assistance is also entitled to any free legal assistance provided under state law.

Section 63 creates s. 88.7061, F.S., relating to the registration of a foreign support order subject to the Hague Convention. It specifies that a party who is seeking recognition of a foreign support order is required to register the order with the state. The request for registration is required to be accompanied by an enumerated list of other documents.

Section 64 creates s. 88.7071, F.S., relating to a contest of the validity of a foreign support order subject to the Hague Convention. It provides that a contest to the recognition of a foreign support order must be filed within 30 days after the notice of the registration. If the contesting party lives outside the United States, he or she will have 60 days after the notice. It also lists possible bases for a contest, such as lack of basis for enforcement, questionable authenticity, etc.

Section 65 creates s. 88.7081, F.S., relating to the recognition and enforcement of a foreign support order subject to the Hague Convention. It provides that this state is required to recognize a foreign support order if the issuing tribunal had personal jurisdiction and the order is enforceable in the issuing country. This section also provides a process for when a tribunal of this state does not recognize a foreign support order. If the order is not recognized as a whole, any severable portions are to be recognized.

Section 66 creates s. 88.7091, F.S., relating to refusal of recognition and enforcement of a foreign support order subject to the Hague Convention. Grounds for refusal of a foreign support order include a determination that the order is incompatible with public policy, was obtained by fraud, etc.

Section 67 creates s. 88.7101, F.S., relating to foreign support orders subject to the Hague Convention. This section states that a direct request for recognition and enforcement of a foreign support order must be accompanied by the complete text of the foreign order and a record stating that the order is an enforceable decision in the issuing country. Grounds for refusal to recognize foreign orders are also listed.

Section 68 creates s. 88.7111, F.S., relating to modification of a foreign child support order subject to the Hague Convention. It provides that a tribunal in this state may not modify a foreign support order if the obligee remains a resident of the issuing country, except under specified circumstances.

Section 69 creates s. 88.7112, F.S., relating to jurisdiction to modify a spousal support order of a foreign country. This section provides that a tribunal of this state having personal jurisdiction over the parties may modify a spousal support order of a foreign tribunal under specified circumstances.

Section 70 amends s. 88.8091, F.S., relating to a technical change.

Section 71 amends s. 88.9011, F.S., to specify that in applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law among enacting states.

Section 72 amends s. 88.9031, F.S., relating to severability.

Sections 73 and 74 amend ss. 61.13 and 827.06, F.S., relating to support of children, parenting and time-sharing, and nonsupport of dependents to provide cross references.

Section 75 provides an effective date of July 1, 2011.

B. SECTION DIRECTORY:

See above.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the Department of Revenue (DOR or department), the bill will create an operational workload because DOR will have to prepare and submit a formal request for an exemption from Federal Title IV-D requirements to the Federal Office of Child Support Enforcement. The department will also have to revise its procedures for interstate case processing and retrain staff. The bill may also affect DOR's IV-D automated system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may have a positive fiscal impact on Florida residents who are owed child support from foreign obligors who currently face great difficulties in collecting.

D. FISCAL COMMENTS:

The Department of Revenue reports that amendments to UIFSA can result in the state being out of compliance with federal law and losing federal funding. However, it is anticipated that, as some point in the near future, federal law will require passage of this act and at that point the failure to pass this law would result in a loss of federal funding.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Pursuant to federal law, Florida adopted the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to continue to receive federal funding for state child support programs.³⁵ There is currently similar legislation pending in Congress to require adoption of the 2008 UIFSA revision represented in the bill.³⁶ Congress has the authority to act only pursuant to express or implied legislative authority in the Constitution.³⁷ Under the Tenth Amendment, all other powers are reserved to the states and the people. The authority to make laws relating to family issues is not delegated in the Constitution and is thus something that has traditionally been left to the discretion of the states. However, the Supreme Court has held that under its broad taxing and spending powers, "Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power 'to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory administrative objectives.'"³⁸ Therefore, it seems permissible for Congress to require the states to adopt this uniform act in the furtherance of the policy objective of international child support enforcement.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments from the Florida Department of Revenue

³⁵ 42 U.S.C. s. 666.

³⁶ Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, Treaty Doc. 110-21, Exec. Rept. 111-2, 111th Congress 2d. Session (Jan. 22, 2010).

³⁷ U.S. CONST. art. 1, s. 1. states that "All legislative Powers herein granted shall be vested in a Congress of the United States which shall consist of a Senate and a House of Representatives."

³⁸ *South Dakota v. Dole*, 483 U.S. 203, 206 (1987) (holding that Congress had the authority to mandate a national minimum drinking age conditioned on federal funding).

Federal law requires that states adopt the 1996 version of the Uniform Interstate Family Support Act (UIFSA) in order to receive federal funding. After the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention), UIFSA was amended in 2008 to incorporate the treaty created at Hague Convention. Currently, the U.S. Senate has ratified the treaty, but it is not in effect in the United States because full effect requires state law amendments.

This bill makes many changes to ch. 88, F.S., which is the section of law relating to UIFSA. According to the Department of Revenue (DOR or department), if this bill passes, Florida will not be in compliance with federal law.³⁹ If Florida is not in compliance with federal law, its Title IV-D plan may be disapproved, which will mean Florida will not receive federal IV-D matching funds or incentive payments. Additionally, a federal financial penalty may be imposed on the state's Title IV-A TANF block grant.⁴⁰

The Federal Office of Child Support Enforcement (OCSE or office) has stated that if a state adopts UIFSA, as amended in 2008, "verbatim" and with a provision that the effective date is delayed until the Hague Convention is ratified, then OCSE will approve the state's IV-D state plan.⁴¹

A state may formally request an exemption or waiver from the OCSE justifying why the state's Title IV-D plan should be approved, but the OCSE may not grant the request. Because this bill does not adopt UIFSA, as amended in 2008, verbatim, and the bill does not contain a delayed effective date contingent on the ratification of the Hague Convention, Florida would have to formally request an exemption from OCSE.⁴²

According to DOR, there are currently only four states that have adopted UIFSA, as amended in 2008, and the law in each of those states incorporated a delayed effective date pending approval of the Hague Convention.⁴³

Telephonic Testimony

The bill amends s. 88.3161(6), F.S., to require a tribunal to permit a party or witness outside this state to be deposed or to testify by telephone, audiovisual means, or other electronic means. Currently, UIFSA allows, but does not require, a tribunal to permit telephonic testimony. Allowing a party to provide telephonic testimony requires the consent of all parties involved in the proceeding.⁴⁴ To the extent that this bill requires a tribunal to permit such testimony over the objection of a party, it will conflict with the Florida rules of judicial administration, as well as Florida case law.

Determination of Paternity

According to DOR, the state is required by federal law to determine paternity in interstate initiating and responding cases.⁴⁵ Under current law, s. 88.7011, F.S., provides that a tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought to determine parentage. This bill repeals that section of law. The determination of parentage is still provided for under s. 88.3051, F.S., in the bill; however, this section of law only relates to the duties and powers of a responding tribunal. There is no corresponding provision in s. 88.3041, F.S., which relates to the duties of the initiating tribunal.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Office of Child Support Enforcement, Administration for Children and Families, U.S. Dep't of Health and Human Servs., *Dear Colleague Letter DCL-08-41, Subject: Uniform Interstate Family Support Act 2008*, available at <http://www.acf.hhs.gov/programs/cse/pol/DCL/2008/dcl-08-41.htm> (last visited Mar. 24, 2011).

⁴² According to DOR, a delayed effective date that is contingent on ratification of a treaty by the United States may constitute an impermissible delegation of legislative authority in violation of article II, section 3 of the Florida Constitution. Florida Department of Revenue, *supra* note 39.

⁴³ *Id.*

⁴⁴ Fla. R. Jud. Admin. 2.530(d)(1); *M.S. v. Dep't of Children and Families*, 6 So. 3d 109 (Fla. 4th DCA 2009); *S.A. v. Dep't of Children and Families*, 961 So. 2d 1066 (Fla. 3d DCA 2007).

⁴⁵ Florida Department of Revenue, *supra* note 39; *see also* 45 C.F.R. s. 303.7.

Accordingly, it appears that if this bill becomes law, a tribunal of this state may only act as a responding tribunal in determination of parentage proceedings.

Legal Assistance

The bill creates s. 88.7051, F.S., which provides, in part, that in a direct request for recognition and enforcement of a foreign support order or agreement the obligee or obligor is entitled to benefit from free legal assistance provided for by the law of this state if the person was receiving free legal assistance in the issuing country. According to DOR, "the impact of this requirement, legally and fiscally, is unknown."⁴⁶

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to the Uniform Interstate Family Support
 3 Act; amending s. 88.1011, F.S.; revising and providing
 4 definitions; amending s. 88.1021, F.S.; designating the
 5 Department of Revenue as the support enforcement agency of
 6 this state; amending s. 88.1031, F.S.; revising provisions
 7 relating to remedies provided by the act; creating s.
 8 88.1041, F.S.; providing for applicability of provisions
 9 to residents of foreign counties and foreign support
 10 proceedings; amending s. 88.2011, F.S.; providing that
 11 specified bases of personal jurisdiction may not be used
 12 to acquire personal jurisdiction for certain purposes
 13 unless specified requirements are met; amending s.
 14 88.2021, F.S.; providing for duration of personal
 15 jurisdiction; deleting provisions relating to procedure
 16 when exercising jurisdiction over nonresident; amending
 17 ss. 88.2031 and 88.2041, F.S.; conforming provisions to
 18 changes made by the act; amending s. 88.2051, F.S.;
 19 revising provisions relating to continuation of exclusive
 20 jurisdiction; amending s. 88.2061, F.S.; providing for
 21 continuing jurisdiction to enforce child support orders;
 22 amending s. 88.2071, F.S.; revising provisions relating to
 23 determination of a controlling child support order;
 24 amending s. 88.2081, F.S.; revising language relating to
 25 child support orders for two or more obligees; amending s.
 26 88.2091, F.S.; revising language relating to credit for
 27 child support payments; creating s. 88.2101, F.S.;
 28 providing for application of the act to a nonresident

29 subject to personal jurisdiction; creating s. 88.2111,
 30 F.S.; providing for continuing, exclusive jurisdiction to
 31 modify a spousal support order; amending s. 88.3011, F.S.;
 32 revising provisions relating to applicability of the act;
 33 amending ss. 88.3021 and 88.3031, F.S.; revising
 34 terminology; amending s. 88.3041, F.S.; revising
 35 provisions relating to duties of an initiating tribunal;
 36 amending s. 88.3051, F.S.; revising provisions relating to
 37 duties and powers of a responding tribunal; amending s.
 38 88.3061, F.S.; revising terminology; amending s. 88.3071,
 39 F.S.; revising provisions relating to the duties of a
 40 support enforcement agency; amending s. 88.3081, F.S.;
 41 providing that the Governor and Cabinet may determine that
 42 a foreign country has established a reciprocal arrangement
 43 for child support with this state and take appropriate
 44 action for notification of the determination; amending s.
 45 88.3101, F.S.; revising terminology; amending s. 88.3111,
 46 F.S.; revising provisions relating to pleadings and
 47 accompanying documents; amending s. 88.3121, F.S.;
 48 revising requirements for nondisclosure of certain
 49 information; amending ss. 88.3131 and 88.3141, F.S.;
 50 revising terminology; amending s. 88.3161, F.S.; revising
 51 provisions relating to special rules of evidence and
 52 procedure; amending ss. 88.3171 and 88.3181, F.S.;
 53 revising terminology; amending s. 88.3191, F.S.; revising
 54 provisions relating to receipt and disbursement of
 55 payments; amending s. 88.4011, F.S.; revising provisions
 56 relating to establishment of a support order; providing a

57 | directive to the Division of Statutory Revision; amending
 58 | s. 88.5011, F.S.; revising provisions relating to an
 59 | employer's receipt of an income-withholding order from
 60 | another state; amending ss. 88.50211, 88.5031, 88.5041,
 61 | and 88.5051, F.S.; revising terminology; amending s.
 62 | 88.5061, F.S.; revising provisions relating to a contest
 63 | by obligor; amending s. 88.5071, F.S.; revising
 64 | terminology; providing a directive to the Division of
 65 | Statutory Revision; amending s. 88.6011, F.S.; revising
 66 | terminology; amending s. 88.6021, F.S.; revising
 67 | provisions relating to the procedure to register order for
 68 | enforcement; amending s. 88.6031, F.S.; revising
 69 | terminology; amending s. 88.6041, F.S.; revising
 70 | provisions relating to choice of law; amending s. 88.6051,
 71 | F.S.; revising provisions relating to notice of
 72 | registration of order; amending s. 88.6061, F.S.; revising
 73 | provisions relating to the procedure to contest the
 74 | validity or enforcement of a registered order; amending s.
 75 | 88.6071, F.S.; revising provisions relating to the
 76 | contesting of registration or enforcement; amending s.
 77 | 88.6081, F.S.; revising terminology; amending s. 88.6091,
 78 | F.S.; correcting a cross-reference; amending s. 88.6111,
 79 | F.S.; revising provisions relating to modification of a
 80 | child support order of another state; amending s. 88.6121,
 81 | F.S.; revising provisions relating to recognition of a
 82 | child support order modified in another state; creating s.
 83 | 88.6151, F.S.; providing for jurisdiction to modify a
 84 | child support order of a foreign county; creating s.

85 88.6161, F.S.; providing procedures for registration of a
 86 child support order of a foreign country for modification;
 87 providing a directive to the Division of Statutory
 88 Revision; repealing s. 88.7011, F.S., relating to a
 89 proceeding to determine parentage; creating s. 88.70111,
 90 F.S.; providing definitions relating to a support
 91 proceeding under the Convention on the International
 92 Recovery of Child Support and Other Forms of Family
 93 Maintenance; creating s. 88.7021, F.S.; providing for
 94 applicability; creating s. 88.7031, F.S.; specifying the
 95 relationship of the Department of Revenue to the United
 96 States central authority; creating s. 88.7041, F.S.;
 97 providing for initiation by the Department of Revenue of
 98 support proceedings subject to the convention; creating s.
 99 88.7051, F.S.; providing for direct requests to tribunals;
 100 creating s. 88.7061, F.S.; providing for registration of a
 101 support order subject to the convention; creating s.
 102 88.7071, F.S.; providing for contests of the validity of
 103 foreign support orders subject to the convention; creating
 104 s. 88.7081, F.S.; providing for the recognition and
 105 enforcement of a foreign support order subject to the
 106 convention; creating s. 88.7091, F.S.; specifying grounds
 107 for the refusal of recognition and enforcement of foreign
 108 support order subject to the convention; creating s.
 109 88.7101, F.S.; providing requirements for a foreign
 110 support agreement subject to the convention; creating s.
 111 88.7111, F.S.; providing for the modification of a foreign
 112 child support order subject to the convention; creating s.

113 88.7121, F.S.; providing jurisdiction to modify a spousal
 114 support order of a foreign country; amending s. 88.8011,
 115 F.S.; revising terminology; amending s. 88.9011, F.S.;
 116 revising provisions relating to the uniformity of
 117 application and construction of the act; amending s.
 118 88.9031, F.S.; revising terminology; amending ss. 61.13
 119 and 827.06, F.S.; correcting cross-references; providing
 120 an effective date.

121

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

123

124 Section 1. Section 88.1011, Florida Statutes, is amended
 125 to read:

126 88.1011 Definitions.—As used in this act:

127 (1) "Child" means an individual, whether over or under the
 128 age of majority, who is or is alleged to be owed a duty of
 129 support by the individual's parent or who is or is alleged to be
 130 the beneficiary of a support order directed to the parent.

131 (2) "Child support order" means a support order for a
 132 child, including a child who has attained the age of majority
 133 under the law of the issuing state or foreign country.

134 (3) "Convention" means the Convention on the International
 135 Recovery of Child Support and Other Forms of Family Maintenance,
 136 concluded at The Hague on November 23, 2007.

137 (4) ~~(3)~~ "Duty of support" means an obligation imposed or
 138 imposable by law to provide support for a child, spouse, or
 139 former spouse, including an unsatisfied obligation to provide
 140 support.

141 (5) "Foreign country" means a country, including a
 142 political subdivision thereof, other than the United States,
 143 that authorizes the issuance of support orders and:
 144 (a) Which has been declared under the law of the United
 145 States to be a foreign reciprocating country;
 146 (b) Which has established a reciprocal arrangement for
 147 child support with this state as provided in s. 88.3081;
 148 (c) Which has enacted a law or established procedures for
 149 the issuance and enforcement of support orders which are
 150 substantially similar to the procedures under this act; or
 151 (d) In which the convention is in force with respect to
 152 the United States.
 153 (6) "Foreign support order" means a support order of a
 154 foreign tribunal.
 155 (7) "Foreign tribunal" means a court, administrative
 156 agency, or quasi-judicial entity of a foreign country which is
 157 authorized to establish, enforce, or modify support orders or to
 158 determine parentage of a child. The term includes a competent
 159 authority under the convention.
 160 (8)~~(4)~~ "Home state" means the state in which a child lived
 161 with a parent or a person acting as parent for at least 6
 162 consecutive months immediately preceding the time of filing of a
 163 petition or comparable pleading for support and, if a child is
 164 less than 6 months old, the state in which the child lived from
 165 birth with any of them. A period of temporary absence of any of
 166 them is counted as part of the 6-month or other period.
 167 (9)~~(5)~~ "Income" includes earnings or other periodic
 168 entitlements to money from any source and any other property

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169 subject to withholding for support under the law of this state.

170 (10)~~(6)~~ "Income-withholding order" means an order or other
 171 legal process directed to an obligor's employer or other debtor,
 172 as defined by the income deduction law of this state, or payor
 173 as defined by s. 61.046, to withhold support from the income of
 174 the obligor.

175 ~~(7) "Initiating state" means a state from which a
 176 proceeding is forwarded or in which a proceeding is filed for
 177 forwarding to a responding state under this act or a law or
 178 procedure substantially similar to this act, the Uniform
 179 Reciprocal Enforcement of Support Act, or the Revised Uniform
 180 Reciprocal Enforcement of Support Act.~~

181 (11)~~(8)~~ "Initiating tribunal" means the authorized
 182 tribunal ~~in an initiating state.~~

183 (12) "Issuing foreign country" means the foreign country
 184 in which a tribunal issues a support order or a judgment
 185 determining parentage of a child.

186 (13)~~(9)~~ "Issuing state" means the state in which a
 187 tribunal issues a support order or renders a judgment
 188 determining parentage.

189 (14)~~(10)~~ "Issuing tribunal" means the tribunal that issues
 190 a support order or ~~renders~~ a judgment determining parentage.

191 (15)~~(11)~~ "Law" includes decisional and statutory law and
 192 rules and regulations having the force of law.

193 (16)~~(12)~~ "Obligee" means:

194 (a) An individual to whom a duty of support is or is
 195 alleged to be owed or in whose favor a support order ~~has been~~
 196 ~~issued~~ or a judgment determining parentage has been issued

197 ~~rendered;~~

198 (b) A state or political subdivision to which the rights
 199 under a duty of support or support order have been assigned or
 200 which has independent claims based on financial assistance
 201 provided to an individual obligee; ~~or~~

202 (c) An individual seeking a judgment determining parentage
 203 of the individual's child; or

204 (d) A person that is a creditor in a proceeding under part
 205 VII of this chapter.

206 (17) ~~(13)~~ "Obligor" means an individual, or the estate of a
 207 decedent that:

208 (a) ~~Who~~ Who owes or is alleged to owe a duty of support;

209 (b) ~~Who~~ Who is alleged but has not been adjudicated to be a
 210 parent of a child; or

211 (c) ~~Who~~ Who is liable under a support order.

212 (18) "Person" means an individual, corporation, business
 213 trust, estate, trust, partnership, limited liability company,
 214 association, joint venture, public corporation, government, or
 215 governmental subdivision, agency, or instrumentality or any
 216 other legal or commercial entity.

217 (19) "Record" means information that is inscribed on a
 218 tangible medium or that is stored in an electronic or other
 219 medium that is retrievable in perceivable form.

220 (20) ~~(14)~~ "Register" means to record or file a support
 221 order or judgment determining parentage of a child issued in
 222 another state or a foreign country ~~in the Registry of Foreign~~
 223 ~~Support Orders of the circuit court, or other appropriate~~
 224 ~~location for the recording or filing of foreign judgments~~

225 ~~generally or foreign support orders specifically.~~

226 (21)~~(15)~~ "Registering tribunal" means a tribunal in which
227 a support order is registered.

228 (22)~~(16)~~ "Responding state" means a state in which a
229 proceeding is filed or to which a proceeding is forwarded for
230 filing from another state or a foreign country ~~an initiating~~
231 ~~state under this act or a law or procedure substantially similar~~
232 ~~to this act, the Uniform Reciprocal Enforcement of Support Act,~~
233 ~~or the Revised Uniform Reciprocal Enforcement of Support Act.~~

234 (23)~~(17)~~ "Responding tribunal" means the authorized
235 tribunal in a responding state.

236 (24)~~(18)~~ "Spousal-support order" means a support order for
237 a spouse or former spouse of the obligor.

238 (25)~~(19)~~ "State" means a state of the United States, the
239 District of Columbia, Puerto Rico, the United States Virgin
240 Islands, or any territory or insular possession subject to the
241 jurisdiction of the United States. The term includes:

242 ~~(a) an Indian tribe; and~~

243 ~~(b) A foreign jurisdiction that has enacted a law or~~
244 ~~established procedures for issuance and enforcement of support~~
245 ~~orders which are substantially similar to the procedures under~~
246 ~~this act, the Uniform Reciprocal Enforcement of Support Act, or~~
247 ~~the Revised Uniform Reciprocal Enforcement of Support Act, as~~
248 ~~determined by the Attorney General.~~

249 (26)~~(20)~~ "Support enforcement agency" means a public
250 official or agency authorized to seek:

251 (a) Seek enforcement of support orders or laws relating to
252 the duty of support;

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- 253 (b) Seek establishment or modification of child support;
- 254 (c) Request determination of parentage; ~~or~~
- 255 (d) Attempt to locate obligors or their assets; or
- 256 (e) Request determination of the controlling child support
- 257 order.

258 (27)-(21) "Support order" means a judgment, decree, ~~or~~
 259 order, or directive, whether temporary, final, or subject to
 260 modification, issued in a state or foreign country for the
 261 benefit of a child, a spouse, or a former spouse, which provides
 262 for monetary support, health care, arrearages, retroactive
 263 support, or reimbursement for financial assistance provided to
 264 an individual obligee in place of child support. The term, ~~and~~
 265 may include related costs and fees, interest, income
 266 withholding, automatic adjustment, reasonable attorney's fees,
 267 and other relief.

268 (28)-(22) "Tribunal" means a court, administrative agency,
 269 or quasi-judicial entity authorized to establish, enforce, or
 270 modify support orders or to determine parentage.

271 Section 2. Section 88.1021, Florida Statutes, is amended
 272 to read:

273 88.1021 ~~Tribunal of State~~ tribunal and support enforcement
 274 agency.-

275 (1) The circuit court or other appropriate court,
 276 administrative agency, quasi-judicial entity, or combination is
 277 the tribunal of this state.

278 (2) The Department of Revenue is the support enforcement
 279 agency of this state.

280 Section 3. Section 88.1031, Florida Statutes, is amended

281 to read:

282 88.1031 Remedies cumulative.—

283 (1) Remedies provided by this act are cumulative and do
 284 not affect the availability of remedies under other law, or the
 285 recognition of a foreign support order on the basis of comity.

286 (2) This act does not:

287 (a) Provide the exclusive method of establishing or
 288 enforcing a support order under the law of this state; or

289 (b) Grant a tribunal of this state jurisdiction to render
 290 judgment or issue an order relating to child custody or
 291 visitation in a proceeding under this act.

292 Section 4. Section 88.1041, Florida Statutes, is created
 293 to read:

294 88.1041 Application to resident of foreign county and
 295 foreign support proceeding.—

296 (1) A tribunal of this state shall apply parts I through
 297 VI of this chapter, and, as applicable, part VII of this
 298 chapter, to a support proceeding involving:

299 (a) A foreign support order;

300 (b) A foreign tribunal; or

301 (c) An obligee, obligor, or child residing in a foreign
 302 country.

303 (2) A tribunal of this state that is requested to
 304 recognize and enforce a support order on the basis of comity may
 305 apply the procedural and substantive provision of parts I
 306 through VI of this chapter.

307 (3) Part VII of this chapter applies only to a support
 308 proceeding under the convention. In such a proceeding, if a

309 provision of part VII of this chapter is inconsistent with parts
 310 I through VI of this chapter, part VII of this chapter controls.

311 Section 5. Section 88.2011, Florida Statutes, is amended
 312 to read:

313 88.2011 Bases for jurisdiction over nonresident.—

314 (1) In a proceeding to establish, enforce, or modify a
 315 support order or to determine parentage, a tribunal of this
 316 state may exercise personal jurisdiction over a nonresident
 317 individual or the individual's guardian or conservator if:

318 (a)~~(1)~~ The individual is personally served with citation,
 319 summons, or notice within this state;

320 (b)~~(2)~~ The individual submits to the jurisdiction of this
 321 state by consent, by entering a general appearance, or by filing
 322 a responsive document having the effect of waiving any contest
 323 to personal jurisdiction;

324 (c)~~(3)~~ The individual resided with the child in this
 325 state;

326 (d)~~(4)~~ The individual resided in this state and provided
 327 prenatal expenses or support for the child;

328 (e)~~(5)~~ The child resides in this state as a result of the
 329 acts or directives of the individual;

330 (f)~~(6)~~ The individual engaged in sexual intercourse in
 331 this state and the child may have been conceived by that act of
 332 intercourse;

333 (g)~~(7)~~ The individual asserted parentage in a tribunal or
 334 in a putative father registry maintained in this state by the
 335 appropriate agency; or

336 (h)~~(8)~~ There is any other basis consistent with the

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337 constitutions of this state and the United States for the
 338 exercise of personal jurisdiction.

339 (2) The bases of personal jurisdiction set forth in
 340 subsection (1) or in any other law of this state may not be used
 341 to acquire personal jurisdiction for tribunal of this state to
 342 modify a child support order of another state unless the
 343 requirements of s. 88.6111 are met, or, in the case of a foreign
 344 support order, unless the requirements of s. 88.6151 are met.

345 Section 6. Section 88.2021, Florida Statutes, is amended
 346 to read:

347 88.2021 Duration of personal Procedure when exercising
 348 jurisdiction over nonresident. ~~Personal jurisdiction acquired by~~
 349 ~~a tribunal of this state in a proceeding under this act or other~~
 350 ~~law of this state relating to a support order continues so long~~
 351 ~~as a tribunal of this state has continuing, exclusive~~
 352 ~~jurisdiction to modify its order or continuing jurisdiction to~~
 353 ~~enforce its order as provided by ss. 88.2051, 88.2061, and~~
 354 ~~88.2111 A tribunal of this state exercising personal~~
 355 ~~jurisdiction over a nonresident under s. 88.2011 may apply s.~~
 356 ~~88.3161 (special rules of evidence and procedure) to receive~~
 357 ~~evidence from another state, and s. 88.3181 (assistance with~~
 358 ~~discovery) to obtain discovery through a tribunal of another~~
 359 ~~state. In all other respects, parts III through VII of this~~
 360 ~~chapter do not apply and the tribunal shall apply the procedural~~
 361 ~~and substantive law of this state, including the rules on choice~~
 362 ~~of law other than those established by this act.~~

363 Section 7. Section 88.2031, Florida Statutes, is amended
 364 to read:

365 88.2031 Initiating and responding tribunal of state.—Under
 366 this act, a tribunal of this state may serve as an initiating
 367 tribunal to forward proceedings to another state and as a
 368 responding tribunal for proceedings initiated in another state
 369 or a foreign country.

370 Section 8. Section 88.2041, Florida Statutes, is amended
 371 to read:

372 88.2041 Simultaneous proceedings in another state.—

373 (1) A tribunal of this state may exercise jurisdiction to
 374 establish a support order if the petition or comparable pleading
 375 is filed after a petition or comparable pleading is filed in
 376 another state or a foreign country only if:

377 (a) The petition or comparable pleading in this state is
 378 filed before the expiration of the time allowed in the other
 379 state or the foreign country for filing a responsive pleading
 380 challenging the exercise of jurisdiction by the other state or
 381 the foreign country;

382 (b) The contesting party timely challenges the exercise of
 383 jurisdiction in the other state or the foreign country; and

384 (c) If relevant, this state is the home state of the
 385 child.

386 (2) A tribunal of this state may not exercise jurisdiction
 387 to establish a support order if the petition or comparable
 388 pleading is filed before a petition or comparable pleading is
 389 filed in another state or a foreign country if:

390 (a) The petition or comparable pleading in the other state
 391 or the foreign country is filed before the expiration of the
 392 time allowed in this state for filing a responsive pleading

393 | challenging the exercise of jurisdiction by this state;

394 | (b) The contesting party timely challenges the exercise of
395 | jurisdiction in this state; and

396 | (c) If relevant, the other state or the foreign country is
397 | the home state of the child.

398 | Section 9. Section 88.2051, Florida Statutes, is amended
399 | to read:

400 | 88.2051 Continuing exclusive jurisdiction.—

401 | (1) A tribunal of this state has issued ~~issuing~~ a support
402 | order consistent with the law of this state has and shall
403 | exercise continuing exclusive jurisdiction to modify ~~ever~~ a
404 | child support order if the order is the controlling order and:

405 | (a) At the time of the filing of a request for
406 | modification, As long as this state is ~~remains~~ the residence of
407 | the obligor, the individual obligee, or the child for whose
408 | benefit the support order is issued; or

409 | (b) Even if this state is not the residence of the
410 | obligor, the individual obligee, or the child for whose benefit
411 | the support order is issued, the parties consent in a record or
412 | in open court that the tribunal of this state may continue to
413 | exercise jurisdiction to modify its order ~~Until all of the~~
414 | ~~parties who are individuals have filed written consents with the~~
415 | ~~tribunal of this state for a tribunal of another state to modify~~
416 | ~~the order and assume continuing exclusive jurisdiction.~~

417 | (2) A tribunal of this state that has issued ~~issuing~~ a
418 | child support order consistent with the law of this state may
419 | not exercise ~~its~~ continuing, exclusive jurisdiction to modify
420 | the order if: ~~the order has been modified by a tribunal of~~

421 ~~another state pursuant to this act or a law substantially~~
 422 ~~similar to this act.~~

423 (a) All of the parties who are individuals file consent in
 424 a record with the tribunal of this state that a tribunal of
 425 another state that has jurisdiction over at least one of the
 426 parties who is an individual or that is located in the state of
 427 residence of the child may modify the order and assume
 428 continuing, exclusive jurisdiction; or

429 (b) Its order is not the controlling order.

430 ~~(3) If a child support order of this state is modified by~~
 431 ~~a tribunal of another state pursuant to this act or a law~~
 432 ~~substantially similar to this act, a tribunal of this state~~
 433 ~~loses its continuing exclusive jurisdiction with regard to~~
 434 ~~prospective enforcement of the order issued in this state, and~~
 435 ~~may only:~~

436 ~~(a) Enforce the order that was modified as to amounts~~
 437 ~~accruing before the modification;~~

438 ~~(b) Enforce nonmodifiable aspects of that order; and~~

439 ~~(c) Provide other appropriate relief for violations of~~
 440 ~~that order which occurred before the effective date of the~~
 441 ~~modification.~~

442 (3)(4) If a tribunal of this state shall recognize the
 443 continuing exclusive jurisdiction of a tribunal of another state
 444 which has issued a child support order pursuant to this act or a
 445 law substantially similar to this act which modifies a child
 446 support order of a tribunal of this state, tribunals of this
 447 state shall recognize the continuing, exclusive jurisdiction of
 448 the tribunal of the other state.

449 (4) A tribunal of this state that lacks continuing,
 450 exclusive jurisdiction to modify a child support order may serve
 451 as an initiating tribunal to request a tribunal of another state
 452 to modify a support order issued in that state.

453 (5) A temporary support order issued ex parte or pending
 454 resolution of a jurisdictional conflict does not create
 455 continuing exclusive jurisdiction in the issuing tribunal.

456 ~~(6) A tribunal of this state issuing a support order~~
 457 ~~consistent with the law of this state has continuing exclusive~~
 458 ~~jurisdiction over a spousal support order throughout the~~
 459 ~~existence of the support obligation. A tribunal of this state~~
 460 ~~may not modify a spousal support order issued by a tribunal of~~
 461 ~~another state having continuing exclusive jurisdiction over that~~
 462 ~~order under the law of that state.~~

463 Section 10. Section 88.2061, Florida Statutes, is amended
 464 to read:

465 88.2061 ~~Enforcement and modification of support order by~~
 466 ~~tribunal having~~ Continuing jurisdiction to enforce child support
 467 order.-

468 (1) A tribunal of this state that has issued a child
 469 support order consistent with the law of this state may serve as
 470 an initiating tribunal to request a tribunal of another state to
 471 enforce; ~~or modify a support order issued in that state.~~

472 (a) The order if the order is the controlling order and
 473 has not been modified by a tribunal of another state that
 474 assumed jurisdiction pursuant to the Uniform Interstate Family
 475 Support Act; or

476 (b) A money judgment for arrears of support and interest

477 on the order accrued before a determination that an order of a
 478 tribunal of another state is the controlling order.

479 (2) A tribunal of this state having continuing ~~exclusive~~
 480 jurisdiction over a support order may act as a responding
 481 tribunal to enforce ~~or modify~~ the order. ~~If a party subject to~~
 482 ~~the continuing exclusive jurisdiction of the tribunal no longer~~
 483 ~~resides in the issuing state, in subsequent proceedings the~~
 484 ~~tribunal may apply s. 88.3161 (special rules of evidence and~~
 485 ~~procedure) to receive evidence from another state and s. 88.3181~~
 486 ~~(assistance with discovery) to obtain discovery through a~~
 487 ~~tribunal of another state.~~

488 ~~(3) A tribunal of this state which lacks continuing~~
 489 ~~exclusive jurisdiction over a spousal support order may not~~
 490 ~~serve as a responding tribunal to modify a spousal support order~~
 491 ~~of another state.~~

492 Section 11. Section 88.2071, Florida Statutes, is amended
 493 to read:

494 88.2071 Determination ~~Recognition~~ of controlling child
 495 support order.—

496 (1) If a proceeding is brought under this act and only one
 497 tribunal has issued a child support order, the order of that
 498 tribunal controls and must be so recognized.

499 (2) If a proceeding is brought under this act, and two or
 500 more child support orders have been issued by tribunals of this
 501 state or another state with regard to the same obligor and the
 502 same child, a tribunal of this state having personal
 503 jurisdiction over both the obligor and individual obligee shall
 504 apply the following rules and by order shall determine ~~in~~

505 ~~determining which order controls to recognize for purposes of~~
 506 ~~continuing, exclusive jurisdiction:~~

507 (a) If only one of the tribunals would have continuing,
 508 exclusive jurisdiction under this act, the order of that
 509 tribunal controls and must be so recognized.

510 (b) 1. If more than one of the tribunals would have
 511 continuing, exclusive jurisdiction under this act, an order
 512 issued by a tribunal in the current home state of the child
 513 ~~controls; and must be so recognized,~~ but

514 2. If an order has not been issued in the current home
 515 state of the child, the order most recently issued controls ~~and~~
 516 ~~must be so recognized.~~

517 (c) If none of the tribunals would have continuing,
 518 exclusive jurisdiction under this act, the tribunal of this
 519 state ~~having jurisdiction over the parties~~ shall issue a child
 520 support order, which controls ~~and must be so recognized.~~

521 (3) If two or more child support orders have been issued
 522 for the same obligor and the same child, upon request of a ~~and~~
 523 ~~if the obligor or the individual obligee resides in this state,~~
 524 a party who is an individual or a support enforcement agency,
 525 ~~may request~~ a tribunal of this state having personal
 526 jurisdiction over both the obligor and the obligee who is an
 527 individual shall ~~to~~ determine which order controls ~~and must be~~
 528 ~~so recognized~~ under subsection (2). The request may be filed
 529 with a registration for enforcement or registration for
 530 modification pursuant to part VI of this chapter, or may be
 531 filed as a separate proceeding ~~must be accompanied by a~~
 532 ~~certified copy of every support order in effect. The requesting~~

533 ~~party shall give notice of the request to each party whose~~
 534 ~~rights may be affected by the determination.~~

535 (4) A request to determine which is the controlling order
 536 must be accompanied by a copy of every child support order in
 537 effect and the applicable record of payments. The requesting
 538 party shall give notice of the request to each party whose
 539 rights may be affected by the determination.

540 ~~(5)(4)~~ The tribunal that issued the controlling order
 541 under subsection (1), subsection (2), or subsection (3) ~~is the~~
 542 ~~tribunal that~~ has continuing, exclusive jurisdiction to the
 543 extent provided in ss. ~~under s.~~ 88.2051 and 88.2061.

544 ~~(6)(5)~~ A tribunal of this state that ~~which~~ determines by
 545 order which is the identity of the controlling order under
 546 paragraph (2)(a), ~~or~~ paragraph (2)(b), or subsection (3) or that
 547 ~~which~~ issues a new controlling order under paragraph (2)(c)
 548 shall state in that order:

549 (a) The basis upon which the tribunal made its
 550 determination.

551 (b) The amount of prospective support, if any.

552 (c) The total amount of consolidated arrears and accrued
 553 interest, if any, under all of the orders after all payments
 554 made are credited as provided by s. 88.2091.

555 ~~(7)(6)~~ Within 30 days after issuance of an order
 556 determining which is the identity of the controlling order, the
 557 party obtaining the order shall file a certified copy of it in
 558 ~~with~~ each tribunal that issued or registered an earlier order of
 559 child support. A party or support enforcement agency obtaining
 560 ~~who obtains~~ the order that ~~and~~ fails to file a certified copy is

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561 subject to appropriate sanctions by a tribunal in which the
 562 issue of failure to file arises. The failure to file does not
 563 affect the validity or enforceability of the controlling order.

564 (8) An order that has been determined to be the
 565 controlling order, or a judgment for consolidated arrears of
 566 support and interest, if any, made pursuant to this section must
 567 be recognized in proceedings under this act.

568 Section 12. Section 88.2081, Florida Statutes, is amended
 569 to read:

570 88.2081 ~~Multiple~~ Child support orders for two or more
 571 obligees.—In responding to ~~multiple~~ registrations, petitions, or
 572 comparable pleadings for enforcement of two or more child
 573 support orders in effect at the same time with regard to the
 574 same obligor and different individual obligees, at least one of
 575 which was issued by a tribunal of another state, a tribunal of
 576 this state shall enforce those orders in the same manner as if
 577 the ~~multiple~~ orders had been issued by a tribunal of this state.

578 Section 13. Section 88.2091, Florida Statutes, is amended
 579 to read:

580 88.2091 Credit for payments.—A tribunal of this state
 581 shall credit amounts collected ~~and credited~~ for a particular
 582 period pursuant to any child support order against the amount
 583 owed for the same period under any other child support order for
 584 support of the same child ~~a support order issued by a tribunal~~
 585 ~~of another state must be credited against the amounts accruing~~
 586 ~~or accrued~~ for the same period under any other child ~~a~~ support
 587 order issued by the tribunal of this state, another state, or a
 588 foreign country.

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589 Section 14. Section 88.2101, Florida Statutes, is created
 590 to read:

591 88.2101 Application of act to nonresident subject to
 592 personal jurisdiction.—A tribunal of this state exercising
 593 personal jurisdiction over a nonresident in a proceeding under
 594 this act, under another law of this state relating to a support
 595 order, or recognizing a foreign support order may receive
 596 evidence from outside this state pursuant to s. 88.3161,
 597 communicate with a tribunal outside this state pursuant to s.
 598 88.3171, and obtain discovery through a tribunal outside this
 599 state pursuant to s. 88.3181. In all other respects, parts III
 600 through VI of this chapter do not apply, and the tribunal shall
 601 apply the procedural and substantive law of this state.

602 Section 15. Section 88.2111, Florida Statutes, is created
 603 to read:

604 88.2111 Continuing, exclusive jurisdiction to modify
 605 spousal support order.—

606 (1) A tribunal of this state issuing a spousal support
 607 order consistent with the law of this state has continuing,
 608 exclusive jurisdiction to modify the spousal support order
 609 throughout the existence of the obligation.

610 (2) A tribunal of this state may not modify a spousal
 611 support order issued by a tribunal of another state or foreign
 612 country having continuing, exclusive jurisdiction over that
 613 order under the law of that state or foreign country.

614 (3) A tribunal of this state that has continuing,
 615 exclusive jurisdiction over a spousal support order may serve
 616 as:

617 (a) An initiating tribunal to request a tribunal of
 618 another state to enforce the spousal support order issued in
 619 this state; or

620 (b) A responding tribunal to enforce or modify its own
 621 spousal support order.

622 Section 16. Section 88.3011, Florida Statutes, is amended
 623 to read:

624 88.3011 Proceedings under this act.—

625 (1) Except as otherwise provided in this act, this part
 626 ~~article~~ applies to all proceedings under this act.

627 ~~(2) This act provides for the following proceedings:~~

628 ~~(a) Establishment of an order for spousal support or child~~
 629 ~~support pursuant to part IV;~~

630 ~~(b) Enforcement of a support order and income-withholding~~
 631 ~~order of another state without registration pursuant to part V;~~

632 ~~(c) Registration of an order for spousal support or child~~
 633 ~~support of another state for enforcement pursuant to part VI;~~

634 ~~(d) Modification of an order for child support or spousal~~
 635 ~~support issued by a tribunal of this state pursuant to ss.~~
 636 ~~88.2031-88.2061;~~

637 ~~(e) Registration of an order for child support of another~~
 638 ~~state for modification pursuant to part VI;~~

639 ~~(f) Determination of parentage pursuant to part VII; and~~

640 ~~(g) Assertion of jurisdiction over nonresidents pursuant~~
 641 ~~to ss. 88.2011-88.2021.~~

642 (2)(3) An individual petitioner or a support enforcement
 643 agency may initiate ~~commence~~ a proceeding authorized under this
 644 act by filing a petition or a comparable pleading in an

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645 initiating tribunal for forwarding to a responding tribunal or
 646 by filing a petition or a comparable pleading directly in a
 647 tribunal of another state or a foreign country which has or can
 648 obtain personal jurisdiction over the respondent.

649 Section 17. Section 88.3021, Florida Statutes, is amended
 650 to read:

651 88.3021 Proceeding ~~Action~~ by minor parent.—A minor parent,
 652 or a guardian or other legal representative of a minor parent,
 653 may maintain a proceeding on behalf of or for the benefit of the
 654 minor's child.

655 Section 18. Section 88.3031, Florida Statutes, is amended
 656 to read:

657 88.3031 Application of law of state.—Except as otherwise
 658 provided in ~~by~~ this act, a responding tribunal of this state
 659 shall:

660 (1) ~~Shall~~ Apply the procedural and substantive law,
 661 including the rules on choice of law, generally applicable to
 662 similar proceedings originating in this state and may exercise
 663 all powers and provide all remedies available in those
 664 proceedings; and

665 (2) ~~Shall~~ Determine the duty of support and the amount
 666 payable in accordance with the law and support guidelines of
 667 this state.

668 Section 19. Section 88.3041, Florida Statutes, is amended
 669 to read:

670 88.3041 Duties of initiating tribunal.—

671 (1) Upon the filing of a petition or comparable pleading
 672 authorized by this act, an initiating tribunal of this state

673 shall forward ~~three copies of~~ the petition and its accompanying
 674 documents or a comparable pleading and its accompanying
 675 documents:

676 (a) To the responding tribunal or appropriate support
 677 enforcement agency in the responding state; or

678 (b) If the identity of the responding tribunal is unknown,
 679 to the state information agency of the responding state with a
 680 request that they be forwarded to the appropriate tribunal and
 681 that receipt be acknowledged.

682 (2) If requested by the responding tribunal ~~a responding~~
 683 ~~state has not enacted this act or a law or procedure~~
 684 ~~substantially similar to this act,~~ a tribunal of this state
 685 shall ~~may~~ issue a certificate or other document and make
 686 findings required by the law of the responding state. If the
 687 responding tribunal ~~state~~ is in a foreign country ~~jurisdiction,~~
 688 upon request the tribunal of this state shall ~~may~~ specify the
 689 amount of support sought, convert that amount into the
 690 equivalent amount in the foreign currency under applicable
 691 official or market exchange rate as publicly reported, and
 692 provide any other documents necessary to satisfy the
 693 requirements of the responding foreign tribunal ~~state~~.

694 Section 20. Section 88.3051, Florida Statutes, is amended
 695 to read:

696 88.3051 Duties and powers of responding tribunal.—

697 (1) When a responding tribunal of this state receives a
 698 petition or comparable pleading from an initiating tribunal or
 699 directly pursuant to s. 88.3011 (2) ~~(3)~~, it shall cause the
 700 petition or comparable pleading to be filed and notify the

701 petitioner where and when it was filed.

702 (2) A responding tribunal of this state, to the extent not
 703 prohibited ~~otherwise authorized~~ by other law, may do one or more
 704 of the following:

705 (a) Establish ~~Issue~~ or enforce a support order, modify a
 706 child support order, determine the controlling child support
 707 order, or ~~render a judgment to~~ determine parentage of a child.

708 (b) Order an obligor to comply with a support order,
 709 specifying the amount and the manner of compliance.

710 (c) Order income withholding.

711 (d) Determine the amount of any arrearages, and specify a
 712 method of payment.

713 (e) Enforce orders by civil or criminal contempt, or both.

714 (f) Set aside property for satisfaction of the support
 715 order.

716 (g) Place liens and order execution on the obligor's
 717 property.

718 (h) Order an obligor to keep the tribunal informed of the
 719 obligor's current residential address, telephone number,
 720 employer, address of employment, and telephone number at the
 721 place of employment.

722 (i) Issue a bench warrant, *capias*, or writ of bodily
 723 attachment for an obligor who has failed after proper notice to
 724 appear at a hearing ordered by the tribunal and enter the bench
 725 warrant, *capias*, or writ of bodily attachment in any local and
 726 state computer systems for criminal warrants.

727 (j) Order the obligor to seek appropriate employment by
 728 specified methods.

729 (k) Award reasonable attorney's fees and other fees and
730 costs.

731 (1) Grant any other available remedy.

732 (3) A responding tribunal of this state shall include in a
733 support order issued under this act, or in the documents
734 accompanying the order, the calculations on which the support
735 order is based.

736 (4) A responding tribunal of this state may not condition
737 the payment of a support order issued under this act upon
738 compliance by a party with provisions for visitation.

739 (5) If a responding tribunal of this state issues an order
740 under this act, the tribunal shall send a copy of the order to
741 the petitioner and the respondent and to the initiating
742 tribunal, if any.

743 (6) If requested to enforce a support order, arrears, or
744 judgment, or modify a support order stated in a foreign
745 currency, a responding tribunal of this state shall convert the
746 amount stated in the foreign currency to the equivalent amount
747 in dollars under the applicable official or market exchange rate
748 as publicly reported.

749 Section 21. Section 88.3061, Florida Statutes, is amended
750 to read:

751 88.3061 Inappropriate tribunal.—If a petition or
752 comparable pleading is received by an inappropriate tribunal of
753 this state, the tribunal ~~it~~ shall forward the pleading and
754 accompanying documents to an appropriate tribunal of ~~in~~ this
755 state or another state and notify the petitioner where and when
756 the pleading was sent.

757 Section 22. Section 88.3071, Florida Statutes, is amended
 758 to read:

759 88.3071 Duties of support enforcement agency.—

760 (1) In a proceeding under this act, a support enforcement
 761 agency of this state, upon request:

762 (a) Shall provide services to a petitioner residing in a
 763 state;

764 (b) Shall provide services to a petitioner requesting
 765 services through a central authority of a foreign country as
 766 described in s. 88.1011(5)(a) or s. 88.1011(5)(d); and

767 (c) May provide services to a petitioner who is an
 768 individual not residing in a state ~~A support enforcement agency~~
 769 ~~of this state, upon request, shall provide services to a~~
 770 ~~petitioner in a proceeding under this act.~~

771 (2) A support enforcement agency that is providing
 772 services to the petitioner as appropriate shall:

773 (a) Take all steps necessary to enable an appropriate
 774 tribunal in this state, ~~or~~ another state, or a foreign country
 775 to obtain jurisdiction over the respondent.

776 (b) Request an appropriate tribunal to set a date, time,
 777 and place for a hearing.

778 (c) Make a reasonable effort to obtain all relevant
 779 information, including information as to income and property of
 780 the parties.

781 (d) Within 10 days, exclusive of Saturdays, Sundays, and
 782 legal holidays, after receipt of a written notice from an
 783 initiating, responding, or registering tribunal, send a copy of
 784 the notice to the petitioner.

785 (e) Within 10 days, exclusive of Saturdays, Sundays, and
 786 legal holidays, after receipt of a written communication from
 787 the respondent or the respondent's attorney, send a copy of the
 788 communication to the petitioner.

789 (f) Notify the petitioner if jurisdiction over the
 790 respondent cannot be obtained.

791 (3) A support enforcement agency of this state that
 792 requests registration of a child support order in this state for
 793 enforcement or for modification shall make reasonable efforts:

794 (a) To ensure that the order to be registered is the
 795 controlling order; or

796 (b) If two or more child support orders exist and the
 797 identity of the controlling order has not been determined, to
 798 ensure that a request for such a determination is made in a
 799 tribunal having jurisdiction to do so.

800 (4) A support enforcement agency of this state that
 801 requests registration and enforcement of a support order,
 802 arrear, or judgment stated in a foreign currency shall convert
 803 the amounts stated in the foreign currency into the equivalent
 804 amounts in dollars under the applicable official or market
 805 exchange rate as publicly reported.

806 (5) A support enforcement agency of this state shall issue
 807 or request a tribunal of this state to issue a child support
 808 order and an income-withholding order that redirect payment of
 809 current support, arrear, and interest if requested to do so by
 810 a support enforcement agency of another state pursuant to s.
 811 88.3191.

812 (6)~~(3)~~ This act does not create or negate a relationship

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813 of attorney and client or other fiduciary relationship between a
 814 support enforcement agency or the attorney for the agency and
 815 the individual being assisted by the agency.

816 Section 23. Section 88.3081, Florida Statutes, is amended
 817 to read:

818 88.3081 Duty of Governor and Cabinet.—

819 (1) If the Governor and Cabinet determine that the support
 820 enforcement agency is neglecting or refusing to provide services
 821 to an individual, the Governor and Cabinet may order the agency
 822 to perform its duties under this act or may provide those
 823 services directly to the individual.

824 (2) The Governor and Cabinet may determine that a foreign
 825 country has established a reciprocal arrangement for child
 826 support with this state and take appropriate action for
 827 notification of the determination.

828 Section 24. Paragraph (c) of subsection (2) of section
 829 88.3101, Florida Statutes, is amended to read:

830 88.3101 Duties of state information agency.—

831 (2) The state information agency shall:

832 (c) Forward to the appropriate tribunal in the place in
 833 this state in which the ~~individual~~ obligee who is an individual
 834 or the obligor resides, or in which the obligor's property is
 835 believed to be located, all documents concerning a proceeding
 836 under this act received from another state or a foreign country
 837 ~~an initiating tribunal or the state information agency of the~~
 838 ~~initiating state.~~

839 Section 25. Subsection (1) of section 88.3111, Florida
 840 Statutes, is amended to read:

841 88.3111 Pleadings and accompanying documents.-
 842 (1) In a proceeding under this act, a petitioner seeking
 843 to establish ~~or modify~~ a support order, ~~or~~ to determine
 844 parentage of a child, or to register and modify a support order
 845 of a tribunal of another state or a foreign country ~~in a~~
 846 ~~proceeding under this act~~ must file a ~~verify the~~ petition or
 847 comparable pleading. Unless otherwise ordered under s. 88.3121
 848 ~~(nondisclosure of information in exceptional circumstances)~~, the
 849 petition or comparable pleading or the documents accompanying
 850 either the petition or comparable pleading must provide, so far
 851 as known, the name, residential address, and social security
 852 numbers of the obligor and the obligee or the parent and alleged
 853 parent, and the name, sex, residential address, social security
 854 number, and date of birth of each child for whose benefit ~~whom~~
 855 support is sought or whose parentage is to be determined. Unless
 856 filed at the time of registration, the petition must be
 857 accompanied by a ~~certified~~ copy of any support order known to
 858 have been issued by another tribunal ~~in effect~~. The petition may
 859 include any other information that may assist in locating or
 860 identifying the respondent.

861 Section 26. Section 88.3121, Florida Statutes, is amended
 862 to read:

863 88.3121 Nondisclosure of information in exceptional
 864 circumstances.-If a party alleges in an affidavit or a pleading
 865 under oath that the health, safety, or liberty of a party or
 866 child would be jeopardized by disclosure of specific identifying
 867 information, that information must be sealed and may not be
 868 disclosed to the other party or the public. After a hearing in

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869 which a tribunal takes into consideration the health, safety, or
 870 liberty of the party or child, the tribunal may order disclosure
 871 of information that the tribunal determines to be in the
 872 interest of justice ~~Upon a finding, which may be made ex parte,~~
 873 ~~that the health, safety, or liberty of a party or child would be~~
 874 ~~unreasonably put at risk by the disclosure of identifying~~
 875 ~~information, or if an existing order so provides, a tribunal~~
 876 ~~shall order that the address of the child or party or other~~
 877 ~~identifying information not be disclosed in a pleading or other~~
 878 ~~document filed in a proceeding under this act.~~

879 Section 27. Subsection (2) of section 88.3131, Florida
 880 Statutes, is amended to read:

881 88.3131 Costs and fees.—

882 (2) If an obligee prevails, a responding tribunal of this
 883 state may assess against an obligor filing fees, reasonable
 884 attorney's fees, other costs, and necessary travel and other
 885 reasonable expenses incurred by the obligee and the obligee's
 886 witnesses. The tribunal may not assess fees, costs, or expenses
 887 against the obligee or the support enforcement agency of either
 888 the initiating or the responding state or foreign country,
 889 except as provided by other law. Attorney's fees may be taxed as
 890 costs, and may be ordered paid directly to the attorney, who may
 891 enforce the order in the attorney's own name. Payment of support
 892 owed to the obligee has priority over fees, costs, and expenses.

893 Section 28. Subsections (1) and (3) of section 88.3141,
 894 Florida Statutes, are amended to read:

895 88.3141 Limited immunity of petitioner.—

896 (1) Participation by a petitioner in a proceeding under

897 | this act before a responding tribunal, whether in person, by
 898 | private attorney, or through services provided by the support
 899 | enforcement agency, does not confer personal jurisdiction over
 900 | the petitioner in another proceeding.

901 | (3) The immunity granted by this section does not extend
 902 | to civil litigation based on acts unrelated to a proceeding
 903 | under this act committed by a party while physically present in
 904 | this state to participate in the proceeding.

905 | Section 29. Section 88.3161, Florida Statutes, is amended
 906 | to read:

907 | 88.3161 Special rules of evidence and procedure.—

908 | (1) The physical presence of a nonresident party who is an
 909 | individual ~~the petitioner~~ in a ~~responding~~ tribunal of this state
 910 | is not required for the establishment, enforcement, or
 911 | modification of a support order or the rendition of a judgment
 912 | determining parentage of a child.

913 | (2) ~~An A-verified petition or other comparable pleading,~~
 914 | affidavit, a document substantially complying with federally
 915 | mandated forms, or ~~and~~ a document incorporated by reference in
 916 | any of them, which would not be excluded under the hearsay rule
 917 | if given in person, is admissible in evidence if given under
 918 | penalty of perjury ~~oath~~ by a party or witness residing outside
 919 | this ~~in another~~ state.

920 | (3) A copy of the record of child support payments
 921 | certified as a true copy of the original by the custodian of the
 922 | record may be forwarded to a responding tribunal. The copy is
 923 | evidence of facts asserted in it, and is admissible to show
 924 | whether payments were made.

925 (4) Copies of bills for testing for parentage of a child,
 926 and for prenatal and postnatal health care of the mother and
 927 child, furnished to the adverse party at least 10 days before
 928 trial, are admissible in evidence to prove the amount of the
 929 charges billed and that the charges were reasonable, necessary,
 930 and customary.

931 (5) Documentary evidence transmitted from outside this
 932 ~~another~~ state to a tribunal of this state by telephone,
 933 telecopier, or other electronic means that do not provide an
 934 original record ~~writing~~ may not be excluded from evidence on an
 935 objection based on the means of transmission.

936 (6) In a proceeding under this act, a tribunal of this
 937 state shall ~~may~~ permit a party or witness residing outside this
 938 ~~in another~~ state to be deposed or to testify by telephone,
 939 audiovisual means, or other electronic means at a designated
 940 tribunal or other location ~~in that state~~. A tribunal of this
 941 state shall cooperate with other tribunals ~~of other states~~ in
 942 designating an appropriate location for the deposition or
 943 testimony.

944 (7) If a party called to testify at a civil hearing
 945 refuses to answer on the ground that the testimony may be self-
 946 incriminating, the trier of fact may draw an adverse inference
 947 from the refusal.

948 (8) A privilege against disclosure of communications
 949 between spouses does not apply in a proceeding under this act.

950 (9) The defense of immunity based on the relationship of
 951 husband and wife or parent and child does not apply in a
 952 proceeding under this act.

953 (10) A voluntary acknowledgment of paternity, certified as
 954 a true copy, is admissible to establish parentage of a child.

955 Section 30. Section 88.3171, Florida Statutes, is amended
 956 to read:

957 88.3171 Communications between tribunals.—A tribunal of
 958 this state may communicate with a tribunal outside this ~~of~~
 959 ~~another~~ state in a record ~~writing~~, or by telephone, electronic
 960 mail, or other means, to obtain information concerning the laws
 961 of that state, the legal effect of a judgment, decree, or order
 962 of that tribunal, and the status of a proceeding ~~in the other~~
 963 ~~state~~. A tribunal of this state may furnish similar information
 964 by similar means to a tribunal outside this ~~of another~~ state.

965 Section 31. Section 88.3181, Florida Statutes, is amended
 966 to read:

967 88.3181 Assistance with discovery.—A tribunal of this
 968 state may:

969 (1) Request a tribunal outside this ~~of another~~ state to
 970 assist in obtaining discovery.

971 (2) Upon request, compel a person over which ~~whom~~ it has
 972 jurisdiction to respond to a discovery order issued by a
 973 tribunal outside this ~~of another~~ state.

974 Section 32. Section 88.3191, Florida Statutes, is amended
 975 to read:

976 88.3191 Receipt and disbursement of payments.—

977 (1) A support enforcement agency or tribunal of this state
 978 shall disburse promptly any amounts received pursuant to a
 979 support order, as directed by the order. The agency or tribunal
 980 shall furnish to a requesting party or tribunal of another state

981 | or a foreign country a certified statement by the custodian of
 982 | the record of the amounts and dates of all payments received.

983 | (2) If neither the obligor, nor the obligee who is an
 984 | individual, nor the child resides in this state, upon request
 985 | from the support enforcement agency of this state or another
 986 | state, the support enforcement agency of this state or a
 987 | tribunal of this state shall:

988 | (a) Direct that the support payment be made to the support
 989 | enforcement agency in the state in which the obligee is
 990 | receiving services; and

991 | (b) Issue and send to the obligor's employer a conforming
 992 | income-withholding order or an administrative notice of change
 993 | of payee, reflecting the redirected payments.

994 | (3) The support enforcement agency of this state receiving
 995 | redirected payments from another state pursuant to a law similar
 996 | to subsection (2) shall furnish to a requesting party or
 997 | tribunal of the other state a certified statement by the
 998 | custodian of the record of the amount and dates of all payments
 999 | received.

1000 | Section 33. Section 88.4011, Florida Statutes, is amended
 1001 | to read:

1002 | 88.4011 Establishment of ~~Petition to establish~~ support
 1003 | order.—

1004 | (1) If a support order entitled to recognition under this
 1005 | act has not been issued, a responding tribunal of this state
 1006 | with personal jurisdiction over the parties may issue a support
 1007 | order if:

1008 | (a) The individual seeking the order resides in another

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1009 state; or

1010 (b) The support enforcement agency seeking the order is
1011 located in another state.

1012 (2) The tribunal may issue a temporary child support order
1013 if the tribunal determines that such an order is appropriate and
1014 the individual ordered to pay is:

1015 (a) A presumed father of the child;

1016 (b) Petitioning to have his paternity adjudicated;

1017 (c) Identified as the father of the child through genetic
1018 testing;

1019 (d) An alleged father who has declined to submit to
1020 genetic testing;

1021 (e) Shown by clear and convincing evidence to be the
1022 father of the child;

1023 (f) An acknowledged father as provided in s. 382.013, s.
1024 382.016, or s. 742.10;

1025 (g) The mother of the child; or

1026 (h) An individual who has been ordered to pay child
1027 support in a previous proceeding and the order has not been
1028 reversed or vacated

1029 ~~(a) The respondent has signed a verified statement~~
1030 ~~acknowledging parentage;~~

1031 ~~(b) The respondent has been determined by or pursuant to~~
1032 ~~law to be the parent; or~~

1033 ~~(c) There is other clear and convincing evidence that the~~
1034 ~~respondent is the child's parent.~~

1035 (3) Upon finding, after notice and opportunity to be
1036 heard, that an obligor owes a duty of support, the tribunal

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1037 shall issue a support order directed to the obligor and may
 1038 issue other orders pursuant to s. 88.3051.

1039 Section 34. The Division of Statutory Revision is directed
 1040 to redesignate part V of chapter 88, Florida Statutes, as
 1041 "ENFORCEMENT OF SUPPORT ORDER OF ANOTHER STATE WITHOUT
 1042 REGISTRATION."

1043 Section 35. Section 88.5011, Florida Statutes, is amended
 1044 to read:

1045 88.5011 Employer's receipt of income-withholding order of
 1046 another state.—An income-withholding order issued in another
 1047 state may be sent by or on behalf of the obligee, or by the
 1048 support enforcement agency, to the person ~~or entity~~ defined as
 1049 the obligor's employer under the income deduction law of this
 1050 state or payor as defined by s. 61.046, without first filing a
 1051 petition or comparable pleading or registering the order with a
 1052 tribunal of this state.

1053 Section 36. Paragraph (b) of subsection (3) of section
 1054 88.50211, Florida Statutes, is amended to read:

1055 88.50211 Employer's compliance with income-withholding
 1056 order of another state.—

1057 (3) Except as otherwise provided by subsection (4) and s.
 1058 88.5031, the employer shall withhold and distribute the funds as
 1059 directed in the withholding order by complying with the terms of
 1060 the order which specify:

1061 (b) The person ~~or agency~~ designated to receive payments
 1062 and the address to which the payments are to be forwarded;

1063 Section 37. Section 88.5031, Florida Statutes, is amended
 1064 to read:

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1065 88.5031 Employer's compliance with two or more ~~multiple~~
 1066 income-withholding orders.—If the obligor's employer receives
 1067 two or more ~~multiple~~ income-withholding orders with respect to
 1068 the earnings of the same obligor, the employer satisfies the
 1069 terms of the ~~multiple~~ orders if the employer complies with the
 1070 law of the state of the obligor's principal place of employment
 1071 to establish the priorities for withholding and allocating
 1072 income withheld for two or more ~~multiple~~ child support obligees.

1073 Section 38. Section 88.5041, Florida Statutes, is amended
 1074 to read:

1075 88.5041 Immunity from civil liability.—An employer that
 1076 ~~who~~ complies with an income-withholding order issued in another
 1077 state in accordance with this article is not subject to civil
 1078 liability to an individual or agency with regard to the
 1079 employer's withholding of child support from the obligor's
 1080 income.

1081 Section 39. Section 88.5051, Florida Statutes, is amended
 1082 to read:

1083 88.5051 Penalties for noncompliance.—An employer that ~~who~~
 1084 willfully fails to comply with an income-withholding order
 1085 issued by another state and received for enforcement is subject
 1086 to the same penalties that may be imposed for noncompliance with
 1087 an order issued by a tribunal of this state.

1088 Section 40. Section 88.5061, Florida Statutes, is amended
 1089 to read:

1090 88.5061 Contest by obligor.—

1091 (1) An obligor may contest the validity or enforcement of
 1092 an income-withholding order issued in another state and received

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1093 directly by an employer in this state by registering the order
 1094 in a tribunal of this state and filing a contest to that order
 1095 as provided in part VI of this chapter, or otherwise contesting
 1096 the order in the same manner as if the order had been issued by
 1097 a tribunal of this state. ~~Section 88.6041, choice of law,~~
 1098 ~~applies to the contest.~~

1099 (2) The obligor shall give notice of the contest to:

1100 (a) A support enforcement agency providing services to the
 1101 obligee;

1102 (b) Each employer that has directly received an income-
 1103 withholding order relating to the obligor; and

1104 (c) The person ~~or agency~~ designated to receive payments in
 1105 the income-withholding order, or if no person ~~or agency~~ is
 1106 designated, to the obligee.

1107 Section 41. Subsection (1) of section 88.5071, Florida
 1108 Statutes, is amended to read:

1109 88.5071 Administrative enforcement of orders.—

1110 (1) A party or support enforcement agency seeking to
 1111 enforce a support order or an income-withholding order, or both,
 1112 issued in by a tribunal of another state or a foreign support
 1113 order may send the documents required for registering the order
 1114 to a support enforcement agency of this state.

1115 Section 42. (1) The Division of Statutory Revision is
 1116 directed to redesignate part VI of chapter 88, Florida Statutes,
 1117 as "REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT
 1118 ORDER."

1119 (2) The Division of Statutory Revision is directed to
 1120 divide part VI of chapter 88, Florida Statutes, into subpart A,

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1121 consisting of ss. 88.6011-88.6041, Florida Statutes, to be
 1122 entitled "Registration and Enforcement of Support Order;"
 1123 subpart B, consisting of ss. 88.6051-88.6081, Florida Statutes,
 1124 to be entitled "Contest of Validity or Enforcement;" subpart C,
 1125 consisting of ss. 88.6091-88.6141, Florida Statutes, to be
 1126 entitled "Registration and Modification of Child Support Order
 1127 of Another State;" and subpart D, consisting of ss. 88.6151 and
 1128 88.6161, Florida Statutes, to be entitled "Registration and
 1129 Modification of Foreign Child Support Order."

1130 Section 43. Section 88.6011, Florida Statutes, is amended
 1131 to read:

1132 88.6011 Registration of order for enforcement.—A support
 1133 order or an income-withholding order issued in by a tribunal of
 1134 another state or a foreign support order may be registered in
 1135 this state for enforcement.

1136 Section 44. Section 88.6021, Florida Statutes, is amended
 1137 to read:

1138 88.6021 Procedure to register order for enforcement.—

1139 (1) Except as otherwise provided in s. 88.7061, a support
 1140 order or income-withholding order of another state or a foreign
 1141 support order may be registered in this state by sending the
 1142 following records ~~documents and information~~ to the appropriate
 1143 tribunal in this state:

1144 (a) A letter of transmittal to the tribunal requesting
 1145 registration and enforcement.

1146 (b) Two copies, including one certified copy, of the order
 1147 ~~all orders~~ to be registered, including any modification of the
 1148 ~~an~~ order.

1149 (c) A sworn statement by the person requesting party
 1150 ~~seeking~~ registration or a certified statement by the custodian
 1151 of the records showing the amount of any arrearage.

1152 (d) The name of the obligor and, if known:

1153 1. The obligor's address and social security number.

1154 2. The name and address of the obligor's employer and any
 1155 other source of income of the obligor.

1156 3. A description and the location of property of the
 1157 obligor in this state not exempt from execution.

1158 (e) Except as otherwise provided in s. 88.3121, the name
 1159 and address of the obligee and, if applicable, the ~~agency or~~
 1160 person to whom support payments are to be remitted.

1161 (2) On receipt of a request for registration, the
 1162 registering tribunal shall cause the order to be filed as an
 1163 order of a tribunal of another state or a foreign support order
 1164 ~~a foreign judgment~~, together with one copy of the documents and
 1165 information, regardless of their form.

1166 (3) A petition or comparable pleading seeking a remedy
 1167 that must be affirmatively sought under other law of this state
 1168 may be filed at the same time as the request for registration or
 1169 later. The pleading must specify the grounds for the remedy
 1170 sought.

1171 (4) If two or more orders are in effect, the person
 1172 requesting registration shall:

1173 (a) Furnish to the tribunal a copy of every support order
 1174 asserted to be in effect in addition to the documents specified
 1175 in this section;

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1176 (b) Specify the order alleged to be the controlling order,
 1177 if any; and

1178 (c) Specify the amount of consolidated arrears, if any.

1179 (5) A request for a determination of which is the
 1180 controlling order may be filed separately or with a request for
 1181 registration and enforcement or for registration and
 1182 modification. The person requesting registration shall give
 1183 notice of the request to each party whose rights may be affected
 1184 by the determination.

1185 Section 45. Section 88.6031, Florida Statutes, is amended
 1186 to read:

1187 88.6031 Effect of registration for enforcement.—

1188 (1) A support order or income-withholding order issued in
 1189 another state or a foreign support order is registered when the
 1190 order is filed in the registering tribunal of this state.

1191 (2) A registered support order issued in another state or
 1192 a foreign country is enforceable in the same manner and is
 1193 subject to the same procedures as an order issued by a tribunal
 1194 of this state.

1195 (3) Except as otherwise provided in this act article, a
 1196 tribunal of this state shall recognize and enforce, but may not
 1197 modify, a registered support order if the issuing tribunal had
 1198 jurisdiction.

1199 Section 46. Section 88.6041, Florida Statutes, is amended
 1200 to read:

1201 88.6041 Choice of law.—

1202 (1) Except as otherwise provided in subsection (4), the
 1203 law of the issuing state or foreign country governs:

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1204 (a) The nature, extent, amount, and duration of current
 1205 payments under a registered support order; and other obligations
 1206 of support and

1207 (b) The computation and payment of arrearages and accrual
 1208 of interest on the arrearages under the order; and

1209 (c) The existence and satisfaction of other obligations
 1210 under the support order.

1211 (2) In a proceeding for arrears under a registered support
 1212 order arrearages, the statute of limitation under the laws of
 1213 this state or of the issuing state or foreign country, whichever
 1214 is longer, applies.

1215 (3) A responding tribunal of this state shall apply the
 1216 procedures and remedies of this state to enforce current support
 1217 and collect arrears and interest due on a support order of
 1218 another state or foreign country registered in this state.

1219 (4) After a tribunal of this or another state determines
 1220 which is the controlling order and issues an order consolidating
 1221 arrears, if any, a tribunal of this state shall prospectively
 1222 apply the law of the state or foreign country issuing the
 1223 controlling order, including its law on interest on arrears, on
 1224 current and future support, and on consolidated arrears.

1225 Section 47. Section 88.6051, Florida Statutes, is amended
 1226 to read:

1227 88.6051 Notice of registration of order.—

1228 (1) When a support order or income-withholding order
 1229 issued in another state or a foreign support order is
 1230 registered, the registering tribunal of this state shall notify
 1231 the nonregistering party. The notice must be accompanied by a

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1232 copy of the registered order and the documents and relevant
 1233 information accompanying the order.

1234 (2) A ~~The~~ notice must inform the nonregistering party:

1235 (a) That a registered order is enforceable as of the date
 1236 of registration in the same manner as an order issued by a
 1237 tribunal of this state.

1238 (b) That a hearing to contest the validity or enforcement
 1239 of the registered order must be requested within 20 days after
 1240 the date of mailing or personal service of the notice, unless
 1241 the registered order is under s. 88.7071.

1242 (c) That failure to contest the validity or enforcement of
 1243 the registered order in a timely manner will result in
 1244 confirmation of the order and enforcement of the order and the
 1245 alleged arrearages and precludes further contest of that order
 1246 with respect to any matter that could have been asserted.

1247 (d) Of the amount of any alleged arrearages.

1248 (3) If the registering party asserts that two or more
 1249 orders are in effect, a notice must also:

1250 (a) Identify the two or more orders and the order alleged
 1251 by the registering party to be the controlling order and the
 1252 consolidated arrears, if any;

1253 (b) Notify the nonregistering party of the right to a
 1254 determination of which is the controlling order;

1255 (c) State that the procedures provided in subsection (2)
 1256 apply to the determination of which is the controlling order;
 1257 and

1258 (d) State that failure to contest the validity or
 1259 enforcement of the order alleged to be the controlling order in

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1260 a timely manner may result in confirmation that the order is the
 1261 controlling order.

1262 ~~(4)(3)~~ Upon registration of an income-withholding order
 1263 for enforcement, the support enforcement agency or the
 1264 registering tribunal shall notify the obligor's employer
 1265 pursuant to chapter 61 or other income deduction law of this
 1266 state.

1267 Section 48. Subsections (1) and (2) of section 88.6061,
 1268 Florida Statutes, are amended to read:

1269 88.6061 Procedure to contest validity or enforcement of
 1270 registered order.—

1271 (1) A nonregistering party seeking to contest the validity
 1272 or enforcement of a registered order in this state shall request
 1273 a hearing within the time required by s. 88.6051 ~~20 days after~~
 1274 ~~notice of the registration~~. The nonregistering party may seek to
 1275 vacate the registration, to assert any defense to an allegation
 1276 of noncompliance with the registered order, or to contest the
 1277 remedies being sought or the amount of any alleged arrearages
 1278 pursuant to s. 88.6071.

1279 (2) If the nonregistering party fails to contest the
 1280 validity or enforcement of the registered support order in a
 1281 timely manner, the order is confirmed by operation of law.

1282 Section 49. Section 88.6071, Florida Statutes, is amended
 1283 to read:

1284 88.6071 Contest of registration or enforcement.—

1285 (1) A party contesting the validity or enforcement of a
 1286 registered support order or seeking to vacate the registration
 1287 has the burden of proving one or more of the following defenses:

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1288 (a) The issuing tribunal lacked personal jurisdiction over
 1289 the contesting party;

1290 (b) The order was obtained by fraud;

1291 (c) The order has been vacated, suspended, or modified by
 1292 a later order;

1293 (d) The issuing tribunal has stayed the order pending
 1294 appeal;

1295 (e) There is a defense under the law of this state to the
 1296 remedy sought;

1297 (f) Full or partial payment has been made; ~~or~~

1298 (g) The statute of limitation under s. 88.6041 precludes
 1299 enforcement of some or all of the alleged arrearages; or

1300 (h) The alleged controlling order is not the controlling
 1301 order.

1302 (2) If a party presents evidence establishing a full or
 1303 partial defense under subsection (1), a tribunal may stay
 1304 enforcement of a ~~the~~ registered support order, continue the
 1305 proceeding to permit production of additional relevant evidence,
 1306 and issue other appropriate orders. An uncontested portion of
 1307 the registered support order may be enforced by all remedies
 1308 available under the law of this state.

1309 (3) If the contesting party does not establish a defense
 1310 under subsection (1) to the validity or enforcement of a
 1311 registered support ~~the~~ order, the registering tribunal shall
 1312 issue an order confirming the order.

1313 Section 50. Section 88.6081, Florida Statutes, is amended
 1314 to read:

1315 88.6081 Confirmed order.—Confirmation of a registered

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1316 support order, whether by operation of law or after notice and
 1317 hearing, precludes further contest of the order with respect to
 1318 any matter that could have been asserted at the time of
 1319 registration.

1320 Section 51. Section 88.6091, Florida Statutes, is amended
 1321 to read:

1322 88.6091 Procedure to register child support order of
 1323 another state for modification.—A party or support enforcement
 1324 agency seeking to modify, or to modify and enforce, a child
 1325 support order issued in another state shall register that order
 1326 in this state in the same manner provided in ss. 88.6011-88.6081
 1327 ~~88.6011-88.6041~~ if the order has not been registered. A petition
 1328 for modification may be filed at the same time as a request for
 1329 registration, or later. The pleading must specify the grounds
 1330 for modification.

1331 Section 52. Section 88.6111, Florida Statutes, is amended
 1332 to read:

1333 88.6111 Modification of child support order of another
 1334 state.—

1335 (1) If s. 88.6131 does not apply, upon petition, a
 1336 tribunal of this state may modify ~~After~~ a child support order
 1337 issued in another state which is ~~has been~~ registered in this
 1338 state, ~~the responding tribunal of this state may modify that~~
 1339 ~~order only if, s. 88.6131 does not apply and after notice and~~
 1340 hearing, the tribunal ~~it~~ finds that:

1341 (a) The following requirements are met:

1342 1. Neither the child, nor the ~~individual~~ obligee who is an
 1343 individual, nor ~~and~~ the obligor resides ~~do not reside~~ in the

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1344 issuing state;

1345 2. A petitioner who is a nonresident of this state seeks
1346 modification; and

1347 3. The respondent is subject to the personal jurisdiction
1348 of the tribunal of this state; or

1349 (b) This state is the state of residence of the child, or
1350 a party who is an individual, is subject to the personal
1351 jurisdiction of the tribunal of this state and all of the
1352 parties who are individuals have filed ~~written~~ consents in a
1353 record in the issuing tribunal for a tribunal of this state to
1354 modify the support order and assume continuing exclusive
1355 jurisdiction ~~over the order. However, if the issuing state is a~~
1356 ~~foreign jurisdiction that has not enacted a law or established~~
1357 ~~procedures substantially similar to the procedures under this~~
1358 ~~act, the consent otherwise required of an individual residing in~~
1359 ~~this state is not required for the tribunal to assume~~
1360 ~~jurisdiction to modify the child support order.~~

1361 (2) Modification of a registered child support order is
1362 subject to the same requirements, procedures, and defenses that
1363 apply to the modification of an order issued by a tribunal of
1364 this state and the order may be enforced and satisfied in the
1365 same manner.

1366 (3) A tribunal of this state may not modify any aspect of
1367 a child support order that may not be modified under the law of
1368 the issuing state, including the duration of the obligation of
1369 support. If two or more tribunals have issued child support
1370 orders for the same obligor and same child, the order that
1371 controls and must be so recognized under s. 88.2071 establishes

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1372 the aspects of the support order which are nonmodifiable.

1373 (4) In a proceeding to modify a child support order, the
 1374 law of the state that is determined to have issued the initial
 1375 controlling order governs the duration of the obligation of
 1376 support. The obligor's fulfillment of the duty of support
 1377 established by that order precludes imposition of a further
 1378 obligation of support by a tribunal of this state.

1379 (5)(4) On issuance of an order by a tribunal of this state
 1380 modifying a child support order issued in another state, the a
 1381 tribunal of this state becomes the tribunal of continuing
 1382 exclusive jurisdiction.

1383 (6) Notwithstanding subsections (1)-(5) and s. 88.2011(2),
 1384 a tribunal of this state retains jurisdiction to modify an order
 1385 issued by a tribunal of this state if:

- 1386 (a) One party resides in another state; and
- 1387 (b) The other party resides outside the United States.

1388 Section 53. Section 88.6121, Florida Statutes, is amended
 1389 to read:

1390 88.6121 Recognition of order modified in another state.--If
 1391 a child support order issued by a tribunal of this state is
 1392 modified shall recognize a modification of its earlier child
 1393 support order by a tribunal of another state which assumed
 1394 jurisdiction pursuant to the Uniform Interstate Family Support
 1395 Act, a tribunal of this state this act or a law substantially
 1396 similar to this act and, upon request, except as otherwise
 1397 provided in this act, shall:

- 1398 (1) May enforce the order that was modified only as to
- 1399 arrears and interest amounts accruing before the modification.

1400 ~~(2) Enforce only nonmodifiable aspects of that order.~~
 1401 (2)(3) May provide other appropriate relief ~~only~~ for
 1402 violations of its ~~that~~ order which occurred before the effective
 1403 date of the modification.

1404 (3)(4) Shall recognize the modifying order of the other
 1405 state, upon registration, for the purpose of enforcement.

1406 Section 54. Section 88.6151, Florida Statutes, is created
 1407 to read:

1408 88.6151 Jurisdiction to modify child support order of
 1409 foreign country.-

1410 (1) Except as otherwise provided in s. 88.7111, if a
 1411 foreign country lacks or refuses to exercise jurisdiction to
 1412 modify its child support order pursuant to its laws, a tribunal
 1413 of this state may assume jurisdiction to modify the child
 1414 support order and bind all individuals subject to the personal
 1415 jurisdiction of the tribunal whether the consent to modification
 1416 of a child support order otherwise required of the individual
 1417 pursuant to s. 88.6111 has been given or whether the individual
 1418 seeking modification is a resident of this state or of the
 1419 foreign country.

1420 (2) An order issued by a tribunal of this state modifying
 1421 a foreign child support order pursuant to this section is the
 1422 controlling order.

1423 Section 55. Section 88.6161, Florida Statutes, is created
 1424 to read:

1425 88.6161 Procedure to register child support order of
 1426 foreign country for modification.-A party or support enforcement
 1427 agency seeking to modify, or to modify and enforce, a foreign

1428 child support order not under the convention may register that
 1429 order in this state under ss. 88.6011-88.6081 if the order has
 1430 not been registered. A petition for modification may be filed at
 1431 the same time as a request for registration, or at another time.
 1432 The petition must specify the grounds for modification.

1433 Section 56. The Division of Statutory Revision is directed
 1434 to redesignate part VII of chapter 88, Florida Statutes, as
 1435 "SUPPORT PROCEEDING UNDER CONVENTION."

1436 Section 57. Section 88.7011, Florida Statutes, is
 1437 repealed.

1438 Section 58. Section 88.70111, Florida Statutes, is created
 1439 to read:

1440 88.70111 Definitions.—As used in this part, the term:

1441 (1) "Application" means a request under the convention by
 1442 an obligee or obligor, or on behalf of a child, made through a
 1443 central authority for assistance from another central authority.

1444 (2) "Central authority" means the entity designated by the
 1445 United States or a foreign country described in s. 88.102(5)(d)
 1446 to perform the functions specified in the convention.

1447 (3) "Convention support order" means a support order of a
 1448 tribunal of a foreign country described in s. 88.102(5)(d).

1449 (4) "Direct request" means a petition filed by an
 1450 individual in a tribunal of this state in a proceeding involving
 1451 an obligee, obligor, or child residing outside the United
 1452 States.

1453 (5) "Foreign central authority" means the entity
 1454 designated by a foreign country described in s. 88.102(5)(d) to
 1455 perform the functions specified in the convention.

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- 1456 (6) "Foreign support agreement":
 1457 (a) Means an agreement for support in a record that:
 1458 1. Is enforceable as a support order in the country of
 1459 origin;
 1460 2. Has been:
 1461 a. Formally drawn up or registered as an authentic
 1462 instrument by a foreign tribunal; or
 1463 b. Authenticated by or concluded, registered, or filed
 1464 with a foreign tribunal; and
 1465 3. May be reviewed and modified by a foreign tribunal; and
 1466 (b) Includes a maintenance arrangement or authentic
 1467 instrument under the convention.

1468 (7) "United States central authority" means the Secretary
 1469 of the United States Department of Health and Human Services.

1470 Section 59. Section 88.7021, Florida Statutes, is created
 1471 to read:

1472 88.7021 Applicability.—This part applies only to a support
 1473 proceeding under the convention. In such a proceeding, if a
 1474 provision of this part is inconsistent with parts I through VI,
 1475 this part controls.

1476 Section 60. Section 88.7031, Florida Statutes, is created
 1477 to read:

1478 88.7031 Relationship of Department of Revenue to United
 1479 States central authority.—The Department of Revenue is
 1480 recognized as the agency designated by the United States central
 1481 authority to perform specific functions under the convention.

1482 Section 61. Section 88.7041, Florida Statutes, is created
 1483 to read:

1484 88.7041 Initiation by Department of Revenue of support
 1485 proceeding subject to convention.-

1486 (1) In a proceeding subject to the convention, the
 1487 Department of Revenue shall:

1488 (a) Transmit and receive applications; and

1489 (b) Initiate or facilitate the institution of a proceeding
 1490 regarding an application in a tribunal of this state.

1491 (2) The following support proceedings are available to an
 1492 obligee under the convention:

1493 (a) Recognition or recognition and enforcement of a
 1494 foreign support order.

1495 (b) Enforcement of a support order issued or recognized in
 1496 this state.

1497 (c) Establishment of a support order if there is no
 1498 existing order, including, where necessary, determination of
 1499 parentage.

1500 (d) Establishment of a support order if recognition of a
 1501 foreign support order is not possible or is refused because of
 1502 the lack of a basis for recognition and enforcement under s.
 1503 88.7081 or on grounds specified in s. 88.7091(2) or s.
 1504 88.7091(5).

1505 (e) Modification of a support order made by a tribunal of
 1506 this state.

1507 (f) Modification of a foreign support order.

1508 (3) The following support proceedings are available under
 1509 the convention to an obligor against whom there is an existing
 1510 support order:

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1511 (a) Recognition of an order suspending or limiting
 1512 enforcement of an existing support order of a tribunal of this
 1513 state.

1514 (b) Modification of a support order of a tribunal of this
 1515 state.

1516 (c) Modification of a support order of a tribunal of
 1517 another state or foreign country.

1518 (4) A tribunal of this state may not require security,
 1519 bond, or deposit, however described, to guarantee the payment of
 1520 costs and expenses in proceedings under the convention.

1521 Section 62. Section 88.7051, Florida Statutes, is created
 1522 to read:

1523 88.7051 Direct request.—

1524 (1) A petitioner may file a direct request in a tribunal
 1525 of this state seeking the establishment or modification of a
 1526 support order or determination of parentage. In such a
 1527 proceeding, the law of this state applies.

1528 (2) A petitioner may file a direct request in a tribunal
 1529 of this state seeking the recognition and enforcement of a
 1530 support order or support agreement. In such a proceeding, the
 1531 provisions of ss. 88.7061-88.7121 apply.

1532 (3) In a direct request for recognition and enforcement of
 1533 a foreign support order or agreement:

1534 (a) No security, bond, or deposit shall be required to
 1535 guarantee the payment of costs and expenses related to the
 1536 proceedings; and

1537 (b) The obligee or obligor, who in the issuing country has
 1538 benefited from free legal assistance, shall be entitled to

1539 benefit, at least to the same extent, from any free legal
 1540 assistance provided for by the law of this state under the same
 1541 circumstances.

1542 (4) An individual filing directly to a tribunal will not
 1543 receive assistance from the Department of Revenue.

1544 (5) Nothing in this part prevents the application of laws
 1545 of this state that provide simplified, more expeditious rules
 1546 regarding a direct request for recognition and enforcement of a
 1547 foreign support order or support agreement.

1548 Section 63. Section 88.7061, Florida Statutes, is created
 1549 to read:

1550 88.7061 Registration of support order subject to
 1551 convention.--

1552 (1) Except as otherwise provided in this part, a party who
 1553 is an individual or a support enforcement agency seeking
 1554 recognition of a foreign support order subject to the convention
 1555 shall register the order in this state as provided in part VI of
 1556 this chapter.

1557 (2) Notwithstanding ss. 88.3111 and 88.6021, a request for
 1558 registration of a foreign support order subject to the
 1559 convention shall be accompanied by the following:

1560 (a) A complete text of the support order, or an abstract
 1561 or extract of the support order drawn up by the issuing foreign
 1562 tribunal, which may be in the form recommended by the Hague
 1563 Conference on Private International Law.

1564 (b) A record stating that the support order is enforceable
 1565 in the issuing country.

1566 (c) If the respondent did not appear and was not
 1567 represented in the proceedings in the issuing country, a record
 1568 attesting, as appropriate, either that the respondent had proper
 1569 notice of the proceedings and an opportunity to be heard, or
 1570 that the respondent had proper notice of the support order and
 1571 the opportunity to challenge or appeal it on fact and law.

1572 (d) If necessary, a record showing the amount of any
 1573 arrears, and the date the amount was calculated.

1574 (e) If necessary, a record showing a requirement for
 1575 automatic adjustment of the amount of support, if any, and the
 1576 information necessary to make the appropriate calculations.

1577 (f) If necessary, a record showing the extent to which the
 1578 applicant received free legal assistance in the issuing country.

1579 (3) A request for registration of a foreign support order
 1580 may seek recognition and partial enforcement of the order.

1581 (4) A tribunal of this state may refuse to register a
 1582 foreign support order only if recognition and enforcement of the
 1583 order is manifestly incompatible with public policy.

1584 (5) The tribunal shall promptly notify the parties of the
 1585 registration or the refusal to register a foreign support order.

1586 Section 64. Section 88.7071, Florida Statutes, is created
 1587 to read:

1588 88.7071 Contest of validity of foreign support order
 1589 subject to convention.-

1590 (1) Except as otherwise provided in this part, ss.
 1591 88.6051-88.6081 apply to a contest of the validity of a
 1592 registered foreign support order subject to the convention.

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1593 | (2) A party contesting the recognition and enforcement of
 1594 | a registered foreign support order subject to the convention
 1595 | must file a contest within 30 days after notice of the
 1596 | registration unless the contesting party does not reside in the
 1597 | United States or a state, in which case the contest must be
 1598 | filed within 60 days after notice.

1599 | (3) A contest of a registered foreign support order may be
 1600 | based only on:

1601 | (a) The authenticity or integrity of any record
 1602 | transmitted in accordance with s. 88.7061;

1603 | (b) The lack of a basis for enforcement under s. 88.7081;

1604 | (c) The grounds for refusing enforcement under s. 88.7091;

1605 | or

1606 | (d) The payment in part or in whole of the alleged
 1607 | arrears.

1608 | (4) In a contest of the validity of a registered foreign
 1609 | support order, a tribunal of this state:

1610 | (a) Is bound by the findings of fact on which the foreign
 1611 | tribunal based its jurisdiction; and

1612 | (b) May not review the merits of the support order.

1613 | (5) A tribunal of this state deciding a contest of the
 1614 | validity of a registered foreign support order shall promptly
 1615 | notify the parties of its decision.

1616 | (6) An appeal, if any, does not stay the enforcement of a
 1617 | foreign support order unless there are exceptional
 1618 | circumstances.

1619 | Section 65. Section 88.7081, Florida Statutes, is created
 1620 | to read:

1621 88.7081 Recognition and enforcement of foreign support
 1622 order subject to convention.—

1623 (1) A tribunal of this state shall recognize and enforce a
 1624 foreign support order subject to the convention if:

1625 (a) The issuing tribunal had personal jurisdiction
 1626 consistent with s. 88.2011; and

1627 (b) The order is enforceable in the issuing country.

1628 (2) If a tribunal of this state may not recognize a
 1629 foreign support order because under similar facts the tribunal
 1630 would not have had personal jurisdiction consistent with s.
 1631 88.2011:

1632 (a) The tribunal must allow a reasonable time for a party
 1633 to request the tribunal to establish a support order;

1634 (b) The tribunal may not use its refusal to recognize the
 1635 foreign support order as a basis for dismissing the request;

1636 (c) The Department of Revenue shall take all appropriate
 1637 measures to request a child support order for the obligee if the
 1638 application for recognition and enforcement was received under
 1639 s. 88.7041(1).

1640 (3) If a tribunal of this state may not recognize and
 1641 enforce the whole of a foreign support order, it shall enforce
 1642 any severable part of the order. An application or direct
 1643 request may seek recognition and partial enforcement of a
 1644 foreign support order.

1645 Section 66. Section 88.7091, Florida Statutes, is created
 1646 to read:

1647 88.7091 Refusal of recognition and enforcement of foreign
 1648 support order subject to convention.—A tribunal of this state

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1649 may refuse recognition and enforcement of a foreign support
 1650 order subject to the convention if:
 1651 (1) Recognition and enforcement of the order is manifestly
 1652 incompatible with public policy;
 1653 (2) The order was obtained by fraud in connection with a
 1654 matter of procedure;
 1655 (3) A proceeding between the same parties and having the
 1656 same purpose is pending before a tribunal of this state and that
 1657 proceeding was the first to be instituted;
 1658 (4) The order is incompatible with a more recent support
 1659 order issued between the same parties and having the same
 1660 purpose if the more recent support order is entitled to
 1661 recognition and enforcement in this state;
 1662 (5) In a case in which the respondent neither appeared nor
 1663 was represented in the proceeding in the issuing foreign country
 1664 when the law of the country:
 1665 (a) Provides for notice of proceedings, the respondent did
 1666 not have proper notice of the proceedings and an opportunity to
 1667 be heard; or
 1668 (b) Does not provide for notice of the proceedings, the
 1669 respondent did not have proper notice of the order and the
 1670 opportunity to challenge or appeal it on fact and law; or
 1671 (6) The order was made in violation of s. 88.7111.
 1672 Section 67. Section 88.7101, Florida Statutes, is created
 1673 to read:
 1674 88.7101 Foreign support agreement subject to convention.-

1675 (1) Except as provided in subsections (3) and (4), a
 1676 tribunal of this state shall recognize and enforce a foreign
 1677 support agreement registered in this state.

1678 (2) An application or direct request for recognition and
 1679 enforcement of a foreign support agreement shall be accompanied
 1680 by the following:

1681 (a) A complete text of the foreign support agreement.

1682 (b) A record stating that the foreign support agreement is
 1683 enforceable as a decision in the issuing country.

1684 (3) A tribunal of this state may refuse to register a
 1685 foreign support agreement only if registration is manifestly
 1686 incompatible with public policy.

1687 (4) A tribunal of this state may refuse recognition and
 1688 enforcement of a foreign support agreement if it finds:

1689 (a) Recognition and enforcement of the agreement is
 1690 manifestly incompatible with public policy;

1691 (b) The agreement was obtained by fraud or falsification;

1692 (c) The agreement is incompatible with a support order
 1693 issued between the same parties and having the same purpose,
 1694 either in this state, another state, or a foreign country if the
 1695 support order is entitled to recognition in this state; or

1696 (d) The record submitted under subsection (2) lacks
 1697 authenticity or integrity.

1698 (5) A proceeding for recognition and enforcement of a
 1699 foreign support agreement shall be suspended during the pendency
 1700 of a challenge to the agreement before a tribunal of another
 1701 state or foreign country.

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1702 Section 68. Section 88.7111, Florida Statutes, is created
 1703 to read:

1704 88.7111 Modification of foreign child support order
 1705 subject to convention.-

1706 (1) A tribunal of this state may not modify a foreign
 1707 child support order if the obligee remains a resident of the
 1708 foreign country where the support order was issued unless:

1709 (a) The obligee submits to the jurisdiction of a tribunal
 1710 of this state, either expressly or by defending on the merits of
 1711 the case without objecting to the jurisdiction at the first
 1712 available opportunity; or

1713 (b) The foreign tribunal lacks or refuses to exercise
 1714 jurisdiction to modify its support order or issue a new support
 1715 order.

1716 (2) If a tribunal of this state does not modify the
 1717 foreign child support order because the order may not be
 1718 recognized in this state, the provisions of s. 88.7081 apply.

1719 Section 69. Section 88.7121, Florida Statutes, is created
 1720 to read:

1721 88.7121 Jurisdiction to modify spousal support order of
 1722 foreign country.-A tribunal of this state with personal
 1723 jurisdiction over the parties may modify a spousal support order
 1724 of a foreign tribunal if:

1725 (1) The foreign tribunal lacks or refuses to exercise
 1726 jurisdiction to modify its order pursuant to its laws;

1727 (2) There is agreement in writing between the parties to
 1728 the jurisdiction of the tribunal of this state; or

1729 (3) The parties submit to the jurisdiction of the tribunal
 1730 of this state expressly or by defending on the merits without
 1731 objecting.

1732 Section 70. Paragraph (b) of subsection (2) of section
 1733 88.8011, Florida Statutes, is amended to read:

1734 88.8011 Grounds for rendition.—

1735 (2) The Governor of this state may:

1736 (b) On the demand of ~~by~~ the Governor of another state,
 1737 surrender an individual found in this state who is charged
 1738 criminally in the other state with having failed to provide for
 1739 the support of an obligee.

1740 Section 71. Section 88.9011, Florida Statutes, is amended
 1741 to read:

1742 88.9011 Uniformity of application and construction.—In
 1743 applying and construing this uniform act, consideration must be
 1744 given to the need to promote uniformity of ~~This act shall be~~
 1745 ~~applied and construed to effectuate its general purpose to make~~
 1746 ~~uniform~~ the law with respect to its ~~the~~ subject matter ~~of this~~
 1747 ~~act~~ among states that enact ~~enacting~~ it.

1748 Section 72. Section 88.9031, Florida Statutes, is amended
 1749 to read:

1750 88.9031 Severability ~~clause~~.—If any provision of this act
 1751 or its application to any person or circumstance is held
 1752 invalid, the invalidity does not affect other provisions or
 1753 applications of this act which can be given effect without the
 1754 invalid provision or application, and to this end the provisions
 1755 of this act are severable.

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1756 Section 73. Paragraph (a) of subsection (7) of section
 1757 61.13, Florida Statutes, is amended to read:

1758 61.13 Support of children; parenting and time-sharing;
 1759 powers of court.—

1760 (7)(a) Each party to any paternity or support proceeding
 1761 is required to file with the tribunal as defined in s.
 1762 ~~88.1011(22)~~ and State Case Registry upon entry of an order, and
 1763 to update as appropriate, information on location and identity
 1764 of the party, including social security number, residential and
 1765 mailing addresses, telephone number, driver's license number,
 1766 and name, address, and telephone number of employer. Each party
 1767 to any paternity or child support proceeding in a non-Title IV-D
 1768 case shall meet the above requirements for updating the tribunal
 1769 and State Case Registry.

1770 Section 74. Paragraph (b) of subsection (5) of section
 1771 827.06, Florida Statutes, is amended to read:

1772 827.06 Nonsupport of dependents.—

1773 (5)

1774 (b) The element of knowledge may be proven by evidence
 1775 that a court or tribunal as defined by s. ~~88.1011(22)~~ has
 1776 entered an order that obligates the defendant to provide the
 1777 support.

1778 Section 75. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1111 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Mayfield offered the following:

3
4 **Amendment**

5 Remove line 294 and insert:

6 88.1041 Application to resident of foreign country and

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1111 (2011)

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 Subcommittee
2 Representative(s) Mayfield offered the following:

3

4 **Amendment**

5 Remove line 501 and insert:

6 state, ~~or~~ another state, or foreign country with regard to the
7 same obligor and the

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Mayfield offered the following:

Amendment

5 Remove lines 575-588 and insert:
6 which was issued by a tribunal of another state or a foreign
7 country, a tribunal of this state shall enforce those orders in
8 the same manner as if the ~~multiple~~ orders had been issued by a
9 tribunal of this state.

10 Section 13. Section 88.2091, Florida Statutes, is amended
11 to read:

12 88.2091 Credit for payments.—A tribunal of this state
13 shall credit amounts collected ~~and credited~~ for a particular
14 period pursuant to any child support order against the amounts
15 owed for the same period under any other child support order for
16 support of the same child ~~a support order issued by a tribunal~~
17 ~~of another state must be credited against the amounts accruing~~
18 ~~or accrued for the same period under a support order issued by~~
19 the tribunal of this state, another state, or a foreign country.

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative(s) Mayfield offered the following:

Amendment (with title amendment)

5 Remove line 1778 and insert:

6 Section 75. Upon the passage of this bill, the Department
 7 of Revenue is directed to apply for a waiver from the Federal
 8 Office of Child Support Enforcement pursuant to the state plan
 9 requirement under Title IV-D of the Social Security Act

10 Section 76. This act shall take effect upon the earlier of
 11 90 days following Congress amending 42 U.S.C. s. 666(f) to allow
 12 or require states to adopt the 2008 version of the Uniform
 13 Interstate Family Support Act, or 90 days following the state
 14 obtaining a waiver of its state plan requirement under Title IV-
 15 D of the Social Security Act.

16
 17
 18 -----
 19 **T I T L E A M E N D M E N T**

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1111 (2011)

Amendment No. 4

20 Remove lines 119-120 and insert:
21 and 827.06, F.S.; correcting cross-references; directing the
22 Department of Revenue to apply for a waiver; providing a
23 contingent effective date.
24

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1393 Sovereign Immunity
SPONSOR(S): Artiles and Nunez
TIED BILLS: None IDEN./SIM. BILLS: SB 1676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Billmeier <i>Lmg</i>	Bond <i>YB</i>
2) Health & Human Services Committee			
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Sovereign immunity is a legal concept that prohibits suits against the government, unless the government waives the protection. The state has long provided a limited waiver of its sovereign immunity for ordinary tort liability, including medical malpractice. This bill provides that a not-for-profit college or university that owns or operates an accredited medical school, while under contract with a teaching hospital to provide patient services, is considered a part of state government, and thus is entitled to sovereign immunity protection.

There is a possibility that this bill may result in some increase in future state expenditures, although the amount is unknown. This bill does not appear to have a fiscal impact on local governments.

This bill takes effect upon becoming a law and applies to all claims arising after the effective date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The term "sovereign immunity" originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the government or its political subdivisions for the torts of officers or agents of such governments unless such immunity is expressly waived.

Article X, s. 13, Fla. Const., recognizes the concept of sovereign immunity and gives the Legislature the right to waive such immunity in part or in full by general law. In 1973, the Legislature enacted a partial waiver of sovereign immunity.¹ Section 768.28, F.S., contains the limited waiver of sovereign immunity applicable to the state. Section 768.28(1), F.S., provides that individuals may sue the government under circumstances where a private person would be liable to the claimant. Section 768.28(5), F.S., limits the recovery of any one person to \$100,000 for one incident and limits all recovery related to one incident to a total of \$200,000. Those amounts increase to \$200,000 and \$300,000, respectively, effective October 1, 2011.² Where the state's sovereign immunity applies, section 768.28(9), F.S., provides that the officers, employees and agents of the state that were involved in the commission of the tort are not personally liable to an injured party. Sovereign immunity extends to all subdivisions of the state, including counties and school boards.³

Whether sovereign immunity applies turns on the degree of control of the agent of the state retained by the state.⁴ In *Stoll v. Noel*, the Florida Supreme Court explained that independent contractor physicians may be agents of the state for purposes of sovereign immunity:

One who contracts on behalf of another and subject to the other's control except with respect to his physical conduct is an agent and also independent contractor.⁵

The court examined the employment contract between the physicians and the state to determine whether the state's right to control was sufficient to create an agency relationship and held that it did.⁶ The court explained:

Whether CMS physician consultants are agents of the state turns on the degree of control retained or exercised by CMS. This Court has held that the right to control depends upon the terms of the employment contract. *National Sur. Corp. v. Windham*, 74 So.2d 549, 550 (Fla.1954) ("The [principal's] right to control depends upon the terms of the contract of employment..."). CMS requires each consultant, as a condition of participating in the CMS program, to agree to abide by the terms published in its HRS Manual and CMS Consultant's Guide which contain CMS policies and rules governing its relationship with the consultants. The Consultant's Guide states that all services provided to CMS patients must be authorized in advance by the clinic medical director. The language of the HRS Manual ascribes to CMS responsibility to supervise and direct the medical care of all CMS patients and supervisory authority over all personnel. The manual also grants to the CMS medical director absolute authority over payment for treatments proposed by consultants. The HRS Manual and the Consultant's Guide demonstrate that CMS has final authority over all care and treatment provided to CMS

¹ Chapter 73-313, L.O.F.

² Chapter 2010-26, L.O.F.

³ Section 768.28(2), F.S.

⁴ *Stoll v. Noel*, 694 So.2d 701, 703 (Fla. 1997).

⁵ *Stoll v. Noel*, 694 So.2d 701, 703 (Fla. 1997)(quoting The Restatement of Agency).

⁶ *Stoll v. Noel*, 694 So.2d 701, 703 (Fla. 1997).

patients, and it can refuse to allow a physician consultant's recommended course of treatment of any CMS patient for either medical or budgetary reasons.

Our conclusion is buttressed by HRS's acknowledgment that the manual creates an agency relationship between CMS and its physician consultants, and despite its potential liability in this case, HRS has acknowledged full financial responsibility for the physicians' actions. HRS's interpretation of its manual is entitled to judicial deference and great weight.⁷

The sovereign immunity recovery caps do not prevent a plaintiff from obtaining a judgment in excess of the caps but the plaintiff cannot recover the excess damages without action by the Legislature.⁸ The limits are constitutional.⁹ In *Gerard v. Dept. of Transportation*, 472 So.2d 1170 (Fla. 1985), the Florida Supreme Court held that the recovery caps within s 768.28(5), F.S., did not prevent a plaintiff from seeking a judgment exceeding the recovery caps. However, the court noted that "even if he is able to obtain a judgment against the Department of Transportation in excess of the settlement amount and goes to the legislature to seek a claims bill with the judgment in hand, this does not mean that the liability of the Department has been conclusively established. The legislature will still conduct its own independent hearing to determine whether public funds would be expended, much like a non jury trial. After all this, the legislature, in its discretion, may still decline to grant him any relief."¹⁰

Chapter 766, F.S., provides current law on medical malpractice. Section 766.1115, F.S., provides that certain health care providers who contract with the state are considered agents of the state, and thus entitled to the protection of sovereign immunity. The protection only applies where the contract contains specific conditions.

Section 768.28(9)(b)2., F.S., defines the term "officer, employee, or agent" for purposes of the sovereign immunity statute. Several identified groups are included in the definition, including health care providers when providing services pursuant to s. 766.1115, F.S.

Florida law confers sovereign immunity to a number of persons who perform public services, including:

- Persons or organizations providing shelter space without compensation during an emergency. s. 252.51, F.S.
- A health care entity providing services as part of a school nurse services contract. s. 381.0056(10), F.S.
- Members of the Florida Health Services Corps who provide medical care to indigent persons in medically underserved areas. s. 381.0302(11), F.S.
- A person under contract to review materials, make site visits or provide expert testimony regarding complaints or applications received by the Department of Health or the Department of Business and Professional Regulation. ss. 455.221(3) and 456.009(3), F.S.
- Physicians retained by the Florida State Boxing Commission. s. 548.046(1), F.S.
- Health care providers under contract to provide uncompensated care to indigent state residents. s. 768.28(9)(b), F.S.
- Health care providers or vendors under contract with the Department of Corrections to provide inmate care. s. 768.28(10)(a), F.S.

⁷ *Stall v. Noel*, 694 So.2d 701,703 (Fla. 1997).

⁸ Section 768.28(5), F.S.

⁹ *Berek v. Metropolitan Dade County*, 422 So.2d 838 (Fla. 1982); *Cauley v. City of Jacksonville*, 403 So.2d 379 (Fla. 1981).

¹⁰ *Gerard v. Department of Transportation*, 472 So.2d 1170, 1173 (Fla. 1985).

- An operator, dispatcher, or other person or entity providing security or maintenance for rail services in the South Florida Rail Corridor, under contract with the Tri-County Commuter Rail Authority the Department of Transportation. s. 768.28(10)(d), F.S.
- Professional firms that provide monitoring and inspection services of work required for state roadway, bridge or other transportation facility projects. s. 768.28(10)(e), F.S.
- A provider or vendor under contract with the Department of Juvenile Justice to provide juvenile and family services. s. 768.28(11)(a), F.S.
- Health care practitioners under contract with state universities to provide medical services to student athletes. s. 768.28(12)(a), F.S.

Under the federal Emergency Medical Treatment and Active Labor Act,¹¹ any patient who presents at an emergency department requesting examination or treatment for a medical condition must be provided with an appropriate medical screening examination to determine if he or she is suffering from an emergency medical condition. If so, the hospital is obligated to either provide treatment until the patient is stable or to transfer the patient to another hospital.

Jackson Memorial Hospital is an accredited, non-profit, tertiary care hospital located in Miami. It is the major teaching facility for the University of Miami School of Medicine. It has over 1500 licensed beds. Jackson Memorial is the regional trauma center.¹² Jackson Memorial Hospital is operated by a public health trust.¹³ According to information provided by the University of Miami, faculty members at the University Miami School of Medicine provide patient services at Jackson Memorial Hospital. While Jackson Memorial Hospital is protected by sovereign immunity, the University of Miami may not be covered under current law.

Effect of this Bill

This bill amends the definition of "officer, employee, or agent" in s. 768.28(9)(b), F.S., to include a Florida not-for-profit college, university, or medical school and its employees, under certain circumstances.

This bill creates s. 768.28(10)(f), F.S., to provide that any Florida not-for-profit college or university that owns or operates an accredited medical school or any of its employees or agents that have agreed in an affiliation agreement or other contract to provide patient services¹⁴ as agents of a teaching hospital¹⁵ which is owned or operated by the state, a county, a municipality, a public health trust, a special taxing district, any other governmental entity having health care responsibilities, or a not-for-profit entity that operates such facilities as an agent of that governmental entity under a lease or other contract, are agents of the state and are immune from liability for torts in the same manner and to the same extent as a teaching hospital and its governmental owner or operator while acting within the scope of and pursuant to guidelines established in the contract.

Currently, the six teaching hospitals to which this bill would appear to apply are: Jackson Memorial in Miami, Mount Sinai Medical Center in Miami Beach, Shands Healthcare at the University of Florida in

¹¹ See 42 USC 1395dd

¹² <http://www.jhsmiami.org/landing.cfm?id=7>

¹³ <http://www.jhsmiami.org/body.cfm?id=1142>

¹⁴ This bill defines "patient services" as any comprehensive health care services; the training or supervision of medical students, interns, residents, or fellows; access to or participation in medical research protocols; or any related executive, managerial, or administrative services provided according to an affiliation agreement or other contract with the teaching hospital or its governmental owner or operator.

¹⁵ Section 408.07(45), F.S., defines "teaching hospital" as any Florida hospital officially affiliated with an accredited Florida medical school which exhibits activity in the area of graduate medical education as reflected by at least seven different graduate medical education programs accredited by the Accreditation Council for Graduate Medical Education or the Council on Postdoctoral Training of the American Osteopathic Association and the presence of 100 or more full-time equivalent resident physicians.

Gainesville, Shands Jacksonville Medical Center, Orlando Health in Orlando, and Tampa General Hospital.

This bill requires that the contract to provide patient services must provide for indemnification of the state by the agent for any liability incurred up to the limits set forth in ch. 768, F.S., to the extent caused by the negligence of the college, university, or medical school or its employees or agents. Current limits are \$100,000 for any one person for one incident and limits all recovery related to one incident to a total of \$200,000. Those amounts increase to \$200,000 and \$300,000, respectively, effective October 1, 2011.

This bill amends s. 766.1115, F.S., to provide that the any affiliation agreement or contract entered into by a medical school to provide comprehensive health care services to patients at public hospitals, which agreement or contract is subject to the sovereign immunity provisions in s. 768.28, F.S., and exempt from the requirements of s. 766.1115, F.S.

This bill provides that an employee or agent of a college, university, or its medical school is not personally liable in tort and may not be named as a party defendant in any action arising from the provision of any such patient services except as provided in s. 768.27(9), F.S.¹⁶

This bill requires the public teaching hospital, the medical school, or its employees or agents to provide written notice to each patient, or the patient's legal representative that the medical school and its employees are agents of the state and that the exclusive remedy for injury or damage suffered as a result of any act or omission of the public teaching hospital, the medical school, or an employee or agent of the medical school while acting within the scope of her or his duties pursuant to the affiliation agreement or other contract is by commencement of an action pursuant to s. 768.28, F.S. The patient or his or her legal representative must acknowledge receipt of the written notice.

This bill provides that an employee providing patient services is not an employee for purposes of the state's worker's compensation statute.

This bill provides extensive findings intended to demonstrate that that there is an overwhelming public necessity for the sovereign immunity liability protection in this bill.

This bill takes effect upon becoming a law and applies to all claims arising after the effective date.

B. SECTION DIRECTORY:

Section 1 provides legislative findings.

Section 2 amends s. 766.1115, F.S., relating to health care providers and creation of agency relationship with governmental contractors.

Section 3 amends s. 768.28, F.S., relating to a waiver of sovereign immunity.

Section 4 provides that this bill takes effect upon becoming a law and applies to all claims arising after the effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁶ This bill defines "employee or agent of a college, university, or medical school" as an officer, a member of the faculty, a health care practitioner or licensee defined in s. 456.001, or any other person who is directly or vicariously liable.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

It is unknown how many cases this bill may affect so the effect of this bill on private parties is not known.

The Agency for Health Care Administration reports that this bill is not anticipated to have a fiscal impact on the agency. This bill could affect state expenditures if the Legislature chooses to pass a claims bill that exceeds the sovereign immunity limits.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Article I, s. 21, Fla. Const., provides that the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay. In *Kluger v. White*, 281 So.2d 1 (Fla. 1973), the Florida Supreme Court held that:

[w]here a right of access to the courts for redress for a particular injury has been provided...the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people of the State to redress for injuries, unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown.¹⁷

The Florida Supreme Court in *Kluger* invalidated a statute that required a minimum of \$550 in property damages arising from an automobile accident before a lawsuit could be brought. Based upon the *Kluger* test, the Florida Supreme Court has also invalidated a portion of a tort reform statute that placed a cap on all noneconomic damages because the statute did not provide claimants with a commensurate benefit.¹⁸ Thus, the Legislature cannot restrict damages by either enacting a

¹⁷ *Kluger v. White*, 281 So.2d 1, 4 (Fla. 1973).

¹⁸ *See Smith v. Dept. of Insurance*, 507 So.2d 1080 (Fla. 1987).

minimum damage amount or a monetary cap on damages without meeting the *Kluger* test. This bill limits of all damages to the amounts set forth in s. 768.28, F.S., unless the Legislature subsequently enacts a claims bill.

The caps on noneconomic damages in medical malpractice cases, found in ss. 766.207 and 766.209, F.S., have been found by the Florida Supreme Court to meet the *Kluger* test and are not violative of the access to courts provision in the Florida Constitution. In *University of Miami v. Echarte*, 618 So.2d 189 (Fla. 1993), the court ruled that the arbitration scheme met both prongs of the *Kluger* test. First, the court held that the arbitration scheme provided claimants with a commensurate benefit for the loss of the right to fully recover noneconomic damages as the claimant has the opportunity to receive prompt recovery without the risk and uncertainty of litigation or having to prove fault in a civil trial. Additionally, the claimant benefits from: reduced costs of attorney and expert witness fees which would be required to prove liability; joint and several liability of multiple defendants; prompt payment of damages after determination by the arbitration panel; interest penalties against the defendant for failure to promptly pay the arbitration award; and limited appellate review of the arbitration award.

Second, the court in *Echarte* ruled that, even if the medical malpractice arbitration statutes did not provide a commensurate benefit, the statutes satisfied the second prong of *Kluger* which requires a legislative finding that an overpowering public necessity exists, and further that no alternative method of meeting such public necessity can be shown. The court found that the Legislature's factual and policy findings of a medical malpractice crisis constituted an overpowering public necessity. The court also ruled that the record supported the conclusion that no alternative or less onerous method existed for meeting the public necessity of ending the medical malpractice crisis. The court explained, "...it is clear that both the arbitration statute, with its conditional limits on recovery of noneconomic damages, and the strengthened regulation of the medical profession are necessary to meet the medical malpractice insurance crisis."¹⁹

This bill limits the recovery of damages. If the cap is challenged, the court may scrutinize this limitation based on the rulings in *Kluger* and its progeny. Accordingly, the court would have to determine whether this bill provided a claimant with a reasonable alternative to the right to recover full noneconomic damages. If not, the courts would look to see whether this bill was a response to an overpowering public necessity and that no alternative method of meeting such public necessity could have been shown. In addition, the court may scrutinize the contract between the entity and the hospital to determine whether the state entity exercised control over the physician similar to the physicians in *Stoll v. Noel*.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Applicability of this Bill

This bill does not address a situation where a patient is unable to acknowledge receipt of the notice that damages may be limited.

Public Records and Public Meetings

Article I, s. 24, Fla. Const, provides that records and meetings of public entities are to be open to the public unless a statutory exemption applies. Statutory provisions implementing art. I, s. 24, include ch. 119 and ch. 286, F.S. The Florida Supreme Court addressed the issue of when a private entity under contract with a public agency falls under the purview of the public records and meeting provisions. The court looked to a number of factors which indicate a significant level of involvement by the public agency:

¹⁹ *University of Miami v. Echarte*, 618 So.2d 189, 195-197 (Fla. 1993).

The factors considered include, but are not limited to: 1) the level of public funding; 2) commingling of funds; 3) whether the activity was conducted on publicly owned property; 4) whether services contracted for are an integral part of the public agency's chosen decision-making process; 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; 6) the extent of the public agency's involvement with, regulation of, or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) for who's benefit the private entity is functioning.²⁰

This bill provides that "any Florida not-for-profit college or university that owns or operates an accredited medical school or any of its employees or agents" that have a contract to provide patient services as agents of a teaching hospital "which is owned or operated by the state, a county, a municipality, a public health trust, a special taxing district, any other governmental entity having health care responsibilities, or a not-for-profit entity that operates such facilities as an agent of that governmental entity under a lease" are agents of the state. Since the private entities (colleges, universities, medical schools, or employees) are contracting with government entities, it could be argued that they are subject to the public records and meetings laws under *Schwab*. If the issue is litigated, the court would have to determine whether the factors set forth in *Schwab* apply. If the court were to find that the public records or meetings laws applied to the private entities, it would have to determine whether a statutory public records or meetings exemption applied.

One court noted a difficulty in determining which records are public records when a private corporation acts on behalf of the state:

In holding that [private corporation] is subject to the public records act because it is acting on behalf of the [government entity], we emphasize that we are not ruling that all of its records are public. Some of its records may be subject to statutory exemptions or to valid claims of privacy. Likewise, we cannot rule that every function of this corporation is performed on behalf of the [government entity]. While we have seen little evidence of functions that might fall outside the realm of public access, the trial court is free to review specific activities of the corporation on remand to determine whether they involve nongovernmental functions which fall outside the public disclosure requirements.²¹

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

²⁰ *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group*, 596 So.2d 1029, 1031 (Fla. 1992).

²¹ *Sarasota Herald-Tribune Co. v. Community Health Corp., Inc.*, 582 So.2d 730, 734 (Fla. 2d DCA 1991)(footnote omitted).

1 A bill to be entitled
 2 An act relating to sovereign immunity; providing
 3 legislative findings and intent; amending s. 766.1115,
 4 F.S.; providing that specified provisions relating to
 5 sovereign immunity for health care providers do not apply
 6 to certain affiliation agreements or contracts to provide
 7 certain comprehensive health care services; amending s.
 8 768.28, F.S.; expanding the definition of the term
 9 "officer, employee, or agent" for purposes of sovereign
 10 immunity to include certain health care providers;
 11 providing that certain colleges and universities that own
 12 or operate a medical school or any of its employees or
 13 agents that have agreed in an affiliation agreement to
 14 provide patient services as agents of a teaching hospital
 15 that is owned or operated by a governmental entity having
 16 health care responsibilities, or a not-for-profit entity
 17 that operates such facilities as an agent of that
 18 governmental entity under a lease, are agents of the state
 19 and are immune from certain liability for torts; requiring
 20 the contract to provide for indemnification; providing
 21 definitions; requiring that each patient, or the patient's
 22 legal representative, receive written notice regarding the
 23 patient's exclusive remedy for injury or damage suffered;
 24 providing that an employee providing patient services is
 25 not an employee or agent of the state for purposes of
 26 workers' compensation; providing for application;
 27 providing an effective date.

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

30

31 Section 1. (1) The Legislature finds that access to
 32 quality, affordable health care for residents of this state is a
 33 necessary goal for the state and that public teaching hospitals
 34 play an essential role in providing access to comprehensive
 35 health care services.

36 (2) The Legislature finds that this state:

37 (a) Has the largest and fastest growing percentage of
 38 citizens over the age of 65, who typically have their health
 39 care needs increase as their age increases.

40 (b) Ranks fifth highest in the nation in the number of
 41 citizens who are uninsured.

42 (c) Ranks eighth highest in the nation in active
 43 physicians age 60 or older, with 25 percent of this state's
 44 physicians over the age of 65.

45 (d) Ranks third highest in the nation in the number of
 46 active physicians who are international medical graduates,
 47 creating a dependency on physicians educated and trained in
 48 other states and countries.

49 (e) Has been impacted by medical malpractice, liability,
 50 and reimbursement issues.

51 (3) The Legislature finds that the rapidly growing
 52 population and changing demographics of this state make it
 53 imperative that students continue to choose this state as the
 54 place to receive their medical education and practice medicine.

55 (4) The Legislature finds that graduate medical education
 56 is the process of comprehensive specialty training that a

57 | medical school graduate undertakes to develop and refine skills.
 58 | Residents work under the direct supervision of medical faculty,
 59 | who provide guidance, training, and oversight, serving as role
 60 | models to young physicians. The vast majority of this care takes
 61 | place in large teaching hospitals, which serve as "safety nets"
 62 | to many indigent and underserved patients who otherwise might
 63 | not receive help. Resident training, including the supervision
 64 | component, is an important part of ensuring access to care by
 65 | residents and medical doctors in training who render appropriate
 66 | and quality care. Medical faculty provide the vital link between
 67 | access to quality care and balancing the demands of educating
 68 | and training residents. Physicians who assume this role are
 69 | often juggling the demands of patient care, teaching, research,
 70 | and policy and budgetary issues related to the programs they
 71 | administer.

72 | (5) The Legislature finds that access to quality health
 73 | care at public teaching hospitals is enhanced when public
 74 | teaching hospitals affiliate and coordinate their common
 75 | endeavors with medical schools. The existing definition of a
 76 | teaching hospital in s. 408.07, Florida Statutes, contemplates
 77 | such affiliations between teaching hospitals and accredited
 78 | medical schools in this state. These affiliations are an
 79 | integral part of the delivery of more efficient and economical
 80 | health care services to patients in public teaching hospitals by
 81 | offering a single, high quality of care to all patients
 82 | regardless of income. These affiliations also provide quality
 83 | graduate medical education programs to resident physicians who
 84 | provide patient services at public teaching hospitals. These

85 affiliations ensure continued access to quality, comprehensive
 86 health care services for residents of this state and, therefore,
 87 should be encouraged in order to maintain and expand such
 88 services.

89 (6) (a) The Legislature finds that s. 381.0403, Florida
 90 Statutes, "The Community Hospital Education Act" (CHEP),
 91 established programs "intended to provide additional outpatient
 92 and inpatient services, a continuing supply of highly trained
 93 physicians, and graduate medical education." Section
 94 381.0403(9), Florida Statutes, before its amendment by chapter
 95 2010-161, Laws of Florida, required the Executive Office of the
 96 Governor, the Department of Health, and the Agency for Health
 97 Care Administration to collaborate in the establishment of a
 98 committee to produce an annual report on graduate medical
 99 education which addressed the role of residents and medical
 100 faculty in the provision of health care; the relationship of
 101 graduate medical education to the state's physician workforce;
 102 the costs of training medical residents for hospitals, medical
 103 schools, teaching hospitals, including all hospital-medical
 104 affiliations, practice plans at all of the medical schools, and
 105 municipalities; the availability and adequacy of all sources of
 106 revenue to support graduate medical education and recommended
 107 alternative sources of funding for graduate medical education;
 108 and the use of state and federal funds for graduate medical
 109 education by hospitals receiving such funds.

110 (b) The Graduate Medical Education Committee submitted
 111 Reports in 2009 and 2010 and, among other findings, determined
 112 that graduate medical education training has a direct impact on

113 the quality and adequacy of the state's physician specialty and
 114 subspecialty workforce and the geographic distribution of
 115 physicians; the support and expansion of residency programs in
 116 critical need areas could result in more primary care
 117 practitioners and specialists practicing in this state; medical
 118 residents are more likely to practice in the state where they
 119 completed their graduate medical education training than where
 120 they went to medical school; quality, prestigious programs
 121 attract the best students, who stay as practicing physicians;
 122 medical residents act as "safety nets" to care for indigent,
 123 uninsured, and underserved patients in this state; supporting
 124 residency programs helps ensure this state's ability to train
 125 and retain the caliber of medical doctors its citizens and
 126 visitors deserve; and ongoing strategic planning for the
 127 expanded capacity of graduate medical education programs is
 128 crucial in order for the state to meet its health care needs.
 129 However, the January 2010 Annual Report of Graduate Medical
 130 Education in Florida by the Graduate Medical Education Committee
 131 indicated that the Association of American Medical Colleges
 132 ranked Florida 43rd nationally in the number of resident
 133 physicians in training per 100,000 population.

134 (7) The Legislature finds that ss. 28 and 29, chapter
 135 2010-161, Laws of Florida, which amended ss. 381.0403 and
 136 381.4018, Florida Statutes, respectively, modified the existing
 137 law that established the responsibility of the Department of
 138 Health for physician workforce development and created a
 139 Physician Workforce Advisory Council and a graduate medical
 140 education innovation program. The legislative intent in s.

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141 | 381.4018, Florida Statutes, recognizes that "physician workforce
142 | planning is an essential component of ensuring that there is an
143 | adequate and appropriate supply of well-trained physicians to
144 | meet this state's future health care service needs as the
145 | general population and elderly population of the state
146 | increase." According to the Council on Graduate Medical
147 | Education's sixteenth report entitled "Physician Workforce
148 | Policy Guidelines for the United States, 2000-2010 (January
149 | 2005)," this country could see shortages as high as 85,000
150 | physicians by 2020.

151 | (8) The Legislature finds, based upon the 2008 Florida
152 | Physician Workforce Annual Report from the Department of Health,
153 | that although the American Association of Medical Colleges
154 | reports that this state ranks 15th nationally in the number of
155 | active physicians per 100,000 population, these national-level
156 | data do not take into account many factors that determine the
157 | number of actively practicing physicians. Rather, additional
158 | concerns impact this state's physician workforce, including the
159 | current practice environment for physicians. These concerns
160 | include malpractice insurance and liability costs, reimbursement
161 | rates, administrative burdens, and the impact of Amendment 8,
162 | approved in November 2004, which created s. 26, Article X of the
163 | State Constitution, which prohibits persons found to have
164 | committed three or more incidents of medical malpractice from
165 | being licensed by this state to provide health care services as
166 | a medical doctor. As the department concluded, these service
167 | delivery concerns may hinder the recruitment of doctors to this
168 | state based on the real or perceived influence of the severity

169 of the medical liability climate in this state.

170 (9) The Legislature finds that when medical schools
 171 affiliate or enter into contracts with public teaching hospitals
 172 to provide patient services, but medical schools and their
 173 employees do not have the same level of protection against
 174 liability claims as public teaching hospitals and their public
 175 employees when providing the same patient services to the same
 176 patients, the exposure of these medical schools and their
 177 employees to claims arising out of alleged medical malpractice
 178 and other allegedly negligent acts is increased
 179 disproportionately. With the recent growth in the availability
 180 of state-established medical schools and medical education
 181 programs and ongoing efforts to support, strengthen, and
 182 increase the available residency training positions and medical
 183 faculty in both existing and newly designated teaching
 184 hospitals, this exposure and the consequent disparity will
 185 continue to increase. This will add to the current crisis with
 186 respect to the physician workforce in the state, which will be
 187 alleviated only through legislative relief.

188 (10) The Legislature finds that the high cost of
 189 litigation and unequal liability exposure have adversely
 190 impacted the ability of some medical schools to provide or
 191 permit their employees to provide patient services to patients
 192 in public teaching hospitals. If corrective action is not taken,
 193 this health care crisis will lead to the reduction of patient
 194 services in public teaching hospitals. In addition, it will
 195 reduce the ability of public teaching hospitals to further
 196 support their public mission through the admission of patients

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197 | to their teaching services and reduce the ability of public
198 | teaching hospitals to act as teaching sites for medical students
199 | from private and public medical schools. It will also contribute
200 | to a reduction in the high-quality medical care and training
201 | provided through public teaching hospitals that are affiliated
202 | with accredited medical schools as well as a reduction in
203 | essential research, program development, and infrastructure
204 | improvements in public teaching hospitals.

205 | (11) The Legislature finds that the public will benefit
206 | from corrective action to address the foregoing concerns.
207 | Designating medical schools and their employees as agents of the
208 | state who are subject to the protections of sovereign immunity
209 | when providing patient services in public teaching hospitals
210 | pursuant to an affiliation agreement or other written contract
211 | will maintain and increase that public benefit.

212 | (12) The Legislature finds that making high-quality health
213 | care available to the residents of this state is an overwhelming
214 | public necessity.

215 | (13) The Legislature finds that ensuring that medical
216 | schools and their employees are able continue to practice, treat
217 | patients, supervise medical and graduate education, engage in
218 | research, and provide administrative support and services in
219 | public teaching hospitals is an overwhelming public necessity.

220 | (14) It is the intent of the Legislature that medical
221 | schools that provide or permit their employees to provide
222 | patient services in public teaching hospitals pursuant to an
223 | affiliation agreement or other contract be subject to sovereign
224 | immunity protections under s. 768.28, Florida Statutes, in the

225 same manner and to the same extent as the state, its agencies,
 226 and political subdivisions.

227 (15) It is the intent of the Legislature that employees of
 228 medical schools who provide patient services in a public
 229 teaching hospital and the employees of public teaching hospitals
 230 be immune from lawsuits in the same manner and to the same
 231 extent as employees and agents of the state, its agencies, and
 232 political subdivisions and that they not be held personally
 233 liable in tort or named as a party defendant in an action while
 234 performing patient services, except as provided in s.
 235 768.28(9)(a), Florida Statutes.

236 (16) The Legislature finds that there is an overwhelming
 237 public necessity for this legislative action and that there is
 238 no alternative method of meeting such public necessity.

239 Section 2. Subsection (11) of section 766.1115, Florida
 240 Statutes, is amended to read:

241 766.1115 Health care providers; creation of agency
 242 relationship with governmental contractors.—

243 (11) APPLICABILITY.—This section applies to incidents
 244 occurring on or after April 17, 1992. This section does not
 245 apply to any health care contract entered into by the Department
 246 of Corrections which is subject to s. 768.28(10)(a). This
 247 section does not apply to any affiliation agreement or other
 248 contract which is subject to s. 768.28(10)(f). Nothing in this
 249 section in any way reduces or limits the rights of the state or
 250 any of its agencies or subdivisions to any benefit currently
 251 provided under s. 768.28.

252 Section 3. Paragraph (b) of subsection (9) of section

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253 768.28, Florida Statutes, is amended, and paragraph (f) is added
 254 to subsection (10) of that section, to read:

255 768.28 Waiver of sovereign immunity in tort actions;
 256 recovery limits; limitation on attorney fees; statute of
 257 limitations; exclusions; indemnification; risk management
 258 programs.—

259 (9)

260 (b) As used in this subsection, the term:

261 1. "Employee" includes any volunteer firefighter.

262 2. "Officer, employee, or agent" includes, but is not
 263 limited to, any health care provider when providing services
 264 pursuant to s. 766.1115; ~~τ~~ any member of the Florida Health
 265 Services Corps, as defined in s. 381.0302, who provides
 266 uncompensated care to medically indigent persons referred by the
 267 Department of Health; a Florida not-for-profit college,
 268 university, or medical school and the employees or agents of
 269 such college, university, or medical school pursuant to
 270 paragraph (10) (f); ~~τ~~ and any public defender or her or his
 271 employee or agent, including, among others, an assistant public
 272 defender and an investigator.

273 (10)

274 (f)1. For purposes of this section, any Florida not-for-
 275 profit college or university that owns or operates an accredited
 276 medical school or any of its employees or agents that have
 277 agreed in an affiliation agreement or other contract to provide
 278 patient services as agents of a teaching hospital, as defined in
 279 s. 408.07(45), which is owned or operated by the state, a
 280 county, a municipality, a public health trust, a special taxing

281 | district, any other governmental entity having health care
 282 | responsibilities, or a not-for-profit entity that operates such
 283 | facilities as an agent of that governmental entity under a lease
 284 | or other contract, are agents of the state and are immune from
 285 | liability for torts in the same manner and to the same extent as
 286 | a teaching hospital and its governmental owner or operator while
 287 | acting within the scope of and pursuant to guidelines
 288 | established in the contract.

289 | 2. The contract shall provide, to the extent permitted by
 290 | law, for the indemnification of the state by the agent for any
 291 | liability incurred up to the limits set forth in this chapter to
 292 | the extent caused by the negligence of the college, university,
 293 | or medical school or its employees or agents. As used in this
 294 | paragraph, the term "patient services" means any comprehensive
 295 | health care services, as defined in s. 641.19(4); the training
 296 | or supervision of medical students, interns, residents, or
 297 | fellows; access to or participation in medical research
 298 | protocols; or any related executive, managerial, or
 299 | administrative services provided according to an affiliation
 300 | agreement or other contract with the teaching hospital or its
 301 | governmental owner or operator. As used in this paragraph, the
 302 | term, "employee or agent of a college, university, or medical
 303 | school" means, but is not limited to, an officer, a member of
 304 | the faculty, a health care practitioner or licensee defined in
 305 | s. 456.001, or any other person who is directly or vicariously
 306 | liable. Such employee or agent of a college, university, or its
 307 | medical school is not personally liable in tort and may not be
 308 | named as a party defendant in any action arising from the

309 provision of any such patient services, except as provided in
 310 paragraph (9) (a).

311 3. The public teaching hospital, the medical school, or
 312 its employees or agents must provide written notice to each
 313 patient, or the patient's legal representative, the receipt of
 314 which must be acknowledged in writing, that the medical school
 315 and its employees are agents of the state and that the exclusive
 316 remedy for injury or damage suffered as a result of any act or
 317 omission of the public teaching hospital, the medical school, or
 318 an employee or agent of the medical school while acting within
 319 the scope of her or his duties pursuant to the affiliation
 320 agreement or other contract is by commencement of an action
 321 under this section.

322 4. This paragraph does not make an employee providing
 323 patient services an employee or agent of the state for purposes
 324 of chapter 440.

325 Section 4. This act shall take effect upon becoming a law,
 326 and applies to all claims accruing on or after that date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1393 (2011)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative(s) Artiles offered the following:

3
4 **Amendment (with title amendment)**

5 Remove line 301 and insert:

6 government owner or operator. The contract must also provide
7 that those limited portions of the college, university, or
8 medical school that are directly providing services pursuant to
9 the contract and that are considered an agency of the state for
10 purposes of this section are acting on behalf of a public agency
11 pursuant to s. 119.011(2). As used in this paragraph, the
12
13

14 -----
15 **T I T L E A M E N D M E N T**

16 Remove line 20 and insert:

17 the contract to provide for indemnification; providing that the
18 portion of the not-for-profit entity deemed an agent of the

COMMITTEE/SUBCOMMITTEE AMENDMENT

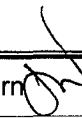

Bill No. HB 1393 (2011)

Amendment No. 1

19 state for purpose of indemnity is also an agency of the state
20 for purpose of public records laws; providing

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1475 Alimony
SPONSOR(S): Stargel
TIED BILLS: None IDEN./SIM. BILLS: SB 1978

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

SUMMARY ANALYSIS

Alimony is used to provide financial support to a financially dependent former spouse. The primary basis for determining alimony is whether there is need and ability to pay; alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay. By statute, there are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony. The bill provides that a court must consider the four types of alimony listed by statute when deciding which type of alimony is appropriate.

By statute, a marriage is either short-term, moderate-term, or long-term based on the length of the marriage. The length of the marriage is one factor a court considers when determining which type of alimony is appropriate. Current law provides that only short-term and moderate-term marriages may have an award of durational alimony. The bill provides that a long-term marriage may have an award of durational alimony. The bill also provides that an alimony award may not result in the party receiving the award enjoying a standard of living that is greater than that of the party paying the alimony unless there are written findings of exceptional circumstances.

Several revisions were made to the alimony statute in the 2010 legislative session, including the statutory creation of lengths of marriage and types of alimony. Those revisions only apply to awards of alimony on or after July 1, 2010 and to modifications of awards that were awarded on or after that date. The bill provides that the revisions are applicable to modifications of all awards retroactive to July 1, 2010.

The bill provides an effective date of July 1, 2011 and applies to all initial awards of alimony entered on or after that date and to all modifications of alimony awards for marriages of short or moderate duration made on or after July 1, 2011.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Alimony

Alimony is used to provide financial support to a financially dependent former spouse.¹ In Florida, the primary basis for determining alimony is whether there is need and ability to pay; alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.² Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.³

Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony in a dissolution of marriage case. These factors include:

- The standard of living established during the marriage;
- The duration of the marriage;
- The age and the physical and emotional condition of each party;
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each;
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment;
- The contribution of each party to the marriage, including, but not limited, services rendered in homemaking, child care, education, and career building of the other party;
- The responsibilities each party will have with regard to any minor children they have in common;
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable nondeductible payment;
- All sources of income available to either party, including income available to either party through investments of any asset held by that party; and
- Any other factor necessary to do equity and justice between the parties.

In addition, the trial court is given broad discretion to consider any other factor necessary to do equity and justice between the parties.⁴ A court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.⁵

For purposes of determining alimony, there is a rebuttable presumption that:

- A short-term marriage is a marriage having a duration of less than seven years;
- A moderate-term marriage is a marriage having a duration of greater than seven years but less than seventeen years; and
- A long-term marriage is a marriage having a duration of seventeen years or greater.⁶

Florida law provides for four types of alimony; bridge-the-gap alimony,⁷ rehabilitative alimony,⁸ durational alimony,⁹ and permanent alimony.¹⁰

¹ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla.B.J. 71, 71 (Oct. 2004).

² *Id.*

³ *Id.*

⁴ Section 61.08(2), F.S.

⁵ Section 61.08(1), F.S.

⁶ Section 61.08(4), F.S.

⁷ Section 61.08(5), F.S.

⁸ Section 61.08(6), F.S.

⁹ Section 61.08(7), F.S.

¹⁰ Section 61.08(8), F.S.

Effect of the Bill: Awarding of Alimony

The bill amends s. 61.08, F.S., to provide that the court determine the proper type and amount of alimony or maintenance pursuant to subsections 5- 8. These subsections refer to the four types of alimony: Bridge-the-gap, rehabilitative, durational, and permanent

Bridge-the-Gap Alimony

Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap alimony is not modifiable in amount or duration.¹¹

Rehabilitative Alimony

Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or credentials; or the acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.¹² In order to award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.¹³ An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14, F.S., based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.¹⁴

Durational Alimony

Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration. An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14, F.S. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.¹⁵

Effect of the Bill: Durational Alimony

The bill amends s. 61.08(7), F.S., by deleting the provision that provides that only a marriage of short or moderate may be awarded durational alimony. The deletion of this provision will allow a court to award durational alimony to a party in a long-term marriage.

Permanent Alimony

Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration, following a marriage of moderate duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are exceptional circumstances. An award of permanent alimony terminates upon the

¹¹ Section 60.08(5), F.S.

¹² Section 60.08(6)(a), F.S.

¹³ Section 60.08(6)(b), F.S.

¹⁴ Section 60.08(6)(c), F.S.

¹⁵ Section 60.08(7), F.S.

death of either party or upon the remarriage of the party receiving alimony. An award may be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14, F.S.¹⁶

Effect of the Bill: Permanent Alimony

The bill amends s. 61.08(8), F.S., to provide that written findings of exceptional circumstances are needed for the award of permanent alimony for a marriage of short duration. The bill also provides that in awarding permanent alimony, the court must include findings regarding the applicability of the needs and necessities of life established during the marriage to the alimony award and must include findings that no other form of alimony, including, but not limited to durational alimony, is adequate.

Effect of the Bill: Limit on Alimony

The bill creates s. 61.08(9), F.S., to provide that an alimony award may not result in the party receiving the alimony award enjoying a standard of living that is greater than that of the party paying the alimony, unless there are written findings of exceptional circumstances.

Applicability of Amendments made in 2010 Legislative Session

Current law provides that the amendments made pursuant to ch. 2010-199, L.O.F., are only applicable to awards of alimony made on or after July 1, 2010 and modifications of those awards. The amendments do not apply to modification of alimony awards in which the original award was made before July 1, 2010.¹⁷

Effect of the Bill: Applicability of Amendments made in 2010 Legislative Session

The bill also provides that all amendments made in the 2010 Legislative session to s. 61.08, F.S., apply to all modifications of alimony awards made after July 1, 2010.

Effect of the Bill: Effective Date and Applicability

The bill provides that the amendments to s. 61.08, F.S., apply to all initial awards of alimony entered on or after the effective date of the act and to all modifications of alimony awards for short or moderation duration made on or after the effective date.

B. SECTION DIRECTORY:

Section 1 amends s. 61.08, F.S., regarding alimony.

Section 2 provides an effective date of July 1, 2011.

Section 3 amends s. 2 of ch. 2010-299, L.O.F., regarding application.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹⁶ See s. 61.14, F.S., Enforcement and modification of support, maintenance, or alimony agreements or orders.

¹⁷ See note in s. 61.08, F.S. "Section 2, ch. 2010-199, provides that "[t]he amendments to s. 61.08, Florida Statutes, by this act apply to all initial awards of alimony entered after July 1, 2010, and modifications of such awards. Such amendments may not serve as a basis to modify awards entered before July 1, 2010, or as a basis to change amounts or duration of awards existing before July 1, 2010. The amendments to s. 61.08, Florida Statutes, by this act are applicable to all cases pending on or filed after July 1, 2010."

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

2. Other:

The bill provides that the amendments to s. 2 of ch. 2010-199, L.O.F., are retroactive to July 1, 2010. Retroactive application of legislation can implicate the due process provisions of the Constitution.¹⁸ As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.¹⁹

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

¹⁸ See *State Department of Transportation v. Knowles*, 402 So.2d 1155 (Fla. 1981).

¹⁹ See *Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So.2d. 494 (Fla. 1999).

1 A bill to be entitled
 2 An act relating to alimony; amending s. 61.08, F.S.;
 3 revising provisions relating to factors to be considered
 4 for alimony awards; revising provisions relating to awards
 5 of permanent alimony; providing that an alimony award may
 6 not result in the party receiving the award enjoying a
 7 standard of living that is greater than that of the party
 8 paying alimony unless there are written findings of
 9 exceptional circumstances; providing applicability for
 10 amendments by the act; revising provisions relating to
 11 applicability of certain amendments made in ch. 2010-199,
 12 Laws of Florida, to delete language declaring those
 13 amendments inapplicable to modification of awards made
 14 before the effective date of that act and applying those
 15 amendments to modifications of such awards; providing for
 16 retroactive effect; providing effective dates.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (9) of section 61.08, Florida
 21 Statutes, is renumbered as subsection (10), a new subsection (9)
 22 is added to that section, and subsections (2), (7), and (8) of
 23 that section are amended, to read:

24 61.08 Alimony.—
 25 (2) In determining whether to award alimony or
 26 maintenance, the court shall first make a specific factual
 27 determination as to whether either party has an actual need for
 28 alimony or maintenance and whether either party has the ability

29 | to pay alimony or maintenance. If the court finds that a party
 30 | has a need for alimony or maintenance and that the other party
 31 | has the ability to pay alimony or maintenance, then in
 32 | determining the proper type and amount of alimony or maintenance
 33 | under subsections (5)-(8), the court shall consider all relevant
 34 | factors, including, but not limited to:

35 | (a) The standard of living established during the
 36 | marriage.

37 | (b) The duration of the marriage.

38 | (c) The age and the physical and emotional condition of
 39 | each party.

40 | (d) The financial resources of each party, including the
 41 | nonmarital and the marital assets and liabilities distributed to
 42 | each.

43 | (e) The earning capacities, educational levels, vocational
 44 | skills, and employability of the parties and, when applicable,
 45 | the time necessary for either party to acquire sufficient
 46 | education or training to enable such party to find appropriate
 47 | employment.

48 | (f) The contribution of each party to the marriage,
 49 | including, but not limited to, services rendered in homemaking,
 50 | child care, education, and career building of the other party.

51 | (g) The responsibilities each party will have with regard
 52 | to any minor children they have in common.

53 | (h) The tax treatment and consequences to both parties of
 54 | any alimony award, including the designation of all or a portion
 55 | of the payment as a nontaxable, nondeductible payment.

56 | (i) All sources of income available to either party,

57 | including income available to either party through investments
 58 | of any asset held by that party.

59 | (j) Any other factor necessary to do equity and justice
 60 | between the parties.

61 | (7) Durational alimony may be awarded when permanent
 62 | periodic alimony is inappropriate. The purpose of durational
 63 | alimony is to provide a party with economic assistance for a set
 64 | period of time ~~following a marriage of short or moderate~~
 65 | ~~duration~~. An award of durational alimony terminates upon the
 66 | death of either party or upon the remarriage of the party
 67 | receiving alimony. The amount of an award of durational alimony
 68 | may be modified or terminated based upon a substantial change in
 69 | circumstances in accordance with s. 61.14. However, the length
 70 | of an award of durational alimony may not be modified except
 71 | under exceptional circumstances and may not exceed the length of
 72 | the marriage.

73 | (8) Permanent alimony may be awarded to provide for the
 74 | needs and necessities of life as they were established during
 75 | the marriage of the parties for a party who lacks the financial
 76 | ability to meet his or her needs and necessities of life
 77 | following a dissolution of marriage. Permanent alimony may be
 78 | awarded following a marriage of moderate or long duration,
 79 | ~~following a marriage of moderate duration~~ if such an award is
 80 | appropriate upon consideration of the factors set forth in
 81 | subsection (2), or following a marriage of short duration if
 82 | there are written findings of exceptional circumstances. In
 83 | awarding permanent alimony, the court shall include findings
 84 | regarding the applicability of the needs and necessities of life

85 established during the marriage to the alimony award and shall
 86 include findings that no other form of alimony, including, but
 87 not limited to, durational alimony, is adequate. An award of
 88 permanent alimony terminates upon the death of either party or
 89 upon the remarriage of the party receiving alimony. An award may
 90 be modified or terminated based upon a substantial change in
 91 circumstances or upon the existence of a supportive relationship
 92 in accordance with s. 61.14.

93 (9) An alimony award may not result in the party receiving
 94 the award enjoying a standard of living that is greater than
 95 that of the party paying alimony unless there are written
 96 findings of exceptional circumstances.

97 Section 2. The amendments to s. 61.08, Florida Statutes,
 98 by this act apply to all initial awards of alimony entered on or
 99 after July 1, 2011, and to all modifications of alimony awards
 100 for marriages of short or moderate duration made on or after
 101 July 1, 2011.

102 Section 3. Effective upon this act becoming a law and
 103 retroactive to July 1, 2010, section 2 of chapter 2010-199, Laws
 104 of Florida, is amended to read:

105 Section 2. The amendments to s. 61.08, Florida Statutes,
 106 by this act apply to all initial awards of alimony entered after
 107 July 1, 2010, and to all modifications of alimony ~~such~~ awards
 108 ~~made after July 1, 2010. Such amendments may not serve as a~~
 109 ~~basis to modify awards entered before July 1, 2010, or as a~~
 110 ~~basis to change amounts or duration of awards existing before~~
 111 ~~July 1, 2010. The amendments to s. 61.08, Florida Statutes, by~~
 112 ~~this act are applicable to all cases pending on or filed after~~

HB 1475

2011

113 | ~~July 1, 2010.~~

114 | Section 4. Except as otherwise expressly provided in this
115 | act and except for this section, which shall take effect upon
116 | this act becoming a law, this act shall take effect July 1,
117 | 2011.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
 2 Representative(s) Stargel offered the following:

3
 4 **Amendment (with title amendment)**

5 Remove lines 64-117 and insert:

6 period of time following a marriage of short or moderate
 7 duration, or following a marriage of long duration if there is
 8 no ongoing need for support on a permanent basis. An award of
 9 durational alimony terminates upon the death of either party or
 10 upon the remarriage of the party receiving alimony. The amount
 11 of an award of durational alimony may be modified or terminated
 12 based upon a substantial change in circumstances in accordance
 13 with s. 61.14. However, the length of an award of durational
 14 alimony may not be modified except under exceptional
 15 circumstances and may not exceed the length of the marriage.

16 (8) Permanent alimony may be awarded to provide for the
 17 needs and necessities of life as they were established during
 18 the marriage of the parties for a party who lacks the financial
 19 ability to meet his or her needs and necessities of life

Amendment No. 1

20 following a dissolution of marriage. Permanent alimony may be
21 awarded following a marriage of long duration if such an award
22 is appropriate upon consideration of the factors set forth in
23 subsection (2), following a marriage of moderate duration if
24 such an award is appropriate based upon clear and convincing
25 evidence after consideration of the factors set forth in
26 subsection (2), or following a marriage of short duration if
27 there are written findings of exceptional circumstances. In
28 awarding permanent alimony, the court shall include a finding
29 that no other form of alimony is fair and reasonable under the
30 circumstances of the parties. An award of permanent alimony
31 terminates upon the death of either party or upon the remarriage
32 of the party receiving alimony. An award may be modified or
33 terminated based upon a substantial change in circumstances or
34 upon the existence of a supportive relationship in accordance
35 with s. 61.14.

36 (9) The award of alimony shall not leave the payor with
37 significantly less net income than the net income of the
38 recipient unless there are written findings of exceptional
39 circumstances.

40 Section 2. This act is effective upon becoming law and
41 shall apply to all initial awards of alimony entered after the
42 effective date of this act and modifications of such awards.

43
44
45 -----
46 **T I T L E A M E N D M E N T**

47 Remove lines 5-16 and insert:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1475 (2011)

Amendment No. 1

48 | of durational alimony; revising provisions relating to awards of
49 | permanent alimony; providing that the award of alimony shall not
50 | leave the payor with significantly less net income than the net
51 | income of the recipient unless there are written findings of
52 | exceptional circumstances; providing for applicability of the
53 | act, providing an effective date.

54