Civil Justice Subcommittee

Wednesday, January 18, 2012
8:30 AM
404 HOB

Dean Cannon
Speaker

Eric Eisnaugle
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice Subcommittee

Start Date and Time:	Wednesday, January 18, 2012 08:30 am
End Date and Time:	Wednesday, January 18, 2012 10:30 am
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 565 Family Law by Porter
HB 715 Self-service Storage Facilities by Caldwell
HB 733 Probate by Kiar
CS/HB 803 Child Protection by Health & Human Services Access Subcommittee, Diaz
HB 917 Jurisdiction of the Courts by Bileca
HB 921 Landlords and Tenants by Stargel
HB 963 Dispute Resolution by Harrison
HB 1023 Suspension of Driver Licenses and Motor Vehicle Registrations by Costello
HB 1115 Teacher Protection by Brandes, Grant

NOTICE FINALIZED on 01/13/2012 16:15 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 565 Family Law
SPONSOR(S): Porter
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 752

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

SUMMARY ANALYSIS

In a contested marital dissolution, the court must identify which assets are nonmarital and those that are marital. In general, marital assets are divided equitably between the parties, whereas nonmarital assets remain as property of a spouse.

Under current law passive appreciation of real property that accrues during the marriage is subject to equitable distribution even though the property itself is a nonmarital asset. Courts determine the value of the passive appreciation of nonmarital real property to be equitably distributed according to a formula created by the courts.

The bill establishes a statutory formula for determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding.

The bill may have an indeterminate fiscal impact on state courts. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Statutory Framework for the Equitable Distribution of Marital Assets and Liabilities

Chapter 61, F.S., governs proceedings for the dissolution of marriage in Florida. Current law provides that a court must distribute the marital assets and liabilities based on the premise that the distribution be equal.[1] The court must do so unless justification exists for an unequal distribution based on relevant factors specified in s. 61.075(1), F.S. In a contested marital dissolution in which a stipulation and agreement has not been entered and filed, the distribution of marital assets or liabilities must be supported by factual findings based on competent substantial evidence with reference to the relevant statutory factors.[2] The court's findings must identify which assets are nonmarital and those that are marital.[3]

"Marital assets and liabilities" generally include:

- Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.[4]
- The enhancement in value and appreciation of nonmarital assets resulting from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.[5]
- Interspousal gifts during the marriage.[6]
- All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.[7]
- Real property held by the parties as tenants by the entireties.[8]
- All personal property titled jointly by the parties as tenants by the entireties.[9]

"Nonmarital assets and liabilities" generally include:

- Assets acquired and liabilities incurred by either party prior to marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities.[10]
- Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets.[11]
- All income derived from nonmarital assets during the marriage unless the income was treated, used, relied upon by the parties as a marital asset.[12]
- Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities.[13]
- Any liability incurred by forgery or unauthorized signature by one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party having committed forgery or having affixed the unauthorized signature.[14]

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[1] Section 61.075(1), F.S.
[2] Section 61.075(3), F.S.
[3] Section 61.075(3)(a) and (b), F.S.
[4] Section 61.075(6)(a)1.a., F.S.
[5] Section 61.075(6)(a)1.b., F.S.
[6] Section 61.075(6)(a)1.c., F.S.
[7] Section 61.075(6)(a)1.d., F.S.
[8] Section 61.075(6)(a)2., F.S.
[9] Section 61.075(6)(a)3., F.S.
[10] Section 61.075(6)(b)1., F.S.
[11] Section 61.075(6)(b)2., F.S.
[12] Section 61.075(6)(b)3., F.S.
[13] Section 61.075(6)(b)4., F.S.

Equitable Distribution of Marital Assets and Liabilities under Kaaa v. Kaaa[15]

In *Kaaa v. Kaaa*, the Florida Supreme Court held that "passive appreciation of the marital home that accrues during the marriage is subject to equitable distribution even though the home itself is a nonmarital asset."[16] For instance, passive appreciation in the value of nonmarital real property is subject to equitable distribution where the mortgage is paid with marital funds.[17] The Court recognized that the marital portion of nonmarital property encumbered by a mortgage paid down with marital funds includes two components: (1) a portion of the enhancement value of the marital asset resulting from the contributions of the nonowner spouse; and (2) a portion of the value of the passive appreciation of that asset that accrued during the marriage.[18]

In *Kaaa*, the Supreme Court provided a methodology for courts to use in determining the value of the passive appreciation of nonmarital real property to be equitably distributed and in allocating that value to both owner and nonowner spouse.[19] Pursuant to the methodology, a court must make several steps:

> First, the court must determine the overall current fair market value of the home. Second, the court must determine whether there has been a passive appreciation in the home's value. Third, the court must determine whether the passive appreciation is a marital asset under section 61.075(5)(a)(2)[, F.S]. This step must include findings of fact by the trial court that marital funds were used to pay the mortgage and that the nonowner spouse made contributions to the property. Moreover, the trial court must determine to what extent the contributions of the nonowner spouse affected the appreciation of the property. Fourth, the trial court must determine the value of the passive appreciation that accrued during the marriage and is subject to equitable distribution. Fifth, after the court determines the value of the passive appreciation to be equitably distributed, the court's next step is to determine how the value is allocated.[20]

The Supreme Court adopted the following formula used in *Stevens v. Stevens*, for the allocation of the appreciated value of nonmarital real property:

> If a separate asset is unencumbered and no marital funds are used to finance its acquisition, improvement, or maintenance, no portion of its value should ordinarily be included in the marital estate, absent improvements effected by marital labor. If an asset is financed entirely by borrowed money which marital funds repay, the entire asset should be included in the marital estate. In general, in the absence of improvements, the portion of the appreciated value of a separate asset which should be treated as a marital asset will be the same as the fraction calculated by dividing the indebtedness with which the asset was encumbered at the time of the marriage by the value of the asset at the time of the marriage.[21]

Passive appreciation of a nonmarital asset that is unencumbered is not subject to equitable distribution, absent the use of any marital funds or marital labor for its acquisition, improvement, or maintenance.[22]

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[14] Section 61.075(6)(b)5., F.S.
[15] *Kaaa v. Kaaa*, 58 So. 3d 867 (Fla. 2010).
[16] *Id.* at 868.
[17] *Id.* at 869.
[18] *Id.* at 871-72.
[19] *Id.* at 872.
[20] *Id.*
[21] *Id.* at 872 (quoting *Stevens v. Stevens*, 651 So. 2d 1306, 1307-08 (Fla. 1st DCA 1995).
[22] *Stevens v. Stevens*, 651 So. 2d 1306, 1307 (Fla. 1st DCA 2006); Dawn D. Nichols and Sean K. Ahmed, *Nonmarital Real Estate: Is the Appreciation Marital, Nonmarital, or a Combination of Both?*, 81 FLA. B.J. 75, 75 (Oct. 2007).

Security and Interest for Installment payments

In equitably distributing marital assets and liabilities, pursuant to s. 61.075(10), F.S., a court may order a party to pay a monetary payment in a lump sum or in installments paid over a fixed period. Section 61.075(10), F.S., does not currently give courts the discretion to require the payor to provide security or pay a reasonable rate of interest if installments are ordered.

Coverture Fraction

The term "coverture fraction" is not used in the Florida Statutes. However, in case law, it refers to "a formula used by the trial court to determine the marital portion of a retirement or pension fund." Under the formula:

> To determine the amount of a retirement or pension fund accumulated during the marriage, the trial court, creat[es] a fraction where the numerator is the amount of time the employee was married while participating in the plan, and the denominator is the total time the employee has in the plan. The trial court then multiplies the plan"s present value by the coverture fraction to calculate the total present value of the retirement fund which accrued during the marriage.[23]

Effect of Proposed Changes

The bill establishes a formula for a court to use in determining the value of the marital portion of nonmarital real property which is subject to equitable distribution in a divorce proceeding. Under the bill, the value of the marital portion of nonmarital real property is the sum of the following:

- The mortgage principal paid during the marriage from marital funds.
- A portion of the passive appreciation in the property which is related to the amount of marital funds used to pay the mortgage.
- Any active appreciation of the property resulting from the efforts or contributions of either party during the marriage.

Under the formula, the passive appreciation in the marital property, which is subject to equitable distribution, must be determined by multiplying the coverture fraction by the passive appreciation of the property during the marriage.

The passive appreciation is determined by subtracting the gross value of the property on date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage and less any additional encumbrances secured by the property during the marriage in excess of the first note and mortgage on which principal is paid from marital funds.

The numerator of the coverture fraction consists of the total paydown of principal from marital funds of all notes and mortgages secured by the property during the marriage. The denominator consists of the value of the real property on the date of marriage, the date of acquisition of the property, or the date the property was encumbered by the first note and mortgage on which principal was paid from marital funds, whichever is later.

The total marital portion of the property consists of the marital portion of the passive appreciation, the mortgage principal paid during the marriage from marital funds, and any active appreciation of the property which may not exceed the total net equity in the property at the date of value.

The bill also allows a court to deviate from the formula if a party proves that application of the formula is not equitable.

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[23] *Horton v. Horton*, 62 So. 3d 689, 691 (Fla. 2d DCA 2011) (citations omitted)).

Additionally, the bill authorizes the court to require a person who is ordered to make installment payments as part of the equitable distribution of marital assets and liabilities to provide security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If a court requires security or interest, the court must make written findings relating to any deferred payments, the amount of any security required, and the interest. The bill does not preclude the intended recipient of the installment payments from taking action under the procedures to enforce a judgment, in chapter 55, F.S., to collect any funds from a person who fails to make the court-ordered payments.

B. SECTION DIRECTORY:

Section 1 amends s. 61.075, relating to equitable distribution of marital assets and liabilities.

Section 2 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

There may be an indeterminate fiscal impact on state courts. The Office of the State Courts Administrator reports that the trial court's task in determining the passive appreciation of real property characterized as a marital asset will continue to be an extremely fact-intensive one. Significant judicial time will be expended in both the determination of the facts and use of the mathematical calculation. The fiscal impact on expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify any increase in judicial workload.[24]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

[24] Office of the State Court Administrator, 2011 Judicial Impact Statement for SB 752 (Nov. 9, 2011) (on file with the House Civil Justice Subcommittee).

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Using the term "coverture fraction" may be confusing given its use in equitable distribution of pension plan assets.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to family law; amending s. 61.075, F.S.; redefining the term "marital assets and liabilities" for purposes of equitable distribution in dissolution of marriage actions; providing that the term includes the paydown of principal of notes and mortgages secured by nonmarital real property and certain passive appreciation in such property under certain circumstances; providing formulas and guidelines for determining the amount of such passive appreciation; requiring security and interest relating to the installment payment of such assets; providing exceptions; permitting the court to provide written findings regarding any installment payments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (6) and subsection (10) of section 61.075, Florida Statutes, are amended to read:

61.075 Equitable distribution of marital assets and liabilities.—

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

a. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

b. The enhancement in value and appreciation of nonmarital assets resulting ~~either~~ from the efforts of either party during

the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

c. The paydown of principal of a note and mortgage secured by nonmarital real property and a portion of any passive appreciation in the property, if the note and mortgage secured by the property are paid down from marital funds during the marriage. The portion of passive appreciation in the property characterized as marital and subject to equitable distribution shall be determined by multiplying a coverture fraction by the passive appreciation in the property during the marriage.

(I) The passive appreciation shall be determined by subtracting the gross value of the property on the date of the marriage or the date of acquisition of the property, whichever is later, from the value of the property on the valuation date in the dissolution action, less any active appreciation of the property during the marriage, as defined in sub-subparagraph b., and less any additional encumbrances secured by the property during the marriage in excess of the first note and mortgage on which principal is paid from marital funds.

(II) The coverture fraction shall consist of a numerator, defined as the total paydown of principal from marital funds of all notes and mortgages secured by the property during the marriage, and a denominator, defined as the value of the subject real property on the date of the marriage, the date of acquisition of the property, or the date the property was encumbered by the first note and mortgage on which principal was paid from marital funds, whichever is later.

(III) The passive appreciation shall be multiplied by the

coverture fraction to determine the marital portion of the passive appreciation in the property.

(IV) The total marital portion of the property shall consist of the marital portion of the passive appreciation, as defined in subparagraph 3., the mortgage principal paid during the marriage from marital funds, and any active appreciation of the property, as defined in sub-subparagraph b., not to exceed the total net equity in the property at the date of valuation.

(V) The court shall apply this formula unless a party shows circumstances sufficient to establish that application of the formula would be inequitable under the facts presented.

d.~~c.~~ Interspousal gifts during the marriage.

e.~~d.~~ All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

2. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

4. The burden of proof to overcome the gift presumption shall be by clear and convincing evidence.

(10)(a) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time.

(b) If installment payments are ordered, the court may require security and a reasonable rate of interest, or otherwise recognize the time value of money in determining the amount of the installments. If security or interest is required, the court shall make written findings relating to any deferred payments, the amount of any security required, and the interest. This subsection does not preclude the application of chapter 55 to any subsequent default.

Section 2. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 715 Self-service Storage Facilities
SPONSOR(S): Caldwell
TIED BILLS: None **IDEN./SIM. BILLS:** SB 646

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

SUMMARY ANALYSIS

The Self-storage Facility Act allows a facility owner to sell personal property in a storage facility if the tenant fails to pay rent. The facility owner is required to give notice of the intent to sell the property to the tenant before selling the property and is required to give notice to the tenant if the sale of the property results in more money than is necessary to pay the rent due. Notice must be delivered to the tenant or mailed by certified mail. The bill removes the requirement to use certified mail and allows notices to be provided to the tenant by first-class mail with a certificate of mailing, and by e-mail in certain circumstances.

This bill also requires the rental agreement or application to contain a provision disclosing whether the applicant is a member of the military.

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:

Background - Notice

Sections 83.801-83.809, F.S., comprise Florida's "Self-storage Facility Act" (the "Act"). The Act provides remedies for the owner of a self-storage facility[1] or a self-contained storage unit[2] in the event that a tenant does not pay rent. The Act gives the facility owner the ability to deny a tenant's access to his or her property if the tenant is more than five days delinquent in paying rent.[3]

The Act provides that the owner of a self-storage facility or self-contained storage unit has a lien upon all personal property located at a self-service storage facility or in a self-contained storage unit for rent, labor charges, or other charges in relation to the personal property and for expenses necessary to preserve or dispose of the property.[4] The facility owner's lien is enforced as follows:

- The tenant is notified by written notice[5] delivered in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If mailed, the notice given is presumed delivered when it is deposited with the United States Postal Service and properly addressed with postage prepaid.

- After the expiration of the time given in the notice, an advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located. If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.[6]

In the event of a sale, the facility owner may satisfy the lien from the proceeds of the sale. The balance, if any, is held by the facility owner for delivery on demand to the tenant. A notice of any balance must be delivered by the facility owner to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.[7]

Current law also requires the facility owner to hold the sale proceeds for holders of liens against the property whose liens have priority over the owner's lien. The facility owner must provide notice of the amount of sale proceeds to such lienholders by either personal delivery or certified mail.[8]

The notices required by s. 83.806, F.S., must be sent by certified mail to the tenant's last known address.[9] The last known address means the address provided by the tenant in the latest rental agreement or an address provided by the tenant by hand delivery or certified mail in a subsequent

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[1] "Self-service storage facility" is defined by s. 83.803(1), F.S, as any real property designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.

[2] "Self-contained storage unit" is defined by s. 83.803(2), F.S, as any unit not less than 200 cubic feet in size, including, but not limited to, a trailer, box, or other shipping container, which is leased by a tenant primarily for use as storage space whether the unit is located at a facility owned or operated by the owner or at another location designated by the tenant.

[3] Section 83.8055, F.S.

[4] Section 83.805, F.S.

[5] The notice must contain a statement showing the amount due, the date it became due, a description of the property, a demand for payment within 14 days, and a conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

[6] Section 83.806, F.S.

[7] Section 83.806(8), F.S.

[8] *Id.*

[9] Section 83.806(1), F.S.

written notice of a change of address.[10] Certified mail provides verification of proof of delivery by requiring the recipient's signature for delivery.[11] Currently, the USPS charges $2.85 for certified mail service in addition to applicable postage for the piece.[12]

Effect of the Bill - Notice

The bill amends 83.803(6), F.S., to change the definition of "last known address" to specifically include a post office box address and to include a change of address if provided by the tenant. The new definition also allows the tenant to provide the address by first class mail or e-mail notice, in addition to hand delivery.

This bill amends s. 83.806, F.S., to provide that most notices required by s. 83.806, F.S., may either be delivered to the tenant or lienholder, e-mailed, or mailed by first-class mail, rather than certified mail. However, e-mail notice may not be utilized to notify the tenant of a sale of the contents of the storage unit or to notify the tenant or secured lienholders as to the amount of the sale.

A certificate of mailing must be included with the notification if notification is made by mail. In order for email notice to be valid, the facility owner must receive a response, a return receipt, or delivery confirmation from the same e-mail address. If the facility owner does not receive any of these, the facility owner must send notice of the sale to the tenant by first-class mail, along with a certificate of the mailing, before proceeding with the sale.

This bill also amends s. 83.803(6), F.S., to provide that tenants may provide notice of change of address by first class mail or e-mail. It removes the requirement that tenants mail notice by certified mail.

Background - Rental Agreements

The Servicemembers Civil Relief Act (50 U.S.C. ss. 501-596) requires a court order to enforce a lien against some members of the military. Persons are subject to federal criminal penalties for failing to comply with the Servicemembers Civil Relief Act. Current law does not contain a requirement that applicants for a self-storage lease disclose whether they are in the military. Under current law, the owner of a self-storage facility might not know a renter is in the military and could violate federal law by not obtaining a court order before conducting a sale of the property belonging to a member of the military.

Effect of the Bill - Additional Provisions in Rental Agreements

This bill amends s. 83.808, F.S., to require a rental agreement to contain a provision disclosing whether the applicant is a member of the uniformed services as defined in 10 U.S.C. s. 101(a)(5).[13] This provision discloses the renter's military status to the owner of the facility. This bill does not change the requirement that the owner of a self-service storage facility comply with the Servicemembers Civil Relief Act.

B. SECTION DIRECTORY:

Section 1 amends s. 83.803, F.S., relating to the definition of "last known address."

Section 2 amends s. 83.806, F.S., relating to enforcement of liens.

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[10] Section 83.803(6), F.S.

[11] *See* https://www.usps.com/send/insurance-and-extra-services.htm (last visited December 12, 2011).

[12] *Id.*

[13] 10 U.S.C. s. 101(a)(5) provides the definition of "uniformed services" for purposes of the Servicemembers Civil Relief Act. It defines uniformed services as the armed forces, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

Section 3 amends s. 83.808, F.S., relating to contracts.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill allows the owner of a self-service storage facility to send notice for certain actions via email or first-class mail instead of certified mail. The cost of a first-class stamp is $.45, while certified mail costs an additional $2.85.

This bill also requires the owner of a self-service storage facility to modify rental agreements or applications to contain a new provision disclosing whether the applicant is a member of the uniformed services, which may initially cost owners money to prepare if their agreements or applications do not already contain such a provision.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.803, F.S.; revising the definition of the term "last known address"; amending s. 83.806, F.S.; revising notice requirements relating to enforcing an owner's lien; authorizing notice by e-mail or first-class mail, along with a certificate of mailing; providing requirements for e-mail notice; revising provisions relating to when notice given is presumed delivered; amending s. 83.808, F.S.; requiring rental agreements and applications for rental agreements to contain a provision for the disclosure of the applicant's membership in the uniformed services; providing an effective date.

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

Section 1. Subsection (6) of section 83.803, Florida Statutes, is amended to read:

83.803 Definitions.—As used in ss. 83.801-83.809:

(6) "Last known address" means the street ~~that~~ address or post office box address provided by the tenant in the latest rental agreement or in a subsequent written change-of-address notice provided ~~the address provided by the tenant~~ by hand delivery, first-class mail, or e-mail ~~certified mail in a subsequent written notice of a change of address~~.

Section 2. Subsections (1), (3), and (8) of section 83.806, Florida Statutes, are amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(1) The tenant shall be notified by written notice delivered in person, by e-mail, or by first-class ~~certified~~ mail, along with a certificate of mailing, to the tenant's last known address and conspicuously posted at the self-service storage facility or on the self-contained storage unit. If the owner sends notice of a pending sale of property to the tenant's last known e-mail address and does not receive a response, return receipt, or delivery confirmation from the same e-mail address, the owner must send notice of the sale to the tenant by first-class mail, along with a certificate of mailing, to the tenant's last known address before proceeding with the sale.

(3) Any notice given pursuant to this section shall be presumed delivered when it is deposited with the United States Postal Service~~, registered,~~ and properly addressed with postage prepaid.

(8) In the event of a sale under this section, the owner may satisfy his or her lien from the proceeds of the sale, provided the owner's lien has priority over all other liens in the personal property. The lien rights of secured lienholders are automatically transferred to the remaining proceeds of the sale. The balance, if any, shall be held by the owner for delivery on demand to the tenant. A notice of any balance shall be delivered by the owner to the tenant in person or by first-class ~~certified~~ mail, along with a certificate of mailing, to the last known address of the tenant. If the tenant does not claim the balance of the proceeds within 2 years after ~~of~~ the

date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the balance. In the event that the owner's lien does not have priority over all other liens, the sale proceeds shall be held for the benefit of the holders of those liens having priority. A notice of the amount of the sale proceeds shall be delivered by the owner to the tenant or secured lienholders in person or by first-class ~~certified~~ mail, along with a certificate of mailing, to their last known addresses. If the tenant or the secured lienholders do not claim the sale proceeds within 2 years after ~~of~~ the date of sale, the proceeds shall be deemed abandoned, and the owner shall have no further obligation with regard to the payment of the proceeds.

Section 3. Section 83.808, Florida Statutes, is amended to read:

83.808 Contracts ~~Contractual liens~~.—

(1) Nothing in ss. 83.801-83.809 shall be construed as in any manner impairing or affecting the right of parties to create liens by special contract or agreement nor shall it in any manner impair or affect any other lien arising at common law, in equity, or by any statute of this state or any other lien not provided for in s. 83.805.

(2) A rental agreement or an application for a rental agreement must contain a provision disclosing whether the applicant is a member of the uniformed services as that term is defined in 10 U.S.C. s. 101(a)(5).

Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 733 Probate
SPONSOR(S): Kiar
TIED BILLS: None **IDEN./SIM. BILLS:** SB 988

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

SUMMARY ANALYSIS

The Florida Constitution provides a homestead exemption for certain property owned by "natural persons." The exemption protects the property owner and the property owner's family from creditors and financial misfortune. It also restricts the property owner's ability to devise homestead property to anyone other than the surviving spouse or dependent children.

The bill:

- Revises the definition for "protected homestead" to provide that real property owned in tenancy by the entireties or in joint tenancy with right of survivorship is not protected homestead;
- Clarifies language in ss. 2 and 14 of chapter 2011-183, Laws of Florida, relating to a surviving spouse's elective share;
- Clarifies the time period in which an attorney-in-fact or guardian must file a petition for authority to make an election to take a tenancy in common interest in a homestead; and
- Bars inheritance through intestate succession of a natural or adoptive parent from or through a child for whom their parental rights have previously been terminated.

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:

Background

Probate is the process for marshalling the assets of a deceased person, paying debts, and distributing property to heirs. If the deceased left a valid will, the estate is "testate", and the assets are distributed according to the will. If the deceased did not leave a valid will, the estate is "intestate," and the assets are distributed according to statute. There are two significant exceptions to these general rules. Exempt property and homestead property transfer to certain surviving dependents before such property is subject to being sold to pay creditors; in addition, the elective share provisions may provide a different inheritance for a surviving spouse than the spouse would otherwise receive by operation of the will and of probate law.

Protected Homestead

Homestead is a house, outbuildings and adjoining land owned and occupied by a person or a family as a residence.[1] Article X, s. 4(a)(1) of the Florida Constitution provides a homestead exemption for certain property owned by "natural persons." The exemption protects the property owner and the property owner's family from creditors and financial misfortune. It also restricts the property owner's ability to devise homestead property to anyone other than the surviving spouse or dependent children. However, the constitution provides that this constraint does not apply to property held in tenancy by the entireties[2] or if the property owner is unmarried and has no minor children.

Section 731.201(33), F.S., defines "protected homestead" as:

> [T]he property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned as tenants by the entirety is not protected homestead.

Case law provides that homestead owned by the decedent and another individual in joint tenancy with rights of survivorship is not subject to the restrictions on devise.[3]

The term "protected homestead" is found in the following statutory sections:

- Section 409.9101 – Recovery of payments made on behalf of Medicaid-eligible persons (Medicaid Estate Recovery Act);
- Section 731.201 – General definitions (The Florida Probate Code);
- Section 732.2045 – Exclusions and overlapping application;
- Section 732.402 – Exempt property;
- Section 732.403 – Family allowance;
- Section 733.607 – Possession of estate;
- Section 733.608 – General power of personal representative;
- Section 733.617 – Compensation of personal representative;
- Section 733.6171 – Compensation of attorney for the personal representative;
- Section 733.817 – Apportionment of estate taxes.

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[1] Black's Law Dictionary (9th ed. 2009).

[2] A tenancy by the entireties is a form of real estate ownership that may only be held by a legally married couple. Upon the death of one spouse, full ownership of the property immediately vests in the other spouse by operation of law. Tenancy by the entireties is presumed if the deed simply identifies the owners as "husband and wife." *See* Black's Law Dictionary (9th ed. 2009).

[3] *See Ostyn v. Olympic*, 455 So. 2d 1137 (Fla. 2d DCA 1984); Marger v. De Rosa, 57 So. 3d 866 (Fla. 2d DCA 2011).

The following statutes specifically reference Article X, section 4 for situations where the owner has died, but the term "homestead" is not qualified by the word "protected."

- Section 732.227 – Homestead Defined (Florida Uniform Disposition of Community Property Rights at Death Act.)
- Section 732.401 – Descent of Homestead
- Section 732.401 – Devise of Homestead
- Section 739.203 – Disclaimer of rights of property held as tenancy by the entirety.

The Florida Supreme Court has recognized that various types of real estate ownership may qualify for homestead protection and in 1941 stated:

> The Constitution limits the homestead land area that may be exempted, but it does not define or limit the estates in land to which homestead exemption may apply; therefore, in the absence of controlling provisions or principals of law to the contrary, the exemptions allowed by section 1, article 10 [now Article X, Section 4], may attach to any estate in land owned by the head of a family residing in this state, whether it is a freehold or less estate, if the land does not exceed the designated area and it is in fact the family home place. When the estate or interest of the owner in the homestead land terminates, the homestead exemption of such owner therein necessarily ceases.[4]

An owner's interest in tenancy by the entireties or joint tenancy with rights of survivorship may qualify for the protection against creditor's claims during the lifetime of the owners, and may also be subject to restrictions on the alienation of homestead during the owners' lifetime.

This bill clarifies that homestead property owned by the decedent in either a joint tenancy with rights of survivorship or tenancy by the entireties is not protected homestead as the decedent's interest in the homestead property terminates at death. The bill will not change the current law but is rather designed to eliminate any confusion caused by the omission of the reference to homestead property in a joint tenancy with rights of survivorship in the exemptions from definition of "protected homestead."

Descent of Homestead

Current law at s. 732.401(1) and (2), F.S., addresses descent (transfer of property to descendants) of homestead property where no devise is allowed. The statute provides:

> (1) [] [T]he homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.
>
> (2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

The right of election pursuant to s. 732.401(2), F.S., may be exercised by 1) the surviving spouse or 2) with court approval, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime. The statute provides several requirements and guidelines for the right of election:

[4] *Coleman v. Williams, 146 Fla. 45, 200 So. 207 (Fla. 1941).*

- The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime;
- A petition by an attorney or guardian of the property for approval to make the election tolls the time for making the election until 6 months after the decedent's death or 30 days after the rendition of an order authorizing the election, whichever occurs last;
- Once made, the election is irrevocable;
- The election must be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The statute contains language to include in the notice.

The bill eliminates the provision tolling the time for making the election where a petition by an attorney or guardian of the property for approval to make the election is filed. Instead, the petition for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. In addition, if the petition is timely filed, the time for making the election shall be extended for at least 30 days after the rendition of the order allowing the election.

Termination of Parental Rights

A court may terminate parental rights where a party files a petition for termination of parental rights; certain requirements, such as providing notice to relevant parties, are met; and the court's order specifies one of the grounds for termination listed in s. 39.806, F.S. Currently, there is no provision prohibiting a parent whose parental rights have been terminated from later inheriting through intestate succession. The bill creates s. 732.1081, F.S., barring inheritance through intestate succession of a natural or adoptive parent from or through a child for whom their parental rights have previously been terminated.

Other Changes

In 2011, the Florida Legislature amended Florida Statutes s. 732.201, F.S., to increase the intestate share of the surviving spouse in certain circumstances. Section 14, ch. 2011-183, provides that "[e]xcept as otherwise expressly provided in this act, this act shall take effect upon becoming a law and shall apply to all proceedings pending before such date and all cases commenced on or after the effective date." Section 2, ch. 2011-183 provides for an effective date of October 1, 2011 for the changes to s. 732.201, F.S. However, the language of s. 2 does not address the application of the amended statutes to estates pending or filed on or after October 1, 2011 for decedent's dying before October 1, 2011.

The bill clarifies language in ss. 2 and 14 of chapter 2011-183, Laws of Florida, relating to a surviving spouse's elective share. Specifically, the bill provides that s. 2 of the act applies only to the estates of decedents dying on or after October 1, 2011.

B. SECTION DIRECTORY:

Section 1 amends s. 731.201, F.S., relating to definitions.

Section 2 amends s. 732.102, F.S., relating to spouse's share of intestate estate.

Section 3 amends s. 732.401, F.S., relating to descent of homestead.

Section 4 creates s. 732.1081, F.S., relating to termination of parental rights.

Section 5 provides that the act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Under some circumstances, retroactive application of civil legislation may violate the state constitution by impairing a vested right, creating a new obligation, or imposing a new penalty.[5] Courts apply a two-pronged test to determine whether retroactive application of a statute violates the constitution. "First, the Court must ascertain whether the Legislature intended for the statute to apply retroactively. Second, if such an intent is clearly expressed, the Court must determine whether retroactive application would violate any constitutional principles."[6]

   The bill provides that amendments to 732.102, F.S., apply only to the estates of descendents dying on or after October 1, 2011. It appears that this provision preserves an existing right and therefore does not implicate the constitution.

B. RULE-MAKING AUTHORITY:

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

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[5] *See State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 61 (Fla.1995)
[6] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873, 877 (Fla. 2010)

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to probate; amending s. 731.201, F.S.; excluding real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship from the definition of the term "protected homestead"; clarifying the application of amendments to s. 732.102, F.S., made by chapter 2011-183, Laws of Florida, relating to a spouse's share of an intestate estate; amending s. 732.401, F.S.; revising the period of time during which an attorney in fact or guardian of the property of a surviving spouse may petition for approval to elect to take a one-half interest in the decedent's homestead; specifying the minimum duration of an extension of time; creating s. 732.1081, F.S.; barring inheritance rights of a natural or adoptive parent whose parental rights have been previously terminated pursuant to law; providing for application of the act; providing effective dates.

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

Section 1. Effective July 1, 2012, and applicable to proceedings pending before or commenced on or after July 1, 2012, subsection (33) of section 731.201, Florida Statutes, is amended to read:

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to

specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(33) "Protected homestead" means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner's surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship ~~as tenants by the entirety~~ is not protected homestead.

Section 2. Notwithstanding section 2 or section 14 of chapter 2011-183, Laws of Florida, the amendments to section 732.102, Florida Statutes, made by section 2 of that act apply only to the estates of decedents dying on or after October 1, 2011.

Section 3. Effective July 1, 2012, and applicable only to estates of persons dying on or after July 1, 2012, section 732.401, Florida Statutes, is amended to read:

732.401 Descent of homestead.—

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half

interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(a) The right of election may be exercised:

1. By the surviving spouse; or

2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(b) The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime. The time for making the election may not be extended except as provided in paragraph (c).

(c) A petition by an attorney in fact or by a guardian of the property of the surviving spouse for approval to make the election must be filed within 6 months after the decedent's death and during the surviving spouse's lifetime. If the petition is timely filed, the time for making the election shall be extended for at least 30 days after the rendition of the order allowing the election ~~tolls the time for making the election until 6 months after the decedent's death or 30 days after the rendition of an order authorizing the election, whichever occurs last~~.

(d) Once made, the election is irrevocable.

(e) The election shall be made by filing a notice of

election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE
TO TAKE A ONE-HALF INTEREST OF
DECEDENT'S INTEREST IN
HOMESTEAD PROPERTY

STATE OF.....
COUNTY OF.....

1. The decedent, ..., died on ..... On the date of the decedent's death, The decedent was married to ....., who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, which ~~that~~ real property being in ..... County, Florida, and described as: ...(description of homestead property)....

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property, and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

.....

...(Affiant)...

Sworn to (or affirmed) and subscribed before me this .... day of ...(month)..., ...(year)..., by ...(affiant)...

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

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

Personally Known OR Produced Identification

...(Type of Identification Produced)...

(3) Unless and until an election is made under subsection (2), expenses relating to the ownership of the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with chapter 738. If an election is made, expenses relating to the ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.

(4) If the surviving spouse's life estate created in subsection (1) is disclaimed pursuant to chapter 739, the interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or in joint tenancy with rights of survivorship.

Section 4. Effective July 1, 2012, and applicable only to estates of persons dying on or after July 1, 2012, section 732.1081, Florida Statutes, is created to read:

732.1081 Termination of parental rights.—For the purpose of intestate succession by a natural or adoptive parent, a natural or adoptive parent is barred from inheriting from or through a child if the natural or adoptive parent's parental rights were terminated pursuant to chapter 39 prior to the death of the child, and the natural or adoptive parent shall be treated as if the parent predeceased the child.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 803 Child Protection
SPONSOR(S): Health & Human Services Access Subcommittee; Diaz
TIED BILLS: None **IDEN./SIM. BILLS:** SPB 7166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee	14 Y, 0 N, As CS	Batchelor	Schoolfield
2) Civil Justice Subcommittee		Bond NB	Bond NB
3) Appropriations Committee			
4) Health & Human Services Committee			

SUMMARY ANALYSIS

CS/HB 803 makes substantial changes to various provisions in statutes relating to child abuse, the Florida Abuse Hotline, Child Protective Investigations, and the dependency process. Specifically, the bill does the following:

- Amends hotline procedures to specify that the hotline may accept a call from a parent or legal custodian seeking assistance for themselves when the call does not meet the statutory requirement of abuse, abandonment or neglect.
- Permits the Department of Children and Families (DCF) to discontinue an investigation if they determine that a false report of abuse, abandonment or neglect has been filed.
- Requires DCF to maintain one electronic child welfare case file for each child.
- Requires Child Protective Investigators (CPI) to determine the need for immediate consultation with law enforcement, child protection teams, and others prior to the commencement of an investigation.
- Outlines the activities and training requirements for CPI's.
- Requires that monitoring of protective investigation reports are used to determine the quality and timeliness of safety assessments, and teamwork with other professionals and engagement with families.
- Provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law which requires that a dependency petition be filed under certain conditions is deleted by the bill.
- The bill amends court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued.
- The bill makes improvements and changes to the injunction process to prevent child abuse.
- Requires DCF for out-of-home placement of a child to submit fingerprints of any household members who are 18 years of age or older to the state for criminal background and records checks.
- Amends the time frame for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law that already specify 12 months.
- The bill provides specific circumstances in which the court may have maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent.

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:

Background

Chapter 39, Florida Statutes

Chapter 39, F.S., provides Legislative direction for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.[1] The Legislature has established the Florida Abuse Hotline, Child Protection Investigations, and Community Based Care system to help ensure the safety and protection of children.

Florida Abuse Hotline

DCF operates the Florida Abuse Hotline (hotline), a 24 hour a day 7 day a week hotline that receives calls relating to child abuse or neglect. The hotline serves as a point of contact for people who reasonably suspect or believe that a child is being abused, abandoned or neglected. [2] Callers to the hotline may remain anonymous; however, various professions[3] are required to report to the hotline and are required to provide their name as part of the permanent report.[4] Once a call has been made to the hotline, the operators of the hotline are required to enter all information into the Florida Safe Families Network (FSFN), and determine if the report meets the statutory definition of child abuse, abandonment or neglect by a caregiver.[5] If the report meets the definition it is then referred to the appropriate child investigative office.[6] DCF is required to maintain a master file for each child whose report is accepted by the hotline. [7]

DCF has authorized the hotline to also accept calls which do not meet the criteria for abuse, abandonment or neglect. These are called Special Condition Referrals and include when the parent, adult household member, or other person responsible for the child's welfare:[8]

- Has been or is about to be incarcerated;
- Has been or is about to be hospitalized;
- Has died; or
- Is having difficulty caring for a child to the degree that it appears likely that without intervention, abuse will occur.

Child Protective Investigations

Once a call is received to the hotline and a determination has been made that a child may be a victim of abuse, abandonment or neglect, a Child Protective Investigator (CPI) is sent out for an immediate onsite investigation, if appropriate, or within 24 hours from the time the report was accepted by the hotline.[9] DCF is required to report criminal conduct[10] immediately to county law enforcement in which

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[1] s. 39.001(1)(a), F.S.
[2] s. 39.201(1)(a), F.S.
[3] s. 39.201(1)(b), F.S.
[4] *Id*
[5] s. 39.01(1), (2), (44), F.S.
[6] s. 39.201(2)(a), F.S.
[7] S. 39.301, F.S.
[8] *Id.*
[9] Rule 65C-29.003, F.A.C.
[10] s. 39.301(2)(b), F.S.

the alleged conduct has occurred. [11] The CPI is required to inform all parties of the report, once the initial assessment is complete, including the parent, legal custodian or other person responsible for the child's welfare.[12] All investigations are required to be completed within 60 days, unless there is a concurrent criminal investigation, the death of a child is involved, or the child is determined to be missing.[13]

Current statute provides for 2 options for response once the CPI determines the report is complete.[14] If it is determined that child would best be served in the home and child care or other treatment is voluntarily accepted by the child and the parent or legal custodian, the CPI may make the necessary references for treatment.[15] If the child is in need of protection and supervision from the court, DCF shall file a petition for dependency.[16] A petition for dependency is required for all cases classified as high risk, including but not limited to the young age of the parents or legal custodians, the use of illegal drugs, the arrest of parents or legal guardians for the manufacturing, processing, disposing of or storing of any substances in violation of Chapter 893, F.S. (drug laws), and domestic violence. [17]

If the CPI determines that a false report has been filed[18], the CPI will inform the reporter of criminal penalties and administrative fines associated with false reporting and will work with their supervisor to close the case. If the alleged perpetrator of abuse, abandonment or neglect consents, DCF may refer the report to law enforcement for prosecution of filing a false report.[19]

DCF currently performs child protection investigation services in 60 counties using department staff. [20] In the remaining 7 counties[21], investigations are conducted by local Sheriff's offices under contract with DCF.[22] There are currently 1,475 CPI's in the state that are either employed through DCF or the sheriff's office. [23]

Protective Injunction

Current law allows a court to issue an injunction to prevent an act of child abuse including protection from acts of domestic violence at any time after a protective investigation has been initiated, and there is reasonable cause for the injunction.[24] An injunction issued pursuant to this section may order an alleged or actual offender to do one or more of the following:

- Refrain from further abuse or acts of domestic violence.
- Participate in a specialized treatment program.
- Limit contact or communication with the child victim, other children in the home, or any other child.
- Refrain from contacting the child at home, school, work, or wherever the child may be found.

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[11] s. 39.301(2)(a), F.S.
[12] Rule 65C-29.003, F.A.C.
[13] s. 39.301(17), F.S.
[14] s. 39.301(9)(a)(b), F.S.
[15] s. 39.301(9)(a), F.S.
[16] s. 39.301(9)(b), F.S.
[17] *Id.*
[18] Rule 65C-29.010, F.A.C.
[19] s. 39.205(5), F.S.
[20] OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).
[21] Broward, Citrus, Hillsborough, Manatee, Pasco, Pinellas, and Seminole.
[22] OPPAGA Memorandum, Sheriff's Offices have Advantages for Conducting Child Abuse Investigations, but Quality Cannot be Directly Compared to DCF. (February 26, 2011).
[23] Staff Analysis for CS/HB 279 (2011); (on file with committee staff).
[24] s. 39.504((1), F.S.

- Have limited or supervised visitation with the child.; pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members.
- Vacate the home in which the child resides.[25]

The injunction will remain in effect until modified or dissolved by the court, and is enforceable in all counties in the state,[26] allowing law enforcement to exercise arrest powers in the enforcement of the injunction, if necessary.[27]

Petitions

If during the course of a protective investigation, DCF or law enforcement deems that a child cannot safely remain in a home, because of abuse, abandonment or neglect, the child can be taken into custody.[28] Once a child is taken into custody, DCF will review the facts supporting the removal of the child and determine if sufficient cause exist to file a shelter petition. If sufficient cause does not exist the child shall be returned to their parent or legal custodian.[29] If sufficient cause does exist, DCF shall file a petition and schedule a hearing with the courts, and request that a shelter hearing be held within 24 hours from the removal of the child from the home. [30] Each petition filed must contain the identity and residences of the parent or legal custodians, and must identify the name, age and sex of each child named in the petition. [31] Additionally, the petition must detail what voluntary services/and or dependency mediations the parents or legal custodian were offered and what the results were.[32]

At the adjudicatory hearing the court may make one the following rulings: [33]

- That the child is not a dependent child and dismiss the case.
- That the child is adjudicated dependent and may remain in the home, under supervision of the court, or be placed in out-of-home care.
- That the child may remain in the home, under the supervision of DCF; adjudication of dependency would be withheld assuming the family complies with the conditions of supervision.

DCF will develop a case plan for each child taken from the home with the goal of achieving permanency for the child.

Effect of Proposed Changes

Section 1. Definitions

The bill amends the definition of "institutional child abuse or neglect" to include a cross reference which provides a definition for "other person" which is referenced in the institutional child abuse or neglect definition.

Section 2. Procedures and Jurisdiction of the Court

The bill amends 39.013, F.S., related to court procedures and jurisdiction to specify that jurisdiction of the court attaches to a case when a petition for injunction to prevent child abuse has been issued pursuant to s. 39.504, F.S. Current law provides that court jurisdiction attaches to a case when

[25] s. 39.504(3)(a), F.S.
[26] s. 39.504(30(c), F. S.
[27] s. 39.504(4), F.S.
[28] s. 39.401(1)(b)(1), F.S.
[29] s39.401(3)(a), F.S.
[30] s. 39.401(3)(b), F.S.
[31] Fla.R.Jud.Admin.8.310.
[32] *Id.*
[33] s. 39.507, F.S.

petitions for shelter, dependency or termination of parental rights are filed or the child is taken into DCF custody. DCF reports that some courts will not recognize or hear an injunction unless a shelter, dependency or termination of parental rights petition has already been filed. This change will assist DCF by not requiring one of these other petitions when all that may be needed to resolve a situation is an injunction to protect the child.

Section 3. Criminal History Records Checks

The bill amends the requirements for background screening for persons being considered by DCF for the placement of a child. The bill requires that all persons, including parents, undergo a background screening through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal check. Additionally, the bill specifies that all household members and visitors 18 years of age or older are required to submit fingerprints to the Florida Department of Law Enforcement (FDLE) as a condition of background screening. Lastly, the bill requires that an out-of-state criminal history records check, for anyone 18 years of age or older, be conducted if the state allows for the release of such records.

Section 4. Hotline Reports of Child Abuse, Abandonment or Neglect

The bill amends hotline procedures to specify that the hotline may accept a call from a parent or legal custodian that does not meet the statutory requirement of abuse, abandonment or neglect if the person is calling on their own behalf for services. If DCF determines that the parent or legal custodian is in need of services to prevent a possible future harm to the child, DCF may make a referral for voluntary community services. DCF is currently making these referrals as "Special Condition Referrals" outlined in their Operating Procedures, without statutory authority. Adding this section to law clarifies current practice. The bill also clarifies that the hotline is the first step in the safety assessment and investigative process.

Section 5. False Reports of Abuse, Abandonment or Neglect

The bill permits that if DCF or its agent determines that a false report of abuse, abandonment or neglect has been filed, DCF may discontinue all investigative services during the course of investigation. Currently, DCF may not discontinue until the investigation has closed. This could help reduce the workload of CPI's by not requiring them to finish an investigation when a false report has been filed.

Section 6. Child Protection Investigations

The bill makes several changes to the current child protective investigation process.

- The bill provides DCF with discretion as to whether to file a dependency petition to the court when a child is in need of protection and supervision. Current law is deleted which requires that a dependency petition be filed when the child needs protection and supervision of the court and when the case is determined to be high risk.[34]

- The bill requires that the case record for each child be electronic and include all information from reports called into the hotline and all services the child and the family has received.

- The bill removes several provisions from current law which provided conditions as to when a child protective investigation is to be performed. This is replaced with a general directive that each report from the hotline which is accepted will be investigated and provides the following list of activities to be performed, some of which are already in current law:

    - Review all available information specific to the child and family and the alleged maltreatment including past family child welfare history, criminal records checks, and requests for law enforcement assistance provided by the hotline.

[34] s.39.301(9)(b), F.S.

- Interview collateral contacts, which may include professionals who know the child.
- Conduct face-to-face interviews, including with the child's parent or caregiver.
- Assess the child's residence.

(The following are new requirements proposed by the bill)

- Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals.
- Document impending dangers to the child based on safety assessment instruments as opposed to a risk assessment instrument which is required in current law. Neither the bill or current law defines "safety" or "risk". It is, therefore, not clear what change is intended by a safety assessment versus a risk assessment.

- The bill provides conditions under which an investigator may close a case and also makes changes to the case review process to identify strengths and weaknesses.

Section 7. Protective Investigations of Institutional Child Abuse, Abandonment or Neglect

The bill clarifies that during a protective investigation of institutional child abuse, abandonment or neglect, the CPI must include an interview with the child's parent or legal guardian as opposed to making an onsite visit to the residence.

Section 8.Child on Child Sexual Abuse

The bill specifies that DCF contracted Sheriff's offices that provide CPI services, or contracted case management personnel as opposed to district staff must follow the procedures in s. 39.307, F.S., involving child-on-child sexual abuse. The bill also removes the 7 day timeframe in which an assessment of service and treatment needs must be completed for a child who is a victim or perpetrator of child-on-child sexual abuse. This allows DCF more time to make the assessment as it often takes more than 7 days.[35]

Section 9. Injunctions

The bill makes improvements and changes to the injunction process to prevent child abuse in s.39.504, F.S., and mirrors language in the civil injunction process in Chapter 741, F.S. The bill requires a petitioner seeking an injunction to file a verified petition or a petition along with an affidavit, specifying the actions of the alleged offender and the remedies sought. The court of jurisdiction is required to set the hearing on the petition to take place as soon as possible. Prior to the hearing, the court may issue a temporary ex parte injunction lasting no more than 15 days. The hearing on the petition must take place within these 15 days, unless good cause is shown otherwise. The bill specifies that before the hearing the alleged offender must be served with a copy of the petition and the temporary injunction if one has been filed. The current injunction process in s.39.504, F.S., does not specify a timeframe for hearings.

The bill also clarifies that the person whom an injunction is against is not automatically a party to subsequent dependency actions.

Section 10. Disposition Hearings

The bill clarifies that parents are included in the list of adults for which a home study must be conducted when considered for out of home placement for a child. In addition, the requirements for the home study are increased to include that DCF must submit fingerprints of any household members who are 18 years of age or older to FDLE for state and criminal background checks and a records check through State Automated Child Welfare Information System. The bill also provides that DCF has the discretion to submit fingerprints of other visitors in the home who are made known to DCF.

[35] HB 803, DCF Analysis 2012 (on file with committee staff).

Section 11. Case Plan Development

The bill provides specific circumstances in which the court may have maintaining and strengthening families as a permanency goal in the child's case plan when the child resides with a parent. The bill adds the date a child was adjudicated dependent to the list of event dates used to measure compliance with the 12 month case plan.

Section 12. Permanency Determination

The bill makes minor technical wording changes.

Section 13. Judicial Review

The bill adds the date the child was adjudicated dependent as a starting point when considering extending the goal of reunification in a case plan beyond 12 months.

Section 14. Requirement to file a petition to Terminate Parental Rights

The bill provides that if a child is still in DCF custody 12 months after the child was sheltered or adjudicated dependent, whichever occurs first, that DCF shall file a petition to terminate parental rights. Current law provides for this to occur at the 12 month judicial review hearing.

Section 15. Termination of Parental Rights

The bill amends the timeframe for parents to comply with a case plan from 9 months to 12 months as it relates to grounds for termination of parental rights. This is a conforming change to other sections of law (including ss 39.401, 39.6011, 39.621, 39.701, 39.8055, F.S.) that already specify 12 months.

Sections 16, 17 and 18

The bill makes conforming changes.

Section 19

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1: Amends s. 39.01, F.S., relating to definitions.

Section 2: Amends s. 39.013, F.S., relating to procedures and jurisdiction; right to counsel.

Section 3: Amends s. 39.0138, F.S., relating to criminal history records check; limit on placement of a child.

Section 4: Amends s. 39.201, F.S., relating to mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.

Section 5: Amends s. 39.205, F.S., relating to penalties relating to reporting of child abuse, abandonment, or neglect.

Section 6: Amends s. 39.301, F.S., relating to initiation of protective investigations.

Section 7: Amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment or neglect.

Section 8: Amends s. 39.307, F.S., relating to reports of child-on-child sexual abuse.

Section 9: Amends s. 39.504, F.S., relating to injunction pending disposition of petition.

Section 10: Amends s. 39.521, F.S., relating to disposition hearings; powers of disposition.

Section 11: Amends s. 39.6011, F.S., relating to case plan development.

Section 12: Amends s. 39.621, F.S., relating to permanency determination by the court.

Section 13: Amends s. 39.701, F.S., relating to judicial review.

Section 14: Amends s. 39.8055, F.S., relating to requirement to file a petition to terminate parental rights; exceptions.

Section 15: Amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 16: Amends s. 39.502, F.S., relating to notice, process, and service.

Section 17: Amends s. 39.823, F.S., relating to guardian advocates for drug dependent newborns.

Section 18: Amends s. 39.828, F.S., relating to grounds for appointment of a guardian advocate.

Section 19: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 345 requires DCF to have a single, standard, electronic record. This limits DCF's ability to use a paper copy of a child's record, if needed, and could have budget implications by requiring the use of an electronic record.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 11, 2012 the Health and Human Services Access Subcommittee adopted three amendments to House Bill 803. All three amendments are technical amendments that either clarify the bills intent or correct cross references. The bill was reported favorably as a Committee Substitute. This analysis reflects the Committee Substitute.

A bill to be entitled

An act relating to child protection; amending s. 39.01, F.S.; revising the definition of "institutional child abuse or neglect"; amending s. 39.013, F.S.; specifying when jurisdiction attaches for a petition for an injunction to prevent child abuse issued pursuant to specified provisions; amending s. 39.0138, F.S.; revising provisions relating to criminal history records check on persons being considered for placement of a child; requiring a records check through the State Automated Child Welfare Information System; providing for an out-of-state criminal history records check of certain persons who have lived out of state if such records may be obtained; amending s. 39.201, F.S.; providing procedures for calls from a parent or legal custodian seeking assistance for himself or herself which do not meet the criteria for being a report of child abuse, abandonment, or neglect, but show a potential future risk of harm to a child and requiring a referral if a need for community services exists; specifying that the central abuse hotline is the first step in the safety assessment and investigation process; amending s. 39.205, F.S.; permitting discontinuance of an investigation of child abuse, abandonment, or neglect during the course of the investigation if it is determined that the report was false; amending s. 39.301, F.S.; substituting references to a standard electronic child welfare case

for a master file; revising requirements for such a file; revising requirements for informing the subject of an investigation; deleting provisions relating to a preliminary determination as to whether an investigation report is complete; revising requirements for child protective investigation activities to be performed to determine child safety; specifying uses for certain criminal justice information accesses by child protection investigators; requiring documentation of the present and impending dangers to each child through use of a standardized safety assessment; revising provisions relating to required protective, treatment, and ameliorative services; revising requirements for the Department of Children and Family Service's training program for staff responsible for responding to reports accepted by the central abuse hotline; requiring the department's training program at the regional and district levels to include results of qualitative reviews of child protective investigation cases handled within the region or district; revising requirements for the department's quality assurance program; amending s. 39.302, F.S.; requiring that a protective investigation must include an interview with the child's parent or legal guardian; amending s. 39.307, F.S.; requiring the department, contracted sheriff's office providing protective investigation services, or contracted case management personnel

responsible for providing services to adhere to certain procedures relating to reports of child-on-child sexual abuse; deleting a requirement that an assessment of service and treatment needs to be completed within a specified period; amending s. 39.504, F.S.; revising provisions relating to the process for seeking a child protective injunction; providing for temporary ex parte injunctions; providing requirements for service on an alleged offender; revising provisions relating to the contents of an injunction; providing for certain relief; providing requirements for notice of a hearing on a motion to modify or dissolve an injunction; providing that a person against whom an injunction is entered does not automatically become a party to a subsequent dependency action concerning the same child; amending s. 39.521, F.S.; requiring a home study report if a child has been removed from the home and will be remaining with a parent; substituting references to the State Automated Child Welfare Information System for the Florida Abuse Hotline Information System applicable to records checks; authorizing submission of fingerprints of certain household members; authorizing requests for national criminal history checks and fingerprinting of any visitor to the home known to the department; amending s. 39.6011, F.S.; providing additional options for the court with respect to case plans; providing for expiration of a

child's case plan no later than 12 months after the date the child was adjudicated dependent; conforming a cross-reference to changes made by the act; amending s. 39.621, F.S.; revising terminology relating to permanency determinations; amending s. 39.701, F.S.; providing that a court must schedule a judicial review hearing if the citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was adjudicated dependent, unless specified other events occurred earlier; conforming a cross-reference to changes made by the act; amending s. 39.8055, F.S.; requiring the department to file a petition to terminate parental rights within a certain number of days after the completion of a specified period after the child was sheltered or adjudicated dependent, whichever occurs first; amending s. 39.806, F.S.; increasing the number of months of failure of the parent or parents to substantially comply with a child's case plan in certain circumstances that constitutes evidence of continuing abuse, neglect, or abandonment and grounds for termination of parental rights; revising a cross-reference; amending ss. 39.502, 39.823, and 39.828, F.S.; conforming cross-references to changes made by the act; providing an effective date.

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

Section 1. Subsection (33) of section 39.01, Florida Statutes, is amended to read:

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

(33) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care as defined in subsection (47).

Section 2. Subsection (2) of section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.—

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or

some other person, or was not in the physical or legal custody of any ~~no~~ person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a

young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

Section 3. Subsection (1) of section 39.0138, Florida Statutes, is amended to read:

39.0138 Criminal history and other records checks ~~check~~; limit on placement of a child.—

(1) The department shall conduct a records check through the State Automated Child Welfare Information System (SACWIS) and a local and statewide criminal history records check on all persons, including parents, being considered by the department for placement of a child ~~subject to a placement decision~~ under this chapter, including all nonrelative placement decisions, and all members of the household, 12 years of age and older, of the person being considered~~, and frequent visitors to the household~~. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies of all household members 18 years of age and older and other visitors to the home. An out-of-state criminal history records check must be initiated for any person 18 years of age or older who resided in another state if that state allows the release of such records. ~~A criminal history records check must also include a search of the department's automated abuse information system.~~ The department shall establish by rule standards for evaluating

any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

Section 4. Paragraph (a) of subsection (2) and subsection (4) of section 39.201, Florida Statutes, are amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.—

(2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter. Any call received from a parent or legal custodian seeking assistance for himself or herself which does not meet the criteria for being a report of child abuse, abandonment, or neglect may be accepted by the hotline for response to ameliorate a potential future risk of harm to a child. If it is determined by a child welfare professional that a need for community services exists, the

department shall refer the parent or legal custodian for appropriate voluntary community services.

(4) The department shall operate ~~establish~~ and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The central abuse hotline is the first step in the safety assessment and investigation process. The central abuse hotline shall be operated in such a manner as to enable the department to:

(a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.

(b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports.

(e) Serve as a resource for the evaluation, management,

and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

Section 5. Subsections (3) and (5) of section 39.205, Florida Statutes, are amended to read:

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.—

(3) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, commits ~~is guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) If the department or its authorized agent has determined during the course of ~~after~~ its investigation that a report is a false report, the department may discontinue all investigative activities and shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s.

39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

Section 6. Section 39.301, Florida Statutes, is amended to read:

39.301 Initiation of protective investigations.—

(1) Upon receiving a report of known or suspected child abuse, abandonment, or neglect, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, the central abuse hotline shall determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline shall immediately notify the department's designated district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline shall notify the department's designated district staff responsible for protective investigations in sufficient time to allow for an investigation. At the time of notification, the central abuse hotline shall also provide information to district staff on any previous report concerning a subject of the present report or any pertinent information

relative to the present report or any noted earlier reports.

(2)(a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred.

(b) As used in this subsection, the term "criminal conduct" means:

1. A child is known or suspected to be the victim of child abuse, as defined in s. 827.03, or of neglect of a child, as defined in s. 827.03.

2. A child is known or suspected to have died as a result of abuse or neglect.

3. A child is known or suspected to be the victim of aggravated child abuse, as defined in s. 827.03.

4. A child is known or suspected to be the victim of sexual battery, as defined in s. 827.071, or of sexual abuse, as defined in s. 39.01.

5. A child is known or suspected to be the victim of institutional child abuse or neglect, as defined in s. 39.01, and as provided for in s. 39.302(1).

6. A child is known or suspected to be a victim of human trafficking, as provided in s. 787.06.

(c) Upon receiving a written report of an allegation of criminal conduct from the department, the law enforcement agency shall review the information in the written report to determine whether a criminal investigation is warranted. If the law enforcement agency accepts the case for criminal investigation, it shall coordinate its investigative activities with the

department, whenever feasible. If the law enforcement agency does not accept the case for criminal investigation, the agency shall notify the department in writing.

(d) The local law enforcement agreement required in s. 39.306 shall describe the specific local protocols for implementing this section.

(3) The department shall maintain a single, standard electronic child welfare case ~~master~~ file for each child whose report is accepted by the central abuse hotline for investigation. Such file must contain information concerning all reports received by the abuse hotline concerning that child and all services received by that child and family. The file must be made available to any department staff, agent of the department, or contract provider given responsibility for conducting a protective investigation.

(4) To the extent practical, all protective investigations involving a child shall be conducted or the work supervised by a single individual in order for there to be broad knowledge and understanding of the child's history. When a new investigator is assigned to investigate a second and subsequent report involving a child, a multidisciplinary staffing shall be conducted which includes new and prior investigators, their supervisors, and appropriate private providers in order to ensure that, to the extent possible, there is coordination among all parties. The department shall establish an internal operating procedure that ensures that all required investigatory activities, including a review of the child's complete investigative and protective services history, are completed by the investigator, reviewed by

the supervisor in a timely manner, and signed and dated by both the investigator and the supervisor.

(5)(a) Upon commencing an investigation under this part, the child protective investigator shall inform any subject of the investigation of the following:

1. The names of the investigators and identifying credentials from the department.

2. The purpose of the investigation.

3. The right to obtain his or her own attorney and ways that the information provided by the subject may be used.

4. The possible outcomes and services of the department's response ~~shall be explained to the parent or legal custodian~~.

5. The right of the parent or legal custodian to be engaged ~~involved~~ to the fullest extent possible in determining the nature of the allegation and the nature of any identified problem and the remedy.

6. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

(b) The investigator shall ~~department's training program shall ensure that protective investigators know how to~~ fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of investigators' interviews with parents or legal custodians or children.

(6) Upon commencing an investigation under this part, if a report was received from a reporter under s. 39.201(1)(b), the

protective investigator must provide his or her contact information to the reporter within 24 hours after being assigned to the investigation. The investigator must also advise the reporter that he or she may provide a written summary of the report made to the central abuse hotline to the investigator which shall become a part of the electronic child welfare case ~~master~~ file.

(7) An assessment of safety ~~risk~~ and the perceived needs for the child and family shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family. This assessment must include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence.

(8) Protective investigations shall be performed by the department or its agent.

~~(9) The person responsible for the investigation shall make a preliminary determination as to whether the report is complete, consulting with the attorney for the department when necessary. In any case in which the person responsible for the investigation finds that the report is incomplete, he or she shall return it without delay to the person or agency originating the report or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction, and request additional information in order to complete the report; however, the confidentiality of any report filed in accordance with this chapter shall not be violated.~~

~~(a) If it is determined that the report is complete, but~~

~~the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the protective investigator may refer the parent or legal custodian and child for such care or other treatment.~~

~~(b) If it is determined that the child is in need of the protection and supervision of the court, the department shall file a petition for dependency. A petition for dependency shall be filed in all cases classified by the department as high-risk. Factors that the department may consider in determining whether a case is high-risk include, but are not limited to, the young age of the parents or legal custodians; the use of illegal drugs; the arrest of the parents or legal custodians on charges of manufacturing, processing, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893; or domestic violence.~~

~~(c) If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.~~

(9) ~~(10)~~ (a) For each report received from the central abuse hotline and accepted for investigation ~~that meets one or more of the following criteria~~, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform the following ~~an onsite~~ child protective investigation activities to determine child safety:

1. Conduct a review of all relevant, available information specific to the child and family and alleged maltreatment; family child welfare history; local, state, and federal criminal

records checks; and requests for law enforcement assistance provided by the abuse hotline. Based on a review of available information, including the allegations in the current report, a determination shall be made as to whether immediate consultation should occur with law enforcement, the child protection team, a domestic violence shelter or advocate, or a substance abuse or mental health professional. Such consultations should include discussion as to whether a joint response is necessary and feasible. A determination shall be made as to whether the person making the report should be contacted before the face-to-face interviews with the child and family members ~~A report for which there is obvious compelling evidence that no maltreatment occurred and there are no prior reports containing some indicators or verified findings of abuse or neglect with respect to any subject of the report or other individuals in the home. A prior report in which an adult in the home was a victim of abuse or neglect before becoming an adult does not exclude a report otherwise meeting the criteria of this subparagraph from the onsite child protective investigation provided for in this subparagraph. The process for an onsite child protective investigation stipulated in this subsection may not be conducted if an allegation meeting the criteria of this subparagraph involves physical abuse, sexual abuse, domestic violence, substance abuse or substance exposure, medical neglect, a child younger than 3 years of age, or a child who is disabled or lacks communication skills~~.

2. Conduct ~~A report concerning an incident of abuse which is alleged to have occurred 2 or more years prior to the date of~~

~~the report and there are no other indicators of risk to any child in the home.~~

~~(b) The onsite child protective investigation to be performed shall include a~~ face-to-face interviews ~~interview~~ with the child; other siblings, if any; and the parents, legal custodians, or caregivers.~~; and other adults in the household and an onsite assessment of the child's residence in order to:~~

3.~~1.~~ Assess the child's residence, including a determination of ~~Determine~~ the composition of the family and ~~or~~ household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

4.~~2.~~ Determine whether there is any indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

5.~~3.~~ Complete assessment of immediate child safety for ~~Determine the immediate and long-term risk to~~ each child based on available records, interviews, and observations with all persons named in subparagraph 2. and appropriate collateral contacts, which may include other professionals ~~by conducting state and federal records checks, including, when feasible, the~~

~~records of the Department of Corrections, on the parents, legal custodians, or caregivers, and any other persons in the same household. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and shall not be further disseminated or used for any other purpose~~. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and may not be further disseminated or used for any other purpose.

6.~~4.~~ Document the present and impending dangers ~~Determine the immediate and long-term risk~~ to each child based on the identification of inadequate protective capacity through utilization of a standardized safety ~~risk~~ assessment instrument ~~instruments~~.

(b) Upon completion of the immediate safety assessment, the department shall determine the additional activities necessary to assess impending dangers, if any, and close the investigation.

~~5. Based on the information obtained from available sources, complete the risk assessment instrument within 48 hours~~

~~after the initial contact and, if needed, develop a case plan.~~

(c)~~6.~~ For each report received from the central abuse hotline, the department or the sheriff providing child protective investigative services under s. 39.3065, shall determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's safety and well-being and development, and cause the delivery of those services through the early intervention of the department or its agent. As applicable, ~~The training provided to staff members who conduct~~ child protective investigators ~~investigations~~ must inform parents and caregivers ~~include instruction on~~ how and when to use the injunction process under ~~s. 39.504 or~~ s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

1. If the department or the sheriff providing child protective investigative services determines that the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the parent or legal custodian and child may be referred for such care, case management, or other community resources.

2. If the department or the sheriff providing child protective investigative services determines that the child is in need of protection and supervision, the department may file a petition for dependency.

3. If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.

~~(c) The determination that a report requires an investigation as provided in this subsection and does not require an enhanced onsite child protective investigation pursuant to subsection (11) must be approved in writing by the supervisor with documentation specifying why additional investigative activities are not necessary.~~

~~(d) A report that meets the criteria specified in this subsection is not precluded from further investigative activities. At any time it is determined that additional investigative activities are necessary for the safety of the child, such activities shall be conducted.~~

(10)~~(11)~~(a) The department's training program for staff responsible for responding to reports accepted by the central abuse hotline must also ensure that child protective responders:

1. Know how to fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of child protective responder interviews with parents or legal custodians or children.

2. Know how and when to use the injunction process under s. 39.504 or s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

(b) To enhance the skills of individual staff members and to improve the region's and district's overall child protection system, the department's training program at the regional and district levels must include results of qualitative reviews of child protective investigation cases handled within the region or district in order to identify weaknesses as well as examples of effective interventions which occurred at each point in the

case. ~~For each report that meets one or more of the following criteria, the department shall perform an enhanced onsite child protective investigation:~~

~~1. Any allegation that involves physical abuse, sexual abuse, domestic violence, substance abuse or substance exposure, medical neglect, a child younger than 3 years of age, or a child who is disabled or lacks communication skills.~~

~~2. Any report that involves an individual who has been the subject of a prior report containing some indicators or verified findings of abuse, neglect, or abandonment.~~

~~3. Any report that does not contain compelling evidence that the maltreatment did not occur.~~

~~4. Any report that does not meet the criteria for an onsite child protective investigation as set forth in subsection (10).~~

~~(b) The enhanced onsite child protective investigation shall include, but is not limited to:~~

~~1. A face-to-face interview with the child, other siblings, parents or legal custodians or caregivers, and other adults in the household;~~

~~2. Collateral contacts;~~

~~3. Contact with the reporter as required by rule;~~

~~4. An onsite assessment of the child's residence in accordance with paragraph (10)(b); and~~

~~5. An updated assessment.~~

(c) For all reports received, detailed documentation is required for the investigative activities.

(11) ~~(12)~~ The department shall incorporate into its quality

assurance program the monitoring of ~~the determination of~~ reports that receive a ~~an onsite~~ child protective investigation to determine the quality and timeliness of safety assessments, engagements with families, teamwork with other experts and professionals, and appropriate investigative activities that are uniquely tailored to the safety factors associated with each child and family ~~and those that receive an enhanced onsite child protective investigation~~.

(12) ~~(13)~~ If the department or its agent is denied reasonable access to a child by the parents, legal custodians, or caregivers and the department deems that the best interests of the child so require, it shall seek an appropriate court order or other legal authority before ~~prior to~~ examining and interviewing the child.

(13) ~~(14)~~ Onsite visits and face-to-face interviews with the child or family shall be unannounced unless it is determined by the department or its agent or contract provider that such unannounced visit would threaten the safety of the child.

(14) ~~(15)~~ (a) If the department or its agent determines that a child requires immediate or long-term protection through:

1. Medical or other health care; or

2. Homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Intensive Crisis Counseling Program,

such services shall first be offered for voluntary acceptance unless there are high-risk factors that may impact the ability

of the parents or legal custodians to exercise judgment. Such factors may include the parents' or legal custodians' young age or history of substance abuse or domestic violence.

(b) The parents or legal custodians shall be informed of the right to refuse services, as well as the responsibility of the department to protect the child regardless of the acceptance or refusal of services. If the services are refused, a collateral contact ~~required under subparagraph (11)(b)2.~~ shall include a relative, if the protective investigator has knowledge of and the ability to contact a relative. If the services are refused and the department deems that the child's need for protection so requires, the department shall take the child into protective custody or petition the court as provided in this chapter. At any time after the commencement of a protective investigation, a relative may submit in writing to the protective investigator or case manager a request to receive notification of all proceedings and hearings in accordance with s. 39.502. The request shall include the relative's name, address, and phone number and the relative's relationship to the child. The protective investigator or case manager shall forward such request to the attorney for the department. The failure to provide notice to either a relative who requests it pursuant to this subsection or to a relative who is providing out-of-home care for a child may ~~shall~~ not result in any previous action of the court at any stage or proceeding in dependency or termination of parental rights under any part of this chapter being set aside, reversed, modified, or in any way changed absent a finding by the court that a change is required in the

child's best interests.

(c) The department, in consultation with the judiciary, shall adopt by rule criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. If after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to child protection teams pursuant to s. 39.303(2) and (3), the file must include written documentation that the administrative review included the results of the team's evaluation. Factors that must be included in the development of the rule include noncompliance with the case plan developed by the department, or its agent, and the family under this chapter and prior abuse reports with findings that involve the child or caregiver.

(15) ~~(16)~~ When a child is taken into custody pursuant to this section, the authorized agent of the department shall request that the child's parent, caregiver, or legal custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are

known.

(16)~~(17)~~ The department shall complete its protective investigation within 60 days after receiving the initial report, unless:

(a) There is also an active, concurrent criminal investigation that is continuing beyond the 60-day period and the closure of the protective investigation may compromise successful criminal prosecution of the child abuse or neglect case, in which case the closure date shall coincide with the closure date of the criminal investigation and any resulting legal action.

(b) In child death cases, the final report of the medical examiner is necessary for the department to close its investigation and the report has not been received within the 60-day period, in which case the report closure date shall be extended to accommodate the report.

(c) A child who is necessary to an investigation has been declared missing by the department, a law enforcement agency, or a court, in which case the 60-day period shall be extended until the child has been located or until sufficient information exists to close the investigation despite the unknown location of the child.

(17)~~(18)~~ Immediately upon learning during the course of an investigation that:

(a) The immediate safety or well-being of a child is endangered;

(b) The family is likely to flee;

(c) A child died as a result of abuse, abandonment, or

neglect;

(d) A child is a victim of aggravated child abuse as defined in s. 827.03; or

(e) A child is a victim of sexual battery or of sexual abuse,

the department shall ~~orally~~ notify the jurisdictionally responsible state attorney, and county sheriff's office or local police department, and, within 3 working days, transmit a full written report to those agencies. The law enforcement agency shall review the report and determine whether a criminal investigation needs to be conducted and shall assume lead responsibility for all criminal fact-finding activities. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding an offense described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate.

(18) ~~(19)~~ In a child protective investigation or a criminal investigation, when the initial interview with the child is conducted at school, the department or the law enforcement agency may allow, notwithstanding ~~the provisions of~~ s. 39.0132(4), a school staff member who is known by the child to be present during the initial interview if:

(a) The department or law enforcement agency believes that the school staff member could enhance the success of the interview by his or her presence; and

(b) The child requests or consents to the presence of the school staff member at the interview.

School staff may be present only when authorized by this subsection. Information received during the interview or from any other source regarding the alleged abuse or neglect of the child is ~~shall be~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1), except as otherwise provided by court order. A separate record of the investigation of the abuse, abandonment, or neglect may ~~shall~~ not be maintained by the school or school staff member. Violation of this subsection is ~~constitutes~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(19)~~(20)~~ When a law enforcement agency conducts a criminal investigation into allegations of child abuse, neglect, or abandonment, photographs documenting the abuse or neglect shall ~~will~~ be taken when appropriate.

(20)~~(21)~~ Within 15 days after the case is reported to him or her pursuant to this chapter, the state attorney shall report his or her findings to the department and shall include in such report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

~~(22) In order to enhance the skills of individual staff and to improve the district's overall child protection system, the department's training program at the district level must include periodic reviews of cases handled within the district in order to identify weaknesses as well as examples of effective~~

~~interventions that occurred at each point in the case.~~

(21)~~(23)~~ When an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers, except that a previous report may be used to determine whether a child is safe and what the known risk is to the child at any stage of a child protection proceeding.

(22)~~(24)~~ If, after having been notified of the requirement to report a change in residence or location of the child to the protective investigator, a parent or legal custodian causes the child to move, or allows the child to be moved, to a different residence or location, or if the child leaves the residence on his or her own accord and the parent or legal custodian does not notify the protective investigator of the move within 2 business days, the child may be considered to be a missing child for the purposes of filing a report with a law enforcement agency under s. 937.021.

Section 7. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(1) The department shall conduct a child protective

investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(33) or (47), acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established under s. 39.201(5) and ~~orally~~ notify the appropriate state attorney, law enforcement agency, and licensing agency, which shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations ~~onsite~~ or having face-to-face interviews with the child, investigation visits shall be unannounced unless it is determined by the department or its agent that unannounced visits threaten the safety of the child. If a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an interview with the child's parent or legal guardian ~~an onsite visit of the child's place of residence~~. The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as

to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 8. Subsection (2) of section 39.307, Florida Statutes, is amended to read:

39.307 Reports of child-on-child sexual abuse.—

(2) The department, contracted sheriff's office providing protective investigation services, or contracted case management personnel responsible for providing services ~~District staff~~, at a minimum, shall adhere to the following procedures:

(a) The purpose of the response to a report alleging juvenile sexual abuse behavior shall be explained to the caregiver.

1. The purpose of the response shall be explained in a manner consistent with legislative purpose and intent provided in this chapter.

2. The name and office telephone number of the person responding shall be provided to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

3. The possible consequences of the department's response, including outcomes and services, shall be explained to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

(b) The caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver shall be involved to the fullest extent possible in determining the nature of the sexual behavior concerns ~~allegation~~ and the nature of any problem or risk to other children.

(c) The assessment of risk and the perceived treatment needs of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers shall be conducted by the district staff, the child protection team of the Department of Health, and other providers under contract with the department to provide services to the caregiver of the alleged offender, the victim, and the victim's caregiver.

(d) The assessment shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

(e) If necessary, the child protection team of the Department of Health shall conduct a physical examination of the victim, which is sufficient to meet forensic requirements.

(f) Based on the information obtained from the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, his or her caregiver, the victim, and the victim's caregiver, an assessment of service and treatment needs ~~report~~ must be completed ~~within 7 days~~ and, if needed, a case plan developed within 30 days.

(g) The department shall classify the outcome of the report as follows:

1. Report closed. Services were not offered because the department determined that there was no basis for intervention.

2. Services accepted by alleged juvenile sexual offender. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and accepted by the caregiver.

3. Report closed. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.

4. Notification to law enforcement. The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.

5. Services accepted by victim. Services were offered to the victim and accepted by the caregiver.

6. Report closed. Services were offered to the victim but were rejected by the caregiver.

Section 9. Section 39.504, Florida Statutes, is amended to read:

39.504 Injunction pending disposition of petition; penalty.—

(1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, issue an injunction

to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse occurring based upon a recent overt act or failure to act.

(2) The petitioner seeking the injunction shall file a verified petition, or a petition along with an affidavit, setting forth the specific actions by the alleged offender from which the child must be protected and all remedies sought. Upon filing the petition, the court shall set a hearing to be held at the earliest possible time. Pending the hearing, the court may issue a temporary ex parte injunction, with verified pleadings or affidavits as evidence. The temporary ex parte injunction pending a hearing is effective for up to 15 days and the hearing must be held within that period unless continued for good cause shown, which may include obtaining service of process, in which case the temporary ex parte injunction shall be extended for the continuance period. The hearing may be held sooner if the alleged offender has received reasonable notice ~~Notice shall be provided to the parties as set forth in the Florida Rules of Juvenile Procedure, unless the child is reported to be in imminent danger, in which case the court may issue an injunction immediately. A judge may issue an emergency injunction pursuant to this section without notice if the court is closed for the transaction of judicial business. If an immediate injunction is issued, the court must hold a hearing on the next day of judicial business to dissolve the injunction or to continue or modify it in accordance with this section~~.

(3) Before the hearing, the alleged offender must be

personally served with a copy of the petition, all other pleadings related to the petition, a notice of hearing, and, if one has been entered, the temporary injunction. Following the hearing, the court may enter a final injunction. The court may grant a continuance of the hearing at any time for good cause shown by any party. If a temporary injunction has been entered, it shall be continued during the continuance.

(4) ~~(3)~~ If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.

(a) The injunction applies ~~shall apply~~ to the alleged or actual offender in a case of child abuse or acts of domestic violence. The conditions of the injunction shall be determined by the court, which ~~conditions~~ may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence.

2. Participate in a specialized treatment program.

3. Limit contact or communication with the child victim, other children in the home, or any other child.

4. Refrain from contacting the child at home, school, work, or wherever the child may be found.

5. Have limited or supervised visitation with the child.

~~6. Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child incurred as a result of the offenses; and similar costs for other family members.~~

6.~~7.~~ Vacate the home in which the child resides.

(b) Upon proper pleading, the court may award the following relief in a temporary ex parte or final injunction ~~If the intent of the injunction is to protect the child from domestic violence, the conditions may also include~~:

1. ~~Awarding the~~ Exclusive use and possession of the dwelling to the caregiver or exclusion of ~~excluding~~ the alleged or actual offender from the residence of the caregiver.

~~2. Awarding temporary custody of the child to the caregiver.~~

2.~~3.~~ ~~Establishing~~ Temporary support for the child or other family members.

3. The costs of medical, psychiatric, and psychological treatment for the child incurred due to the abuse, and similar costs for other family members.

This paragraph does not preclude an ~~the~~ adult victim of domestic violence from seeking protection for himself or herself under s. 741.30.

(c) The terms of the final injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. Notice of hearing on the motion to modify or dissolve the injunction must be provided to all parties, including the department. The injunction is valid and enforceable in all counties in the state.

(5)~~(4)~~ Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver

a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(6) ~~(5)~~ Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(7) The person against whom an injunction is entered under this section does not automatically become a party to a subsequent dependency action concerning the same child.

Section 10. Paragraph (r) of subsection (2) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.—

(2) The predisposition study must provide the court with the following documented information:

(r) If the child has been removed from the home and will be remaining with a relative, parent, or other adult approved by the court, a home study report concerning the proposed placement shall be included in the predisposition report. Before ~~Prior to~~ recommending to the court any out-of-home placement for a child other than placement in a licensed shelter or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a minimum:

1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.

2. Records checks through the State Automated Child Welfare Information System (SACWIS) ~~Florida Abuse Hotline Information System (FAHIS)~~, and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older. In addition, the fingerprints of any household members who are 18 years of age or older may be submitted to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information. The department has the discretion to request State Automated Child Welfare Information System (SACWIS) and local, statewide, and national criminal history checks and fingerprinting of any other visitor to the home who is made known to the department ~~and any other persons made known to the department who are frequent visitors in the home~~. Out-of-state criminal records checks must be initiated for any individual ~~designated above~~ who has resided in a state other than Florida if ~~provided~~ that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.

3. An assessment of the physical environment of the home.

4. A determination of the financial security of the proposed legal custodians.

5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process

and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

The department may ~~shall~~ not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

Section 11. Subsection (2) and paragraph (b) of subsection (4) of section 39.6011, Florida Statutes, are amended to read:

39.6011 Case plan development.—

(2) The case plan must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. Each case plan must contain:

(a) A description of the identified problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the

department.

(b) The permanency goal.

(c) If concurrent planning is being used, a description of the permanency goal of reunification with the parent or legal custodian in addition to a description of one of the remaining permanency goals described in s. 39.01.

1. If a child has not been removed from a parent, but is found to be dependent, even if adjudication of dependency is withheld, the court may leave the child in the current placement with maintaining and strengthening the placement as a permanency option.

2. If a child has been removed from a parent and is placed with a parent from whom the child was not removed, the court may leave the child in the placement with the parent from whom the child was not removed with maintaining and strengthening the placement as a permanency option.

3. If a child has been removed from a parent and is subsequently reunified with that parent, the court may leave the child with that parent with maintaining and strengthening the placement as a permanency option.

(d) The date the compliance period expires. The case plan must be limited to as short a period as possible for accomplishing its provisions. The plan's compliance period expires no later than 12 months after the date the child was initially removed from the home, the child was adjudicated dependent, or the date the case plan was accepted by the court, whichever occurs first ~~sooner~~.

(e) A written notice to the parent that failure of the

parent to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.

(4) The case plan must describe:

(b) The responsibility of the case manager to forward a relative's request to receive notification of all proceedings and hearings submitted pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~ to the attorney for the department;

Section 12. Subsection (1) of section 39.621, Florida Statutes, is amended to read:

39.621 Permanency determination by the court.—

(1) Time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or within ~~no later than~~ 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to be supervised by ~~receive supervision from~~ the department or awaits adoption.

Section 13. Paragraph (b) of subsection (3), subsection (6), and paragraph (e) of subsection (10) of section 39.701, Florida Statutes, are amended to read:

39.701 Judicial review.—

(3)

(b) If the citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was removed from the home, ~~or~~ the case plan was adopted, or the child was adjudicated dependent, whichever date came first, the court must schedule a judicial review hearing to be conducted by the court within 30 days after receiving the recommendation from the citizen review panel.

(6) The attorney for the department shall notify a relative who submits a request for notification of all proceedings and hearings pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~. The notice shall include the date, time, and location of the next judicial review hearing.

(10)

(e) Within ~~No later than~~ 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If~~, at this hearing,~~ the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The

department must file the motion within ~~no later than~~ 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal.

Section 14. Paragraph (a) of subsection (1) of section 39.8055, Florida Statutes, is amended to read:

39.8055 Requirement to file a petition to terminate parental rights; exceptions.—

(1) The department shall file a petition to terminate parental rights within 60 days after any of the following if:

(a) The ~~At the time of the 12-month judicial review hearing, a~~ child is not returned to the physical custody of the parents 12 months after the child was sheltered or adjudicated dependent, whichever occurs first;

Section 15. Paragraphs (e) and (k) of subsection (1) and subsection (2) of section 39.806, Florida Statutes, are amended to read:

39.806 Grounds for termination of parental rights.—

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. The failure of the parent or parents to substantially comply with the case plan for a period of 12 ~~9~~ months after an adjudication of the child as a dependent

child or the child's placement into shelter care, whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 12-month ~~9-month~~ period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval of a case plan having the goal of reunification with the parent, whichever occurs first; or

2. The parent or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with the case plan before time to comply with the case plan expires.

(k) A test administered at birth that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant, and the biological mother of the child is the biological mother of at least one other child who was adjudicated dependent after a finding of harm to the child's health or welfare due to exposure to a controlled substance or alcohol as defined in s.

39.01~~(32)(g)~~, after which the biological mother had the opportunity to participate in substance abuse treatment.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(b)-(d) or (f)-(l) ~~(1)(e)-(l)~~ have occurred.

Section 16. Subsections (1) and (19) of section 39.502, Florida Statutes, are amended to read:

39.502 Notice, process, and service.—

(1) Unless parental rights have been terminated, all parents must be notified of all proceedings or hearings involving the child. Notice in cases involving shelter hearings and hearings resulting from medical emergencies must be that most likely to result in actual notice to the parents. In all other dependency proceedings, notice must be provided in accordance with subsections (4)-(9), except when a relative requests notification pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~, in which case notice shall be provided pursuant to subsection (19).

(19) In all proceedings and hearings under this chapter, the attorney for the department shall notify, orally or in writing, a relative requesting notification pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~ of the date, time, and location of such proceedings and hearings, and notify the relative that he or she has the right to attend all subsequent proceedings and hearings, to submit reports to the court, and to speak to the court regarding the child, if the relative so desires. The court has the discretion to release the attorney for the department

from notifying a relative who requested notification pursuant to s. 39.301(14)(b) ~~39.301(15)(b)~~ if the relative's involvement is determined to be impeding the dependency process or detrimental to the child's well-being.

Section 17. Section 39.823, Florida Statutes, is amended to read:

39.823 Guardian advocates for drug dependent newborns.—The Legislature finds that increasing numbers of drug dependent children are born in this state. Because of the parents' continued dependence upon drugs, the parents may temporarily leave their child with a relative or other adult or may have agreed to voluntary family services under s. 39.301(14) ~~39.301(15)~~. The relative or other adult may be left with a child who is likely to require medical treatment but for whom they are unable to obtain medical treatment. The purpose of this section is to provide an expeditious method for such relatives or other responsible adults to obtain a court order which allows them to provide consent for medical treatment and otherwise advocate for the needs of the child and to provide court review of such authorization.

Section 18. Paragraph (a) of subsection (1) of section 39.828, Florida Statutes, is amended to read:

39.828 Grounds for appointment of a guardian advocate.—

(1) The court shall appoint the person named in the petition as a guardian advocate with all the powers and duties specified in s. 39.829 for an initial term of 1 year upon a finding that:

(a) The child named in the petition is or was a drug

dependent newborn as described in s. 39.01~~(32)(g)~~;

Section 19. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 Jurisdiction of the Courts
SPONSOR(S): Bileca
TIED BILLS: None **IDEN./SIM. BILLS:** SB 486

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

SUMMARY ANALYSIS

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment and a state's long-arm statute.

Florida's choice-of-law statute provides that a contract will be enforced by the courts of this state where Florida law has been designated as the governing law in the agreement and the transaction is valued at no less than $250,000. The forum-selection statute grants courts jurisdiction to hear cases relating to any contracts that have been made pursuant to Florida's choice-of-law statute.

The bill revises Florida's long-arm, choice-of-law, and forum-selection statutes, as well as provisions of the Enforcement of Foreign Judgment Act and the International Commercial Arbitration Act to:

- Provide that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with choice-of-law statute.
- Delete language that prevents the enforcement of a choice-of-law provision in a contract where each party is a nonresident.
- Delete language from the Enforcement of Foreign Judgment Act, regarding the definition of "foreign judgment," to clarify that the statute applies to a court order from a U.S. territory (i.e. Puerto Rico), not merely to a court order from one of the 50 states.
- Correct cross references in the International Commercial Arbitration Act to conform with the UNCITRAL Model Law on Commercial Arbitration.

The bill may have an indeterminate fiscal impact on state courts. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Personal Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment.[1] The test for determining whether a court is able to assert personal jurisdiction over a nonresident is whether the nonresident has "minimum contacts" in the forum so that the commencement of a proceeding against said individual will not "offend traditional notions of fair play and substantial justice."[2] The principal inquiry is whether the nonresident's conduct and connection with the forum state would lead him or her to believe that they could "reasonably anticipate being haled into court."[3]

Florida Long-Arm Statute

The second limitation on a court's ability to assert personal jurisdiction is derived from a state's long-arm statute. Such statutes can be drafted broadly[4] to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow for a court to assume personal jurisdiction in a particular case. Florida's statute falls in the latter category.

In *Venetian Salami Co. v. J.S. Parthenais*, the Florida Supreme Court described the relationship between Florida's long-arm statute and the due process requirements of the Fourteenth Amendment as follows:

> By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned. It has not specifically addressed whether the federal constitutional requirement of minimum contacts has been met. As a practical matter, it could not do so because each case will depend upon the facts.[5]

Therefore, two inquiries must be satisfied in determining a court's ability to assert personal jurisdiction over a nonresident: 1) whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and 2) if so, whether the necessary minimum contacts exist to satisfy due process requirements.[6]

Important Court Rulings

In *Jetbroadband WV, LC v. Mastec North America, Inc.*, the court held that by promulgating ss. 685.101 and 685.102, F.S., the legislature created a separate jurisdictional basis for asserting personal jurisdiction over a nonresident that was outside the ambit of the long-arm statute.[7] In that case, the court declared that the nonresident defendant was subject to the jurisdiction of Florida's courts by virtue

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[1] U.S. Const. amend. XIV, s. 2 ("No state shall . . . deprive any person of life, liberty, or property without due process of law . . .); *see International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement,* 326 U.S. 310, 316 (1945).
[2] *International Shoe*, 326 U.S. at 316.
[3] *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474 (1985) (quoting *World-Wide Volkswagen Co. v. Woodson,* 444 U.S. 286, 297 (1980)).
[4] An example of a broad long-arm statute can be found in Cal. Civil Code s. 410.10 (2011), which states: "A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."
[5] *Venetian Salami Co. v. J.S. Parthenais,* 554 So. 2d 499, 500 (Fla. 1989).
[6] *Jetbroadband WV, LLC v. Mastec North America, Inc.*, 13 So. 3d 159, 161 (Fla. 3rd DCA 2009).
[7] *Id.*

of the forum-selection clause that designated Florida as the appropriate venue to commence an action or proceeding regarding a dispute arising from the parties' agreement.[8]

The court distinguished its ruling from an earlier Florida Supreme Court case, *McRae v. J.D./M.D., Inc.*, that was decided 12 years earlier. There, the court refused to enforce a forum-selection clause and denied jurisdiction on the grounds that there was no jurisdictional basis for doing so under the 1987 version of the long-arm statute.[9] At the time of the decision, Florida's Choice-of-Law and Forum Selection statutes had not been enacted.[10] In *Jetbroadband,* the court explained that, due to passage of the choice-of-law and forum selection statutes, Florida courts were now equipped with the jurisdictional authority to hear cases involving forum-selection clauses that designate Florida as the venue of choice for a proceeding.[11]

Florida Choice-of-Law Statute

The choice-of-law statute provides that a court may enforce a contract where Florida law is designated as the governing law in the agreement and the transaction is valued at no less than $250,000.[12] The statute further provides that such contracts will be enforced if: "1) the contract bears a substantial or reasonable relation to Florida, or 2) at least one of the parties is either a resident or citizen of Florida (if a person), or is incorporated or organized under the laws of Florida or maintains a place of business in Florida (if a business)."[13]

As presently drafted, the choice-of-law statute is unclear regarding whether a substantial relationship is required between the agreement, parties, and Florida. For instance, s. 685.101(1), F.S, provides that:

> [A]ny contract, agreement or undertaking . . . may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement or undertaking . . . whether or not [it] bears any relation to this state.

In contrast, s. 685.101(2), F.S, provides that:

> [T]his section does not apply to any contract, agreement, or undertaking regarding any transaction which does not bear a substantial or reasonable relation to the state in which every party is either or a combination of [a nonresident of this state or incorporated or organized under the laws of another state.]

In sum, s. 685.101(1), F.S., appears to require no substantial connection between the subject matter of the agreement and Florida; however, in s. 685.101(2), F.S., the statute explicitly requires a connection between the parties and Florida.

Florida Forum-Selection Statute

The forum-selection statute, s. 685.102, F.S., grants courts jurisdiction to hear cases relating to a contract made pursuant to Florida's choice-of-law statute, or s. 685.101, F.S.

Regarding enforceability, the United States Supreme Court has held that such clauses should be upheld, unless it can be shown that its enforcement would be unreasonable or unjust, or that the clause was invalid as a result of fraud or overreaching.[14] The Court has also held that the minimum contacts

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[8] *Id.* at 162-63.
[9] *McRae v. J.D./M.D., Inc.* 511 So. 2d 540, 542 (1987).
[10] Sections 685.101 and 685.102, F.S (the statutes were passed in 1989, two years after the court's decision in *McRae*).
[11] *Id.*
[12] *Id.*
[13] *Jetbroadband,* 13 So. 3d at 162 (*quoting* Edward M. Mullins & Douglas J. Giuliano, Contractual Waiver of Personal Jurisdiction Under F.S. § 685.102: The Long-Arm Statute's Little-Known Cousin, 80-May Fla. B.J. 36, 37 (2006)).
[14] *M/S Bremen v. Zapata Off-Shore Co.,* 407 U.S. 1, 15 (1972).

standard is met if a forum-selection clause exists that is "freely negotiated and is not unreasonable and unjust."[15]

Effect of Bill

The bill provides that courts may assert personal jurisdiction over a nonresident who enters into a contract that complies with the choice-of-law statute, s. 685.102, F.S.[16] As a result, a court may excercise personal jurisdiction in a case involving nonresidents if they enter into a contract where the parties agree to designate Florida law as governing the contract; thus, contractually agreeing to personal jurisdiction in this state.

The bill amends s. 685.101, F.S., to remove the limiting language requiring "a substantial or reasonable relation to Florida or [that] at least one of the parties be a resident of Florida or incorporated under its laws."[17] As a result, the deletion of the limitation appears to expand the jurisdiction of the courts of this state accordingly.

Other Changes

Florida Enforcement of Foreign Judgments Act

Article IV, clause 1 of the United States Constitution provides that "full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. . ."[18] Accordingly, under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., provide that a foreign judgment from a sister jurisdiction may be enforced in Florida upon being recorded in the office of the clerk of the circuit court of any county.[19] Current law limits this to only apply to a judgment or order from "any other state."

The definition does not contain any reference to territories or possessions of the United States entitled to full faith and credit under federal law (i.e. Puerto Rico).[20]

In *Rodriguez v. Nasrallah*,[21] a state court held that "[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister states." As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida.

The bill amends s. 55.502, F.S., to more succinctly define a foreign judgment as any "judgment, decree, or order of a court which is entitled to full faith and credit." By removing from the definition of "foreign judgment" reference to orders from the 50 states, it would allow for the judgments, orders, and decrees from U.S. territories, such as Puerto Rico, to be recognized under the statute.

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed statutes relating to international commercial arbitration and, in its place, adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (Model Law).

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[15] *Burger King*, 471 U.S. at 473 n. 14.

[16] Several other jurisdictions have similar language in their respective long-arm statutes. MICH. COMP. LAWS s. 600.705 (2011); MONT. CODE ANN. s. 25-20-4(b)(1)(E) (2011); S.D. CODIFIED LAWS s. 15-7-2(5) (2011); TENN CODE ANN. s. 20-2-214 (2011) ("Entering into a contract for services to be rendered or for materials to be furnished in [this state] by such person.").

[17] *Jetbroadband*, 13 So. 3d at 162.

[18] U.S. Const. art. IV, cl.1.

[19] Section 55.503, F.S. (2011).

[20] *See* 28 U.S.C. s. 1738 (2006) (". . . The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form . . .").

[21] *See* 659 So. 2d 437, 439 (Fla. 1st DCA 1995).

Chapter 684, F.S., in accordance with the UNCITRAL Model Law on International Commercial Arbitration, applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. Currently, two of the statutes contain clerical errors relating to cross-references. The bill amends ss. 684.0019 and 684.0026, F.S., to correct cross-references to conform the Florida International Commercial Arbitration Act to the UNCITRAL Model Law on Commercial Arbitration.

B. SECTION DIRECTORY:

Section 1 amends s. 48.193, F.S., relating to the jurisdiction of the courts.

Section 2 amends s. 55.502, F.S., relating to the definition of the term "foreign judgment."

Section 3 amends s. 684.0019, F.S., relating to conditions for granting interim measures.

Section 4 amends s. 684.0026, F.S., relating to recognition and enforcement.

Section 5 amends s. 685.101, F.S., relating to choice-of-law.

Section 6 amends s. 685.102, F.S., relating to jurisdiction.

Section 7 provides that the bill shall take effect on July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate impact on courts' case load. According to the Office of the State Courts Administrator's 2012 Judicial Impact Statement, the bill may increase the number of contract actions filed in circuit court; however, it was unable to quantify to what extent.[22]

[22] Office of the State Court Administrator, 2012 Judicial Impact Statement for HB 917 (Dec. 30, 2011) (on file with the House Civil Justice Subcommittee).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

With respect to choice-of-law conflicts, the United States Supreme Court held that "for a State's substantive law to be selected in a constitutionally permissible manner, the State must have significant contact or a significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair."[23] Accordingly, the removal of the requirement of "significant contacts" or "reasonable relationship" from a state's choice-of-law statute could potentially trigger a due process challenge under the Fourteenth Amendment. However, in *Hague*, there was no contract provision whereby the parties agreed to be governed by a specific state's law. Instead, the question before the Court was which state law applied in the absence of an agreement that designated any state's law as governing. In addition, ss. 685.101 and 685.102, F.S., would continue to preserve existing language that limits the application of the statutes "to the extent permitted under the United States Constitution."[24]

The United States Supreme Court has explained that, in the commercial context, the minimum contacts standard is met if there is a forum-selection clause that it is "freely negotiated and is not unreasonable and unjust."[25]

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[23] *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-13 (1981).
[24] Sections 685.101 and 685.102, F.S.
[25] *Burger King*, 471 U.S. at 473, n. 14; *See also, Elandia International, Inc. v. Koy, et al.*, 690 F. Supp. 2d 1317, 1340 (S.D. Fla. 2010).

A bill to be entitled

An act relating to the jurisdiction of the courts; amending s. 48.193, F.S.; including as an additional basis for subjecting a person to the jurisdiction of the courts of this state provisions which state that a person submits to the jurisdiction of the courts of this state by entering into a contract that designates the law of this state as the law governing the contract and that contains a provision by which such person agrees to submit to the jurisdiction of the courts of this state; amending s. 55.502, F.S.; revising the definition of the term "foreign judgment" for purposes of the Florida Enforcement of Foreign Judgments Act; amending s. 684.0019, F.S.; clarifying that an arbitral tribunal receiving a request for an interim measure to preserve evidence in a dispute governed by the Florida International Commercial Arbitration Act need consider only to the extent appropriate the potential harm that may occur if the measure is not awarded or the possibility that the requesting party will succeed on the merits of the claim; amending s. 684.0026, F.S.; correcting a cross-reference in the Florida International Commercial Arbitration Act; amending s. 685.101, F.S.; deleting a restriction on the jurisdiction of the courts of this state to transactions bearing a substantial relation to this state; revising application dates of provisions relating to the jurisdiction of the courts;

amending s. 685.102, F.S.; revising application dates of provisions relating to the jurisdiction of the courts; providing an effective date.

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

Section 1. Subsection (1) of section 48.193, Florida Statutes, is amended to read:

48.193 Acts subjecting person to jurisdiction of courts of state.—

(1) Any person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself and, if he or she is a natural person, his or her personal representative to the jurisdiction of the courts of this state for any cause of action arising from ~~the doing of~~ any of the following acts:

(a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.

(b) Committing a tortious act within this state.

(c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.

(d) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for

support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.

(f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:

1. The defendant was engaged in solicitation or service activities within this state; or

2. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

(g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

(h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.

(i) Entering into a contract that complies with s. 685.102.

Section 2. Subsection (1) of section 55.502, Florida Statutes, is amended to read:

55.502 Construction of act.—

(1) As used in ss. 55.501-55.509, the term "foreign judgment" means any judgment, decree, or order of a court which

~~of any other state or of the United States if such judgment, decree, or order~~ is entitled to full faith and credit in this state.

Section 3. Section 684.0019, Florida Statutes, is amended to read:

684.0019 Conditions for granting interim measures.—

(1) The party requesting an interim measure under s. 684.0018 must satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) A reasonable possibility exists that the requesting party will succeed on the merits of the claim. The determination on this possibility does not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under s. 684.0018(4) ~~s. 684.0018~~, the requirements in subsection (1) apply only to the extent the arbitral tribunal considers appropriate.

Section 4. Section 684.0026, Florida Statutes, is amended to read:

684.0026 Recognition and enforcement.—

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was

issued, subject to s. 684.0027 ~~s. 684.0019(1)~~.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of the termination, suspension, or modification of the interim measure.

(3) The court where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or if such a decision is necessary to protect the rights of third parties.

Section 5. Section 685.101, Florida Statutes, is amended to read:

685.101 Choice of law.—

(1) The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction involving in the aggregate at least ~~not less than~~ $250,000, the equivalent thereof in any foreign currency, or services or tangible or intangible property, or both, of equivalent value, including a transaction otherwise covered by s. 671.105(1), may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement, or undertaking, the effect thereof and their rights and duties thereunder, in whole or in part, whether or not such contract, agreement, or undertaking bears any relation to this state.

(2) This section does not apply to any contract, agreement, or undertaking:

~~(a) Regarding any transaction which does not bear a substantial or reasonable relation to this state in which every party is either or a combination of:~~

~~1. A resident and citizen of the United States, but not of this state; or~~

~~2. Incorporated or organized under the laws of another state and does not maintain a place of business in this state;~~

(a) ~~(b)~~ For labor or employment;

(b) ~~(c)~~ Relating to any transaction for personal, family, or household purposes, unless such contract, agreement, or undertaking concerns a trust at least one trustee of which resides or transacts business as a trustee in this state, in which case this section applies;

(c) ~~(d)~~ To the extent provided to the contrary in s. 671.105(2); or

(d) ~~(e)~~ To the extent such contract, agreement, or undertaking is otherwise covered or affected by s. 655.55.

(3) This section does not limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement, or undertaking.

(4) This section applies to~~:~~

~~(a)~~ contracts entered into on or after July 1, 2012 ~~June 27, 1989; and~~

~~(b) Contracts entered into prior to June 27, 1989, if an action or proceeding relating to such contract is commenced on or after June 27, 1989~~.

Section 6. Section 685.102, Florida Statutes, is amended to read:

685.102 Jurisdiction.—

(1) Notwithstanding any law that limits the right of a person to maintain an action or proceeding, any person may, to the extent permitted under the United States Constitution, maintain in this state an action or proceeding against any person or other entity residing or located outside this state, if the action or proceeding arises out of or relates to any contract, agreement, or undertaking for which a choice of the law of this state, in whole or in part, has been made consistent with ~~pursuant to~~ s. 685.101 and which contains a provision by which such person or other entity residing or located outside this state agrees to submit to the jurisdiction of the courts of this state.

(2) This section does not affect the jurisdiction of the courts of this state over any action or proceeding arising out of or relating to any other contract, agreement, or undertaking.

(3) This section applies to~~:~~

~~(a)~~ contracts entered into on or after July 1, 2012 ~~June 27, 1989; and~~

~~(b) Contracts entered into prior to June 27, 1989, if an action or proceeding relating to such contract is commenced on or after June 27, 1989~~.

Section 7. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 921 Landlords and Tenants
SPONSOR(S): Stargel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1830

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

SUMMARY ANALYSIS

The "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill updates and modifies the Act to:

- Limit the exception from the Act regarding occupancy under a contract for purchase and sale of the residence to require that the contract be bona fide.
- Specify that certain statutory notice and attorneys fee provisions may not be waived.
- Modify the statutory disclosure regarding deposits to use plain language.
- Require landlords to pay regular assessments to an association.
- Clarify eviction for a continuing noncompliance.
- Allow a landlord to accept partial rent without waiving the right to evict.
- Where the landlord requires a tenant to provide advance notice of an intent to not renew the lease at the end of the term, require the landlord to provide the same notice of intent not to renew.
- Provide that a notice of eviction is not stayed by weekends or holidays.
- Prohibit a landlord from retaliating against a tenant who lawfully pays an association on demand, or a tenant who complains of a fair housing violation.
- Provide that a landlord's mortgage default is not, by itself, grounds for termination of the lease.
- Provide technical and stylistic changes.

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:

Part II of ch. 83, F.S., entitled the "Florida Residential Landlord and Tenant Act" governs the relationship between landlords and tenants under a residential rental agreement. This bill makes various changes to Part II of the Act.

Application and Exclusions from Application of the "Florida Residential Landlord and Tenant Act"

Section 83.41, F.S. provides that Part II of ch. 83, titled the "Florida Residential Landlord and Tenant Act," applies to the rental of a dwelling unit. Various other statutes reference eviction of a person from real property, but may not specifically provide that the eviction is pursuant to the procedures in Part II. The bill specifies that the eviction procedures referenced in these other statutes are as provided in Part II.

Current law also sets out various forms of residential tenancy in which Part II of the Act does not apply.[1] For instance, Part II does not apply to residency or detention in a facility where residence is incidental to certain treatment or services (i.e. medical or religious services). Section 83.41(2) provides that Part II does not apply to "[o]ccupancy under contract of sale of a dwelling unit or property of which it is a part."

The bill amends s. 83.42(2), F.S., to provide that only a a "bona fide" contract of sale of a dwelling unit or property of which it is a part is not subject to Part II of the Act. It further defines a bona fide contract of sale as one in which at least one month's rent has been paid and the buyer has paid a deposit of at least 5 percent of the value of the property, or in which the buyer has paid at least 12 months' rent.

Attorney Fees

Current law provides that the prevailing party in a civil action to enforce a provision of a rental agreement or Part II of the Act may recover reasonable court costs, including attorney's fees. This has been interpreted to provide for attorney's fees where a tenant files a personal injury action against a landlord alleging a breach of the landlord's maintenance duties. In general, attorney's fees are not awarded in personal injury actions.

The bill provides that a right to attorney fees may not be waived in a lease agreement. In addition, this bill provides that attorney's fees may not be awarded in a claim for personal injury damages based on a breach of duty under s. 83.51, F.S., regarding the landlord's obligation to maintain premises.

Deposit Money or Advance Rent Payments; Disclosures

Section 83.49, F.S., governs the landlord's duty to a tenant regarding deposit money or advance rent. The purpose of the statute is to assure tenants that their security deposits will be returned expeditiously or, in the alternative, that they will be promptly notified otherwise.[2]

Current law requires that a landlord furnish a copy of subsection (3) of s. 83.49, F.S., to a tenant. However, that subsection does not give notice of all laws regarding deposits and may not be clear to laypersons. This bill deletes the requirement to give a copy of subsection (3), and replaces it with a disclosure in plain language.

Many landlords require payment of a future rent in advance. For instance, a landlord may require "first, last and a security deposit." In addition to holding the security deposit through the end of the term, current law requires the landlord to also deposit the advance rents into the separate account. Current

[1] Section 83.42, F.S.

[2] *See Durene v. Alcime*, 448 So. 2d 1208, 1210 (Fla. 3d DCA 1984).

law is not clear, however, whether the landlord has to give written notice and an opportunity to object before paying withdrawing advance rents held in the separate account when they become due. This bill provides that advance rents may be withdrawn from the deposit account when such rents are due to the landlord and without notice.

Current law provides that a tenant has 15 days after receipt of a landlord's notice of intention to impose a claim on a security deposit to object to the landlord's claim. After such time, the landlord may deduct the amount of his or her claim and must remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages.[3] Current law provides that, if a landlord fails to give timely notice of a claim against the deposit, the landlord must return the entire deposit but can file a later action regarding the damages.[4] This bill codifies this law and further provides that a tenant who fails to timely object loses the right to object to the landlord taking the deposit but still has a cause of action.

Current law requires a landlord to transfer deposits to a new owner of the property. In practice, some landlords, especially ones who have been foreclosed, neglect to transfer the deposit to the new owner. This bill creates a rebuttable presumption that the new owner has received the deposit, but the presumption is limited to one month's rent.

Outdated Disclosure

Current law at s. 83.50(2), F.S., requires that the landlord, or an authorized representative, must disclose to tenants initially moving into a building that has just been completed and is over three stories the availability or lack of availability of fire protection. The apparent intent of the bill was to give notice to new tenants of buildings without fire protection systems. Current building codes require significant fire protection systems in new buildings over three stories tall. The bill deletes the outdated disclosure requirement related to the availability of fire protection.

Landlord's Obligation to Maintain Premises and Pay Assessments

Current law provides that, during the tenancy, a landlord must comply with applicable building, housing and health code requirements.[5] However, where there are no applicable building, housing, or health codes, the landlord must maintain the roofs, windows, screens, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and the plumbing in reasonable working condition.[6]

Unless otherwise agreed in writing, a landlord must make reasonable provisions for the extermination of rodents and certain insects; locks and keys; the clean and safe condition of common areas; garbage removal and outside receptacles; and functioning facilities for heat during winter, running water, and hot water and must install working smoke detection devices.[7]

The bill moves a landlord's mandatory obligation to maintain screens at landlord expense pursuant to s. 83.51(b), F.S., and, instead, requires the landlord to make reasonable provisions for screens pursuant to s. 83.51(2)(a), F.S. Accordingly, maintenance of screens could be required of a tenant if the lease so provides.

The bill also provides that a landlord must pay regular assessments due to a condominium, cooperative, or homeowners' association. This is in conformity with the requirements in condominium and homeowners association law.

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[3] Section 83.49(3)(b), F.S.
[4] *See Durene*, 448 So. 2d at 1210.
[5] Section 83.51(1)(a), F.S.
[6] Section 83.51(1)(b), F.S.
[7] Section 83.51(2)(a)1-5, F.S; s. 83.51(2)(b), F.S.

Termination of Rental Agreement - Noncompliance

Section 83.56, F.S., governs instances where either the tenant or landlord may terminate the rental agreement. Tenant eviction can be for either monetary default or non-monetary default. Non-monetary defaults are in two categories:

- If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. []

- If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this act such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary.[8]

Some landlords have taken the position that a noncompliance with opportunity to cure still requires an additional 7-day notice upon the re-occurrence of the offense before filing for eviction. This bill amends s. 83.56(2)(b), F.S. to provide that such additional notice is not required.

Termination of Rental Agreement - Rent; Waiver

A landlord waives his or her right to terminate the rental agreement or to bring a civil action for a specific noncompliance if the landlord accepts rent with actual knowledge of such noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions.[9] Likewise, the tenant waives his or her right to terminate or to bring a civil action for a specific noncompliance if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any provision of the rental agreement that is in variance with its provisions. A landlord or tenant does not waive his or her right to terminate the rental agreement or bring a civil action for any subsequent or continuing noncompliance.

Thus, under current law, if a landlord accepts partial rent from a tenant with full knowledge that it is not for the full amount, he or she waives the right to terminate the rental agreement or to bring a civil action.[10] The application of this law discourages landlords from negotiating partial payments with a tenant. This bill provides that a landlord does not waive the right to terminate a rental agreement or to bring a civil action for noncompliance by accepting partial rent provided the landlord notifies the tenant that the landlord may seek payment of the remainder.

The bill also revises several provisions relating to termination of rental agreements to:

- Codify the common practice of landlords to require that payment after service of the 3-day notice must be in cash, money order, or certified funds.
- Specify that a 3-day notice of nonpayment of rent may include late fees.

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[8] Section 83.56(2)(a)-(b), F.S.

[9] Section 83.56(5), F.S.

[10] *See In re Sorrento's I, Inc.*, 195 B.R. 502 (Bkrtcy. M.D. Fla. 1996) (holding that landlord waived his right to terminate the rental agreement where he accepted two untimely checks for partial payment of the rent and the landlord had full knowledge they were not tendered on time and that they did not represent the full amount of rent for the month).

- Provide that the notice requirements in s. 83.56(1)-(3), F.S., may not be waived in a lease.
- Increase the period to institute an action before an exemption involving rent subsidies is waived from 45 days to 90 days.

Termination of a Tenancy with a Specific Duration

Current law provides that a rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement. However, such a provision may not require more than 60 days notice.[11] A rental agreement with a specific duration may also provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, he or she may be liable for liquidated damages as specified in the rental agreement. This only occurs if the landlord provides written notice to the tenant specifying his or her obligations under the notification provision contained in the lease and the date the rental agreement is terminated. Such written notice must be provided to the tenant within 15 days before the start of the notification period contained in the lease and list all fees, penalties and other possible charges to the tenant.

The bill provides that if a rental agreement has a requirement for tenant notice to the landlord regarding nonrenewal, the rental agreement must provide a reciprocal agreement requiring the landlord to provide the same notice of intent not to renew. If the landlord fails to give the tenant a timely notice of nonrenewal, the tenant may elect to continue the tenancy for up to 60 days after the tenant's receipt of notice of nonrenewal.

Restoration of Possession to Landlord Upon Eviction

Current law provides that, in an action for possession, if the judgment is entered in the landlord's favor, the clerk must issue a writ to the sheriff commanding him or her to put the landlord in possession after 24 hours' notice is posted on the premises.[12] The bill provides that weekends and legal holidays do not stay the 24-hour notice period.

Retaliatory Conduct

Current law provides that a landlord may not increase a tenant's rent, decrease services to a tenant, or bring or threaten to bring a civil action primarily because the landlord is retaliating against the tenant.[13] A tenant may raise the defense of retaliatory conduct. However, to do so, the tenant must have acted in good faith. The statute sets out a nonexclusive list of examples of conduct for which the landlord may not retaliate (i.e. a tenant has organized, encouraged or participated in a tenant's organization).

The bill adds two examples to the list of conduct for which a landlord may not retaliate. Specifically, a landlord may not retaliate where: 1) the tenant has paid the rent to a condominium, cooperative, or homeowners association after demand from the association in order to pay the landlord's obligation to the association;[14] or 2) the tenant has exercised his or her rights under local, state, or federal fair housing laws.

Foreclosure of Leased Property

The bill creates a statutory provision to address a landlord and tenant's respective obligation in the event the leased premises is foreclosed upon. Specifically, a landlord is not required to notify a tenant

[11] Section 83.575(1), F.S.
[12] Section 83.62, F.S.
[13] Section 83.64, F.S.
[14] See ss. 718.116(11)(a), 719.108(10)(a), 720.3085, F.S., (providing that if a unit or parcel is occupied by a tenant and the unit or parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay to the association the subsequent rental payments and continue to make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association. The tenant must pay the monetary obligations to the association until the association releases the tenant or the tenant discontinues tenancy in the unit or parcel).

of a mortgage default. In addition, a pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease. These provisions reflect current law.

B. SECTION DIRECTORY:

Section 1 amends s. 83.41, F.S., relating to eviction.

Section 2 amends s. 83.48, F.S., relating to exclusions from application to Part II.

Section 3 amends s. 83.48, F.S., relating to attorney fees.

Section 4 amends s. 83.49, F.S., relating to deposit money and advance rent.

Section 5 amends s. 83.50, F.S., relating to disclosure.

Section 6 amends s. 83.51, F.S., relating to a landlord's obligation to maintain premises and pay assessments.

Section 7 amends s. 83.56, F.S., relating to termination of rental agreement.

Section 8 amends s. 83.575, F.S., relating to termination of tenancy with specific duration.

Section 9 amends s. 83.58, F.S., relating to remedies.

Section 10 amends s. 83.59, F.S., relating to right of action for possession.

Section 11 amends s. 83.60, F.S., relating to defenses to action for rent or possession.

Section 12 amends 83.62, F.S., relating to restoration of possession to landlord.

Section 13 amends 83.63, F.S., relating to casualty damage.

Section 14 amends s. 83.64, F.S., relating to retaliatory conduct.

Section 15 amends s. 83.683, F.S., relating to foreclosure of leased property.

Section 16 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to landlords and tenants; amending s. 83.41, F.S.; providing application of certain eviction procedures under part II of ch. 83, F.S., the "Florida Residential Landlord and Tenant Act"; amending s. 83.42, F.S.; revising exclusions from application of the part; amending s. 83.48, F.S.; providing that the right to attorney fees may not be waived in a lease agreement; providing that attorney fees may not be awarded in a claim for personal injury damages based on a breach of duty of premises maintenance; amending s. 83.49, F.S.; revising and providing landlord disclosure requirements with respect to deposit money and advance rent; providing requirements for the disbursement of advance rents; providing a rebuttable presumption of receipt of security deposits and a limitation on liability with respect to such deposits; amending s. 83.50, F.S.; removing certain landlord disclosure requirements relating to fire protection; amending s. 83.51, F.S.; revising a landlord's obligation to maintain premises with respect to screens; requiring a landlord to pay assessments due to a condominium, cooperative, or homeowners' association; amending s. 83.56, F.S.; revising procedures for the termination of a rental agreement by a landlord; revising notice and payment procedures; providing that a landlord does not waive the right to terminate the rental agreement or to bring a civil

action for noncompliance by accepting partial rent, subject to certain notice; increasing the period to institute an action before an exemption involving rent subsidies is waived; amending s. 83.575, F.S.; revising requirements for the termination of tenancy with specific duration to provide for reciprocal notice provisions in rental agreements; amending ss. 83.58, 83.59, 83.60, and 83.63, F.S.; updating and conforming cross-references; making editorial changes; amending s. 83.62, F.S.; revising procedures for the restoration of possession to a landlord to provide that weekends and holidays do not stay the applicable notice period; amending s. 83.64, F.S.; providing examples of conduct for which the landlord may not retaliate; creating s. 83.683, F.S.; providing that a landlord is not required to notify a tenant of a mortgage default; providing that a pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease; providing an effective date.

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

Section 1. Section 83.41, Florida Statutes, is amended to read:

83.41 Application.—

(1) This part applies to the rental of a dwelling unit.

(2) The eviction procedures in s. 83.62 apply to eviction

from a dwelling subsequent to a final judgment in foreclosure, ejectment, quiet title, partition, or other cause of action in which the court awards possession of a dwelling unit. The eviction procedures in ss. 83.59, 83.60, 83.61, 83.62, 83.625, and 83.681 apply to eviction from a dwelling based on nonpayment of association fees required to be paid to a condominium, cooperative, or homeowners' association after demand. In such cases, the prevailing party in the litigation shall be considered a landlord for purposes of those sections. A prevailing party awarded possession of a dwelling unit shall be governed by s. 83.67(1), (5), (6), and (7).

Section 2. Subsection (2) of section 83.42, Florida Statutes, is amended to read:

83.42 Exclusions from application of part.—This part does not apply to:

(2) Occupancy under a bona fide contract of sale of a dwelling unit or the property of which it is a part. A bona fide contract of sale is one in which at least one month's rent has been paid and the buyer has paid a deposit of at least 5 percent of the value of the property, or in which the buyer has paid at least 12 months' rent.

Section 3. Section 83.48, Florida Statutes, is amended to read:

83.48 Attorney ~~Attorney's~~ fees.—In any civil action brought to enforce the provisions of the rental agreement or this part, the party in whose favor a judgment or decree has been rendered may recover reasonable court costs, including attorney ~~attorney's~~ fees, from the nonprevailing party. The

right to attorney fees in this section may not be waived in a lease agreement. However, attorney fees may not be awarded under this section in a claim for personal injury damages based on a breach of duty under s. 83.51.

Section 4. Subsections (2), (3), and (7) of section 83.49, Florida Statutes, are amended to read:

83.49 Deposit money or advance rent; duty of landlord and tenant.—

(2) The landlord shall, in the lease agreement or within 30 days after ~~of~~ receipt of advance rent or a security deposit, furnish ~~notify~~ the tenant in writing with a disclosure regarding ~~of the manner in which the landlord is holding~~ the advance rent or security deposit ~~and the rate of interest, if any, which the tenant is to receive and the time of interest payments to the tenant~~. ~~Such written notice shall:~~

~~(a) Be given in person or by mail to the tenant.~~

~~(b) State the name and address of the depository where the advance rent or security deposit is being held, whether the advance rent or security deposit is being held in a separate account for the benefit of the tenant or is commingled with other funds of the landlord, and, if commingled, whether such funds are deposited in an interest-bearing account in a Florida banking institution.~~

~~(c) Include a copy of the provisions of subsection (3).~~

Subsequent to providing such notice, if the landlord changes the manner or location in which he or she is holding the advance rent or security deposit, he or she shall notify the tenant

within 30 days after ~~of~~ the change according to the provisions of paragraphs (a)-(d) ~~herein set forth~~. The landlord is not required to give a new notice solely because the depository has merged with another financial institution, changed its name, or transferred ownership to a different financial institution. This subsection does not apply to any landlord who rents fewer than five individual dwelling units. Failure to provide this notice is ~~shall~~ not ~~be~~ a defense to the payment of rent when due. Such written notice shall:

(a) Be given in person or by mail to the tenant;

(b) State the name and address of the depository where the advance rent or security deposit is being held, or state that the landlord has posted a surety bond as provided by law;

(c) State whether the tenant is entitled to interest on the deposit; and

(d) Include the following disclosure:

YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE LANDLORD MAY TRANSFER ADVANCE RENTS AND NONREFUNDABLE DEPOSITS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE

LANDLORD WILL COLLECT THE CLAIM AND MUST MAIL YOU THE REMAINING DEPOSIT, IF ANY. IF YOU TIMELY OBJECT, THE LANDLORD MUST HOLD THE DEPOSIT AND EITHER YOU OR THE LANDLORD WILL HAVE TO FILE A LAWSUIT SO THAT THE COURT CAN RESOLVE THE DISPUTE.

IF THE LANDLORD FAILS TO TIMELY SEND YOU NOTICE, THE LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE DEPOSIT BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A REFUND.

YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE BEFORE FILING A LAWSUIT. GENERALLY, THE WINNING PARTY IN ANY LAWSUIT BETWEEN YOU AND YOUR LANDLORD WILL BE AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING PARTY.

THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL RIGHTS AND OBLIGATIONS.

(3) The landlord may disburse advance rents from the deposit account to the landlord's benefit when the advance rental period commences and without notice to the tenant. The landlord may disburse a deposit designated as nonrefundable at the conclusion of the lease and without notice to the tenant.

For all other deposits:

(a) Upon the vacating of the premises for termination of the lease, if the landlord does not intend to impose a claim on the security deposit, the landlord shall have 15 days to return the security deposit together with interest if otherwise required, or the landlord shall have 30 days to give the tenant written notice by certified mail to the tenant's last known mailing address of his or her intention to impose a claim on the deposit and the reason for imposing the claim. The notice shall contain a statement in substantially the following form:

This is a notice of my intention to impose a claim for damages in the amount of .... upon your security deposit, due to ..... It is sent to you as required by s. 83.49(3), Florida Statutes. You are hereby notified that you must object in writing to this deduction from your security deposit within 15 days from the time you receive this notice or I will be authorized to deduct my claim from your security deposit. Your objection must be sent to ...(landlord's address)....

If the landlord fails to give the required notice within the 30-day period, he or she forfeits the right to impose a claim upon the security deposit and may not seek setoff against the deposit but may file an action for damages after return of the deposit.

(b) Unless the tenant objects to the imposition of the landlord's claim or the amount thereof within 15 days after receipt of the landlord's notice of intention to impose a claim, the landlord may then deduct the amount of his or her claim and

shall remit the balance of the deposit to the tenant within 30 days after the date of the notice of intention to impose a claim for damages. The failure of the tenant to make a timely objection does not waive any rights of the tenant to seek damages in a separate action.

(c) If either party institutes an action in a court of competent jurisdiction to adjudicate the party's right to the security deposit, the prevailing party is entitled to receive his or her court costs plus a reasonable fee for his or her attorney. The court shall advance the cause on the calendar.

(d) Compliance with this section by an individual or business entity authorized to conduct business in this state, including Florida-licensed real estate brokers and sales associates, constitutes ~~shall constitute~~ compliance with all other relevant Florida Statutes pertaining to security deposits held pursuant to a rental agreement or other landlord-tenant relationship. Enforcement personnel shall look solely to this section to determine compliance. This section prevails over any conflicting provisions in chapter 475 and in other sections of the Florida Statutes, and shall operate to permit licensed real estate brokers to disburse security deposits and deposit money without having to comply with the notice and settlement procedures contained in s. 475.25(1)(d).

(7) Upon the sale or transfer of title of the rental property from one owner to another, or upon a change in the designated rental agent, any and all security deposits or advance rents being held for the benefit of the tenants shall be transferred to the new owner or agent, together with any earned

interest and with an accurate accounting showing the amounts to be credited to each tenant account. Upon the transfer of such funds and records to the new owner or agent ~~as stated herein~~, and upon transmittal of a written receipt therefor, the transferor is ~~shall be~~ free from the obligation imposed in subsection (1) to hold such moneys on behalf of the tenant. There is a rebuttable presumption that any new owner or agent received the security deposits from the previous owner or agent; however, the new owner or agent is not liable to a tenant for deposits in excess of 1 month's rent. This subsection does not ~~However, nothing herein shall~~ excuse the landlord or agent for a violation of other ~~the~~ provisions of this section while in possession of such deposits.

Section 5. Section 83.50, Florida Statutes, is amended to read:

83.50 Disclosure.—

~~(1)~~ The landlord, or a person authorized to enter into a rental agreement on the landlord's behalf, shall disclose in writing to the tenant, at or before the commencement of the tenancy, the name and address of the landlord or a person authorized to receive notices and demands in the landlord's behalf. The person so authorized to receive notices and demands retains authority until the tenant is notified otherwise. All notices of such names and addresses or changes thereto shall be delivered to the tenant's residence or, if specified in writing by the tenant, to any other address.

~~(2) The landlord or the landlord's authorized representative, upon completion of construction of a building~~

~~exceeding three stories in height and containing dwelling units, shall disclose to the tenants initially moving into the building the availability or lack of availability of fire protection.~~

Section 6. Subsection (1) and paragraph (a) of subsection (2) of section 83.51, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

83.51 Landlord's obligation to maintain premises and pay assessments.—

(1) The landlord at all times during the tenancy shall:

(a) Comply with the requirements of applicable building, housing, and health codes; or

(b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, ~~screens,~~ doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. ~~However,~~

The landlord is ~~shall~~ not ~~be~~ required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

(2)(a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:

1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises

is required for such extermination, the landlord is ~~shall~~ not ~~be~~ liable for damages but shall abate the rent. The tenant must ~~shall be required to~~ temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.

2. Locks and keys.

3. The clean and safe condition of common areas.

4. Garbage removal and outside receptacles therefor.

5. Functioning facilities for heat during winter, running water, and hot water.

6. Screens.

(5) The landlord shall pay assessments due to a condominium, cooperative, or homeowners' association.

Section 7. Subsections (2) through (5) of section 83.56, Florida Statutes, are amended to read:

83.56 Termination of rental agreement.—

(2) If the tenant materially fails to comply with s. 83.52 or material provisions of the rental agreement, other than a failure to pay rent, or reasonable rules or regulations, the landlord may:

(a) If such noncompliance is of a nature that the tenant should not be given an opportunity to cure it ~~or if the noncompliance constitutes a subsequent or continuing noncompliance within 12 months of a written warning by the landlord of a similar violation~~, deliver a written notice to the tenant specifying the noncompliance and the landlord's intent to terminate the rental agreement by reason thereof. Examples of noncompliance which are of a nature that the tenant should not

be given an opportunity to cure include, but are not limited to, destruction, damage, or misuse of the landlord's or other tenants' property by intentional act or a subsequent or continued unreasonable disturbance. In such event, the landlord may terminate the rental agreement, and the tenant shall have 7 days from the date that the notice is delivered to vacate the premises. The notice shall be ~~adequate if it is~~ in substantially the following form:

You are advised that your lease is terminated effective immediately. You shall have 7 days from the delivery of this letter to vacate the premises. This action is taken because ...(cite the noncompliance)....

(b) If such noncompliance is of a nature that the tenant should be given an opportunity to cure it, deliver a written notice to the tenant specifying the noncompliance, including a notice that, if the noncompliance is not corrected within 7 days from the date the written notice is delivered, the landlord shall terminate the rental agreement by reason thereof. Examples of such noncompliance include, but are not limited to, activities in contravention of the lease or this part ~~act~~ such as having or permitting unauthorized pets, guests, or vehicles; parking in an unauthorized manner or permitting such parking; or failing to keep the premises clean and sanitary. An eviction action filed pursuant to this paragraph does not require a subsequent notice pursuant to paragraph (a). The notice shall be ~~adequate if it is~~ in substantially the following form:

You are hereby notified that ...(cite the noncompliance).... Demand is hereby made that you remedy the noncompliance within 7 days of receipt of this notice or your lease shall be deemed terminated and you shall vacate the premises upon such termination. If this same conduct or conduct of a similar nature is repeated within 12 months, your tenancy is subject to termination without <u>further warning and without</u> your being given an opportunity to cure the noncompliance.

(3) If the tenant fails to pay rent when due and the default continues for 3 days, excluding Saturday, Sunday, and legal holidays, after delivery of written demand by the landlord for payment of the rent or possession of the premises, the landlord may terminate the rental agreement. Legal holidays for the purpose of this section shall be court-observed holidays only. <u>After service of the 3-day notice, the landlord may require payment of the rent to be by cash, money order, or certified funds. The total amount claimed may include all moneys owed to the landlord through the date of the notice, including late fees.</u> The 3-day notice shall contain a statement in substantially the following form:

You are hereby notified that you are indebted to me in the sum of .... dollars for the rent and use of the premises ...(address of leased premises, including county)..., Florida, now occupied by you and that I demand payment of the rent or possession of the premises within 3 days (excluding Saturday,

Sunday, and legal holidays) from the date of delivery of this notice, to wit: on or before the .... day of ...., ...(year)....

...(landlord's name, address and phone number)...

(4) The delivery of the written notices required by subsections (1), (2), and (3) shall be by mailing or delivery of a true copy thereof or, if the tenant is absent from the premises, by leaving a copy thereof at the residence. The notice requirements of subsections (1), (2), and (3) may not be waived in the lease.

(5)(a) If the landlord accepts rent with actual knowledge of a noncompliance by the tenant or accepts performance by the tenant of any other provision of the rental agreement that is at variance with its provisions, or if the tenant pays rent with actual knowledge of a noncompliance by the landlord or accepts performance by the landlord of any other provision of the rental agreement that is at variance with its provisions, the landlord or tenant waives his or her right to terminate the rental agreement or to bring a civil action for that noncompliance, but not for any subsequent or continuing noncompliance. However, a landlord does not waive the right to terminate the rental agreement or to bring a civil action for that noncompliance simply by accepting partial rent for the period if the landlord notifies the tenant that the landlord is reserving the right to enforce the rental agreement.

(b) Any tenant who wishes to defend against an action by the landlord for possession of the unit for noncompliance of the rental agreement or of relevant statutes must ~~shall~~ comply with

~~the provisions in~~ s. 83.60(2). The court may not set a date for mediation or trial unless the provisions of s. 83.60(2) have been met, but shall enter a default judgment for removal of the tenant with a writ of possession to issue immediately if the tenant fails to comply with s. 83.60(2). This subsection does not apply to that portion of rent subsidies received from a local, state, or national government or an agency of local, state, or national government; however, waiver will occur if an action has not been instituted within 90 ~~45~~ days after ~~of~~ the noncompliance.

Section 8. Section 83.575, Florida Statutes, is amended to read:

83.575 Termination of tenancy with specific duration.—

(1) A rental agreement with a specific duration may contain a provision requiring the tenant to notify the landlord before vacating the premises at the end of the rental agreement if the provision also requires that the landlord notify the tenant if the rental agreement will not be renewed on the same terms; however, a rental agreement may not require more than 60 days' notice from either the tenant or the landlord ~~before vacating the premises~~.

(2) A rental agreement with a specific duration may provide that if a tenant fails to give the required notice before vacating the premises at the end of the rental agreement, the tenant may be liable for liquidated damages as specified in the rental agreement if the landlord provides written notice to the tenant specifying the tenant's obligations under the notification provision contained in the lease and the date the

rental agreement is terminated. The landlord must provide such written notice to the tenant within 15 days before the start of the notification period contained in the lease. The written notice shall list all fees, penalties, and other charges applicable to the tenant under this subsection. The rental agreement must provide a reciprocal agreement that if the landlord fails to give the tenant the required timely notice of nonrenewal, the tenant may elect to continue the tenancy for up to 60 days after the tenant's receipt of notice of nonrenewal.

(3) If the tenant remains on the premises with the permission of the landlord after the rental agreement has terminated and fails to give notice required under s. 83.57(3), the tenant is liable to the landlord for an additional 1 month's rent.

Section 9. Section 83.58, Florida Statutes, is amended to read:

83.58 Remedies; tenant holding over.—If the tenant holds over and continues in possession of the dwelling unit or any part thereof after the expiration of the rental agreement without the permission of the landlord, the landlord may recover possession of the dwelling unit in the manner provided for in s. 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the amount of rent due on the dwelling unit, or any part thereof, for the period during which the tenant refuses to surrender possession.

Section 10. Subsection (2) of section 83.59, Florida Statutes, is amended to read:

83.59 Right of action for possession.—

(2) A landlord, the landlord's attorney, or the landlord's agent, applying for the removal of a tenant, shall file in the county court of the county where the premises are situated a complaint describing the dwelling unit and stating the facts that authorize its recovery. A landlord's agent is not permitted to take any action other than the initial filing of the complaint, unless the landlord's agent is an attorney. The landlord is entitled to the summary procedure provided in s. 51.011 ~~[F.S. 1971]~~, and the court shall advance the cause on the calendar.

Section 11. Section 83.60, Florida Statutes, is amended to read:

83.60 Defenses to action for rent or possession; procedure.—

(1) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1) ~~[F.S. 1973]~~, or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. The defense of a material noncompliance with s. 83.51(1) ~~[F.S. 1973]~~ may be raised by the tenant if 7 days have elapsed after the delivery of written notice by the tenant to the landlord, specifying the noncompliance and indicating the intention of the tenant not to pay rent by reason thereof. Such notice by the tenant may be given to the landlord, the landlord's representative as designated pursuant to s. 83.50~~(1)~~, a resident

manager, or the person or entity who collects the rent on behalf of the landlord. A material noncompliance with s. 83.51(1) ~~[F.S. 1973]~~ by the landlord is a complete defense to an action for possession based upon nonpayment of rent, and, upon hearing, the court or the jury, as the case may be, shall determine the amount, if any, by which the rent is to be reduced to reflect the diminution in value of the dwelling unit during the period of noncompliance with s. 83.51(1) ~~[F.S. 1973]~~. After consideration of all other relevant issues, the court shall enter appropriate judgment.

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent <u>that</u> ~~which~~ accrues during the pendency of the proceeding, when due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. <u>If</u> ~~In the event~~ a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies <u>are</u> ~~shall be~~

required to deposit only that portion of the full rent for which they are ~~the tenant is~~ responsible pursuant to the federal, state, or local program in which they are participating.

Section 12. Subsection (1) of section 83.62, Florida Statutes, is amended to read:

83.62 Restoration of possession to landlord.—

(1) In an action for possession, after entry of judgment in favor of the landlord, the clerk shall issue a writ to the sheriff describing the premises and commanding the sheriff to put the landlord in possession after 24 hours' notice conspicuously posted on the premises. Weekends and legal holidays do not stay the 24-hour notice period.

Section 13. Section 83.63, Florida Statutes, is amended to read:

83.63 Casualty damage.—If the premises are damaged or destroyed other than by the wrongful or negligent acts of the tenant so that the enjoyment of the premises is substantially impaired, the tenant may terminate the rental agreement and immediately vacate the premises. The tenant may vacate the part of the premises rendered unusable by the casualty, in which case the tenant's liability for rent shall be reduced by the fair rental value of that part of the premises damaged or destroyed. If the rental agreement is terminated, the landlord shall comply with s. 83.49(3) ~~[F.S. 1973]~~.

Section 14. Subsection (1) of section 83.64, Florida Statutes, is amended to read:

83.64 Retaliatory conduct.—

(1) It is unlawful for a landlord to discriminatorily

increase a tenant's rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defense of retaliatory conduct, the tenant must have acted in good faith. Examples of conduct for which the landlord may not retaliate include, but are not limited to, situations where:

(a) The tenant has complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the premises;

(b) The tenant has organized, encouraged, or participated in a tenants' organization;

(c) The tenant has complained to the landlord pursuant to s. 83.56(1); ~~or~~

(d) The tenant is a servicemember who has terminated a rental agreement pursuant to s. 83.682;

(e) The tenant has paid the rent to a condominium, cooperative, or homeowners' association after demand from the association in order to pay the landlord's obligation to the association; or

(f) The tenant has exercised his or her rights under local, state, or federal fair housing laws.

Section 15. Section 83.683, Florida Statutes, is created to read:

83.683 Foreclosure of leased property.—

(1) A landlord is not required to notify a tenant of a mortgage default.

(2) A pending foreclosure action involving the leased premises is not grounds for a tenant to terminate a lease.

Section 16. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 963 Dispute Resolution
SPONSOR(S): Harrison
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1458

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

SUMMARY ANALYSIS

The Florida Arbitration Act, based on a 1955 model act, was passed in 1957 and revised in 1967. Since then, it has gone mostly unchanged. This bill creates the Revised Florida Arbitration Act based on the 2000 model act. The bill includes provisions that were not included in the original act, such as the ability for arbitrators to issue provisional remedies, challenges based on notice, consolidation of separate arbitration proceedings, conflict disclosure requirements, providing for immunity of arbitrators, and other important substantive changes to the law. The bill provides a detailed framework for arbitration conducted under Florida law.

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:

Current Situation

Many contracts, especially in a commercial context, contain an agreement by the parties to submit to binding arbitration rather than litigation for disputes arising out of the contract. Florida's current arbitration code is based on the 1955 Uniform Arbitration Act (UAA). This bare bones act remains largely unchanged since Florida adopted the UAA in 1957[1] and modified it in 1967[2], even as the use of binding arbitration has become more widespread.

Effect of Proposed Changes

This bill largely adopts the provisions of the 2000 revision of the UAA, as approved by the National Conference of Commissioners on Uniform State Laws. The bill significantly amends or repeals each section of the existing Florida Arbitration Code, and amends s. 682.01, F.S., to rename the chapter as the "Revised Florida Arbitration Code." This bill also creates s. 682.011, F.S., to provide definitions.

Notice

The bill creates s. 682.012, F.S., to provide notice requirements. Notice is generally provided by taking reasonable action to inform the other person, regardless of actual knowledge. Actual knowledge or receipt of notice is sufficient. Delivery to the person's residence or place of business, or another location held out by the person as a place of delivery is also sufficient to provide notice.

Applicability

The bill creates s. 682.013, F.S., providing applicability of the revised act. The revised act applies prospectively for agreements to arbitrate. It also applies retrospectively if all parties agree to apply the revised act. On July 1, 2015, the revised act will apply to all arbitration agreements, regardless of whether the parties agree to apply it retroactively or not.

Effect of Agreement to Arbitrate

The bill creates s. 682.014, F.S., providing that parties may waive procedural requirements of the revised act except that parties may not waive certain reliefs or remedies, jurisdiction, the right to appeal, notice, right to disclosure, or the right to an attorney, before a controversy arises. Parties may not waive other procedural requirements that would fundamentally undermine the arbitration agreement at any time.

Judicial Relief

The bill creates s. 682.015, F.S., providing that a petition for judicial relief must be made to the court in a manner provided by law or by the rules of court. Notice of an initial petition to the court must be provided in a manner consistent with the service of a summons in a civil action. Other motions must be made in the manner provided by law or by the rules of court for serving motions in pending cases.

Nature of Arbitration Agreements

The bill amends s. 682.02, F.S., providing that an agreement to submit to arbitration is valid, enforceable, and irrevocable except upon grounds that a contract can otherwise be revoked. The court decides whether an agreement to arbitrate is valid, while an arbitrator decides whether a condition

[1] Chapter 57-402, L.O.F.
[2] Chapter 67-254, L.O.F.

precedent to arbitrability has been fulfilled and whether the contract containing the agreement to arbitrate is enforceable. Arbitration continues during a court challenge of this nature unless the court orders otherwise.

Compelling or Staying Arbitration

The bill amends s. 682.03, F.S., providing that if a party with a valid agreement to arbitrate fails to appear or does not oppose a motion to compel arbitration, the court must order the arbitration. If the refusing party opposes the motion, the court must decide the issue and order arbitration unless it finds that there is no enforceable agreement to arbitrate the matter. If the court finds that there is no enforceable agreement to arbitrate, then it may not order the parties to arbitrate, however the court may not refuse to order arbitration on the merits of the claim.

The motion to compel arbitration may be made in any court with jurisdiction, however if the controversy is already pending in court, the motion to compel arbitration must be made in the court where the controversy is pending. If a pending case exists, the court must halt the judicial proceeding until it renders a final decision regarding arbitrability. If the court orders arbitration, the judicial proceeding must be stayed pending arbitration.

Provisional Remedies

The bill creates s. 682.031, F.S., providing for conditions of provisional remedies. Before an arbitrator is appointed, the court may enter an order for provision remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action. After an arbitrator is appointed, the arbitrator may issue provisional remedies to the same extent that a court could in a civil action. After an arbitrator is appointed, a party may move for a court order for provisional remedies only if the matter is urgent and the arbitrator cannot act in a timely matter or provide an adequate remedy.

Initiation of Arbitration

The bill creates s. 682.032, F.S., providing that a person initiates arbitration by providing notice by the manner agreed to by the parties, or by certified mail if the agreement does not provide for a method of notice, or by a method allowed by law or rules of court for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought. Unless a party objects for lack of notice by the beginning of the arbitration hearing, notice challenges are waived if the party appears at the hearing.

Consolidation of Separate Arbitration Proceedings

The bill creates s. 682.033, F.S., providing several conditions upon which a court may consolidate separate arbitration proceedings:

- Separate agreements and proceedings exist between the same parties or one party is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;
- The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of transactions;
- The existence of a common issue of law or fact creates the possibility of conflicting decisions if there were separate arbitration proceedings; and
- Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

The court may consolidate some claims while allowing other claims to be resolved separately, however the court may not order consolidation if the agreement to arbitrate prohibits consolidation.

Appointment of Arbitrators by the Court

The bill amends s. 682.04, F.S., to provide conditions for the court to appoint arbitrators. The court, on motion, must appoint one or more arbitrators if the parties have not agreed on a method or the agreed upon method fails, or one or more parties failed to respond to the demand for arbitration or an arbitrator fails to act and a successor has not been appointed. The court must not appoint an arbitrator with a known, direct and material interest in the outcome of the arbitration or a relationship to a party if the agreement calls for a neutral arbitrator.

Disclosure by Arbitrator

The bill creates s. 682.041, F.S., providing that before accepting appointment, an arbitrator must disclose potential conflicts or impartiality including financial or relationship conflicts. The arbitrator must continue to disclose any facts that may affect the arbitrator's impartiality that the arbitrator learns after accepting the appointment. Upon disclosure, if a party objects to the appointment or continued service, the objection may be grounds for vacating an award. If the arbitrator did not disclose a fact as required, the court may vacate an award upon timely objection by a party. A neutral arbitrator is presumed to act with evident partiality. Substantial compliance with agreed upon procedures is a condition precedent to a motion to vacate an award on these grounds.

Majority Action by Arbitrators

The bill amends s. 682.05, F.S., providing that if there is more than one arbitrator, powers of the arbitrator must be exercised by a majority of the arbitrators.

Immunity of Arbitrator

The bill creates s. 682.051, F.S., granting arbitrators immunity from civil liability to the same extent as judges acting in a judicial capacity. Failure of an arbitrator to disclose conflicts does not waive immunity. Arbitrators cannot be compelled to testify about occurrences during arbitration except to determine the claim of an arbitrator against a party or to a hearing on a motion to vacate an award if the moving party establishes prima facie that a ground for vacating the award exists. An arbitrator sued by a party must be awarded attorney fees if the court decides that the arbitrator has civil liability.

Hearing

The bill amends s. 682.06, F.S., granting broad authority to an arbitrator to conduct the arbitration as the arbitrator considers appropriate. An arbitrator may decide a request for summary judgment if the parties agree, or if a party gives notice of the request to the other parties and they have an opportunity to respond. The arbitrator must provide at least five days notice prior to the beginning of the hearing. The arbitrator then has may control the hearing, including adjourning the hearing from time to time as necessary. Each party has the right to be heard, to present material evidence, and to cross-examine witnesses. If an arbitrator is unable to act during the proceeding, a replacement arbitrator must be appointed.

Representation by Attorney

The bill amends s. 682.07, F.S., providing that a party to an arbitration proceeding may be represented by an attorney.

Witnesses, Subpoenas, and Depositions

The bill amends s. 682.08, F.S., providing that an arbitrator has the authority to issue a subpoena in the same manner as a court in a civil action. Arbitrators may allow discovery and depositions of witnesses and may determine the conditions under which discovery and depositions may be taken. An arbitrator may also issue a protective order to prevent disclosure of privileged or confidential information, trade secrets, or other protected information, to the same extent as a court could in a civil action. Subpoena

laws apply to arbitration proceedings, and out of state subpoenas are treated like they would be in a civil action.

Judicial Enforcement of Preaward Ruling by an Arbitrator

The bill creates s. 682.081, F.S., to establish that preaward rulings by an arbitrator may be incorporated into the ruling on motion by the prevailing party, and the court must the summarily decide the motion and issue an order.

Award

The bill amends s. 682.09, F.S., to provide that an arbitrator must make a signed record of an award and provide a copy to each party. The award must be made within the time specified by the agreement to arbitrate or within the time ordered by the court. The time may be extended by a court order or by agreement of the parties of the arbitration.

Change of Award by Arbitrators

The bill amends s. 682.10, F.S., to provide conditions for the modification or correct an award. The arbitrator may correct an award when a miscalculation or problem of form, but not substance, resulted in an incorrect initial award. The arbitrator may also modify the award if the arbitrator has not yet made a final and definite award, or to clarify the award. A motion to change or modify an award must be made and notice provided within 20 days of the moving party receiving notice of the award. An motion to object to the award on any other basis must be made within 10 days of receipt of the notice of the award.

Remedies, Fees and Expenses of Arbitration Proceeding

The bill amends s. 682.11, F.S., providing that arbitrators may award punitive damages and attorney fees to the same extent they would be available in a civil action, but the arbitrator must justify such damages in the award. An arbitrator has broad authority to impose all other remedies, regardless of whether a court would provide similar remedies in a civil action.

Confirming or Vacating an Award

The bill amends s. 682.12, F.S., providing that after an award is granted, a party may motion the court to confirm the award and provide a confirming order.

The bill amends s. 682.13, F.S., providing conditions upon which a court may vacate an award:

- Evident partiality by an arbitrator appointed as a neutral arbitrator;
- Corruption by an arbitrator;
- Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
- An arbitrator refused to postpone the hearing upon showing of sufficient cause of postponement;
- An arbitrator refused to consider material evidence;
- An arbitrator conducted the hearing contrary to the act so as to substantially prejudice the rights of a party to the arbitration proceeding;
- An arbitrator exceeded the arbitrator's powers;
- There was no agreement to arbitrate, unless the moving party participated in the hearing without objection; or
- The arbitration was conducted without proper notice so as to substantially prejudice the rights of a party to the arbitration proceeding.

A motion to vacate an award must be filed within 90 days of the award, or within 90 days of the finding of corruption, fraud, or other undue means, or within 90 days of when the party should have known of

such a finding. If the court vacates an award for any reason other than the lack of an agreement to arbitrate, the court may order a rehearing. If a motion to vacate is denied, the court must confirm the award.

Modification or Correction of Award

The bill amends s. 682.14, F.S., providing the court must modify or correct an award if:

- There is an evident miscalculation of figures or mistake in the description of any person, thing, or property referred to in the award;
- The arbitrator awarded something not submitted in the arbitration and making such a correction will not affect the merits of the decision; or
- The award is imperfect as a matter of form, not substance.

If the application is granted, the court will modify and correct the award. If not, the court shall confirm the award.

Judgment or Decree on Award

The bill amends s. 682.15, F.S., requiring the court, upon granting an order confirming, vacating, modifying, or correcting an award, to enter an order as if for a civil judgment. The court may allow reasonable costs of the motion and subsequent judicial proceedings. On motion by the prevailing party, the court may add reasonable attorney fees and expenses.

Jurisdiction

The bill creates s. 682.181, F.S., providing a court with jurisdiction over the controversy the right to enforce an agreement to arbitrate. An agreement to arbitrate in this state confers exclusive jurisdiction on the court to enter judgment on an award.

Venue

The bill amends s. 682.19, F.S., providing that a petition for judicial relief under this act must be filed in the county specified in the agreement to arbitrate, unless a hearing has already been held, in which case the petition must be filed in that court. Otherwise, the petition may be filed in any Florida county in which an adverse party has a residence or a place of business. If no adverse party has a residence of place of business in Florida, the petition may be filed in any Florida county.

Appeals

The bill amends s. 682.20, F.S., providing for appeals from:

- An order denying an application to compel arbitration;
- An order granting a motion to stay arbitration;
- An order confirming an award;
- An order denying confirmation of an award except in certain circumstances;
- An order modifying or correcting an award;
- An order vacating an award without directing a rehearing; or
- A judgment or decree entered pursuant to this act.

Appeals are taken in the same manner and to the same extent as from orders or judgments in a civil action.

Electronic Signatures in Global and National Commerce Act

The bill creates s. 682.23, F.S., providing that the revised act conforms to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15. U.S.C. s. 7002.

Effective Date and Applicability

The bill provides an effective date of July 1, 2012. The revised act does not affect an action or proceeding commenced or right accrued before the revised act takes effect.

Disputes Excluded

The bill creates s. 682.25, F.S., providing that the revised act does not apply to any dispute involving child custody, visitation, or child support.

Mediation Alternatives to Judicial Action

The bill renames ch. 44, F.S., as "Alternative Dispute Resolution" and amends ss. 44.104, 44. 107, and 731.401 F.S., removing references to binding arbitration. This ensures that the revised act is the sole statute in Florida pertaining to binding arbitration. The bill also amends ss. 440.1926 and 489.144, F.S., to correctly cross-reference the revised act. The bill directs the Division of Statutory Revision to replace the phrase "the effective date of this act" with the date this act becomes a law.

The bill provides an effective date of July 1, 2012.

B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 creates s. 682.011, F.S., providing definitions.

Section 3 creates s. 682.012, F.S., relating to notice.

Section 4 creates s. 682.013, F.S., relating to applicability of the revised code.

Section 5 creates s. 682.014, F.S., relating to effect of agreements to arbitrate.

Section 6 creates s. 682.015, F.S., relating to petition for judicial relief.

Section 7 amends s. 682.02, F.S., relating to arbitration agreements made valid, irrevocable and enforceable.

Section 8 amends s. 682.03, F.S., relating to proceedings to compel and to stay arbitration.

Section 9 creates s. 682.031, F.S., relating to provisional remedies.

Section 10 creates s. 682.032, F.S., relating to initiation of arbitration.

Section 11 creates s. 682.033, F.S., relating to consolidation of separate arbitration proceedings.

Section 12 amends s. 682.04, F.S., relating to appointment of arbitrators by court.

Section 13 creates s. 682.041, F.S., relating to disclosure by arbitrator.

Section 14 amends s. 682.05, F.S., relating to majority action by arbitrators.

Section 15 creates s. 682.051, F.S., relating to immunity of arbitrator.

Section 16 amends s. 682.06, F.S., relating to hearings.

Section 17 amends s. 682.07, F.S., relating to representation by attorney.

Section 18 amends s. 682.08, F.S., relating to witnesses, subpoenas, and depositions.

Section 19 creates s. 682.081, F.S., relating to judicial enforcement of a preaward ruling.

Section 20 amends s. 682.09, F.S., relating to awards.

Section 21 amends s. 682.10, F.S., relating to change of award by arbitrators.

Section 22 amends s. 682.11, F.S., relating to remedies, fees and expenses of arbitration.

Section 23 amends s. 682.12, F.S., relating to confirmation of an award.

Section 24 amends s. 682.13, F.S., relating to vacating an award.

Section 25 amends s. 682.14, F.S., relating to modification or correction of an award.

Section 26 amends s. 682.15, F.S., relating to judgment or decree on award.

Section 27 repeals s. 682.16, F.S., relating to judgment roll and docketing.

Section 28 repeals s. 682.17, F.S., relating to application to court.

Section 29 repeals s. 682.18, F.S., relating to court definition and jurisdiction.

Section 30 creates s. 682.181, F.S., relating to jurisdiction.

Section 31 amends s. 682.19, F.S., relating to venue.

Section 32 amends s. 682.20, F.S., relating to appeals.

Section 33 repeals s. 682.21, F.S., relating to retroactivity.

Section 34 repeals s. 682.22, F.S., relating to severability.

Section 35 creates s. 682.23, F.S., relating to relationship to electronic signatures in Global and National Commerce Act.

Section 36 creates s. 682.24, F.S, relating to effective date and applicability.

Section 37 creates s. 682.25, F.S., relating to excluded disputes.

Section 38 amends s. 44.104, F.S., relating to voluntary trial resolution.

Section 39 amends s. 44.107, F.S., relating to immunity for arbitrators.

Section 40 amends s. 440.1926, F.S., relating to alternate dispute resolution.

Section 41 amends s. 489.1402, F.S., relating to Homeowners' Construction Recovery Fund.

Section 42 amends s. 731.401, F.S., relating to arbitration of disputes.

Section 43 redesignates the title of chapter 44.

Section 44 provides direction to the Division of Statutory Revision.

Section 45 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to dispute resolution; amending s. 682.01, F.S.; revising the short title of the "Florida Arbitration Code" to the "Revised Florida Arbitration Code"; creating s. 682.011, F.S.; providing definitions; creating s. 682.012, F.S.; specifying how a person gives notice to another person and how a person receives notice; creating s. 682.013, F.S.; specifying the applicability of the revised code; creating s. 682.014, F.S.; providing that an agreement may waive or vary the effect of statutory arbitration provisions; providing exceptions; creating s. 682.015, F.S.; providing for petitions for judicial relief; providing for service of notice of an initial petition for such relief; amending s. 682.02, F.S.; revising provisions relating to the making of arbitration agreements; requiring a court to decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate; providing for determination of specified issues by an arbitrator; providing for continuation of an arbitration proceeding pending resolution of certain issues by a court; revising provisions relating to applicability of provisions to certain interlocal agreements; amending s. 682.03, F.S.; revising provisions relating to proceedings to compel and to stay arbitration; creating s. 682.031, F.S.; providing for a court to order provisional remedies before an arbitrator is

appointed and is authorized and able to act; providing for orders for provisional remedies by an arbitrator; providing that a party does not waive a right of arbitration by seeking provisional remedies in court; creating s. 682.032, F.S.; providing for initiation of arbitration; providing that a person waives any objection to lack of or insufficiency of notice by appearing at the arbitration hearing; providing an exception; creating s. 682.033, F.S.; providing for consolidation of separate arbitration proceedings as to all or some of the claims in certain circumstances; prohibiting consolidation if the agreement prohibits consolidation; amending s. 682.04, F.S.; revising provisions relating to appointment of an arbitrator; prohibiting an individual with an interest in the outcome of an arbitration from serving as a neutral arbitrator; creating s. 682.041, F.S.; requiring certain disclosures of interests and relationships by a person before accepting appointment as an arbitrator; providing a continuing obligation to make such disclosures; providing for objections to an arbitrator based on information disclosed; providing for vacation of an award if an arbitrator failed to disclose a fact as required; providing that an arbitrator appointed as a neutral arbitrator who does not disclose certain interests or relationships is presumed to act with partiality for specified purposes; requiring parties to substantially comply

with agreed to procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made in order to seek vacation of an award on specified grounds; amending s. 682.05, F.S.; requiring that if there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators; requiring all arbitrators to conduct the arbitration hearing; creating s. 682.051, F.S.; providing immunity from civil liability for an arbitrator or an arbitration organization acting in the capacity of an arbitrator; providing that this immunity is supplemental to any immunity under other law; providing that failure to make a required disclosure does not remove immunity; providing that an arbitrator or representative of an arbitration organization is not competent to testify and may not be required to produce records concerning the arbitration; providing exceptions; providing for awarding an arbitrator, arbitration organization, or representative of an arbitration organization with reasonable attorney fees and expenses of litigation under certain circumstances; amending s. 682.06, F.S.; revising provisions relating to the conduct of arbitration hearings; providing for summary disposition, notice of hearings, adjournment, and rights of a party to the arbitration proceeding; requiring appointment of a replacement arbitrator in certain circumstances; amending s. 682.07, F.S.;

providing that a party to an arbitration proceeding may be represented by an attorney; amending s. 682.08, F.S.; revising provisions relating to the issuance, service, and enforcement of subpoenas; revising provisions relating to depositions; authorizing an arbitrator to permit discovery in certain circumstances; authorizing an arbitrator to order compliance with discovery; authorizing protective orders by an arbitrator; providing for applicability of laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness; providing for court enforcement of a subpoena or discovery-related order; providing for witness fees; creating s. 682.081, F.S.; providing for judicial enforcement of a preaward ruling by an arbitrator in certain circumstances; amending s. 682.09, F.S.; revising provisions relating to the record needed for an award; revising provisions relating to the time within which an award must be made; amending s. 682.10, F.S.; revising provisions relating to requirements for a motion to modify or correct an award; amending s. 682.11, F.S.; revising provisions relating to fees and expenses of arbitration; authorizing punitive damages and other exemplary relief and remedies; amending s. 682.12, F.S.; revising provisions relating to confirmation of an award; amending s. 682.13, F.S.; revising provisions

relating to grounds for vacating an award; revising provisions relating to a motion for vacating an award; providing for a rehearing in certain circumstances; amending s. 682.14, F.S.; revising provisions relating to the time for moving to modify or correct an award; deleting references to the term "umpire"; revising a provision concerning confirmation of awards; amending s. 682.15, F.S.; revising provisions relating to a court order confirming, vacating without directing a rehearing, modifying, or correcting an award; providing for award of costs and attorney fees in certain circumstances; repealing s. 682.16, F.S., relating to judgment roll and docketing of certain orders; repealing s. 682.17, F.S., relating to application to court; repealing s. 682.18, F.S., relating to the definition of the term "court" and jurisdiction; creating s. 682.181, F.S.; providing for jurisdiction relating to the revised code; amending s. 682.19, F.S.; revising provisions relating to venue for actions relating to the code; amending s. 682.20, F.S.; providing that an appeal may be taken from an order denying confirmation of an award unless the court has entered an order under specified provisions; providing that all other orders denying confirmation of an award are final orders; repealing s. 682.21, F.S., relating to the previous code not applying retroactively; repealing s. 682.22, F.S., relating to conflict of laws; creating s. 682.23, F.S.; specifying

the relationship of the code to the Electronic Signatures in Global and National Commerce Act; creating s. 682.24, F.S.; specifying the effective date of the revised code; providing for applicability; creating s. 682.25, F.S.; providing that the revised code does not apply to any dispute involving child custody, visitation, or child support; amending s. 44.104, F.S.; deleting references to binding arbitration from provisions providing for voluntary trial resolution; providing for temporary relief; revising provisions relating to procedures in voluntary trial resolution; providing that a judgment is reviewable in the same manner as a judgment in a civil action; deleting provisions relating to applicability of the harmless error doctrine; providing limitations on the jurisdiction of a trial resolution judge; providing for the use of juries; providing for the title of a trial resolution judge and the use of judicial robes; amending s. 44.107, F.S.; providing immunity for voluntary trial resolution judges serving under specified provisions; amending ss. 440.1926 and 489.1402, F.S.; conforming cross-references; amending s. 731.401, F.S.; revising a reference to binding arbitration under a specified provision; providing directives to the Division of Statutory Revision, including redesignating the title of chapter 44, Florida Statutes, as "Alternative Dispute Resolution"; providing an effective date.

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

Section 1. Section 682.01, Florida Statutes, is amended to read:

682.01 Short title ~~Florida Arbitration Code~~.—This chapter ~~Sections 682.01-682.22~~ may be cited as the "Revised Florida Arbitration Code."

Section 2. Section 682.011, Florida Statutes, is created to read:

682.011 Definitions.—As used in this chapter, the term:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this state.

(4) "Knowledge" means actual knowledge.

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

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Section 3. Section 682.012, Florida Statutes, is created to read:

682.012 Notice.—

(1) Except as otherwise provided in the Revised Florida Arbitration Code, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(2) A person has notice if the person has knowledge of the notice or has received notice.

(3) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such communications.

Section 4. Section 682.013, Florida Statutes, is created to read:

682.013 Applicability of revised code.—

(1) The Revised Florida Arbitration Code governs an agreement to arbitrate made on or after the effective date of this act.

(2) The Revised Florida Arbitration Code governs an agreement to arbitrate made before the effective date of this act if all the parties to the agreement or to the arbitration proceeding so agree in a record.

(3) Beginning July 1, 2015, the Revised Florida Arbitration Code governs an agreement to arbitrate whenever made.

Section 5. Section 682.014, Florida Statutes, is created to read:

682.014 Effect of agreement to arbitrate; nonwaivable provisions.—

(1) Except as otherwise provided in subsections (2) and (3), a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of the Revised Florida Arbitration Code to the extent permitted by law.

(2) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(a) Waive or agree to vary the effect of the requirements of s. 682.015(1), s. 682.02(1), s. 682.031, s. 682.08(1) or (2), s. 682.181, or s. 682.20;

(b) Agree to unreasonably restrict the right under s. 682.032 to notice of the initiation of an arbitration proceeding;

(c) Agree to unreasonably restrict the right under s. 682.041 to disclosure of any facts by a neutral arbitrator; or

(d) Waive the right under s. 682.07 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under the Revised Florida Arbitration Code, but an employer and a labor organization may waive the right to representation by an attorney in a labor arbitration.

(3) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements in this section or s. 682.013(1) or (3), s. 682.03, s. 682.051, s. 682.081, s. 682.10(4) or (5), s. 682.12, s. 682.13, s. 682.14, s. 682.15(1) or (2), s. 682.23, s. 682.24, or s. 682.25.

Section 6. Section 682.015, Florida Statutes, is created to read:

682.015 Petition for judicial relief.—

(1) Except as otherwise provided in s. 682.20, a petition for judicial relief under this chapter must be made to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(2) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial petition to the court under this chapter must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by law or rule of court for serving motions in pending cases.

Section 7. Section 682.02, Florida Statutes, is amended to read:

682.02 Arbitration agreements made valid, irrevocable, and enforceable; scope.—

(1) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(2) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(3) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(4) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

(5) ~~Two or more parties may agree in writing to submit to arbitration any controversy existing between them at the time of the agreement, or they may include in a written contract a provision for the settlement by arbitration of any controversy thereafter arising between them relating to such contract or the failure or refusal to perform the whole or any part thereof.~~ This section also applies to written interlocal agreements under ss. 163.01 and 373.713 in which two or more parties agree to submit to arbitration any controversy between them concerning water use permit motions ~~applications~~ and other matters, regardless of whether or not the water management district with jurisdiction over the subject motion ~~application~~ is a party to the interlocal agreement or a participant in the arbitration. ~~Such agreement or provision shall be valid, enforceable, and irrevocable without regard to the justiciable character of the controversy; provided that this act shall not apply to any such~~

~~agreement or provision to arbitrate in which it is stipulated that this law shall not apply or to any arbitration or award thereunder.~~

Section 8. Section 682.03, Florida Statutes, is amended to read:

682.03 Proceedings to compel and to stay arbitration.—

(1) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(a) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate.

(b) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate ~~A party to an agreement or provision for arbitration subject to this law claiming the neglect or refusal of another party thereto to comply therewith may make application to the court for an order directing the parties to proceed with arbitration in accordance with the terms thereof. If the court is satisfied that no substantial issue exists as to the making of the agreement or provision, it shall grant the application. If the court shall find that a substantial issue is raised as to the making of the agreement or provision, it shall summarily hear and determine the issue and, according to its determination, shall grant or deny the application~~.

(2) On motion of a person alleging that an arbitration

proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate ~~If an issue referable to arbitration under an agreement or provision for arbitration subject to this law becomes involved in an action or proceeding pending in a court having jurisdiction to hear an application under subsection (1), such application shall be made in said court. Otherwise and subject to s. 682.19, such application may be made in any court of competent jurisdiction~~.

(3) If the court finds that there is no enforceable agreement to arbitrate, it may not order the parties to arbitrate pursuant to subsection (1) or subsection (2) ~~Any action or proceeding involving an issue subject to arbitration under this law shall be stayed if an order for arbitration or an application therefor has been made under this section or, if the issue is severable, the stay may be with respect thereto only. When the application is made in such action or proceeding, the order for arbitration shall include such stay~~.

(4) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established ~~On application the court may stay an arbitration proceeding commenced or about to be commenced, if it shall find that no agreement or provision for arbitration subject to this law exists between the party making the application and the party causing the arbitration to be had. The court shall summarily hear and determine the issue of the~~

~~making of the agreement or provision and, according to its determination, shall grant or deny the application~~.

(5) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise, a motion under this section may be made in any court as provided in s. 682.19 ~~An order for arbitration shall not be refused on the ground that the claim in issue lacks merit or bona fides or because any fault or grounds for the claim sought to be arbitrated have not been shown~~.

(6) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(7) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

Section 9. Section 682.031, Florida Statutes, is created to read:

682.031 Provisional remedies.—

(1) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same

conditions as if the controversy were the subject of a civil action.

(2) After an arbitrator is appointed and is authorized and able to act:

(a) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion under this section.

Section 10. Section 682.032, Florida Statutes, is created to read:

682.032 Initiation of arbitration.—

(1) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a person objects for lack or insufficiency of notice under s. 682.06(3) not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

Section 11. Section 682.033, Florida Statutes, is created to read:

682.033 Consolidation of separate arbitration proceedings.—

(1) Except as otherwise provided in subsection (3), upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(a) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(b) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(c) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(d) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(2) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(3) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Section 12. Section 682.04, Florida Statutes, is amended to read:

682.04 Appointment of arbitrators by court.—

(1) If the parties to an agreement to arbitrate agree on ~~or provision for arbitration subject to this law provides~~ a method for appointing ~~the appointment of~~ arbitrators ~~or an umpire~~, this method must ~~shall~~ be followed, unless the method fails.

(2) The court, on application of a party to an arbitration agreement, shall appoint one or more arbitrators, if:

(a) The parties have not agreed on a method;

(b) The agreed method fails;

(c) One or more of the parties failed to respond to the demand for arbitration; or

(d) An arbitrator fails to act and a successor has not been appointed.

(3) ~~In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or if an arbitrator or umpire who has been appointed fails to act and his or her successor has not been duly appointed, the court, on application of a party to such agreement or provision shall appoint one or more arbitrators or an umpire.~~ An arbitrator ~~or umpire~~ so

appointed has all the ~~shall have like~~ powers of an arbitrator designated ~~as if named or provided for~~ in the agreement to arbitrate appointed pursuant to the agreed method ~~or provision~~.

(4) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

Section 13. Section 682.041, Florida Statutes, is created to read:

682.041 Disclosure by arbitrator.—

(1) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the person's impartiality as an arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding.

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representative, a witness, or another arbitrator.

(2) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable

person would consider likely to affect the impartiality of the arbitrator.

(3) If an arbitrator discloses a fact required by subsection (1) or subsection (2) to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under s. 682.13(1)(b) for vacating an award made by the arbitrator.

(4) If the arbitrator did not disclose a fact as required by subsection (1) or subsection (2), upon timely objection by a party, the court may vacate an award under s. 682.13(1)(b).

(5) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under s. 682.13(1)(b).

(6) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under s. 682.13(1)(b).

Section 14. Section 682.05, Florida Statutes, is amended to read:

682.05 Majority action by arbitrators.—If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of the arbitrators shall conduct the hearing under s. 682.06(3) ~~The~~

~~powers of the arbitrators may be exercised by a majority of their number unless otherwise provided in the agreement or provision for arbitration~~.

Section 15. Section 682.051, Florida Statutes, is created to read:

682.051 Immunity of arbitrator; competency to testify; attorney fees and costs.—

(1) An arbitrator or an arbitration organization acting in the capacity of an arbitrator is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(2) The immunity afforded under this section supplements any immunity under other law.

(3) The failure of an arbitrator to make a disclosure required by s. 682.041 does not cause any loss of immunity under this section.

(4) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(a) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(b) To a hearing on a motion to vacate an award under s. 682.13(1)(a) or (b) if the movant establishes prima facie that a ground for vacating the award exists.

(5) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (4), and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

Section 16. Section 682.06, Florida Statutes, is amended to read:

682.06 Hearing.—

(1) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The arbitrator's authority includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence ~~Unless otherwise provided by the agreement or provision for arbitration:~~

~~(1)(a) The arbitrators shall appoint a time and place for~~

~~the hearing and cause notification to the parties to be served personally or by registered or certified mail not less than 5 days before the hearing. Appearance at the hearing waives a party's right to such notice. The arbitrators may adjourn their hearing from time to time upon their own motion and shall do so upon the request of any party to the arbitration for good cause shown, provided that no adjournment or postponement of their hearing shall extend beyond the date fixed in the agreement or provision for making the award unless the parties consent to a later date. An umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award shall, in the course of his or her jurisdiction, have like powers and be subject to like limitations thereon.~~

~~(b) The arbitrators, or umpire in the course of his or her jurisdiction, may hear and decide the controversy upon the evidence produced notwithstanding the failure or refusal of a party duly notified of the time and place of the hearing to appear. The court on application may direct the arbitrators, or the umpire in the course of his or her jurisdiction, to proceed promptly with the hearing and making of the award.~~

(2) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(a) If all interested parties agree; or

(b) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond ~~The parties are entitled to be heard, to present evidence material to the controversy and to cross-~~

~~examine witnesses appearing at the hearing~~.

(3) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than 5 days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision ~~The hearing shall be conducted by all of the arbitrators but a majority may determine any question and render a final award. An umpire authorized to hear and decide the cause upon the failure of the arbitrators to agree upon an award shall sit with the arbitrators throughout their hearing but shall not be counted as a part of their quorum or in the making of their award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator, arbitrators or umpire appointed to act as neutrals may continue with the hearing and determination of the controversy~~.

(4) At a hearing under subsection (3), a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(5) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with s. 682.04 to continue the proceeding and to resolve the controversy.

Section 17. Section 682.07, Florida Statutes, is amended to read:

682.07 Representation by attorney.—A party to an arbitration proceeding may ~~has the right to~~ be represented by an attorney ~~at any arbitration proceeding or hearing under this law. A waiver thereof prior to the proceeding or hearing is ineffective~~.

Section 18. Section 682.08, Florida Statutes, is amended to read:

682.08 Witnesses, subpoenas, depositions.—

(1) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action ~~Arbitrators, or an umpire authorized to hear and decide the cause upon failure of the arbitrators to agree upon an award, in the course of her or his jurisdiction, may issue subpoenas for the attendance of~~

~~witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpoenas so issued shall be served, and upon application to the court by a party to the arbitration or the arbitrators, or the umpire, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action~~.

(2) In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to, or a witness in, an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken ~~On application of a party to the arbitration and for use as evidence, the arbitrators, or the umpire in the course of her or his jurisdiction, may permit a deposition to be taken, in the manner and upon the terms designated by them or her or him of a witness who cannot be subpoenaed or is unable to attend the hearing~~.

(3) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective ~~All provisions of law compelling a person under subpoena to testify are applicable~~.

(4) If an arbitrator permits discovery under subsection (3), the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related

orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(5) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(6) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(7) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

(8)~~(4)~~ Fees for attendance as a witness shall be the same as for a witness in the circuit court.

Section 19. Section 682.081, Florida Statutes, is created to read:

682.081 Judicial enforcement of preaward ruling by arbitrator.—If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request that the arbitrator incorporate the ruling into an award under s. 682.12. A prevailing party may make a motion to the court for an expedited order to confirm the award under s. 682.12, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under s. 682.13 or s. 682.14.

Section 20. Section 682.09, Florida Statutes, is amended to read:

682.09 Award.—

(1) An arbitrator shall make a record of an award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding ~~The award shall be in writing and shall be signed by the arbitrators joining in the award or by the umpire in the course of his or her jurisdiction. They or he or she shall deliver a copy to each party to the arbitration either personally or by registered or certified mail, or as provided in the agreement or provision~~.

(2) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award ~~An award shall be made within the time fixed therefor by the agreement or provision for arbitration or, if not so fixed, within such time as the court may order on application of a party to the arbitration. The parties may, by written agreement, extend the time either before or after the expiration thereof. Any objection that an award was not made within the time required is waived unless the objecting party notifies the arbitrators or umpire in writing of his or her objection prior to the delivery of the award to him or her~~.

Section 21. Section 682.10, Florida Statutes, is amended to read:

682.10 Change of award by arbitrators ~~or umpire~~.—

(1) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(a) Upon a ground stated in s. 682.14(1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(2) A motion under subsection (1) must be made and notice given to all parties within 20 days after the movant receives notice of the award.

(3) A party to the arbitration proceeding must give notice of any objection to the motion within 10 days after receipt of the notice.

(4) If a motion to the court is pending under s. 682.12, s. 682.13, or s. 682.14, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(a) Upon a ground stated in s. 682.14(1)(a) or (c);

(b) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(c) To clarify the award.

(5) An award modified or corrected pursuant to this section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14

~~On application of a party to the arbitration, or if an application to the court is pending under s. 682.12, s. 682.13 or s. 682.14, on submission to the arbitrators, or to the umpire in the case of an umpire's award, by the court under such conditions as the court may order, the arbitrators or umpire may modify or correct the award upon the grounds stated in s. 682.14(1)(a) and (c) or for the purpose of clarifying the award. The application shall be made within 20 days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the other party to the arbitration, stating that he or she must serve his or her objections thereto, if any, within 10 days from the notice. The award so modified or~~

~~corrected is subject to the provisions of ss. 682.12-682.14~~.

Section 22. Section 682.11, Florida Statutes, is amended to read:

682.11 Remedies; fees and expenses of arbitration proceeding.—

(1) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(2) An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(3) As to all remedies other than those authorized by subsections (1) and (2), an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under s. 682.12 or for vacating an award under s. 682.13.

(4) An arbitrator's expenses and fees, together with other expenses, must be paid as provided in the award.

(5) If an arbitrator awards punitive damages or other exemplary relief under subsection (1), the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief ~~Unless otherwise~~

~~provided in the agreement or provision for arbitration, the arbitrators' and umpire's expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award~~.

Section 23. Section 682.12, Florida Statutes, is amended to read:

682.12 Confirmation of an award.—After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to s. 682.10 or s. 682.14 or is vacated pursuant to s. 682.13 ~~Upon application of a party to the arbitration, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in ss. 682.13 and 682.14~~.

Section 24. Section 682.13, Florida Statutes, is amended to read:

682.13 Vacating an award.—

(1) Upon motion ~~application~~ of a party to an arbitration proceeding, the court shall vacate an arbitration award if ~~when~~:

(a) The award was procured by corruption, fraud, or other undue means;~~.~~

(b) There was:

1. Evident partiality by an arbitrator appointed as a neutral arbitrator;

2. Corruption by an arbitrator; or

3. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding; ~~or corruption in any of the arbitrators or umpire or misconduct prejudicing the rights of any party.~~

(c) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to s. 682.06, so as to prejudice substantially the rights of a party to the arbitration proceeding; ~~The arbitrators or the umpire in the course of her or his jurisdiction exceeded their powers.~~

(d) An arbitrator exceeded the arbitrator's powers; ~~The arbitrators or the umpire in the course of her or his jurisdiction refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of s. 682.06, as to prejudice substantially the rights of a party.~~

(e) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under s. 682.06(3) not later than the beginning of the arbitration hearing; or ~~There was no agreement or provision for arbitration subject to this law, unless the matter was determined in proceedings under s. 682.03 and unless the party participated in the arbitration hearing without raising the objection.~~

(f) The arbitration was conducted without proper notice of the initiation of an arbitration as required in s. 682.032 so as

to prejudice substantially the rights of a party to the arbitration proceeding

~~But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award~~.

(2) A motion under this section must be filed within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion must be made within 90 days after the ground is known or by the exercise of reasonable care would have been known by the movant ~~An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known~~.

(3) If the court vacates an award on a ground other than that set forth in paragraph (1)(e), it may order a rehearing. If the award is vacated on a ground stated in paragraph (1)(a) or paragraph (1)(b), the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in paragraph (1)(c), paragraph (1)(d), or paragraph (1)(f), the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in s. 682.09(2)

for an award ~~In vacating the award on grounds other than those stated in paragraph (1)(c), the court may order a rehearing before new arbitrators chosen as provided in the agreement or provision for arbitration or by the court in accordance with s. 682.04, or, if the award is vacated on grounds set forth in paragraphs (1)(c) and (d), the court may order a rehearing before the arbitrators or umpire who made the award or their successors appointed in accordance with s. 682.04. The time within which the agreement or provision for arbitration requires the award to be made is applicable to the rehearing and commences from the date of the order therefor~~.

(4) If a motion ~~the application~~ to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

Section 25. Section 682.14, Florida Statutes, is amended to read:

682.14 Modification or correction of award.—

(1) Upon motion made within 90 days after the movant receives notice of the award pursuant to s. 682.09 or within 90 days after the movant receives notice of a modified or corrected award pursuant to s. 682.10, the court shall modify or correct the award if ~~Upon application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award when~~:

(a) There is an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the award.

(b) The arbitrators ~~or umpire~~ have awarded upon a matter

not submitted in the arbitration ~~to them or him or her~~ and the award may be corrected without affecting the merits of the decision upon the issues submitted.

(c) The award is imperfect as a matter of form, not affecting the merits of the controversy.

(2) If the application is granted, the court shall modify and correct the award ~~so as to effect its intent~~ and ~~shall~~ confirm the award as so modified and corrected. Otherwise, unless a motion to vacate the award under s. 682.13 is pending, the court shall confirm the award as made.

(3) An application to modify or correct an award may be joined in the alternative with an application to vacate the award under s. 682.13.

Section 26. Section 682.15, Florida Statutes, is amended to read:

682.15 Judgment or decree on award.—

(1) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(2) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(3) On motion of a prevailing party to a contested judicial proceeding under s. 682.12, s. 682.13, or s. 682.14, the court may add reasonable attorney fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without

directing a rehearing, modifying, or correcting an award ~~Upon the granting of an order confirming, modifying or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court~~.

Section 27. Section 682.16, Florida Statutes, is repealed.

Section 28. Section 682.17, Florida Statutes, is repealed.

Section 29. Section 682.18, Florida Statutes, is repealed.

Section 30. Section 682.181, Florida Statutes, is created to read:

682.181 Jurisdiction.—

(1) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(2) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under the Revised Florida Arbitration Code.

Section 31. Section 682.19, Florida Statutes, is amended to read:

682.19 Venue.—A petition pursuant to s. 682.015 must be filed in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the petition may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the court of any county in this

state. All subsequent petitions must be made in the court hearing the initial petition unless the court otherwise directs ~~Any application under this law may be made to the court of the county in which the other party to the agreement or provision for arbitration resides or has a place of business, or, if she or he has no residence or place of business in this state, then to the court of any county. All applications under this law subsequent to an initial application shall be made to the court hearing the initial application unless it shall order otherwise~~.

Section 32. Section 682.20, Florida Statutes, is amended to read:

682.20 Appeals.—

(1) An appeal may be taken from:

(a) An order denying an application to compel arbitration made under s. 682.03.

(b) An order granting a motion ~~an application~~ to stay arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

(c) An order confirming ~~or denying confirmation of~~ an award.

(d) An order denying confirmation of an award unless the court has entered an order under s. 682.10(4) or s. 682.13. All other orders denying confirmation of an award are final orders.

(e)~~(d)~~ An order modifying or correcting an award.

(f)~~(e)~~ An order vacating an award without directing a rehearing.

(g)~~(f)~~ A judgment or decree entered pursuant to this chapter ~~the provisions of this law~~.

(2) The appeal shall be taken in the manner and to the

same extent as from orders or judgments in a civil action.

Section 33. Section 682.21, Florida Statutes, is repealed.

Section 34. Section 682.22, Florida Statutes, is repealed.

Section 35. Section 682.23, Florida Statutes, is created to read:

682.23 Relationship to Electronic Signatures in Global and National Commerce Act.—The provisions of this chapter governing the legal effect, validity, and enforceability of electronic records or electronic signatures and of contracts performed with the use of such records or signatures conform to the requirements of s. 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7002.

Section 36. Section 682.24, Florida Statutes, is created to read:

682.24 Effective date; applicability.—

(1) The Revised Florida Arbitration Code takes effect on July 1, 2012.

(2) The Revised Florida Arbitration Code does not affect an action or proceeding commenced or right accrued before the Revised Florida Arbitration Code takes effect. Subject to s. 682.013, an arbitration agreement made before July 1, 2012, is governed by the former Florida Arbitration Code.

Section 37. Section 682.25, Florida Statutes, is created to read:

682.25 Disputes excluded.—The Revised Florida Arbitration Code does not apply to any dispute involving child custody, visitation, or child support.

Section 38. Section 44.104, Florida Statutes, is amended to read:

44.104 Voluntary ~~binding arbitration and voluntary~~ trial resolution.—

(1) Two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to ~~voluntary binding arbitration, or~~ voluntary trial resolution, in lieu of judicial litigation of the issues involved, prior to or after a lawsuit has been filed~~, provided no constitutional issue is involved~~.

(2) If the parties have entered into an such an agreement and the agreement ~~which provides in voluntary binding arbitration for a method for appointing of one or more arbitrators, or which~~ provides ~~in voluntary trial resolution~~ a method for appointing the ~~a member of The Florida Bar in good standing for more than 5 years to act as~~ trial resolution judge, that method shall be followed ~~the court shall proceed with the appointment as prescribed. However, in voluntary binding arbitration at least one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.106~~. In the absence of an agreement on a method for appointing the trial resolution judge, or if the agreement method fails or for any reason cannot be followed, and the parties fail to agree on the person to serve as the trial resolution judge, the court, on application of a party, shall appoint ~~one or more qualified arbitrators, or~~ the trial resolution judge, as the case requires. A trial resolution judge must be a member of The Florida Bar in good standing for 5

years or more who has agreed to serve.

(3) The ~~arbitrators or~~ trial resolution judge shall be compensated by the parties according to their agreement with the trial resolution judge.

(4) Within 10 days after the submission of the request for ~~binding arbitration, or~~ voluntary trial resolution, the court shall provide for the appointment of the ~~arbitrator or arbitrators, or~~ trial resolution judge, as the case requires. Once appointed, the ~~arbitrators or~~ trial resolution judge shall notify the parties of the time and place for the hearing.

(5) Application for ~~voluntary binding arbitration or~~ voluntary trial resolution shall be filed and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate ~~the records of the applications for voluntary binding arbitration and~~ the records of the applications for voluntary trial resolution from all other civil actions.

(6) Filing of the application for ~~binding arbitration or~~ voluntary trial resolution tolls ~~will toll~~ the running of the applicable statutes of limitation.

(7) The ~~chief arbitrator or~~ trial resolution judge may administer oaths or affirmations and conduct the proceedings as the rules of court shall provide. At the request of any party, the ~~chief arbitrator or~~ trial resolution judge shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply

to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law. The trial resolution judge may order temporary relief in the same manner, and to the same extent, as in civil actions generally. Any party may enforce such an order by filing a petition in the court. Orders entered by the court are reviewable by the appellate court in the same manner, and to the same extent, as orders in civil actions generally.

(8) ~~A voluntary binding arbitration hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision.~~ A trial resolution judge shall conduct a voluntary trial resolution hearing. The trial resolution judge may determine any question and render a final decision.

(9) The Florida Evidence Code and Florida Rules of Civil Procedure ~~shall~~ apply to all proceedings under this section, except that voluntary trial resolution is not governed by procedural rules regulating general and special magistrates, and rulings of the trial resolution judge are not reviewable by filing exceptions with the court.

~~(10) An appeal of a voluntary binding arbitration decision shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:~~

~~(a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.~~

~~(b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.~~

~~(c) Whether the decision reaches a result contrary to the~~

~~Constitution of the United States or of the State of Florida.~~

(10)~~(11)~~ Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. The judgment is reviewable by the appellate court in the same manner, and to the same extent, as a judgment in a civil action ~~Factual findings determined in the voluntary trial are not subject to appeal~~.

~~(12) The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.~~

(11)~~(13)~~ If no appeal is taken within the time provided by rules promulgated by the Supreme Court, ~~then~~ the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision. Equitable remedies are~~, which orders shall be~~ enforceable by the contempt powers of the court to the same extent as in civil actions generally. When a judgment provides for execution, ~~and for which judgments~~ execution shall issue on request of a party.

(12)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute involving child custody, visitation, or child support, or~~ to any dispute that ~~which~~ involves the rights of a third party not a party to the ~~arbitration or~~ voluntary trial resolution when the

third party would be an indispensable party if the dispute were resolved in court or when the third party notifies ~~the chief arbitrator or~~ the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section.

(13) A trial resolution judge does not have jurisdiction to declare unconstitutional a statute, ordinance, or provision of a constitution. If any such claim is made in the voluntary trial resolution proceeding, that claim shall be severed and adjudicated by a judge of the court.

(14)(a) The parties may agree to a trial by a privately selected jury. The court's jury pool may not be used for this purpose. In all other cases, the trial resolution judge shall conduct a bench trial.

(b) The trial resolution judge may wear a judicial robe and use the title "Trial Resolution Judge" when acting in that capacity.

Section 39. Subsection (1) of section 44.107, Florida Statutes, is amended to read:

44.107 Immunity for arbitrators, voluntary trial resolution judges, mediators, and mediator trainees.—

(1) Arbitrators serving under s. 44.103, voluntary trial resolution judges serving under ~~or~~ s. 44.104, mediators serving under s. 44.102, and trainees fulfilling the mentorship requirements for certification by the Supreme Court as a mediator ~~shall~~ have judicial immunity in the same manner and to

the same extent as a judge and are entitled to the same immunity and remedies provided in s. 682.051.

Section 40. Section 440.1926, Florida Statutes, is amended to read:

440.1926 Alternate dispute resolution; claim arbitration.—Notwithstanding any other provision of this chapter, the employer, carrier, and employee may mutually agree to seek consent from a judge of compensation claims to enter into binding claim arbitration in lieu of any other remedy provided for in this chapter to resolve all issues in dispute regarding an injury. Arbitrations agreed to pursuant to this section shall be governed by chapter 682, the Revised Florida Arbitration Code, except that, notwithstanding any provision in chapter 682, the term "court" shall mean a judge of compensation claims. An arbitration award in accordance with this section is ~~shall be~~ enforceable in the same manner and with the same powers as any final compensation order.

Section 41. Paragraph (a) of subsection (1) of section 489.1402, Florida Statutes, is amended to read:

489.1402 Homeowners' Construction Recovery Fund; definitions.—

(1) The following definitions apply to ss. 489.140-489.144:

(a) "Arbitration" means alternative dispute resolution entered into between a claimant and a contractor either pursuant to a construction contract that contains a mandatory arbitration clause or through any binding arbitration under the Revised Florida Arbitration Code.

Section 42. Subsection (2) of section 731.401, Florida Statutes, is amended to read:

731.401 Arbitration of disputes.—

(2) Unless otherwise specified in the will or trust, a will or trust provision requiring arbitration shall be presumed to require voluntary trial resolution ~~binding arbitration~~ under s. 44.104.

Section 43. The Division of Statutory Revision is directed to redesignate the title of chapter 44, Florida Statutes, as "Alternative Dispute Resolution."

Section 44. The Division of Statutory Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 45. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1023 Suspension of Driver Licenses and Motor Vehicle Registrations
SPONSOR(S): Costello
TIED BILLS: None **IDEN./SIM. BILLS:** SB 914

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary	Bond
2) Transportation & Highway Safety Subcommittee			
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides that a person's driver license and motor vehicle registration may be suspended for failure to pay child support. On a timely application by an obligor facing suspension, a court can order issuance of a business use driver license rather than full suspension if the obligor agrees to a payment plan. This bill provides that:

- The court must find that the obligor has the ability to make the required payments pursuant to a payment plan before approving a business use exception license.
- The court cannot suspend the driver license for failure to make payments pursuant to the payment plan without a finding that the obligor had the ability to make the payments.
- A court may reinstate a suspended driver license with a business use driver license if the obligor agrees to an acceptable payment plan.

This bill may have an insignificant nonrecurring fiscal impact on the Department of Highway Safety and Motor Vehicles. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The driver license and motor vehicle registration of a person may be suspended if the person is delinquent in paying child support obligations.[1] Once an obligor is 15 days or more delinquent, notice is furnished warning of the potential suspension. To avoid suspension of the license and registration, the obligor has 20 days from mailing of the notice to pay any delinquency fees plus do one of the following:

- Pay the delinquency in full.
- Come to an agreement for repayment.[2]
- File a petition with the circuit court contesting the suspension.

Where the obligor timely files a petition with the circuit court, the court has the discretion to direct the issuance of a driver license restricted to business purposes only. A driving privilege "restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes.[3] However, a circuit court cannot direct issuance of a license restricted to business purposes only unless the obligor agrees to maintain current payments and agrees to a schedule for payment of the arrearage acceptable to the court. This bill amends s. 61.13016(2)(a), F.S., to further require that the court must find that the obligor has the present ability to make these payments.

If the obligor fails to comply with the schedule of payments previously approved by the court, the court must order suspension of the driver license. This bill amends s. 61.13016(2), F.S., to require that the court find that the court find that the obligor had the present ability to have made the payments before suspending the driver license. The requirement to find a present ability to have made the payments reflects a current case law requirement.[4]

Once a suspension is in place, the license and registration may be reinstated should the obligor pay the delinquency in full, come to an agreement for repayment, or should the circuit court order relief. This bill creates a new subsection (2) in s. 322.058, F.S., to provide that a court may reinstate a driver license restricted to business purposes only.

B. SECTION DIRECTORY:

Section 1 amends s. 61.13016, F.S., regarding suspension of driver license for failure to pay child support.

Section 2 amends s. 322.058, F.S., regarding suspension of driving privilege for failure to pay child support.

Section 3 amends s. 409.256, F.S., to update a cross-reference changed in Section 2.

Section 4 provides an effective date of July 1, 2012.

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[1] Section 61.13016(1), F.S. The driver license is also subject to suspension for failure to cooperate with genetic testing for paternity or failure to appear at a paternity hearing, but those provisions are not implicated by the changes made in this bill.
[2] The agreement for repayment is made with the obligee in non-Title IV-D cases, or with the Title IV-D agency in Title IV-D cases.
[3] Section 322.271(1)(c)1., F.S.
[4] *Larsen v. Larsen*, 901 So.2d 327 (Fla. 5th DCA 2005); *Gregory v. Rice*, 727 So.2d 251 (Fla. 1999).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The Department of Highway Safety and Motor Vehicles estimates nonrecurring reprogramming costs of $8,000 to implement this bill. The cost can be incorporated into normal workload.[5]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The new subsection (2) of s. 322.058, F.S., appears inconsistent with the existing paragraph (2)(c) (which is moved by this bill to (3)(c)).

As drafted, only an obligor facing suspension may apply to the circuit court for a payment plan. The bill implies in the changes to s. 322.058, F.S., but does not make clear in s. 61.13016, F.S., that an obligor who has already been suspended may apply to the circuit court for a payment plan that would allow a business use license.

[5] Department of Highway Safety and Motor Vehicles bill analysis dated December 30, 2011.

Both the Department of Revenue, which administers the state child support collection program, and the Department of Highway Safety and Motor Vehicles, which issues driver licenses and motor vehicle registrations, suggest that electronic notification be used in lieu an affidavit.[6]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[6] Department of Revenue bill analysis dated January 9, 2012. Department of Highway Safety and Motor Vehicles bill analysis dated December 30, 2011.

A bill to be entitled

An act relating to suspension of driver licenses and motor vehicle registrations; amending s. 61.13016, F.S.; revising provisions providing for an obligor who is delinquent in support payments to petition the circuit court to direct the Department of Highway Safety and Motor Vehicles to issue to the obligor a driver license restricted to business purposes only; requiring that the court, before approving a schedule for an obligor's delinquent support payments, find that the obligor has the present ability to pay the child support arrearage and support obligation; requiring that the court direct the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver license if the obligor fails to comply with the schedule of payments and if the obligor has the ability to pay; amending s. 322.058, F.S.; requiring that the Department of Highway Safety and Motor Vehicles reinstate the driving privilege and allow registration of a motor vehicle of a person who has a delinquent support obligation or who has failed to comply with a subpoena, order to appear, order to show cause, or similar order, if the Title IV-D agency in IV-D cases, or the depository or the clerk of the court in non-IV-D cases, provides an affidavit to the department stating that the court has directed that the person be issued a license for driving privileges restricted to business purposes only; amending s.

409.256, F.S.; revising provisions to conform to changes made by the act; providing an effective date.

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

Section 1. Section 61.13016, Florida Statutes, is amended to read:

61.13016 Suspension of driver ~~driver's~~ licenses and motor vehicle registrations.—

(1) The driver ~~driver's~~ license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. ~~In either~~

~~case,~~ The notice must state:

(a) The terms of the order creating the support obligation;

(b) The period of the delinquency and the total amount of the delinquency as of the date of the notice or describe the subpoena, order to appear, order to show cause, or other similar order that ~~which~~ has not been complied with;

(c) That notification will be given to the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license and motor vehicle registration unless, within 20 days after the date the notice is mailed, the obligor:

1.a. Pays the delinquency in full and any other costs and fees accrued between the date of the notice and the date the delinquency is paid;

b. Enters into a written agreement for payment with the obligee in non-IV-D cases or with the Title IV-D agency in IV-D cases; or in IV-D cases, complies with a subpoena or order to appear, order to show cause, or a similar order; or

c. Files a petition with the circuit court to contest the delinquency action; and

2. Pays any applicable delinquency fees.

If the obligor in non-IV-D cases enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court.

(2)(a) If the obligor files a ~~Upon~~ petition ~~filed by the obligor~~ in the circuit court within 20 days after the mailing

date of the notice, the court may~~, in its discretion,~~ direct the department to issue a license for driving privileges restricted to business purposes only, as defined by s. 322.271, if the person is otherwise qualified for such a license. As a condition for the court to exercise its discretion under this subsection, the obligor must agree to a schedule of payment on any child support arrearages and to maintain current child support obligations. Before approving the schedule of payment, the court must find that the obligor has the present ability to pay the schedule of payment for the child support arrearage and the current child support obligation.

(b) If the obligor fails to comply with the schedule of payment and if the obligor has the present ability to do so, the court shall direct the Department of Highway Safety and Motor Vehicles to suspend the obligor's driver ~~driver's~~ license.

(c) ~~(b)~~ The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or on the depository or the clerk of the court in non-IV-D cases. When an obligor timely files a petition to set aside a suspension, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition under this subsection stays the intent to suspend until the entry of a court order resolving the matter.

(3) If the obligor does not, within 20 days after the mailing date on the notice, pay the delinquency, enter into a payment agreement, comply with the subpoena, order to appear,

order to show cause, or other similar order, or file a motion to contest, the Title IV-D agency in IV-D cases, or the depository or clerk of the court in non-IV-D cases, shall file the notice with the Department of Highway Safety and Motor Vehicles and request the suspension of the obligor's driver ~~driver's~~ license and motor vehicle registration in accordance with s. 322.058.

(4) The obligor may, within 20 days after the mailing date on the notice of delinquency or noncompliance and intent to suspend, file in the circuit court a petition to contest the notice of delinquency or noncompliance and intent to suspend on the ground of mistake of fact regarding the existence of a delinquency or the identity of the obligor. The obligor must serve a copy of the petition on the Title IV-D agency in IV-D cases or depository or clerk of the court in non-IV-D cases. When an obligor timely files a petition to contest, the court must hear the matter within 15 days after the petition is filed. The court must enter an order resolving the matter within 10 days after the hearing, and a copy of the order must be served on the parties. The timely filing of a petition to contest stays the notice of delinquency and intent to suspend until the entry of a court order resolving the matter.

(5) The procedures prescribed in this section and s. 322.058 may be used to enforce compliance with an order to appear for genetic testing.

Section 2. Section 322.058, Florida Statutes, is amended to read:

322.058 Suspension of driving privilege ~~privileges~~ due to support delinquency; reinstatement.—

(1) When the department receives notice from the Title IV-D agency or depository or the clerk of the court that a ~~any~~ person licensed to operate a motor vehicle in the State of Florida under the provisions of this chapter has a delinquent support obligation or has failed to comply with a subpoena, order to appear, order to show cause, or similar order, the department shall suspend the driver ~~driver's~~ license of the person named in the notice and the registration of all motor vehicles owned by that person.

(2) The department shall reinstate the driving privilege and allow registration of the motor vehicle of a person who has a delinquent support obligation or who has failed to comply with a subpoena, order to appear, order to show cause, or similar order, if the Title IV-D agency in IV-D cases, or the depository or the clerk of the court in non-IV-D cases, provides to the department an affidavit stating that the person has agreed to a schedule of payment on child support arrearages and to maintain support obligations, and the court has directed that the person be issued a license for driving privileges restricted to business purposes only, as defined by s. 322.271 and pursuant to s. 316.13016.

(3) ~~(2)~~ The department shall also ~~must~~ reinstate the driving privilege and allow registration of a motor vehicle when the Title IV-D agency in IV-D cases or the depository or the clerk of the court in non-IV-D cases provides to the department an affidavit stating that:

(a) The person has paid the delinquency;

(b) The person has reached a written agreement for payment

with the Title IV-D agency or the obligee in non-IV-D cases;

(c) A court has entered an order granting relief to the obligor ordering the reinstatement of the license and motor vehicle registration; or

(d) The person has complied with the subpoena, order to appear, order to show cause, or similar order.

(4) ~~(3)~~ The department is ~~shall~~ not ~~be held~~ liable for a ~~any~~ license or vehicle registration suspension resulting from the discharge of its duties under this section.

(5) ~~(4)~~ This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under chapter 320, except for the transfer of registrations which is inclusive of the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(7)(b).

Section 3. Subsection (7) of section 409.256, Florida Statutes, is amended to read:

409.256 Administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.—

(7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a person who is served with an order to appear for genetic testing fails to appear without good cause or refuses to submit to testing without good cause, the department may take one or more of the following actions:

(a) Commence a proceeding to suspend the driver ~~driver's~~

license and motor vehicle registration of the person ordered to appear, as provided in s. 61.13016;

(b) Impose an administrative fine against the person ordered to appear in the amount of $500; or

(c) File a petition in circuit court to establish paternity, obtain a support order for the child, and seek reimbursement from the person ordered to appear for the full cost of genetic testing incurred by the department.

As provided in s. 322.058(3) ~~s. 322.058(2)~~, a suspended driver ~~driver's~~ license and motor vehicle registration shall ~~may~~ be reinstated when the person ordered to appear complies with the order to appear for genetic testing. The department may collect an administrative fine imposed under this subsection by using civil remedies or other statutory means available to the department for collecting support.

Section 4. This act shall take effect July 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1115 Teacher Protection
SPONSOR(S): Brandes; Grant and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Cary VMC	Bond NB
2) Justice Appropriations Subcommittee			
3) Education Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

Public school classroom teachers are occasionally named as defendants in civil lawsuits as a result of in-school disciplinary issues. This bill allows a teacher to request that the Office of the Attorney General (OAG) represent the teacher in a civil lawsuit arising out of disciplinary issues. The OAG must represent the teacher if it finds that the suit arose out of an act that the teacher had a good faith belief was within the scope of the teacher's duties.

The bill also modifies the definition of "employee organization" within the labor organizations statute to exclude professional teacher associations that do not register as collective bargaining organizations.

This bill does not appear to have a fiscal impact on local governments. This bill appears to require recurring expenditures in the Department of Legal Affairs of $2.1 million annually, commencing in FY 2012-13, payable from the General Revenue Fund.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Civil Suits Against Teachers - Present Situation

Public school teachers[1] are granted the authority to control and discipline students, subject to state law, school district policy, and the direction of the school principal.[2] A classroom teacher, in some circumstances, may be sued for in-class discipline by or on behalf of an aggrieved student.[3] A teacher is not civilly or criminally liable for any action carried out in conformity with the State Board of Education and district school board rules regarding the control or discipline of students, except in the case of excessive force or cruel and unusual punishment.[4] When a teacher is named in a civil suit for enforcing discipline policies, if the teacher is not defended by the school board, the teacher is typically represented a private attorney hired by the teacher, a teacher's union, or another professional teacher's organization.

Civil Suits Against Teachers - Effect of Proposed Changes

This bill creates s. 16.0152, F.S. to allow a public school teacher, other than a substitute teacher, to request that the Office of the Attorney General (OAG) represent the teacher in the suit. Such a request must be made in writing with 14 days of receipt of the complaint. The bill requires the OAG to defend the teacher throughout the civil action if the OAG determines that the teacher acted with a good faith belief that the act was within the scope of the teacher's duties in enforcing discipline policies developed under s. 1003.32, F.S.

The OAG is required to draft a notice of the teacher's options under this bill for dissemination by the Commissioner of Education to each K-12 classroom teacher by August 15th of each year. The bill provides that a decision by the OAG to not represent a teacher is not admissible as evidence in the trial of any civil action that commences.

Employee Organizations - Present Situation

An employee organization is any labor organization, union, association, fraternal order, occupational or professional society, or group, however organized or constituted, that represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer.[5] This definition comes from the chapter of the Florida Statutes relating to labor unions.[6] Recent decisions by the Florida Public Employees Relations Commission, however, have expanded the scope of that definition to include professional teacher associations that do not perform collective bargaining functions, allowing unions to challenge non-collective bargaining teacher associations[7] for unfair labor practices.[8]

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[1] Section 1012.01(2)(a), F.S.
[2] Section 1003.32, F.S.
[3] *See, e.g., Williams v. Cotton*, 346 So.2d 1039 (Fla. 1st DCA 1977).
[4] Section 1006.11(2), F.S.
[5] Section 447.203(11), F.S.
[6] Chapter 447, F.S.
[7] Professional teacher associations are defined by s. 1001.03, F.S., as not-for-profit, professional teacher associations that offer membership to all teachers and offer teacher training and staff development at no fee to the district. Such organizations are allowed equal access to voluntary tacher meetings, access to teacher mailboxes, and may collect voluntary membership fees through payroll deductions.
[8] *See, e.g., Osceola Classroom Teachers Assoc. v. School District of Osceola County*, Case No. CA-2009-068 (PERC Final Order, Oct. 29, 2010) and *Duval Teachers United v. School District of Duval County*, Case No. CA-2010-134 (Hearing Officer's Recommended Order).

This bill amends the definition for "employee organization" in s. 447.203, F.S., to specifically exclude any "professional teacher association" as defined in s. 1001.03(4), F.S., until such organization applies for registration pursuant to the labor union statute.

B. SECTION DIRECTORY:

Section 1 provides a name for the act.

Section 2 creates s. 16.0152, F.S., relating to suits against K-12 classroom teachers.

Section 3 amends s. 447.203, F.S., relating to definition of employee organization.

Section 4 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The Office of the Attorney General estimates that there would be 22 lawsuits annually alleging improper discipline. The OAG also determined that defense costs would be approximately $96,000 per case. Assuming 22 cases is a representative year, the result is an approximate fiscal cost of approximately $2.1 million dollars annually. The bill does not specify the source of funding, and accordingly appears to be funded from the General Revenue Fund.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Office of the Attorney General, requiring the OAG to defend a teacher in a civil lawsuit could create a potential conflict of interest for the OAG, since it currently serves as a legal advisor to the Florida Education Practices Commission.

The bill may also create another potential conflict of interest. The OAG prepares criminal appeals on behalf of the state. It is possible that the OAG could obtain information from a teacher seeking representation in a civil case that implicates the teacher in a criminal case. If that teacher is convicted and appeals, the OAG may then be unable to act as appellate counsel for the state.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

A bill to be entitled

An act relating to teacher protection; providing a short title; creating s. 16.0152, F.S.; authorizing certain teachers who are made a party to a civil suit to request representation by the Attorney General; requiring the Attorney General to defend the teacher if the Attorney General determines that the suit has arisen out of an act that the teacher in good faith believed was within the scope of his or her duties; requiring annual notice to teachers of their options under this provision; providing that certain determinations by the Attorney General are not admissible in evidence; providing construction; amending s. 447.203, F.S.; excluding certain professional teacher associations from the definition of "employee organization" for purposes of provisions relating to public employee organizations unless such associations apply for registration under specified provisions; providing an effective date.

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

Section 1. <u>This act may be cited as the "Teacher Protection Act."</u>

Section 2. Section 16.0152, Florida Statutes, is created to read:

<u>16.0152 Suits against K-12 classroom teachers; defense by Attorney General.—</u>

(1) A K-12 classroom teacher as defined in s. 1012.01(2)(a), other than a substitute teacher, who is made a party to a civil suit for enforcing discipline policies developed under s. 1003.32 may request legal representation by the Attorney General. Such request must be in writing and submitted to the Attorney General as soon as possible, but no later than 14 days after the teacher receives the complaint.

(2) The Attorney General shall defend the teacher throughout the civil action if the Attorney General determines that the suit has arisen out of an act that the teacher in good faith believed was within the scope of the teacher's duties in enforcing discipline policies developed under s. 1003.32.

(3) No later than August 15 of each year, the Attorney General shall draft and the Commissioner of Education shall disseminate a notice to each K-12 classroom teacher concerning the teacher's options under this section.

(4) A determination made by the Attorney General not to represent a teacher under this section is not admissible as evidence in the trial of any such civil action.

(5) This section does not deprive any person of the person's right to select counsel of the person's own choice at the person's own expense.

Section 3. Subsection (11) of section 447.203, Florida Statutes, is amended to read:

447.203 Definitions.—As used in this part:

(11) "Employee organization" or "organization" means any labor organization, union, association, fraternal order, occupational or professional society, or group, however

organized or constituted, that ~~which~~ represents, or seeks to represent, any public employee or group of public employees concerning any matters relating to their employment relationship with a public employer, except that a "professional teacher association" as defined in s. 1001.03(4) shall not be included in this definition until it applies for registration pursuant to s. 447.305.

Section 4. This act shall take effect July 1, 2012.