



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

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

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.

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

1 A bill to be entitled
 2 An act relating to family law; amending s. 61.075,
 3 F.S.; redefining the term "marital assets and
 4 liabilities" for purposes of equitable distribution in
 5 dissolution of marriage actions; providing that the
 6 term includes the paydown of principal of notes and
 7 mortgages secured by nonmarital real property and
 8 certain passive appreciation in such property under
 9 certain circumstances; providing formulas and
 10 guidelines for determining the amount of such passive
 11 appreciation; requiring security and interest relating
 12 to the installment payment of such assets; providing
 13 exceptions; permitting the court to provide written
 14 findings regarding any installment payments; providing
 15 an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraph (a) of subsection (6) and subsection
 20 (10) of section 61.075, Florida Statutes, are amended to read:

21 61.075 Equitable distribution of marital assets and
 22 liabilities.—

23 (6) As used in this section:

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

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

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

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

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

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

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

56 (III) The passive appreciation shall be multiplied by the

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

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

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

68 d.e. Interspousal gifts during the marriage.

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

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

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

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

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

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

100 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 <i>MC</i>	Bond <i>VB</i>
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 facility¹ or a self-contained storage unit² 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 notice⁵ 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

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.

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

1 A bill to be entitled
 2 An act relating to self-service storage facilities;
 3 amending s. 83.803, F.S.; revising the definition of
 4 the term "last known address"; amending s. 83.806,
 5 F.S.; revising notice requirements relating to
 6 enforcing an owner's lien; authorizing notice by e-
 7 mail or first-class mail, along with a certificate of
 8 mailing; providing requirements for e-mail notice;
 9 revising provisions relating to when notice given is
 10 presumed delivered; amending s. 83.808, F.S.;
 11 requiring rental agreements and applications for
 12 rental agreements to contain a provision for the
 13 disclosure of the applicant's membership in the
 14 uniformed services; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Subsection (6) of section 83.803, Florida
 19 Statutes, is amended to read:

20 83.803 Definitions.—As used in ss. 83.801-83.809:

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

27 Section 2. Subsections (1), (3), and (8) of section
 28 83.806, Florida Statutes, are amended to read:

29 83.806 Enforcement of lien.—An owner's lien as provided in
 30 s. 83.805 may be satisfied as follows:

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

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

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

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

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

72 83.808 Contracts ~~Contractual liens.~~-



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

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

83 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 entirety 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 entirety² 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.

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

² A tenancy by the entirety 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 entirety 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 decedents 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.

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

1 A bill to be entitled

2 An act relating to probate; amending s. 731.201, F.S.;

3 excluding real property owned in tenancy by the

4 entireties or in joint tenancy with rights of

5 survivorship from the definition of the term

6 "protected homestead"; clarifying the application of

7 amendments to s. 732.102, F.S., made by chapter 2011-

8 183, Laws of Florida, relating to a spouse's share of

9 an intestate estate; amending s. 732.401, F.S.;

10 revising the period of time during which an attorney

11 in fact or guardian of the property of a surviving

12 spouse may petition for approval to elect to take a

13 one-half interest in the decedent's homestead;

14 specifying the minimum duration of an extension of

15 time; creating s. 732.1081, F.S.; barring inheritance

16 rights of a natural or adoptive parent whose parental

17 rights have been previously terminated pursuant to

18 law; providing for application of the act; providing

19 effective dates.

20

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

22

23 Section 1. Effective July 1, 2012, and applicable to

24 proceedings pending before or commenced on or after July 1,

25 2012, subsection (33) of section 731.201, Florida Statutes, is

26 amended to read:

27 731.201 General definitions.—Subject to additional

28 definitions in subsequent chapters that are applicable to

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29 specific chapters or parts, and unless the context otherwise
 30 requires, in this code, in s. 409.9101, and in chapters 736,
 31 738, 739, and 744, the term:

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

39 Section 2. Notwithstanding section 2 or section 14 of
 40 chapter 2011-183, Laws of Florida, the amendments to section
 41 732.102, Florida Statutes, made by section 2 of that act apply
 42 only to the estates of decedents dying on or after October 1,
 43 2011.

44 Section 3. Effective July 1, 2012, and applicable only to
 45 estates of persons dying on or after July 1, 2012, section
 46 732.401, Florida Statutes, is amended to read:

47 732.401 Descent of homestead.-

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

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

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

61 (a) The right of election may be exercised:

62 1. By the surviving spouse; or

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

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

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

83 (d) Once made, the election is irrevocable.

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

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

89
90 ELECTION OF SURVIVING SPOUSE
91 TO TAKE A ONE-HALF INTEREST OF
92 DECEDENT'S INTEREST IN
93 HOMESTEAD PROPERTY
94

95 STATE OF.....

96 COUNTY OF.....

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

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

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

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

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.....
...(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 entirety or in joint tenancy
with rights of survivorship.

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141 Section 4. Effective July 1, 2012, and applicable only to
 142 estates of persons dying on or after July 1, 2012, section
 143 732.1081, Florida Statutes, is created to read:

144 732.1081 Termination of parental rights.—For the purpose
 145 of intestate succession by a natural or adoptive parent, a
 146 natural or adoptive parent is barred from inheriting from or
 147 through a child if the natural or adoptive parent's parental
 148 rights were terminated pursuant to chapter 39 prior to the death
 149 of the child, and the natural or adoptive parent shall be
 150 treated as if the parent predeceased the child.

151 Section 5. Except as otherwise expressly provided in this
 152 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 <i>VB</i>	Bond <i>VB</i>
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 professions³ 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 conduct¹⁰ immediately to county law enforcement in which

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 filed¹⁸, 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 counties²¹, 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.

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(3)(c), F. S.

²⁷ s. 39.504(4), F.S.

²⁸ s. 39.401(1)(b)(1), F.S.

²⁹ s. 39.401(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.

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

(The following are new requirements proposed by the bill)

- o Determine the need for immediate consultation with law enforcement, child protection teams, domestic violence shelters and substance abuse and mental health professionals.
 - o 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.

29 | for a master file; revising requirements for such a
 30 | file; revising requirements for informing the subject
 31 | of an investigation; deleting provisions relating to a
 32 | preliminary determination as to whether an
 33 | investigation report is complete; revising
 34 | requirements for child protective investigation
 35 | activities to be performed to determine child safety;
 36 | specifying uses for certain criminal justice
 37 | information accesses by child protection
 38 | investigators; requiring documentation of the present
 39 | and impending dangers to each child through use of a
 40 | standardized safety assessment; revising provisions
 41 | relating to required protective, treatment, and
 42 | ameliorative services; revising requirements for the
 43 | Department of Children and Family Service's training
 44 | program for staff responsible for responding to
 45 | reports accepted by the central abuse hotline;
 46 | requiring the department's training program at the
 47 | regional and district levels to include results of
 48 | qualitative reviews of child protective investigation
 49 | cases handled within the region or district; revising
 50 | requirements for the department's quality assurance
 51 | program; amending s. 39.302, F.S.; requiring that a
 52 | protective investigation must include an interview
 53 | with the child's parent or legal guardian; amending s.
 54 | 39.307, F.S.; requiring the department, contracted
 55 | sheriff's office providing protective investigation
 56 | services, or contracted case management personnel

57 | responsible for providing services to adhere to
 58 | certain procedures relating to reports of child-on-
 59 | child sexual abuse; deleting a requirement that an
 60 | assessment of service and treatment needs to be
 61 | completed within a specified period; amending s.
 62 | 39.504, F.S.; revising provisions relating to the
 63 | process for seeking a child protective injunction;
 64 | providing for temporary ex parte injunctions;
 65 | providing requirements for service on an alleged
 66 | offender; revising provisions relating to the contents
 67 | of an injunction; providing for certain relief;
 68 | providing requirements for notice of a hearing on a
 69 | motion to modify or dissolve an injunction; providing
 70 | that a person against whom an injunction is entered
 71 | does not automatically become a party to a subsequent
 72 | dependency action concerning the same child; amending
 73 | s. 39.521, F.S.; requiring a home study report if a
 74 | child has been removed from the home and will be
 75 | remaining with a parent; substituting references to
 76 | the State Automated Child Welfare Information System
 77 | for the Florida Abuse Hotline Information System
 78 | applicable to records checks; authorizing submission
 79 | of fingerprints of certain household members;
 80 | authorizing requests for national criminal history
 81 | checks and fingerprinting of any visitor to the home
 82 | known to the department; amending s. 39.6011, F.S. ;
 83 | providing additional options for the court with
 84 | respect to case plans; providing for expiration of a

85 | child's case plan no later than 12 months after the
 86 | date the child was adjudicated dependent; conforming a
 87 | cross-reference to changes made by the act; amending
 88 | s. 39.621, F.S.; revising terminology relating to
 89 | permanency determinations; amending s. 39.701, F.S.;
 90 | providing that a court must schedule a judicial review
 91 | hearing if the citizen review panel recommends
 92 | extending the goal of reunification for any case plan
 93 | beyond 12 months from the date the child was
 94 | adjudicated dependent, unless specified other events
 95 | occurred earlier; conforming a cross-reference to
 96 | changes made by the act; amending s. 39.8055, F.S.;
 97 | requiring the department to file a petition to
 98 | terminate parental rights within a certain number of
 99 | days after the completion of a specified period after
 100 | the child was sheltered or adjudicated dependent,
 101 | whichever occurs first; amending s. 39.806, F.S.;
 102 | increasing the number of months of failure of the
 103 | parent or parents to substantially comply with a
 104 | child's case plan in certain circumstances that
 105 | constitutes evidence of continuing abuse, neglect, or
 106 | abandonment and grounds for termination of parental
 107 | rights; revising a cross-reference; amending ss.
 108 | 39.502, 39.823, and 39.828, F.S.; conforming cross-
 109 | references to changes made by the act; providing an
 110 | effective date.

111 |
 112 | Be It Enacted by the Legislature of the State of Florida:

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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

141 | some other person, or was not in the physical or legal custody
 142 | of any ~~ne~~ person when the event or condition occurred that
 143 | brought the child to the attention of the court. When the court
 144 | obtains jurisdiction of any child who has been found to be
 145 | dependent, the court shall retain jurisdiction, unless
 146 | relinquished by its order, until the child reaches 18 years of
 147 | age. However, if a youth petitions the court at any time before
 148 | his or her 19th birthday requesting the court's continued
 149 | jurisdiction, the juvenile court may retain jurisdiction under
 150 | this chapter for a period not to exceed 1 year following the
 151 | youth's 18th birthday for the purpose of determining whether
 152 | appropriate aftercare support, Road-to-Independence Program,
 153 | transitional support, mental health, and developmental
 154 | disability services, to the extent otherwise authorized by law,
 155 | have been provided to the formerly dependent child who was in
 156 | the legal custody of the department immediately before his or
 157 | her 18th birthday. If a petition for special immigrant juvenile
 158 | status and an application for adjustment of status have been
 159 | filed on behalf of a foster child and the petition and
 160 | application have not been granted by the time the child reaches
 161 | 18 years of age, the court may retain jurisdiction over the
 162 | dependency case solely for the purpose of allowing the continued
 163 | consideration of the petition and application by federal
 164 | authorities. Review hearings for the child shall be set solely
 165 | for the purpose of determining the status of the petition and
 166 | application. The court's jurisdiction terminates upon the final
 167 | decision of the federal authorities. Retention of jurisdiction
 168 | in this instance does not affect the services available to a

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

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

174 39.0138 Criminal history and other records checks ~~check~~;
 175 limit on placement of a child.-

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

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

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

202 39.201 Mandatory reports of child abuse, abandonment, or
 203 neglect; mandatory reports of death; central abuse hotline.-

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

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

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

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

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

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

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

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

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

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

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

261 39.205 Penalties relating to reporting of child abuse,
 262 abandonment, or neglect.-

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

269 (5) If the department or its authorized agent has
 270 determined during the course of ~~after~~ its investigation that a
 271 report is a false report, the department may discontinue all
 272 investigative activities and shall, with the consent of the
 273 alleged perpetrator, refer the report to the local law
 274 enforcement agency having jurisdiction for an investigation to
 275 determine whether sufficient evidence exists to refer the case
 276 for prosecution for filing a false report as defined in s.
 277 39.01. During the pendency of the investigation, the department
 278 must notify the local law enforcement agency of, and the local
 279 law enforcement agency must respond to, all subsequent reports
 280 concerning children in that same family in accordance with s.

281 | 39.301. If the law enforcement agency believes that there are
 282 | indicators of abuse, abandonment, or neglect, it must
 283 | immediately notify the department, which must ensure the safety
 284 | of the children. If the law enforcement agency finds sufficient
 285 | evidence for prosecution for filing a false report, it must
 286 | refer the case to the appropriate state attorney for
 287 | prosecution.

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

290 | 39.301 Initiation of protective investigations.—

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

309 relative to the present report or any noted earlier reports.

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

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

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

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

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

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

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

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

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

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

340 (d) The local law enforcement agreement required in s.
 341 39.306 shall describe the specific local protocols for
 342 implementing this section.

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

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

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

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

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

372 2. The purpose of the investigation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

440 (9)(10)(a) For each report received from the central abuse
 441 hotline and accepted for investigation ~~that meets one or more of~~
 442 ~~the following criteria~~, the department or the sheriff providing
 443 child protective investigative services under s. 39.3065, shall
 444 perform the following ~~an onsite~~ child protective investigation
 445 activities to determine child safety:

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

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

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

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

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

484 3.1. Assess the child's residence, including a
 485 determination of ~~Determine~~ the composition of the family and ~~or~~
 486 household, including the name, address, date of birth, social
 487 security number, sex, and race of each child named in the
 488 report; any siblings or other children in the same household or
 489 in the care of the same adults; the parents, legal custodians,
 490 or caregivers; and any other adults in the same household.

491 4.2. Determine whether there is any indication that any
 492 child in the family or household has been abused, abandoned, or
 493 neglected; the nature and extent of present or prior injuries,
 494 abuse, or neglect, and any evidence thereof; and a determination
 495 as to the person or persons apparently responsible for the
 496 abuse, abandonment, or neglect, including the name, address,
 497 date of birth, social security number, sex, and race of each
 498 such person.

499 5.3. Complete assessment of immediate child safety for
 500 ~~Determine the immediate and long-term risk to each child~~ based
 501 on available records, interviews, and observations with all
 502 persons named in subparagraph 2. and appropriate collateral
 503 contacts, which may include other professionals ~~by conducting~~
 504 ~~state and federal records checks, including, when feasible, the~~

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

522 6.4. Document the present and impending dangers Determine
 523 the immediate and long-term risk to each child based on the
 524 identification of inadequate protective capacity through
 525 utilization of a standardized safety risk assessment instrument
 526 instruments.

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

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

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

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

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

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

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

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

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

572 (10)(11)(a) The department's training program for staff
 573 responsible for responding to reports accepted by the central
 574 abuse hotline must also ensure that child protective responders:

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

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

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

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

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

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

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

601 ~~4. Any report that does not meet the criteria for an~~
 602 ~~onsite child protective investigation as set forth in subsection~~
 603 ~~(10).~~

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

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

609 ~~2. Collateral contacts;~~

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

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

613 ~~5. An updated assessment.~~

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

616 (11)~~(12)~~ The department shall incorporate into its quality

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

625 (12)~~(13)~~ If the department or its agent is denied
 626 reasonable access to a child by the parents, legal custodians,
 627 or caregivers and the department deems that the best interests
 628 of the child so require, it shall seek an appropriate court
 629 order or other legal authority before ~~prior to~~ examining and
 630 interviewing the child.

631 (13)~~(14)~~ Onsite visits and face-to-face interviews with
 632 the child or family shall be unannounced unless it is determined
 633 by the department or its agent or contract provider that such
 634 unannounced visit would threaten the safety of the child.

635 (14)~~(15)~~(a) If the department or its agent determines that
 636 a child requires immediate or long-term protection through:

- 637 1. Medical or other health care; or
- 638 2. Homemaker care, day care, protective supervision, or
- 639 other services to stabilize the home environment, including
- 640 intensive family preservation services through the Intensive
- 641 Crisis Counseling Program,

642
 643 such services shall first be offered for voluntary acceptance
 644 unless there are high-risk factors that may impact the ability

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

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

673 child's best interests.

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

696 (15)~~(16)~~ When a child is taken into custody pursuant to
 697 this section, the authorized agent of the department shall
 698 request that the child's parent, caregiver, or legal custodian
 699 disclose the names, relationships, and addresses of all parents
 700 and prospective parents and all next of kin, so far as are

701 known.

702 (16)~~(17)~~ The department shall complete its protective
 703 investigation within 60 days after receiving the initial report,
 704 unless:

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

712 (b) In child death cases, the final report of the medical
 713 examiner is necessary for the department to close its
 714 investigation and the report has not been received within the
 715 60-day period, in which case the report closure date shall be
 716 extended to accommodate the report.

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

723 (17)~~(18)~~ Immediately upon learning during the course of an
 724 investigation that:

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

727 (b) The family is likely to flee;

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

729 neglect;

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

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

734

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

748 (18)~~(19)~~ In a child protective investigation or a criminal
749 investigation, when the initial interview with the child is
750 conducted at school, the department or the law enforcement
751 agency may allow, notwithstanding ~~the provisions of s.~~
752 39.0132(4), a school staff member who is known by the child to
753 be present during the initial interview if:

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

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

759
 760 School staff may be present only when authorized by this
 761 subsection. Information received during the interview or from
 762 any other source regarding the alleged abuse or neglect of the
 763 child is ~~shall be~~ confidential and exempt from ~~the provisions of~~
 764 s. 119.07(1), except as otherwise provided by court order. A
 765 separate record of the investigation of the abuse, abandonment,
 766 or neglect may ~~shall~~ not be maintained by the school or school
 767 staff member. Violation of this subsection is ~~constitutes~~ a
 768 misdemeanor of the second degree, punishable as provided in s.
 769 775.082 or s. 775.083.

770 (19)~~(20)~~ When a law enforcement agency conducts a criminal
 771 investigation into allegations of child abuse, neglect, or
 772 abandonment, photographs documenting the abuse or neglect shall
 773 ~~will~~ be taken when appropriate.

774 (20)~~(21)~~ Within 15 days after the case is reported to him
 775 or her pursuant to this chapter, the state attorney shall report
 776 his or her findings to the department and shall include in such
 777 report a determination of whether or not prosecution is
 778 justified and appropriate in view of the circumstances of the
 779 specific case.

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

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

786 (21)~~(23)~~ When an investigation is closed and a person is
 787 not identified as a caregiver responsible for the abuse,
 788 neglect, or abandonment alleged in the report, the fact that the
 789 person is named in some capacity in the report may not be used
 790 in any way to adversely affect the interests of that person.
 791 This prohibition applies to any use of the information in
 792 employment screening, licensing, child placement, adoption, or
 793 any other decisions by a private adoption agency or a state
 794 agency or its contracted providers, except that a previous
 795 report may be used to determine whether a child is safe and what
 796 the known risk is to the child at any stage of a child
 797 protection proceeding.

798 (22)~~(24)~~ If, after having been notified of the requirement
 799 to report a change in residence or location of the child to the
 800 protective investigator, a parent or legal custodian causes the
 801 child to move, or allows the child to be moved, to a different
 802 residence or location, or if the child leaves the residence on
 803 his or her own accord and the parent or legal custodian does not
 804 notify the protective investigator of the move within 2 business
 805 days, the child may be considered to be a missing child for the
 806 purposes of filing a report with a law enforcement agency under
 807 s. 937.021.

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

810 39.302 Protective investigations of institutional child
 811 abuse, abandonment, or neglect.—

812 (1) The department shall conduct a child protective

813 investigation of each report of institutional child abuse,
 814 abandonment, or neglect. Upon receipt of a report that alleges
 815 that an employee or agent of the department, or any other entity
 816 or person covered by s. 39.01(33) or (47), acting in an official
 817 capacity, has committed an act of child abuse, abandonment, or
 818 neglect, the department shall initiate a child protective
 819 investigation within the timeframe established under s.
 820 39.201(5) and orally notify the appropriate state attorney, law
 821 enforcement agency, and licensing agency, which shall
 822 immediately conduct a joint investigation, unless independent
 823 investigations are more feasible. When conducting investigations
 824 onsite or having face-to-face interviews with the child,
 825 investigation visits shall be unannounced unless it is
 826 determined by the department or its agent that unannounced
 827 visits threaten the safety of the child. If a facility is exempt
 828 from licensing, the department shall inform the owner or
 829 operator of the facility of the report. Each agency conducting a
 830 joint investigation is entitled to full access to the
 831 information gathered by the department in the course of the
 832 investigation. A protective investigation must include an
 833 interview with the child's parent or legal guardian ~~an onsite~~
 834 ~~visit of the child's place of residence~~. The department shall
 835 make a full written report to the state attorney within 3
 836 working days after making the oral report. A criminal
 837 investigation shall be coordinated, whenever possible, with the
 838 child protective investigation of the department. Any interested
 839 person who has information regarding the offenses described in
 840 this subsection may forward a statement to the state attorney as

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

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

849 39.307 Reports of child-on-child sexual abuse.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

918 39.504 Injunction pending disposition of petition;
919 penalty.—

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

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

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

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

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

960 (4)(3) If an injunction is issued under this section, the
 961 primary purpose of the injunction must be to protect and promote
 962 the best interests of the child, taking the preservation of the
 963 child's immediate family into consideration.

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

- 969 1. Refrain from further abuse or acts of domestic
 970 violence.
- 971 2. Participate in a specialized treatment program.
- 972 3. Limit contact or communication with the child victim,
 973 other children in the home, or any other child.
- 974 4. Refrain from contacting the child at home, school,
 975 work, or wherever the child may be found.
- 976 5. Have limited or supervised visitation with the child.
- 977 ~~6. Pay temporary support for the child or other family~~
 978 ~~members; the costs of medical, psychiatric, and psychological~~
 979 ~~treatment for the child incurred as a result of the offenses;~~
 980 ~~and similar costs for other family members.~~

981 ~~6.7.~~ Vacate the home in which the child resides.

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

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

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

991 ~~2.3. Establishing~~ Temporary support for the child or other
 992 family members.

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

996
 997 This paragraph does not preclude an ~~the~~ adult victim of domestic
 998 violence from seeking protection for himself or herself under s.
 999 741.30.

1000 (c) The terms of the final injunction shall remain in
 1001 effect until modified or dissolved by the court. The petitioner,
 1002 respondent, or caregiver may move at any time to modify or
 1003 dissolve the injunction. Notice of hearing on the motion to
 1004 modify or dissolve the injunction must be provided to all
 1005 parties, including the department. The injunction is valid and
 1006 enforceable in all counties in the state.

1007 ~~(5)(4)~~ Service of process on the respondent shall be
 1008 carried out pursuant to s. 741.30. The department shall deliver

1009 a copy of any injunction issued pursuant to this section to the
 1010 protected party or to a parent, caregiver, or individual acting
 1011 in the place of a parent who is not the respondent. Law
 1012 enforcement officers may exercise their arrest powers as
 1013 provided in s. 901.15(6) to enforce the terms of the injunction.

1014 (6)~~(5)~~ Any person who fails to comply with an injunction
 1015 issued pursuant to this section commits a misdemeanor of the
 1016 first degree, punishable as provided in s. 775.082 or s.
 1017 775.083.

1018 (7) The person against whom an injunction is entered under
 1019 this section does not automatically become a party to a
 1020 subsequent dependency action concerning the same child.

1021 Section 10. Paragraph (r) of subsection (2) of section
 1022 39.521, Florida Statutes, is amended to read:

1023 39.521 Disposition hearings; powers of disposition.—

1024 (2) The predisposition study must provide the court with
 1025 the following documented information:

1026 (r) If the child has been removed from the home and will
 1027 be remaining with a relative, parent, or other adult approved by
 1028 the court, a home study report concerning the proposed placement
 1029 shall be included in the predisposition report. Before ~~Prior to~~
 1030 recommending to the court any out-of-home placement for a child
 1031 other than placement in a licensed shelter or foster home, the
 1032 department shall conduct a study of the home of the proposed
 1033 legal custodians, which must include, at a minimum:

1034 1. An interview with the proposed legal custodians to
 1035 assess their ongoing commitment and ability to care for the
 1036 child.

1037 2. Records checks through the State Automated Child
 1038 Welfare Information System (SACWIS) ~~Florida Abuse Hotline~~
 1039 ~~Information System (FAHIS)~~, and local and statewide criminal and
 1040 juvenile records checks through the Department of Law
 1041 Enforcement, on all household members 12 years of age or older.
 1042 In addition, the fingerprints of any household members who are
 1043 18 years of age or older may be submitted to the Department of
 1044 Law Enforcement for processing and forwarding to the Federal
 1045 Bureau of Investigation for state and national criminal history
 1046 information. The department has the discretion to request State
 1047 Automated Child Welfare Information System (SACWIS) and local,
 1048 statewide, and national criminal history checks and
 1049 fingerprinting of any other visitor to the home who is made
 1050 known to the department ~~and any other persons made known to the~~
 1051 ~~department who are frequent visitors in the home.~~ Out-of-state
 1052 criminal records checks must be initiated for any individual
 1053 ~~designated above~~ who has resided in a state other than Florida
 1054 if provided that state's laws allow the release of these
 1055 records. The out-of-state criminal records must be filed with
 1056 the court within 5 days after receipt by the department or its
 1057 agent.

1058 3. An assessment of the physical environment of the home.

1059 4. A determination of the financial security of the
 1060 proposed legal custodians.

1061 5. A determination of suitable child care arrangements if
 1062 the proposed legal custodians are employed outside of the home.

1063 6. Documentation of counseling and information provided to
 1064 the proposed legal custodians regarding the dependency process

1065 and possible outcomes.

1066 7. Documentation that information regarding support
 1067 services available in the community has been provided to the
 1068 proposed legal custodians.

1069
 1070 The department may ~~shall~~ not place the child or continue the
 1071 placement of the child in a home under shelter or
 1072 postdisposition placement if the results of the home study are
 1073 unfavorable, unless the court finds that this placement is in
 1074 the child's best interest.

1075
 1076 Any other relevant and material evidence, including other
 1077 written or oral reports, may be received by the court in its
 1078 effort to determine the action to be taken with regard to the
 1079 child and may be relied upon to the extent of its probative
 1080 value, even though not competent in an adjudicatory hearing.
 1081 Except as otherwise specifically provided, nothing in this
 1082 section prohibits the publication of proceedings in a hearing.

1083 Section 11. Subsection (2) and paragraph (b) of subsection
 1084 (4) of section 39.6011, Florida Statutes, are amended to read:

1085 39.6011 Case plan development.—

1086 (2) The case plan must be written simply and clearly in
 1087 English and, if English is not the principal language of the
 1088 child's parent, to the extent possible in the parent's principal
 1089 language. Each case plan must contain:

1090 (a) A description of the identified problem being
 1091 addressed, including the parent's behavior or acts resulting in
 1092 risk to the child and the reason for the intervention by the

1093 department.

1094 (b) The permanency goal.

1095 (c) If concurrent planning is being used, a description of
 1096 the permanency goal of reunification with the parent or legal
 1097 custodian in addition to a description of one of the remaining
 1098 permanency goals described in s. 39.01.

1099 1. If a child has not been removed from a parent, but is
 1100 found to be dependent, even if adjudication of dependency is
 1101 withheld, the court may leave the child in the current placement
 1102 with maintaining and strengthening the placement as a permanency
 1103 option.

1104 2. If a child has been removed from a parent and is placed
 1105 with a parent from whom the child was not removed, the court may
 1106 leave the child in the placement with the parent from whom the
 1107 child was not removed with maintaining and strengthening the
 1108 placement as a permanency option.

1109 3. If a child has been removed from a parent and is
 1110 subsequently reunified with that parent, the court may leave the
 1111 child with that parent with maintaining and strengthening the
 1112 placement as a permanency option.

1113 (d) The date the compliance period expires. The case plan
 1114 must be limited to as short a period as possible for
 1115 accomplishing its provisions. The plan's compliance period
 1116 expires no later than 12 months after the date the child was
 1117 initially removed from the home, the child was adjudicated
 1118 dependent, or the date the case plan was accepted by the court,
 1119 whichever occurs first ~~sooner~~.

1120 (e) A written notice to the parent that failure of the

1121 parent to substantially comply with the case plan may result in
 1122 the termination of parental rights, and that a material breach
 1123 of the case plan may result in the filing of a petition for
 1124 termination of parental rights sooner than the compliance period
 1125 set forth in the case plan.

1126 (4) The case plan must describe:

1127 (b) The responsibility of the case manager to forward a
 1128 relative's request to receive notification of all proceedings
 1129 and hearings submitted pursuant to s. 39.301(14)(b)
 1130 ~~39.301(15)(b)~~ to the attorney for the department;

1131 Section 12. Subsection (1) of section 39.621, Florida
 1132 Statutes, is amended to read:

1133 39.621 Permanency determination by the court.—

1134 (1) Time is of the essence for permanency of children in
 1135 the dependency system. A permanency hearing must be held no
 1136 later than 12 months after the date the child was removed from
 1137 the home or within ~~no later than~~ 30 days after a court
 1138 determines that reasonable efforts to return a child to either
 1139 parent are not required, whichever occurs first. The purpose of
 1140 the permanency hearing is to determine when the child will
 1141 achieve the permanency goal or whether modifying the current
 1142 goal is in the best interest of the child. A permanency hearing
 1143 must be held at least every 12 months for any child who
 1144 continues to be supervised by ~~receive supervision from~~ the
 1145 department or awaits adoption.

1146 Section 13. Paragraph (b) of subsection (3), subsection
 1147 (6), and paragraph (e) of subsection (10) of section 39.701,
 1148 Florida Statutes, are amended to read:

1149 39.701 Judicial review.—

1150 (3)

1151 (b) If the citizen review panel recommends extending the
 1152 goal of reunification for any case plan beyond 12 months from
 1153 the date the child was removed from the home, ~~or~~ the case plan
 1154 was adopted, or the child was adjudicated dependent, whichever
 1155 date came first, the court must schedule a judicial review
 1156 hearing to be conducted by the court within 30 days after
 1157 receiving the recommendation from the citizen review panel.

1158 (6) The attorney for the department shall notify a
 1159 relative who submits a request for notification of all
 1160 proceedings and hearings pursuant to s. 39.301(14)(b)
 1161 ~~39.301(15)(b)~~. The notice shall include the date, time, and
 1162 location of the next judicial review hearing.

1163 (10)

1164 (e) Within ~~No later than~~ 6 months after the date that the
 1165 child was placed in shelter care, the court shall conduct a
 1166 judicial review hearing to review the child's permanency goal as
 1167 identified in the case plan. At the hearing the court shall make
 1168 findings regarding the likelihood of the child's reunification
 1169 with the parent or legal custodian within 12 months after the
 1170 removal of the child from the home. ~~If, at this hearing,~~ the
 1171 court makes a written finding that it is not likely that the
 1172 child will be reunified with the parent or legal custodian
 1173 within 12 months after the child was removed from the home, the
 1174 department must file with the court, and serve on all parties, a
 1175 motion to amend the case plan under s. 39.6013 and declare that
 1176 it will use concurrent planning for the case plan. The

1177 department must file the motion within ~~no later than~~ 10 business
 1178 days after receiving the written finding of the court. The
 1179 department must attach the proposed amended case plan to the
 1180 motion. If concurrent planning is already being used, the case
 1181 plan must document the efforts the department is taking to
 1182 complete the concurrent goal.

1183 Section 14. Paragraph (a) of subsection (1) of section
 1184 39.8055, Florida Statutes, is amended to read:

1185 39.8055 Requirement to file a petition to terminate
 1186 parental rights; exceptions.—

1187 (1) The department shall file a petition to terminate
 1188 parental rights within 60 days after any of the following if:

1189 (a) The ~~At the time of the 12-month judicial review~~
 1190 ~~hearing,~~ a child is not returned to the physical custody of the
 1191 parents 12 months after the child was sheltered or adjudicated
 1192 dependent, whichever occurs first;

1193 Section 15. Paragraphs (e) and (k) of subsection (1) and
 1194 subsection (2) of section 39.806, Florida Statutes, are amended
 1195 to read:

1196 39.806 Grounds for termination of parental rights.—

1197 (1) Grounds for the termination of parental rights may be
 1198 established under any of the following circumstances:

1199 (e) When a child has been adjudicated dependent, a case
 1200 plan has been filed with the court, and:

1201 1. The child continues to be abused, neglected, or
 1202 abandoned by the parent or parents. The failure of the parent or
 1203 parents to substantially comply with the case plan for a period
 1204 of 12 ~~9~~ months after an adjudication of the child as a dependent

1205 child or the child's placement into shelter care, whichever
 1206 occurs first, constitutes evidence of continuing abuse, neglect,
 1207 or abandonment unless the failure to substantially comply with
 1208 the case plan was due to the parent's lack of financial
 1209 resources or to the failure of the department to make reasonable
 1210 efforts to reunify the parent and child. The 12-month ~~9-month~~
 1211 period begins to run only after the child's placement into
 1212 shelter care or the entry of a disposition order placing the
 1213 custody of the child with the department or a person other than
 1214 the parent and the court's approval of a case plan having the
 1215 goal of reunification with the parent, whichever occurs first;
 1216 or

1217 2. The parent or parents have materially breached the case
 1218 plan. Time is of the essence for permanency of children in the
 1219 dependency system. In order to prove the parent or parents have
 1220 materially breached the case plan, the court must find by clear
 1221 and convincing evidence that the parent or parents are unlikely
 1222 or unable to substantially comply with the case plan before time
 1223 to comply with the case plan expires.

1224 (k) A test administered at birth that indicated that the
 1225 child's blood, urine, or meconium contained any amount of
 1226 alcohol or a controlled substance or metabolites of such
 1227 substances, the presence of which was not the result of medical
 1228 treatment administered to the mother or the newborn infant, and
 1229 the biological mother of the child is the biological mother of
 1230 at least one other child who was adjudicated dependent after a
 1231 finding of harm to the child's health or welfare due to exposure
 1232 to a controlled substance or alcohol as defined in s.

1233 39.01~~(32)(g)~~, after which the biological mother had the
 1234 opportunity to participate in substance abuse treatment.

1235 (2) Reasonable efforts to preserve and reunify families
 1236 are not required if a court of competent jurisdiction has
 1237 determined that any of the events described in paragraphs
 1238 (1)(b)-(d) or (f)-(l) ~~(1)(e)-(l)~~ have occurred.

1239 Section 16. Subsections (1) and (19) of section 39.502,
 1240 Florida Statutes, are amended to read:

1241 39.502 Notice, process, and service.—

1242 (1) Unless parental rights have been terminated, all
 1243 parents must be notified of all proceedings or hearings
 1244 involving the child. Notice in cases involving shelter hearings
 1245 and hearings resulting from medical emergencies must be that
 1246 most likely to result in actual notice to the parents. In all
 1247 other dependency proceedings, notice must be provided in
 1248 accordance with subsections (4)-(9), except when a relative
 1249 requests notification pursuant to s. 39.301(14)(b)
 1250 ~~39.301(15)(b)~~, in which case notice shall be provided pursuant
 1251 to subsection (19).

1252 (19) In all proceedings and hearings under this chapter,
 1253 the attorney for the department shall notify, orally or in
 1254 writing, a relative requesting notification pursuant to s.
 1255 39.301(14)(b) ~~39.301(15)(b)~~ of the date, time, and location of
 1256 such proceedings and hearings, and notify the relative that he
 1257 or she has the right to attend all subsequent proceedings and
 1258 hearings, to submit reports to the court, and to speak to the
 1259 court regarding the child, if the relative so desires. The court
 1260 has the discretion to release the attorney for the department

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1261 from notifying a relative who requested notification pursuant to
 1262 s. 39.301(14)(b) ~~39.301(15)(b)~~ if the relative's involvement is
 1263 determined to be impeding the dependency process or detrimental
 1264 to the child's well-being.

1265 Section 17. Section 39.823, Florida Statutes, is amended
 1266 to read:

1267 39.823 Guardian advocates for drug dependent newborns.—The
 1268 Legislature finds that increasing numbers of drug dependent
 1269 children are born in this state. Because of the parents'
 1270 continued dependence upon drugs, the parents may temporarily
 1271 leave their child with a relative or other adult or may have
 1272 agreed to voluntary family services under s. 39.301(14)
 1273 ~~39.301(15)~~. The relative or other adult may be left with a child
 1274 who is likely to require medical treatment but for whom they are
 1275 unable to obtain medical treatment. The purpose of this section
 1276 is to provide an expeditious method for such relatives or other
 1277 responsible adults to obtain a court order which allows them to
 1278 provide consent for medical treatment and otherwise advocate for
 1279 the needs of the child and to provide court review of such
 1280 authorization.

1281 Section 18. Paragraph (a) of subsection (1) of section
 1282 39.828, Florida Statutes, is amended to read:

1283 39.828 Grounds for appointment of a guardian advocate.—

1284 (1) The court shall appoint the person named in the
 1285 petition as a guardian advocate with all the powers and duties
 1286 specified in s. 39.829 for an initial term of 1 year upon a
 1287 finding that:

1288 (a) The child named in the petition is or was a drug

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1289 dependent newborn as described in s. 39.01~~(32)(g)~~;

1290 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 <i>DC</i>	Bond <i>VB</i>
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 broadly⁴ 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

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

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 exercise 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).

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).

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29 amending s. 685.102, F.S.; revising application dates
 30 of provisions relating to the jurisdiction of the
 31 courts; providing an effective date.
 32

33 Be It Enacted by the Legislature of the State of Florida:
 34

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

37 48.193 Acts subjecting person to jurisdiction of courts of
 38 state.—

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

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

49 (b) Committing a tortious act within this state.

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

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

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

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

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

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

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

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

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

78 (i) Entering into a contract that complies with s.
79 685.102.

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

82 55.502 Construction of act.—

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

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

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

90 684.0019 Conditions for granting interim measures.—

91 (1) The party requesting an interim measure under s.
 92 684.0018 must satisfy the arbitral tribunal that:

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

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

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

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

108 684.0026 Recognition and enforcement.—

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

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

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

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

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

125 685.101 Choice of law.—

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

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

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

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

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

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

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

154 (c)~~(d)~~ To the extent provided to the contrary in s.
 155 671.105(2); or

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

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

161 (4) This section applies to:

162 ~~(a) contracts entered into on or after July 1, 2012 June~~
 163 ~~27, 1989; and~~

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

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

169 685.102 Jurisdiction.—

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

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

185 (3) This section applies to:

186 ~~(a)~~ contracts entered into on or after July 1, 2012 ~~June~~
 187 ~~27, 1989; and~~

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

191 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 NB
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 "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.

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.

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

29 action for noncompliance by accepting partial rent,
 30 subject to certain notice; increasing the period to
 31 institute an action before an exemption involving rent
 32 subsidies is waived; amending s. 83.575, F.S.;

33 revising requirements for the termination of tenancy
 34 with specific duration to provide for reciprocal
 35 notice provisions in rental agreements; amending ss.
 36 83.58, 83.59, 83.60, and 83.63, F.S.; updating and
 37 conforming cross-references; making editorial changes;
 38 amending s. 83.62, F.S.; revising procedures for the
 39 restoration of possession to a landlord to provide
 40 that weekends and holidays do not stay the applicable
 41 notice period; amending s. 83.64, F.S.; providing
 42 examples of conduct for which the landlord may not
 43 retaliate; creating s. 83.683, F.S.; providing that a
 44 landlord is not required to notify a tenant of a
 45 mortgage default; providing that a pending foreclosure
 46 action involving the leased premises is not grounds
 47 for a tenant to terminate a lease; providing an
 48 effective date.

49

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

51

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

54 83.41 Application.—

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

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

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

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

70 83.42 Exclusions from application of part.—This part does
 71 not apply to:

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

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

80 83.48 Attorney ~~Attorney's~~ fees.—In any civil action
 81 brought to enforce the provisions of the rental agreement or
 82 this part, the party in whose favor a judgment or decree has
 83 been rendered may recover reasonable court costs, including
 84 attorney ~~attorney's~~ fees, from the nonprevailing party. The

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

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

91 83.49 Deposit money or advance rent; duty of landlord and
 92 tenant.—

93 (2) The landlord shall, in the lease agreement or within
 94 30 days after ~~of~~ receipt of advance rent or a security deposit,
 95 furnish notify the tenant in writing with a disclosure regarding
 96 ~~of the manner in which the landlord is holding the advance rent~~
 97 ~~or security deposit and the rate of interest, if any, which the~~
 98 ~~tenant is to receive and the time of interest payments to the~~
 99 ~~tenant. Such written notice shall:~~

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

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

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

109

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

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

- 122 (a) Be given in person or by mail to the tenant;
- 123 (b) State the name and address of the depository where the
 124 advance rent or security deposit is being held, or state that
 125 the landlord has posted a surety bond as provided by law;
- 126 (c) State whether the tenant is entitled to interest on
 127 the deposit; and
- 128 (d) Include the following disclosure:

129
 130 YOUR LEASE REQUIRES PAYMENT OF CERTAIN DEPOSITS. THE
 131 LANDLORD MAY TRANSFER ADVANCE RENTS AND NONREFUNDABLE
 132 DEPOSITS TO THE LANDLORD'S ACCOUNT AS THEY ARE DUE AND
 133 WITHOUT NOTICE. WHEN YOU MOVE OUT, YOU MUST GIVE THE
 134 LANDLORD YOUR NEW ADDRESS SO THAT THE LANDLORD CAN
 135 SEND YOU NOTICES REGARDING YOUR DEPOSIT. THE LANDLORD
 136 MUST MAIL YOU NOTICE, WITHIN 30 DAYS AFTER YOU MOVE
 137 OUT, OF THE LANDLORD'S INTENT TO IMPOSE A CLAIM
 138 AGAINST THE DEPOSIT. IF YOU DO NOT REPLY TO THE
 139 LANDLORD STATING YOUR OBJECTION TO THE CLAIM WITHIN 15
 140 DAYS AFTER RECEIPT OF THE LANDLORD'S NOTICE, THE

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

146
 147 IF THE LANDLORD FAILS TO TIMELY SEND YOU NOTICE, THE
 148 LANDLORD MUST RETURN THE DEPOSIT BUT MAY LATER FILE A
 149 LAWSUIT AGAINST YOU FOR DAMAGES. IF YOU FAIL TO TIMELY
 150 OBJECT TO A CLAIM, THE LANDLORD MAY COLLECT FROM THE
 151 DEPOSIT BUT YOU MAY LATER FILE A LAWSUIT CLAIMING A
 152 REFUND.

153
 154 YOU SHOULD ATTEMPT TO INFORMALLY RESOLVE ANY DISPUTE
 155 BEFORE FILING A LAWSUIT. GENERALLY, THE WINNING PARTY
 156 IN ANY LAWSUIT BETWEEN YOU AND YOUR LANDLORD WILL BE
 157 AWARDED COSTS AND ATTORNEY FEES PAYABLE BY THE LOSING
 158 PARTY.

159
 160 THIS DISCLOSURE IS BASIC. PLEASE REFER TO PART II OF
 161 CHAPTER 83, FLORIDA STATUTES, TO DETERMINE YOUR LEGAL
 162 RIGHTS AND OBLIGATIONS.

163
 164 (3) The landlord may disburse advance rents from the
 165 deposit account to the landlord's benefit when the advance
 166 rental period commences and without notice to the tenant. The
 167 landlord may disburse a deposit designated as nonrefundable at
 168 the conclusion of the lease and without notice to the tenant.

169 For all other deposits:

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

179
 180 This is a notice of my intention to impose a claim for
 181 damages in the amount of upon your security deposit, due to
 182 It is sent to you as required by s. 83.49(3), Florida
 183 Statutes. You are hereby notified that you must object in
 184 writing to this deduction from your security deposit within 15
 185 days from the time you receive this notice or I will be
 186 authorized to deduct my claim from your security deposit. Your
 187 objection must be sent to ... (landlord's address)....

188
 189 If the landlord fails to give the required notice within the 30-
 190 day period, he or she forfeits the right to impose a claim upon
 191 the security deposit and may not seek setoff against the deposit
 192 but may file an action for damages after return of the deposit.

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

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

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

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

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

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

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

240 83.50 Disclosure.—

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

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

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

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

259 83.51 Landlord's obligation to maintain premises and pay
 260 assessments.-

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

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

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

270
 271 The landlord is shall not ~~be~~ required to maintain a mobile home
 272 or other structure owned by the tenant. The landlord's
 273 obligations under this subsection may be altered or modified in
 274 writing with respect to a single-family home or duplex.

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

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

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

- 286 2. Locks and keys.
- 287 3. The clean and safe condition of common areas.
- 288 4. Garbage removal and outside receptacles therefor.
- 289 5. Functioning facilities for heat during winter, running
 290 water, and hot water.
- 291 6. Screens.

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

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

296 83.56 Termination of rental agreement.—

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

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

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

317

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

322

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

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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 further warning and without 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. 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. 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,

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365 Sunday, and legal holidays) from the date of delivery of this
 366 notice, to wit: on or before the day of, ... (year)....
 367 ... (landlord's name, address and phone number)...

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

375 (5) (a) If the landlord accepts rent with actual knowledge
 376 of a noncompliance by the tenant or accepts performance by the
 377 tenant of any other provision of the rental agreement that is at
 378 variance with its provisions, or if the tenant pays rent with
 379 actual knowledge of a noncompliance by the landlord or accepts
 380 performance by the landlord of any other provision of the rental
 381 agreement that is at variance with its provisions, the landlord
 382 or tenant waives his or her right to terminate the rental
 383 agreement or to bring a civil action for that noncompliance, but
 384 not for any subsequent or continuing noncompliance. However, a
 385 landlord does not waive the right to terminate the rental
 386 agreement or to bring a civil action for that noncompliance
 387 simply by accepting partial rent for the period if the landlord
 388 notifies the tenant that the landlord is reserving the right to
 389 enforce the rental agreement.

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

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

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

405 83.575 Termination of tenancy with specific duration.-

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

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

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

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

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

437 83.58 Remedies; tenant holding over.—If the tenant holds
 438 over and continues in possession of the dwelling unit or any
 439 part thereof after the expiration of the rental agreement
 440 without the permission of the landlord, the landlord may recover
 441 possession of the dwelling unit in the manner provided for in s.
 442 83.59 ~~[F.S. 1973]~~. The landlord may also recover double the
 443 amount of rent due on the dwelling unit, or any part thereof,
 444 for the period during which the tenant refuses to surrender
 445 possession.

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

448 83.59 Right of action for possession.—

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449 (2) A landlord, the landlord's attorney, or the landlord's
 450 agent, applying for the removal of a tenant, shall file in the
 451 county court of the county where the premises are situated a
 452 complaint describing the dwelling unit and stating the facts
 453 that authorize its recovery. A landlord's agent is not permitted
 454 to take any action other than the initial filing of the
 455 complaint, unless the landlord's agent is an attorney. The
 456 landlord is entitled to the summary procedure provided in s.
 457 51.011 ~~{F.S. 1971}~~, and the court shall advance the cause on the
 458 calendar.

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

461 83.60 Defenses to action for rent or possession;
 462 procedure.—

463 (1) In an action by the landlord for possession of a
 464 dwelling unit based upon nonpayment of rent or in an action by
 465 the landlord under s. 83.55 seeking to recover unpaid rent, the
 466 tenant may defend upon the ground of a material noncompliance
 467 with s. 83.51(1) ~~{F.S. 1973}~~, or may raise any other defense,
 468 whether legal or equitable, that he or she may have, including
 469 the defense of retaliatory conduct in accordance with s. 83.64.
 470 The defense of a material noncompliance with s. 83.51(1) ~~{F.S.~~
 471 ~~1973}~~ may be raised by the tenant if 7 days have elapsed after
 472 the delivery of written notice by the tenant to the landlord,
 473 specifying the noncompliance and indicating the intention of the
 474 tenant not to pay rent by reason thereof. Such notice by the
 475 tenant may be given to the landlord, the landlord's
 476 representative as designated pursuant to s. 83.50~~(1)~~, a resident

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477 manager, or the person or entity who collects the rent on behalf
 478 of the landlord. A material noncompliance with s. 83.51(1) ~~{F.S.~~
 479 ~~1973}~~ by the landlord is a complete defense to an action for
 480 possession based upon nonpayment of rent, and, upon hearing, the
 481 court or the jury, as the case may be, shall determine the
 482 amount, if any, by which the rent is to be reduced to reflect
 483 the diminution in value of the dwelling unit during the period
 484 of noncompliance with s. 83.51(1) ~~{F.S. 1973}~~. After
 485 consideration of all other relevant issues, the court shall
 486 enter appropriate judgment.

487 (2) In an action by the landlord for possession of a
 488 dwelling unit, if the tenant interposes any defense other than
 489 payment, the tenant shall pay into the registry of the court the
 490 accrued rent as alleged in the complaint or as determined by the
 491 court and the rent that ~~which~~ accrues during the pendency of the
 492 proceeding, when due. The clerk shall notify the tenant of such
 493 requirement in the summons. Failure of the tenant to pay the
 494 rent into the registry of the court or to file a motion to
 495 determine the amount of rent to be paid into the registry within
 496 5 days, excluding Saturdays, Sundays, and legal holidays, after
 497 the date of service of process constitutes an absolute waiver of
 498 the tenant's defenses other than payment, and the landlord is
 499 entitled to an immediate default judgment for removal of the
 500 tenant with a writ of possession to issue without further notice
 501 or hearing thereon. If ~~In the event~~ a motion to determine rent
 502 is filed, documentation in support of the allegation that the
 503 rent as alleged in the complaint is in error is required. Public
 504 housing tenants or tenants receiving rent subsidies are ~~shall be~~

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

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

510 83.62 Restoration of possession to landlord.—

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

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

519 83.63 Casualty damage.—If the premises are damaged or
 520 destroyed other than by the wrongful or negligent acts of the
 521 tenant so that the enjoyment of the premises is substantially
 522 impaired, the tenant may terminate the rental agreement and
 523 immediately vacate the premises. The tenant may vacate the part
 524 of the premises rendered unusable by the casualty, in which case
 525 the tenant's liability for rent shall be reduced by the fair
 526 rental value of that part of the premises damaged or destroyed.
 527 If the rental agreement is terminated, the landlord shall comply
 528 with s. 83.49(3) ~~[F.S. 1973]~~.

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

531 83.64 Retaliatory conduct.—

532 (1) It is unlawful for a landlord to discriminatorily

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

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

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

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

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

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

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

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

558 83.683 Foreclosure of leased property.-

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

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561 | (2) A pending foreclosure action involving the leased
562 | premises is not grounds for a tenant to terminate a lease.
563 | 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 <i>JMC</i>	Bond <i>YTB</i>
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 1957¹ and modified it in 1967², 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 or 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

1 A bill to be entitled
 2 An act relating to dispute resolution; amending s.
 3 682.01, F.S.; revising the short title of the "Florida
 4 Arbitration Code" to the "Revised Florida Arbitration
 5 Code"; creating s. 682.011, F.S.; providing
 6 definitions; creating s. 682.012, F.S.; specifying how
 7 a person gives notice to another person and how a
 8 person receives notice; creating s. 682.013, F.S.;
 9 specifying the applicability of the revised code;
 10 creating s. 682.014, F.S.; providing that an agreement
 11 may waive or vary the effect of statutory arbitration
 12 provisions; providing exceptions; creating s. 682.015,
 13 F.S.; providing for petitions for judicial relief;
 14 providing for service of notice of an initial petition
 15 for such relief; amending s. 682.02, F.S.; revising
 16 provisions relating to the making of arbitration
 17 agreements; requiring a court to decide whether an
 18 agreement to arbitrate exists or a controversy is
 19 subject to an agreement to arbitrate; providing for
 20 determination of specified issues by an arbitrator;
 21 providing for continuation of an arbitration
 22 proceeding pending resolution of certain issues by a
 23 court; revising provisions relating to applicability
 24 of provisions to certain interlocal agreements;
 25 amending s. 682.03, F.S.; revising provisions relating
 26 to proceedings to compel and to stay arbitration;
 27 creating s. 682.031, F.S.; providing for a court to
 28 order provisional remedies before an arbitrator is

29 appointed and is authorized and able to act; providing
 30 for orders for provisional remedies by an arbitrator;
 31 providing that a party does not waive a right of
 32 arbitration by seeking provisional remedies in court;
 33 creating s. 682.032, F.S.; providing for initiation of
 34 arbitration; providing that a person waives any
 35 objection to lack of or insufficiency of notice by
 36 appearing at the arbitration hearing; providing an
 37 exception; creating s. 682.033, F.S.; providing for
 38 consolidation of separate arbitration proceedings as
 39 to all or some of the claims in certain circumstances;
 40 prohibiting consolidation if the agreement prohibits
 41 consolidation; amending s. 682.04, F.S.; revising
 42 provisions relating to appointment of an arbitrator;
 43 prohibiting an individual with an interest in the
 44 outcome of an arbitration from serving as a neutral
 45 arbitrator; creating s. 682.041, F.S.; requiring
 46 certain disclosures of interests and relationships by
 47 a person before accepting appointment as an
 48 arbitrator; providing a continuing obligation to make
 49 such disclosures; providing for objections to an
 50 arbitrator based on information disclosed; providing
 51 for vacation of an award if an arbitrator failed to
 52 disclose a fact as required; providing that an
 53 arbitrator appointed as a neutral arbitrator who does
 54 not disclose certain interests or relationships is
 55 presumed to act with partiality for specified
 56 purposes; requiring parties to substantially comply

57 | with agreed to procedures of an arbitration
 58 | organization or any other procedures for challenges to
 59 | arbitrators before an award is made in order to seek
 60 | vacation of an award on specified grounds; amending s.
 61 | 682.05, F.S.; requiring that if there is more than one
 62 | arbitrator, the powers of an arbitrator must be
 63 | exercised by a majority of the arbitrators; requiring
 64 | all arbitrators to conduct the arbitration hearing;
 65 | creating s. 682.051, F.S.; providing immunity from
 66 | civil liability for an arbitrator or an arbitration
 67 | organization acting in the capacity of an arbitrator;
 68 | providing that this immunity is supplemental to any
 69 | immunity under other law; providing that failure to
 70 | make a required disclosure does not remove immunity;
 71 | providing that an arbitrator or representative of an
 72 | arbitration organization is not competent to testify
 73 | and may not be required to produce records concerning
 74 | the arbitration; providing exceptions; providing for
 75 | awarding an arbitrator, arbitration organization, or
 76 | representative of an arbitration organization with
 77 | reasonable attorney fees and expenses of litigation
 78 | under certain circumstances; amending s. 682.06, F.S.;
 79 | revising provisions relating to the conduct of
 80 | arbitration hearings; providing for summary
 81 | disposition, notice of hearings, adjournment, and
 82 | rights of a party to the arbitration proceeding;
 83 | requiring appointment of a replacement arbitrator in
 84 | certain circumstances; amending s. 682.07, F.S.;

85 providing that a party to an arbitration proceeding
 86 may be represented by an attorney; amending s. 682.08,
 87 F.S.; revising provisions relating to the issuance,
 88 service, and enforcement of subpoenas; revising
 89 provisions relating to depositions; authorizing an
 90 arbitrator to permit discovery in certain
 91 circumstances; authorizing an arbitrator to order
 92 compliance with discovery; authorizing protective
 93 orders by an arbitrator; providing for applicability
 94 of laws compelling a person under subpoena to testify
 95 and all fees for attending a judicial proceeding, a
 96 deposition, or a discovery proceeding as a witness;
 97 providing for court enforcement of a subpoena or
 98 discovery-related order; providing for witness fees;
 99 creating s. 682.081, F.S.; providing for judicial
 100 enforcement of a preaward ruling by an arbitrator in
 101 certain circumstances; amending s. 682.09, F.S.;
 102 revising provisions relating to the record needed for
 103 an award; revising provisions relating to the time
 104 within which an award must be made; amending s.
 105 682.10, F.S.; revising provisions relating to
 106 requirements for a motion to modify or correct an
 107 award; amending s. 682.11, F.S.; revising provisions
 108 relating to fees and expenses of arbitration;
 109 authorizing punitive damages and other exemplary
 110 relief and remedies; amending s. 682.12, F.S.;
 111 revising provisions relating to confirmation of an
 112 award; amending s. 682.13, F.S.; revising provisions

113 relating to grounds for vacating an award; revising
 114 provisions relating to a motion for vacating an award;
 115 providing for a rehearing in certain circumstances;
 116 amending s. 682.14, F.S.; revising provisions relating
 117 to the time for moving to modify or correct an award;
 118 deleting references to the term "umpire"; revising a
 119 provision concerning confirmation of awards; amending
 120 s. 682.15, F.S.; revising provisions relating to a
 121 court order confirming, vacating without directing a
 122 rehearing, modifying, or correcting an award;
 123 providing for award of costs and attorney fees in
 124 certain circumstances; repealing s. 682.16, F.S.,
 125 relating to judgment roll and docketing of certain
 126 orders; repealing s. 682.17, F.S., relating to
 127 application to court; repealing s. 682.18, F.S.,
 128 relating to the definition of the term "court" and
 129 jurisdiction; creating s. 682.181, F.S.; providing for
 130 jurisdiction relating to the revised code; amending s.
 131 682.19, F.S.; revising provisions relating to venue
 132 for actions relating to the code; amending s. 682.20,
 133 F.S.; providing that an appeal may be taken from an
 134 order denying confirmation of an award unless the
 135 court has entered an order under specified provisions;
 136 providing that all other orders denying confirmation
 137 of an award are final orders; repealing s. 682.21,
 138 F.S., relating to the previous code not applying
 139 retroactively; repealing s. 682.22, F.S., relating to
 140 conflict of laws; creating s. 682.23, F.S.; specifying

141 the relationship of the code to the Electronic
 142 Signatures in Global and National Commerce Act;
 143 creating s. 682.24, F.S.; specifying the effective
 144 date of the revised code; providing for applicability;
 145 creating s. 682.25, F.S.; providing that the revised
 146 code does not apply to any dispute involving child
 147 custody, visitation, or child support; amending s.
 148 44.104, F.S.; deleting references to binding
 149 arbitration from provisions providing for voluntary
 150 trial resolution; providing for temporary relief;
 151 revising provisions relating to procedures in
 152 voluntary trial resolution; providing that a judgment
 153 is reviewable in the same manner as a judgment in a
 154 civil action; deleting provisions relating to
 155 applicability of the harmless error doctrine;
 156 providing limitations on the jurisdiction of a trial
 157 resolution judge; providing for the use of juries;
 158 providing for the title of a trial resolution judge
 159 and the use of judicial robes; amending s. 44.107,
 160 F.S.; providing immunity for voluntary trial
 161 resolution judges serving under specified provisions;
 162 amending ss. 440.1926 and 489.1402, F.S.; conforming
 163 cross-references; amending s. 731.401, F.S.; revising
 164 a reference to binding arbitration under a specified
 165 provision; providing directives to the Division of
 166 Statutory Revision, including redesignating the title
 167 of chapter 44, Florida Statutes, as "Alternative
 168 Dispute Resolution"; providing an effective date.

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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.

195 (6) "Record" means information that is inscribed on a
 196 tangible medium or that is stored in an electronic or other
 197 medium and is retrievable in perceivable form.

198 Section 3. Section 682.012, Florida Statutes, is created
 199 to read:

200 682.012 Notice.-

201 (1) Except as otherwise provided in the Revised Florida
 202 Arbitration Code, a person gives notice to another person by
 203 taking action that is reasonably necessary to inform the other
 204 person in ordinary course, whether or not the other person
 205 acquires knowledge of the notice.

206 (2) A person has notice if the person has knowledge of the
 207 notice or has received notice.

208 (3) A person receives notice when it comes to the person's
 209 attention or the notice is delivered at the person's place of
 210 residence or place of business, or at another location held out
 211 by the person as a place of delivery of such communications.

212 Section 4. Section 682.013, Florida Statutes, is created
 213 to read:

214 682.013 Applicability of revised code.-

215 (1) The Revised Florida Arbitration Code governs an
 216 agreement to arbitrate made on or after the effective date of
 217 this act.

218 (2) The Revised Florida Arbitration Code governs an
 219 agreement to arbitrate made before the effective date of this
 220 act if all the parties to the agreement or to the arbitration
 221 proceeding so agree in a record.

222 (3) Beginning July 1, 2015, the Revised Florida
 223 Arbitration Code governs an agreement to arbitrate whenever
 224 made.

225 Section 5. Section 682.014, Florida Statutes, is created
 226 to read:

227 682.014 Effect of agreement to arbitrate; nonwaivable
 228 provisions.—

229 (1) Except as otherwise provided in subsections (2) and
 230 (3), a party to an agreement to arbitrate or to an arbitration
 231 proceeding may waive, or the parties may vary the effect of, the
 232 requirements of the Revised Florida Arbitration Code to the
 233 extent permitted by law.

234 (2) Before a controversy arises that is subject to an
 235 agreement to arbitrate, a party to the agreement may not:

236 (a) Waive or agree to vary the effect of the requirements
 237 of s. 682.015(1), s. 682.02(1), s. 682.031, s. 682.08(1) or (2),
 238 s. 682.181, or s. 682.20;

239 (b) Agree to unreasonably restrict the right under s.
 240 682.032 to notice of the initiation of an arbitration
 241 proceeding;

242 (c) Agree to unreasonably restrict the right under s.
 243 682.041 to disclosure of any facts by a neutral arbitrator; or

244 (d) Waive the right under s. 682.07 of a party to an
 245 agreement to arbitrate to be represented by an attorney at any
 246 proceeding or hearing under the Revised Florida Arbitration
 247 Code, but an employer and a labor organization may waive the
 248 right to representation by an attorney in a labor arbitration.

249 (3) A party to an agreement to arbitrate or arbitration
 250 proceeding may not waive, or the parties may not vary the effect
 251 of, the requirements in this section or s. 682.013(1) or (3), s.
 252 682.03, s. 682.051, s. 682.081, s. 682.10(4) or (5), s. 682.12,
 253 s. 682.13, s. 682.14, s. 682.15(1) or (2), s. 682.23, s. 682.24,
 254 or s. 682.25.

255 Section 6. Section 682.015, Florida Statutes, is created
 256 to read:

257 682.015 Petition for judicial relief.-

258 (1) Except as otherwise provided in s. 682.20, a petition
 259 for judicial relief under this chapter must be made to the court
 260 and heard in the manner provided by law or rule of court for
 261 making and hearing motions.

262 (2) Unless a civil action involving the agreement to
 263 arbitrate is pending, notice of an initial petition to the court
 264 under this chapter must be served in the manner provided by law
 265 for the service of a summons in a civil action. Otherwise,
 266 notice of the motion must be given in the manner provided by law
 267 or rule of court for serving motions in pending cases.

268 Section 7. Section 682.02, Florida Statutes, is amended to
 269 read:

270 682.02 Arbitration agreements made valid, irrevocable, and
 271 enforceable; scope.-

272 (1) An agreement contained in a record to submit to
 273 arbitration any existing or subsequent controversy arising
 274 between the parties to the agreement is valid, enforceable, and
 275 irrevocable except upon a ground that exists at law or in equity
 276 for the revocation of a contract.

277 (2) The court shall decide whether an agreement to
 278 arbitrate exists or a controversy is subject to an agreement to
 279 arbitrate.

280 (3) An arbitrator shall decide whether a condition
 281 precedent to arbitrability has been fulfilled and whether a
 282 contract containing a valid agreement to arbitrate is
 283 enforceable.

284 (4) If a party to a judicial proceeding challenges the
 285 existence of, or claims that a controversy is not subject to, an
 286 agreement to arbitrate, the arbitration proceeding may continue
 287 pending final resolution of the issue by the court, unless the
 288 court otherwise orders.

289 ~~(5) Two or more parties may agree in writing to submit to~~
 290 ~~arbitration any controversy existing between them at the time of~~
 291 ~~the agreement, or they may include in a written contract a~~
 292 ~~provision for the settlement by arbitration of any controversy~~
 293 ~~thereafter arising between them relating to such contract or the~~
 294 ~~failure or refusal to perform the whole or any part thereof.~~
 295 This section also applies to written interlocal agreements under
 296 ss. 163.01 and 373.713 in which two or more parties agree to
 297 submit to arbitration any controversy between them concerning
 298 water use permit motions ~~applications~~ and other matters,
 299 regardless of whether or not the water management district with
 300 jurisdiction over the subject motion ~~application~~ is a party to
 301 the interlocal agreement or a participant in the arbitration.
 302 ~~Such agreement or provision shall be valid, enforceable, and~~
 303 ~~irrevocable without regard to the justiciable character of the~~
 304 ~~controversy; provided that this act shall not apply to any such~~

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305 ~~agreement or provision to arbitrate in which it is stipulated~~
 306 ~~that this law shall not apply or to any arbitration or award~~
 307 ~~thereunder.~~

308 Section 8. Section 682.03, Florida Statutes, is amended to
 309 read:

310 682.03 Proceedings to compel and to stay arbitration.—

311 (1) On motion of a person showing an agreement to
 312 arbitrate and alleging another person's refusal to arbitrate
 313 pursuant to the agreement:

314 (a) If the refusing party does not appear or does not
 315 oppose the motion, the court shall order the parties to
 316 arbitrate.

317 (b) If the refusing party opposes the motion, the court
 318 shall proceed summarily to decide the issue and order the
 319 parties to arbitrate unless it finds that there is no
 320 enforceable agreement to arbitrate ~~A party to an agreement or~~
 321 ~~provision for arbitration subject to this law claiming the~~
 322 ~~neglect or refusal of another party thereto to comply therewith~~
 323 ~~may make application to the court for an order directing the~~
 324 ~~parties to proceed with arbitration in accordance with the terms~~
 325 ~~thereof. If the court is satisfied that no substantial issue~~
 326 ~~exists as to the making of the agreement or provision, it shall~~
 327 ~~grant the application. If the court shall find that a~~
 328 ~~substantial issue is raised as to the making of the agreement or~~
 329 ~~provision, it shall summarily hear and determine the issue and,~~
 330 ~~according to its determination, shall grant or deny the~~
 331 ~~application.~~

332 (2) On motion of a person alleging that an arbitration

333 proceeding has been initiated or threatened but that there is no
 334 agreement to arbitrate, the court shall proceed summarily to
 335 decide the issue. If the court finds that there is an
 336 enforceable agreement to arbitrate, it shall order the parties
 337 to arbitrate ~~If an issue referable to arbitration under an~~
 338 ~~agreement or provision for arbitration subject to this law~~
 339 ~~becomes involved in an action or proceeding pending in a court~~
 340 ~~having jurisdiction to hear an application under subsection (1),~~
 341 ~~such application shall be made in said court. Otherwise and~~
 342 ~~subject to s. 682.19, such application may be made in any court~~
 343 ~~of competent jurisdiction.~~

344 (3) If the court finds that there is no enforceable
 345 agreement to arbitrate, it may not order the parties to
 346 arbitrate pursuant to subsection (1) or subsection (2) ~~Any~~
 347 ~~action or proceeding involving an issue subject to arbitration~~
 348 ~~under this law shall be stayed if an order for arbitration or an~~
 349 ~~application therefor has been made under this section or, if the~~
 350 ~~issue is severable, the stay may be with respect thereto only.~~
 351 ~~When the application is made in such action or proceeding, the~~
 352 ~~order for arbitration shall include such stay.~~

353 (4) The court may not refuse to order arbitration because
 354 the claim subject to arbitration lacks merit or grounds for the
 355 claim have not been established ~~On application the court may~~
 356 ~~stay an arbitration proceeding commenced or about to be~~
 357 ~~commenced, if it shall find that no agreement or provision for~~
 358 ~~arbitration subject to this law exists between the party making~~
 359 ~~the application and the party causing the arbitration to be had.~~
 360 ~~The court shall summarily hear and determine the issue of the~~

361 ~~making of the agreement or provision and, according to its~~
 362 ~~determination, shall grant or deny the application.~~

363 (5) If a proceeding involving a claim referable to
 364 arbitration under an alleged agreement to arbitrate is pending
 365 in court, a motion under this section must be made in that
 366 court. Otherwise, a motion under this section may be made in any
 367 court as provided in s. 682.19 ~~An order for arbitration shall~~
 368 ~~not be refused on the ground that the claim in issue lacks merit~~
 369 ~~or bona fides or because any fault or grounds for the claim~~
 370 ~~sought to be arbitrated have not been shown.~~

371 (6) If a party makes a motion to the court to order
 372 arbitration, the court on just terms shall stay any judicial
 373 proceeding that involves a claim alleged to be subject to the
 374 arbitration until the court renders a final decision under this
 375 section.

376 (7) If the court orders arbitration, the court on just
 377 terms shall stay any judicial proceeding that involves a claim
 378 subject to the arbitration. If a claim subject to the
 379 arbitration is severable, the court may limit the stay to that
 380 claim.

381 Section 9. Section 682.031, Florida Statutes, is created
 382 to read:

383 682.031 Provisional remedies.-

384 (1) Before an arbitrator is appointed and is authorized
 385 and able to act, the court, upon motion of a party to an
 386 arbitration proceeding and for good cause shown, may enter an
 387 order for provisional remedies to protect the effectiveness of
 388 the arbitration proceeding to the same extent and under the same

389 conditions as if the controversy were the subject of a civil
 390 action.

391 (2) After an arbitrator is appointed and is authorized and
 392 able to act:

393 (a) The arbitrator may issue such orders for provisional
 394 remedies, including interim awards, as the arbitrator finds
 395 necessary to protect the effectiveness of the arbitration
 396 proceeding and to promote the fair and expeditious resolution of
 397 the controversy, to the same extent and under the same
 398 conditions as if the controversy were the subject of a civil
 399 action.

400 (b) A party to an arbitration proceeding may move the
 401 court for a provisional remedy only if the matter is urgent and
 402 the arbitrator is not able to act timely or the arbitrator
 403 cannot provide an adequate remedy.

404 (3) A party does not waive a right of arbitration by
 405 making a motion under this section.

406 Section 10. Section 682.032, Florida Statutes, is created
 407 to read:

408 682.032 Initiation of arbitration.—

409 (1) A person initiates an arbitration proceeding by giving
 410 notice in a record to the other parties to the agreement to
 411 arbitrate in the agreed manner between the parties or, in the
 412 absence of agreement, by certified or registered mail, return
 413 receipt requested and obtained, or by service as authorized for
 414 the commencement of a civil action. The notice must describe the
 415 nature of the controversy and the remedy sought.

416 (2) Unless a person objects for lack or insufficiency of
 417 notice under s. 682.06(3) not later than the beginning of the
 418 arbitration hearing, the person by appearing at the hearing
 419 waives any objection to lack of or insufficiency of notice.

420 Section 11. Section 682.033, Florida Statutes, is created
 421 to read:

422 682.033 Consolidation of separate arbitration
 423 proceedings.-

424 (1) Except as otherwise provided in subsection (3), upon
 425 motion of a party to an agreement to arbitrate or to an
 426 arbitration proceeding, the court may order consolidation of
 427 separate arbitration proceedings as to all or some of the claims
 428 if:

429 (a) There are separate agreements to arbitrate or separate
 430 arbitration proceedings between the same persons or one of them
 431 is a party to a separate agreement to arbitrate or a separate
 432 arbitration proceeding with a third person;

433 (b) The claims subject to the agreements to arbitrate
 434 arise in substantial part from the same transaction or series of
 435 related transactions;

436 (c) The existence of a common issue of law or fact creates
 437 the possibility of conflicting decisions in the separate
 438 arbitration proceedings; and

439 (d) Prejudice resulting from a failure to consolidate is
 440 not outweighed by the risk of undue delay or prejudice to the
 441 rights of or hardship to parties opposing consolidation.

442 (2) The court may order consolidation of separate
 443 arbitration proceedings as to some claims and allow other claims
 444 to be resolved in separate arbitration proceedings.

445 (3) The court may not order consolidation of the claims of
 446 a party to an agreement to arbitrate if the agreement prohibits
 447 consolidation.

448 Section 12. Section 682.04, Florida Statutes, is amended
 449 to read:

450 682.04 Appointment of arbitrators by court.—

451 (1) If the parties to an agreement to arbitrate agree on
 452 ~~or provision for arbitration subject to this law provides a~~
 453 ~~method for appointing the appointment of arbitrators or an~~
 454 ~~umpire, this method must shall be followed, unless the method~~
 455 ~~fails.~~

456 (2) The court, on application of a party to an arbitration
 457 agreement, shall appoint one or more arbitrators, if:

458 (a) The parties have not agreed on a method;

459 (b) The agreed method fails;

460 (c) One or more of the parties failed to respond to the
 461 demand for arbitration; or

462 (d) An arbitrator fails to act and a successor has not
 463 been appointed.

464 ~~(3) In the absence thereof, or if the agreed method fails~~
 465 ~~or for any reason cannot be followed, or if an arbitrator or~~
 466 ~~umpire who has been appointed fails to act and his or her~~
 467 ~~successor has not been duly appointed, the court, on application~~
 468 ~~of a party to such agreement or provision shall appoint one or~~
 469 ~~more arbitrators or an umpire. An arbitrator or umpire so~~

470 appointed has all the ~~shall have like~~ powers of an arbitrator
 471 designated ~~as if named or provided for~~ in the agreement to
 472 arbitrate appointed pursuant to the agreed method ~~or provision~~.

473 (4) An individual who has a known, direct, and material
 474 interest in the outcome of the arbitration proceeding or a
 475 known, existing, and substantial relationship with a party may
 476 not serve as an arbitrator required by an agreement to be
 477 neutral.

478 Section 13. Section 682.041, Florida Statutes, is created
 479 to read:

480 682.041 Disclosure by arbitrator.-

481 (1) Before accepting appointment, an individual who is
 482 requested to serve as an arbitrator, after making a reasonable
 483 inquiry, shall disclose to all parties to the agreement to
 484 arbitrate and arbitration proceeding and to any other
 485 arbitrators any known facts that a reasonable person would
 486 consider likely to affect the person's impartiality as an
 487 arbitrator in the arbitration proceeding, including:

488 (a) A financial or personal interest in the outcome of the
 489 arbitration proceeding.

490 (b) An existing or past relationship with any of the
 491 parties to the agreement to arbitrate or the arbitration
 492 proceeding, their counsel or representative, a witness, or
 493 another arbitrator.

494 (2) An arbitrator has a continuing obligation to disclose
 495 to all parties to the agreement to arbitrate and arbitration
 496 proceeding and to any other arbitrators any facts that the
 497 arbitrator learns after accepting appointment that a reasonable

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498 person would consider likely to affect the impartiality of the
 499 arbitrator.

500 (3) If an arbitrator discloses a fact required by
 501 subsection (1) or subsection (2) to be disclosed and a party
 502 timely objects to the appointment or continued service of the
 503 arbitrator based upon the fact disclosed, the objection may be a
 504 ground under s. 682.13(1)(b) for vacating an award made by the
 505 arbitrator.

506 (4) If the arbitrator did not disclose a fact as required
 507 by subsection (1) or subsection (2), upon timely objection by a
 508 party, the court may vacate an award under s. 682.13(1)(b).

509 (5) An arbitrator appointed as a neutral arbitrator who
 510 does not disclose a known, direct, and material interest in the
 511 outcome of the arbitration proceeding or a known, existing, and
 512 substantial relationship with a party is presumed to act with
 513 evident partiality under s. 682.13(1)(b).

514 (6) If the parties to an arbitration proceeding agree to
 515 the procedures of an arbitration organization or any other
 516 procedures for challenges to arbitrators before an award is
 517 made, substantial compliance with those procedures is a
 518 condition precedent to a motion to vacate an award on that
 519 ground under s. 682.13(1)(b).

520 Section 14. Section 682.05, Florida Statutes, is amended
 521 to read:

522 682.05 Majority action by arbitrators.-If there is more
 523 than one arbitrator, the powers of an arbitrator must be
 524 exercised by a majority of the arbitrators, but all of the
 525 arbitrators shall conduct the hearing under s. 682.06(3) ~~The~~

526 ~~powers of the arbitrators may be exercised by a majority of~~
527 ~~their number unless otherwise provided in the agreement or~~
528 ~~provision for arbitration.~~

529 Section 15. Section 682.051, Florida Statutes, is created
530 to read:

531 682.051 Immunity of arbitrator; competency to testify;
532 attorney fees and costs.-

533 (1) An arbitrator or an arbitration organization acting in
534 the capacity of an arbitrator is immune from civil liability to
535 the same extent as a judge of a court of this state acting in a
536 judicial capacity.

537 (2) The immunity afforded under this section supplements
538 any immunity under other law.

539 (3) The failure of an arbitrator to make a disclosure
540 required by s. 682.041 does not cause any loss of immunity under
541 this section.

542 (4) In a judicial, administrative, or similar proceeding,
543 an arbitrator or representative of an arbitration organization
544 is not competent to testify, and may not be required to produce
545 records as to any statement, conduct, decision, or ruling
546 occurring during the arbitration proceeding, to the same extent
547 as a judge of a court of this state acting in a judicial
548 capacity. This subsection does not apply:

549 (a) To the extent necessary to determine the claim of an
550 arbitrator, arbitration organization, or representative of the
551 arbitration organization against a party to the arbitration
552 proceeding; or

553 (b) To a hearing on a motion to vacate an award under s.
 554 682.13(1)(a) or (b) if the movant establishes prima facie that a
 555 ground for vacating the award exists.

556 (5) If a person commences a civil action against an
 557 arbitrator, arbitration organization, or representative of an
 558 arbitration organization arising from the services of the
 559 arbitrator, organization, or representative or if a person seeks
 560 to compel an arbitrator or a representative of an arbitration
 561 organization to testify or produce records in violation of
 562 subsection (4), and the court decides that the arbitrator,
 563 arbitration organization, or representative of an arbitration
 564 organization is immune from civil liability or that the
 565 arbitrator or representative of the organization is not
 566 competent to testify, the court shall award to the arbitrator,
 567 organization, or representative reasonable attorney fees and
 568 other reasonable expenses of litigation.

569 Section 16. Section 682.06, Florida Statutes, is amended
 570 to read:

571 682.06 Hearing.—

572 (1) An arbitrator may conduct an arbitration in such
 573 manner as the arbitrator considers appropriate for a fair and
 574 expeditious disposition of the proceeding. The arbitrator's
 575 authority includes the power to hold conferences with the
 576 parties to the arbitration proceeding before the hearing and,
 577 among other matters, determine the admissibility, relevance,
 578 materiality, and weight of any evidence ~~Unless otherwise~~
 579 ~~provided by the agreement or provision for arbitration:~~

580 ~~(1)(a) The arbitrators shall appoint a time and place for~~

581 ~~the hearing and cause notification to the parties to be served~~
 582 ~~personally or by registered or certified mail not less than 5~~
 583 ~~days before the hearing. Appearance at the hearing waives a~~
 584 ~~party's right to such notice. The arbitrators may adjourn their~~
 585 ~~hearing from time to time upon their own motion and shall do so~~
 586 ~~upon the request of any party to the arbitration for good cause~~
 587 ~~shown, provided that no adjournment or postponement of their~~
 588 ~~hearing shall extend beyond the date fixed in the agreement or~~
 589 ~~provision for making the award unless the parties consent to a~~
 590 ~~later date. An umpire authorized to hear and decide the cause~~
 591 ~~upon failure of the arbitrators to agree upon an award shall, in~~
 592 ~~the course of his or her jurisdiction, have like powers and be~~
 593 ~~subject to like limitations thereon.~~

594 ~~(b) The arbitrators, or umpire in the course of his or her~~
 595 ~~jurisdiction, may hear and decide the controversy upon the~~
 596 ~~evidence produced notwithstanding the failure or refusal of a~~
 597 ~~party duly notified of the time and place of the hearing to~~
 598 ~~appear. The court on application may direct the arbitrators, or~~
 599 ~~the umpire in the course of his or her jurisdiction, to proceed~~
 600 ~~promptly with the hearing and making of the award.~~

601 (2) An arbitrator may decide a request for summary
 602 disposition of a claim or particular issue:

603 (a) If all interested parties agree; or

604 (b) Upon request of one party to the arbitration
 605 proceeding, if that party gives notice to all other parties to
 606 the proceeding and the other parties have a reasonable
 607 opportunity to respond ~~The parties are entitled to be heard, to~~
 608 ~~present evidence material to the controversy and to cross-~~

609 ~~examine witnesses appearing at the hearing.~~

610 (3) If an arbitrator orders a hearing, the arbitrator

611 shall set a time and place and give notice of the hearing not

612 less than 5 days before the hearing begins. Unless a party to

613 the arbitration proceeding makes an objection to lack or

614 insufficiency of notice not later than the beginning of the

615 hearing, the party's appearance at the hearing waives the

616 objection. Upon request of a party to the arbitration proceeding

617 and for good cause shown, or upon the arbitrator's own

618 initiative, the arbitrator may adjourn the hearing from time to

619 time as necessary but may not postpone the hearing to a time

620 later than that fixed by the agreement to arbitrate for making

621 the award unless the parties to the arbitration proceeding

622 consent to a later date. The arbitrator may hear and decide the

623 controversy upon the evidence produced although a party who was

624 duly notified of the arbitration proceeding did not appear. The

625 court, on request, may direct the arbitrator to conduct the

626 hearing promptly and render a timely decision ~~The hearing shall~~

627 ~~be conducted by all of the arbitrators but a majority may~~

628 ~~determine any question and render a final award. An umpire~~

629 ~~authorized to hear and decide the cause upon the failure of the~~

630 ~~arbitrators to agree upon an award shall sit with the~~

631 ~~arbitrators throughout their hearing but shall not be counted as~~

632 ~~a part of their quorum or in the making of their award. If,~~

633 ~~during the course of the hearing, an arbitrator for any reason~~

634 ~~ceases to act, the remaining arbitrator, arbitrators or umpire~~

635 ~~appointed to act as neutrals may continue with the hearing and~~

636 ~~determination of the controversy.~~

637 (4) At a hearing under subsection (3), a party to the
 638 arbitration proceeding has a right to be heard, to present
 639 evidence material to the controversy, and to cross-examine
 640 witnesses appearing at the hearing.

641 (5) If an arbitrator ceases or is unable to act during the
 642 arbitration proceeding, a replacement arbitrator must be
 643 appointed in accordance with s. 682.04 to continue the
 644 proceeding and to resolve the controversy.

645 Section 17. Section 682.07, Florida Statutes, is amended
 646 to read:

647 682.07 Representation by attorney.—A party to an
 648 arbitration proceeding may ~~has the right to~~ be represented by an
 649 attorney at any arbitration proceeding or hearing under this
 650 law. ~~A waiver thereof prior to the proceeding or hearing is~~
 651 ~~ineffective.~~

652 Section 18. Section 682.08, Florida Statutes, is amended
 653 to read:

654 682.08 Witnesses, subpoenas, depositions.—

655 (1) An arbitrator may issue a subpoena for the attendance
 656 of a witness and for the production of records and other
 657 evidence at any hearing and may administer oaths. A subpoena
 658 must be served in the manner for service of subpoenas in a civil
 659 action and, upon motion to the court by a party to the
 660 arbitration proceeding or the arbitrator, enforced in the manner
 661 for enforcement of subpoenas in a civil action ~~Arbitrators, or~~
 662 ~~an umpire authorized to hear and decide the cause upon failure~~
 663 ~~of the arbitrators to agree upon an award, in the course of her~~
 664 ~~or his jurisdiction, may issue subpoenas for the attendance of~~

665 ~~witnesses and for the production of books, records, documents~~
 666 ~~and other evidence, and shall have the power to administer~~
 667 ~~oaths. Subpoenas so issued shall be served, and upon application~~
 668 ~~to the court by a party to the arbitration or the arbitrators,~~
 669 ~~or the umpire, enforced in the manner provided by law for the~~
 670 ~~service and enforcement of subpoenas in a civil action.~~

671 (2) In order to make the proceedings fair, expeditious,
 672 and cost effective, upon request of a party to, or a witness in,
 673 an arbitration proceeding, an arbitrator may permit a deposition
 674 of any witness to be taken for use as evidence at the hearing,
 675 including a witness who cannot be subpoenaed for or is unable to
 676 attend a hearing. The arbitrator shall determine the conditions
 677 under which the deposition is taken ~~On application of a party to~~
 678 ~~the arbitration and for use as evidence, the arbitrators, or the~~
 679 ~~umpire in the course of her or his jurisdiction, may permit a~~
 680 ~~deposition to be taken, in the manner and upon the terms~~
 681 ~~designated by them or her or him of a witness who cannot be~~
 682 ~~subpoenaed or is unable to attend the hearing.~~

683 (3) An arbitrator may permit such discovery as the
 684 arbitrator decides is appropriate in the circumstances, taking
 685 into account the needs of the parties to the arbitration
 686 proceeding and other affected persons and the desirability of
 687 making the proceeding fair, expeditious, and cost effective ~~All~~
 688 ~~provisions of law compelling a person under subpoena to testify~~
 689 ~~are applicable.~~

690 (4) If an arbitrator permits discovery under subsection
 691 (3), the arbitrator may order a party to the arbitration
 692 proceeding to comply with the arbitrator's discovery-related

693 orders, issue subpoenas for the attendance of a witness and for
 694 the production of records and other evidence at a discovery
 695 proceeding, and take action against a noncomplying party to the
 696 extent a court could if the controversy were the subject of a
 697 civil action in this state.

698 (5) An arbitrator may issue a protective order to prevent
 699 the disclosure of privileged information, confidential
 700 information, trade secrets, and other information protected from
 701 disclosure to the extent a court could if the controversy were
 702 the subject of a civil action in this state.

703 (6) All laws compelling a person under subpoena to testify
 704 and all fees for attending a judicial proceeding, a deposition,
 705 or a discovery proceeding as a witness apply to an arbitration
 706 proceeding as if the controversy were the subject of a civil
 707 action in this state.

708 (7) The court may enforce a subpoena or discovery-related
 709 order for the attendance of a witness within this state and for
 710 the production of records and other evidence issued by an
 711 arbitrator in connection with an arbitration proceeding in
 712 another state upon conditions determined by the court so as to
 713 make the arbitration proceeding fair, expeditious, and cost
 714 effective. A subpoena or discovery-related order issued by an
 715 arbitrator in another state must be served in the manner
 716 provided by law for service of subpoenas in a civil action in
 717 this state and, upon motion to the court by a party to the
 718 arbitration proceeding or the arbitrator, enforced in the manner
 719 provided by law for enforcement of subpoenas in a civil action
 720 in this state.

721 (8)~~(4)~~ Fees for attendance as a witness shall be the same
 722 as for a witness in the circuit court.

723 Section 19. Section 682.081, Florida Statutes, is created
 724 to read:

725 682.081 Judicial enforcement of preaward ruling by
 726 arbitrator.—If an arbitrator makes a preaward ruling in favor of
 727 a party to the arbitration proceeding, the party may request
 728 that the arbitrator incorporate the ruling into an award under
 729 s. 682.12. A prevailing party may make a motion to the court for
 730 an expedited order to confirm the award under s. 682.12, in
 731 which case the court shall summarily decide the motion. The
 732 court shall issue an order to confirm the award unless the court
 733 vacates, modifies, or corrects the award under s. 682.13 or s.
 734 682.14.

735 Section 20. Section 682.09, Florida Statutes, is amended
 736 to read:

737 682.09 Award.—

738 (1) An arbitrator shall make a record of an award. The
 739 record must be signed or otherwise authenticated by any
 740 arbitrator who concurs with the award. The arbitrator or the
 741 arbitration organization shall give notice of the award,
 742 including a copy of the award, to each party to the arbitration
 743 proceeding ~~The award shall be in writing and shall be signed by~~
 744 ~~the arbitrators joining in the award or by the umpire in the~~
 745 ~~course of his or her jurisdiction. They or he or she shall~~
 746 ~~deliver a copy to each party to the arbitration either~~
 747 ~~personally or by registered or certified mail, or as provided in~~
 748 ~~the agreement or provision.~~

749 (2) An award must be made within the time specified by the
 750 agreement to arbitrate or, if not specified therein, within the
 751 time ordered by the court. The court may extend, or the parties
 752 to the arbitration proceeding may agree in a record to extend,
 753 the time. The court or the parties may do so within or after the
 754 time specified or ordered. A party waives any objection that an
 755 award was not timely made unless the party gives notice of the
 756 objection to the arbitrator before receiving notice of the award
 757 ~~An award shall be made within the time fixed therefor by the~~
 758 ~~agreement or provision for arbitration or, if not so fixed,~~
 759 ~~within such time as the court may order on application of a~~
 760 ~~party to the arbitration. The parties may, by written agreement,~~
 761 ~~extend the time either before or after the expiration thereof.~~
 762 ~~Any objection that an award was not made within the time~~
 763 ~~required is waived unless the objecting party notifies the~~
 764 ~~arbitrators or umpire in writing of his or her objection prior~~
 765 ~~to the delivery of the award to him or her.~~

766 Section 21. Section 682.10, Florida Statutes, is amended
 767 to read:

768 682.10 Change of award by arbitrators ~~or umpire.~~-

769 (1) On motion to an arbitrator by a party to an
 770 arbitration proceeding, the arbitrator may modify or correct an
 771 award:

772 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

773 (b) Because the arbitrator has not made a final and
 774 definite award upon a claim submitted by the parties to the
 775 arbitration proceeding; or

776 (c) To clarify the award.

777 (2) A motion under subsection (1) must be made and notice
 778 given to all parties within 20 days after the movant receives
 779 notice of the award.

780 (3) A party to the arbitration proceeding must give notice
 781 of any objection to the motion within 10 days after receipt of
 782 the notice.

783 (4) If a motion to the court is pending under s. 682.12,
 784 s. 682.13, or s. 682.14, the court may submit the claim to the
 785 arbitrator to consider whether to modify or correct the award:

786 (a) Upon a ground stated in s. 682.14(1)(a) or (c);

787 (b) Because the arbitrator has not made a final and
 788 definite award upon a claim submitted by the parties to the
 789 arbitration proceeding; or

790 (c) To clarify the award.

791 (5) An award modified or corrected pursuant to this
 792 section is subject to ss. 682.09(1), 682.12, 682.13, and 682.14
 793 ~~On application of a party to the arbitration, or if an~~
 794 ~~application to the court is pending under s. 682.12, s. 682.13~~
 795 ~~or s. 682.14, on submission to the arbitrators, or to the umpire~~
 796 ~~in the case of an umpire's award, by the court under such~~
 797 ~~conditions as the court may order, the arbitrators or umpire may~~
 798 ~~modify or correct the award upon the grounds stated in s.~~
 799 ~~682.14(1)(a) and (c) or for the purpose of clarifying the award.~~
 800 ~~The application shall be made within 20 days after delivery of~~
 801 ~~the award to the applicant. Written notice thereof shall be~~
 802 ~~given forthwith to the other party to the arbitration, stating~~
 803 ~~that he or she must serve his or her objections thereto, if any,~~
 804 ~~within 10 days from the notice. The award so modified or~~

805 ~~corrected is subject to the provisions of ss. 682.12-682.14.~~

806 Section 22. Section 682.11, Florida Statutes, is amended
807 to read:

808 682.11 Remedies; fees and expenses of arbitration
809 proceeding.—

810 (1) An arbitrator may award punitive damages or other
811 exemplary relief if such an award is authorized by law in a
812 civil action involving the same claim and the evidence produced
813 at the hearing justifies the award under the legal standards
814 otherwise applicable to the claim.

815 (2) An arbitrator may award reasonable attorney fees and
816 other reasonable expenses of arbitration if such an award is
817 authorized by law in a civil action involving the same claim or
818 by the agreement of the parties to the arbitration proceeding.

819 (3) As to all remedies other than those authorized by
820 subsections (1) and (2), an arbitrator may order such remedies
821 as the arbitrator considers just and appropriate under the
822 circumstances of the arbitration proceeding. The fact that such
823 a remedy could not or would not be granted by the court is not a
824 ground for refusing to confirm an award under s. 682.12 or for
825 vacating an award under s. 682.13.

826 (4) An arbitrator's expenses and fees, together with other
827 expenses, must be paid as provided in the award.

828 (5) If an arbitrator awards punitive damages or other
829 exemplary relief under subsection (1), the arbitrator shall
830 specify in the award the basis in fact justifying and the basis
831 in law authorizing the award and state separately the amount of
832 the punitive damages or other exemplary relief ~~Unless otherwise~~

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833 ~~provided in the agreement or provision for arbitration, the~~
 834 ~~arbitrators' and umpire's expenses and fees, together with other~~
 835 ~~expenses, not including counsel fees, incurred in the conduct of~~
 836 ~~the arbitration, shall be paid as provided in the award.~~

837 Section 23. Section 682.12, Florida Statutes, is amended
 838 to read:

839 682.12 Confirmation of an award.—After a party to an
 840 arbitration proceeding receives notice of an award, the party
 841 may make a motion to the court for an order confirming the award
 842 at which time the court shall issue a confirming order unless
 843 the award is modified or corrected pursuant to s. 682.10 or s.
 844 682.14 or is vacated pursuant to s. 682.13 ~~Upon application of a~~
 845 ~~party to the arbitration, the court shall confirm an award,~~
 846 ~~unless within the time limits hereinafter imposed grounds are~~
 847 ~~urged for vacating or modifying or correcting the award, in~~
 848 ~~which case the court shall proceed as provided in ss. 682.13 and~~
 849 ~~682.14.~~

850 Section 24. Section 682.13, Florida Statutes, is amended
 851 to read:

852 682.13 Vacating an award.—

853 (1) Upon motion ~~application~~ of a party to an arbitration
 854 proceeding, the court shall vacate an arbitration award ~~if when:~~

855 (a) The award was procured by corruption, fraud, or other
 856 undue means; ~~or~~

857 (b) There was:

858 1. Evident partiality by an arbitrator appointed as a
 859 neutral arbitrator;

860 2. Corruption by an arbitrator; or

861 3. Misconduct by an arbitrator prejudicing the rights of a
 862 party to the arbitration proceeding; ~~or corruption in any of the~~
 863 ~~arbitrators or umpire or misconduct prejudicing the rights of~~
 864 ~~any party.~~

865 (c) An arbitrator refused to postpone the hearing upon
 866 showing of sufficient cause for postponement, refused to
 867 consider evidence material to the controversy, or otherwise
 868 conducted the hearing contrary to s. 682.06, so as to prejudice
 869 substantially the rights of a party to the arbitration
 870 proceeding; ~~The arbitrators or the umpire in the course of her~~
 871 ~~or his jurisdiction exceeded their powers.~~

872 (d) An arbitrator exceeded the arbitrator's powers; ~~The~~
 873 ~~arbitrators or the umpire in the course of her or his~~
 874 ~~jurisdiction refused to postpone the hearing upon sufficient~~
 875 ~~cause being shown therefor or refused to hear evidence material~~
 876 ~~to the controversy or otherwise so conducted the hearing,~~
 877 ~~contrary to the provisions of s. 682.06, as to prejudice~~
 878 ~~substantially the rights of a party.~~

879 (e) There was no agreement to arbitrate, unless the person
 880 participated in the arbitration proceeding without raising the
 881 objection under s. 682.06(3) not later than the beginning of the
 882 arbitration hearing; ~~or There was no agreement or provision for~~
 883 ~~arbitration subject to this law, unless the matter was~~
 884 ~~determined in proceedings under s. 682.03 and unless the party~~
 885 ~~participated in the arbitration hearing without raising the~~
 886 ~~objection.~~

887 (f) The arbitration was conducted without proper notice of
 888 the initiation of an arbitration as required in s. 682.032 so as

889 to prejudice substantially the rights of a party to the
 890 arbitration proceeding

891
 892 ~~But the fact that the relief was such that it could not or would~~
 893 ~~not be granted by a court of law or equity is not ground for~~
 894 ~~vacating or refusing to confirm the award.~~

895 (2) A motion under this section must be filed within 90
 896 days after the movant receives notice of the award pursuant to
 897 s. 682.09 or within 90 days after the movant receives notice of
 898 a modified or corrected award pursuant to s. 682.10, unless the
 899 movant alleges that the award was procured by corruption, fraud,
 900 or other undue means, in which case the motion must be made
 901 within 90 days after the ground is known or by the exercise of
 902 reasonable care would have been known by the movant ~~An~~
 903 ~~application under this section shall be made within 90 days~~
 904 ~~after delivery of a copy of the award to the applicant, except~~
 905 ~~that, if predicated upon corruption, fraud or other undue means,~~
 906 ~~it shall be made within 90 days after such grounds are known or~~
 907 ~~should have been known.~~

908 (3) If the court vacates an award on a ground other than
 909 that set forth in paragraph (1)(e), it may order a rehearing. If
 910 the award is vacated on a ground stated in paragraph (1)(a) or
 911 paragraph (1)(b), the rehearing must be before a new arbitrator.
 912 If the award is vacated on a ground stated in paragraph (1)(c),
 913 paragraph (1)(d), or paragraph (1)(f), the rehearing may be
 914 before the arbitrator who made the award or the arbitrator's
 915 successor. The arbitrator must render the decision in the
 916 rehearing within the same time as that provided in s. 682.09(2)

917 ~~for an award~~ In vacating the award on grounds other than those
 918 ~~stated in paragraph (1)(c), the court may order a rehearing~~
 919 ~~before new arbitrators chosen as provided in the agreement or~~
 920 ~~provision for arbitration or by the court in accordance with s.~~
 921 ~~682.04, or, if the award is vacated on grounds set forth in~~
 922 ~~paragraphs (1)(c) and (d), the court may order a rehearing~~
 923 ~~before the arbitrators or umpire who made the award or their~~
 924 ~~successors appointed in accordance with s. 682.04. The time~~
 925 ~~within which the agreement or provision for arbitration requires~~
 926 ~~the award to be made is applicable to the rehearing and~~
 927 ~~commences from the date of the order therefor.~~

928 (4) If a motion ~~the application~~ to vacate is denied and no
 929 motion to modify or correct the award is pending, the court
 930 shall confirm the award.

931 Section 25. Section 682.14, Florida Statutes, is amended
 932 to read:

933 682.14 Modification or correction of award.-

934 (1) Upon motion made within 90 days after the movant
 935 receives notice of the award pursuant to s. 682.09 or within 90
 936 days after the movant receives notice of a modified or corrected
 937 award pursuant to s. 682.10, the court shall modify or correct
 938 the award if ~~Upon application made within 90 days after delivery~~
 939 ~~of a copy of the award to the applicant, the court shall modify~~
 940 ~~or correct the award when:~~

941 (a) There is an evident miscalculation of figures or an
 942 evident mistake in the description of any person, thing, or
 943 property referred to in the award.

944 (b) The arbitrators ~~or umpire~~ have awarded upon a matter

945 not submitted in the arbitration ~~to them or him or her~~ and the
 946 award may be corrected without affecting the merits of the
 947 decision upon the issues submitted.

948 (c) The award is imperfect as a matter of form, not
 949 affecting the merits of the controversy.

950 (2) If the application is granted, the court shall modify
 951 and correct the award ~~so as to effect its intent and shall~~
 952 confirm the award as so modified and corrected. Otherwise,
 953 unless a motion to vacate the award under s. 682.13 is pending,
 954 the court shall confirm the award as made.

955 (3) An application to modify or correct an award may be
 956 joined in the alternative with an application to vacate the
 957 award under s. 682.13.

958 Section 26. Section 682.15, Florida Statutes, is amended
 959 to read:

960 682.15 Judgment or decree on award.—

961 (1) Upon granting an order confirming, vacating without
 962 directing a rehearing, modifying, or correcting an award, the
 963 court shall enter a judgment in conformity therewith. The
 964 judgment may be recorded, docketed, and enforced as any other
 965 judgment in a civil action.

966 (2) A court may allow reasonable costs of the motion and
 967 subsequent judicial proceedings.

968 (3) On motion of a prevailing party to a contested
 969 judicial proceeding under s. 682.12, s. 682.13, or s. 682.14,
 970 the court may add reasonable attorney fees and other reasonable
 971 expenses of litigation incurred in a judicial proceeding after
 972 the award is made to a judgment confirming, vacating without

973 directing a rehearing, modifying, or correcting an award ~~Upon~~
 974 ~~the granting of an order confirming, modifying or correcting an~~
 975 ~~award, judgment or decree shall be entered in conformity~~
 976 ~~therewith and be enforced as any other judgment or decree. Costs~~
 977 ~~of the application and of the proceedings subsequent thereto,~~
 978 ~~and disbursements may be awarded by the court.~~

979 Section 27. Section 682.16, Florida Statutes, is repealed.

980 Section 28. Section 682.17, Florida Statutes, is repealed.

981 Section 29. Section 682.18, Florida Statutes, is repealed.

982 Section 30. Section 682.181, Florida Statutes, is created
 983 to read:

984 682.181 Jurisdiction.—

985 (1) A court of this state having jurisdiction over the
 986 controversy and the parties may enforce an agreement to
 987 arbitrate.

988 (2) An agreement to arbitrate providing for arbitration in
 989 this state confers exclusive jurisdiction on the court to enter
 990 judgment on an award under the Revised Florida Arbitration Code.

991 Section 31. Section 682.19, Florida Statutes, is amended
 992 to read:

993 682.19 Venue.—A petition pursuant to s. 682.015 must be
 994 filed in the court of the county in which the agreement to
 995 arbitrate specifies the arbitration hearing is to be held or, if
 996 the hearing has been held, in the court of the county in which
 997 it was held. Otherwise, the petition may be made in the court of
 998 any county in which an adverse party resides or has a place of
 999 business or, if no adverse party has a residence or place of
 1000 business in this state, in the court of any county in this

1001 state. All subsequent petitions must be made in the court
 1002 hearing the initial petition unless the court otherwise directs
 1003 ~~Any application under this law may be made to the court of the~~
 1004 ~~county in which the other party to the agreement or provision~~
 1005 ~~for arbitration resides or has a place of business, or, if she~~
 1006 ~~or he has no residence or place of business in this state, then~~
 1007 ~~to the court of any county. All applications under this law~~
 1008 ~~subsequent to an initial application shall be made to the court~~
 1009 ~~hearing the initial application unless it shall order otherwise.~~

1010 Section 32. Section 682.20, Florida Statutes, is amended
 1011 to read:

1012 682.20 Appeals.—

1013 (1) An appeal may be taken from:

1014 (a) An order denying an application to compel arbitration
 1015 made under s. 682.03.

1016 (b) An order granting a motion ~~an application~~ to stay
 1017 arbitration pursuant to ~~made under~~ s. 682.03(2)-(4).

1018 (c) An order confirming ~~or denying confirmation of~~ an
 1019 award.

1020 (d) An order denying confirmation of an award unless the
 1021 court has entered an order under s. 682.10(4) or s. 682.13. All
 1022 other orders denying confirmation of an award are final orders.

1023 (e) ~~(d)~~ An order modifying or correcting an award.

1024 (f) ~~(e)~~ An order vacating an award without directing a
 1025 rehearing.

1026 (g) ~~(f)~~ A judgment or decree entered pursuant to this
 1027 chapter ~~the provisions of this law.~~

1028 (2) The appeal shall be taken in the manner and to the

1029 same extent as from orders or judgments in a civil action.

1030 Section 33. Section 682.21, Florida Statutes, is repealed.

1031 Section 34. Section 682.22, Florida Statutes, is repealed.

1032 Section 35. Section 682.23, Florida Statutes, is created

1033 to read:

1034 682.23 Relationship to Electronic Signatures in Global and
 1035 National Commerce Act.—The provisions of this chapter governing
 1036 the legal effect, validity, and enforceability of electronic
 1037 records or electronic signatures and of contracts performed with
 1038 the use of such records or signatures conform to the
 1039 requirements of s. 102 of the Electronic Signatures in Global
 1040 and National Commerce Act, 15 U.S.C. s. 7002.

1041 Section 36. Section 682.24, Florida Statutes, is created

1042 to read:

1043 682.24 Effective date; applicability.—

1044 (1) The Revised Florida Arbitration Code takes effect on
 1045 July 1, 2012.

1046 (2) The Revised Florida Arbitration Code does not affect
 1047 an action or proceeding commenced or right accrued before the
 1048 Revised Florida Arbitration Code takes effect. Subject to s.
 1049 682.013, an arbitration agreement made before July 1, 2012, is
 1050 governed by the former Florida Arbitration Code.

1051 Section 37. Section 682.25, Florida Statutes, is created
 1052 to read:

1053 682.25 Disputes excluded.—The Revised Florida Arbitration
 1054 Code does not apply to any dispute involving child custody,
 1055 visitation, or child support.

1056 Section 38. Section 44.104, Florida Statutes, is amended
 1057 to read:

1058 44.104 Voluntary ~~binding arbitration and voluntary~~ trial
 1059 resolution.—

1060 (1) Two or more opposing parties who are involved in a
 1061 civil dispute may agree in writing to submit the controversy to
 1062 ~~voluntary binding arbitration, or~~ voluntary trial resolution, in
 1063 lieu of judicial litigation of the issues involved, prior to or
 1064 after a lawsuit has been filed, ~~provided no constitutional issue~~
 1065 ~~is involved.~~

1066 (2) If the parties have entered into an such an agreement
 1067 and the agreement ~~which provides in voluntary binding~~
 1068 ~~arbitration for a method for appointing of one or more~~
 1069 ~~arbitrators, or which provides in voluntary trial resolution a~~
 1070 method for appointing the ~~a member of The Florida Bar in good~~
 1071 ~~standing for more than 5 years to act as~~ trial resolution judge,
 1072 that method shall be followed ~~the court shall proceed with the~~
 1073 ~~appointment as prescribed. However, in voluntary binding~~
 1074 ~~arbitration at least one of the arbitrators, who shall serve as~~
 1075 ~~the chief arbitrator, shall meet the qualifications and training~~
 1076 ~~requirements adopted pursuant to s. 44.106.~~ In the absence of an
 1077 agreement on a method for appointing the trial resolution judge,
 1078 or if the agreement method fails or for any reason cannot be
 1079 followed, and the parties fail to agree on the person to serve
 1080 as the trial resolution judge, the court, on application of a
 1081 party, shall appoint ~~one or more qualified arbitrators, or the~~
 1082 trial resolution judge, as the case requires. A trial resolution
 1083 judge must be a member of The Florida Bar in good standing for 5

1084 years or more who has agreed to serve.

1085 (3) The ~~arbitrators or~~ trial resolution judge shall be
 1086 compensated by the parties according to their agreement with the
 1087 trial resolution judge.

1088 (4) Within 10 days after the submission of the request for
 1089 ~~binding arbitration, or~~ voluntary trial resolution, the court
 1090 shall provide for the appointment of the ~~arbitrator or~~
 1091 ~~arbitrators, or~~ trial resolution judge, as the case requires.
 1092 Once appointed, the ~~arbitrators or~~ trial resolution judge shall
 1093 notify the parties of the time and place for the hearing.

1094 (5) Application for ~~voluntary binding arbitration or~~
 1095 voluntary trial resolution shall be filed and fees paid to the
 1096 clerk of court as if for complaints initiating civil actions.
 1097 The clerk of the court shall handle and account for these
 1098 matters in all respects as if they were civil actions, except
 1099 that the clerk of court shall keep separate ~~the records of the~~
 1100 ~~applications for voluntary binding arbitration and~~ the records
 1101 of the applications for voluntary trial resolution from all
 1102 other civil actions.

1103 (6) Filing of the application for ~~binding arbitration or~~
 1104 voluntary trial resolution tolls ~~will toll~~ the running of the
 1105 applicable statutes of limitation.

1106 (7) The ~~chief arbitrator or~~ trial resolution judge may
 1107 administer oaths or affirmations and conduct the proceedings as
 1108 the rules of court shall provide. At the request of any party,
 1109 the ~~chief arbitrator or~~ trial resolution judge shall issue
 1110 subpoenas for the attendance of witnesses and for the production
 1111 of books, records, documents, and other evidence and may apply

1112 to the court for orders compelling attendance and production.
 1113 Subpoenas shall be served and shall be enforceable in the manner
 1114 provided by law. The trial resolution judge may order temporary
 1115 relief in the same manner, and to the same extent, as in civil
 1116 actions generally. Any party may enforce such an order by filing
 1117 a petition in the court. Orders entered by the court are
 1118 reviewable by the appellate court in the same manner, and to the
 1119 same extent, as orders in civil actions generally.

1120 (8) ~~A voluntary binding arbitration hearing shall be~~
 1121 ~~conducted by all of the arbitrators, but a majority may~~
 1122 ~~determine any question and render a final decision.~~ A trial
 1123 resolution judge shall conduct a voluntary trial resolution
 1124 hearing. The trial resolution judge may determine any question
 1125 and render a final decision.

1126 (9) The Florida Evidence Code and Florida Rules of Civil
 1127 Procedure shall apply to all proceedings under this section,
 1128 except that voluntary trial resolution is not governed by
 1129 procedural rules regulating general and special magistrates, and
 1130 rulings of the trial resolution judge are not reviewable by
 1131 filing exceptions with the court.

1132 ~~(10) An appeal of a voluntary binding arbitration decision~~
 1133 ~~shall be taken to the circuit court and shall be limited to~~
 1134 ~~review on the record and not de novo, of:~~

1135 ~~(a) Any alleged failure of the arbitrators to comply with~~
 1136 ~~the applicable rules of procedure or evidence.~~

1137 ~~(b) Any alleged partiality or misconduct by an arbitrator~~
 1138 ~~prejudicing the rights of any party.~~

1139 ~~(c) Whether the decision reaches a result contrary to the~~

1140 ~~Constitution of the United States or of the State of Florida.~~

1141 (10)~~(11)~~ Any party may enforce a final decision rendered
 1142 in a voluntary trial by filing a petition for final judgment in
 1143 the circuit court in the circuit in which the voluntary trial
 1144 took place. Upon entry of final judgment by the circuit court,
 1145 any party may appeal to the appropriate appellate court. The
 1146 judgment is reviewable by the appellate court in the same
 1147 manner, and to the same extent, as a judgment in a civil action
 1148 ~~Factual findings determined in the voluntary trial are not~~
 1149 ~~subject to appeal.~~

1150 ~~(12)~~ ~~The harmless error doctrine shall apply in all~~
 1151 ~~appeals. No further review shall be permitted unless a~~
 1152 ~~constitutional issue is raised.~~

1153 (11)~~(13)~~ If no appeal is taken within the time provided by
 1154 rules promulgated by the Supreme Court, ~~then~~ the decision shall
 1155 be referred to the presiding judge in the case, or if one has
 1156 not been assigned, then to the chief judge of the circuit for
 1157 assignment to a circuit judge, who shall enter such orders and
 1158 judgments as are required to carry out the terms of the
 1159 decision. Equitable remedies are, ~~which orders shall be~~
 1160 enforceable by the contempt powers of the court to the same
 1161 extent as in civil actions generally. When a judgment provides
 1162 for execution, and for which judgments execution shall issue on
 1163 request of a party.

1164 (12)~~(14)~~ This section does ~~shall~~ not apply ~~to any dispute~~
 1165 ~~involving child custody, visitation, or child support, or to any~~
 1166 ~~dispute that~~ which involves the rights of a third party not a
 1167 party to the ~~arbitration or~~ voluntary trial resolution when the

1168 third party would be an indispensable party if the dispute were
 1169 resolved in court or when the third party notifies ~~the chief~~
 1170 ~~arbitrator or~~ the trial resolution judge that the third party
 1171 would be a proper party if the dispute were resolved in court,
 1172 that the third party intends to intervene in the action in
 1173 court, and that the third party does not agree to proceed under
 1174 this section.

1175 (13) A trial resolution judge does not have jurisdiction
 1176 to declare unconstitutional a statute, ordinance, or provision
 1177 of a constitution. If any such claim is made in the voluntary
 1178 trial resolution proceeding, that claim shall be severed and
 1179 adjudicated by a judge of the court.

1180 (14)(a) The parties may agree to a trial by a privately
 1181 selected jury. The court's jury pool may not be used for this
 1182 purpose. In all other cases, the trial resolution judge shall
 1183 conduct a bench trial.

1184 (b) The trial resolution judge may wear a judicial robe
 1185 and use the title "Trial Resolution Judge" when acting in that
 1186 capacity.

1187 Section 39. Subsection (1) of section 44.107, Florida
 1188 Statutes, is amended to read:

1189 44.107 Immunity for arbitrators, voluntary trial
 1190 resolution judges, mediators, and mediator trainees.—

1191 (1) Arbitrators serving under s. 44.103, voluntary trial
 1192 resolution judges serving under ~~or~~ s. 44.104, mediators serving
 1193 under s. 44.102, and trainees fulfilling the mentorship
 1194 requirements for certification by the Supreme Court as a
 1195 mediator ~~shall~~ have judicial immunity in the same manner and to

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1196 the same extent as a judge and are entitled to the same immunity
 1197 and remedies provided in s. 682.051.

1198 Section 40. Section 440.1926, Florida Statutes, is amended
 1199 to read:

1200 440.1926 Alternate dispute resolution; claim arbitration.-
 1201 Notwithstanding any other provision of this chapter, the
 1202 employer, carrier, and employee may mutually agree to seek
 1203 consent from a judge of compensation claims to enter into
 1204 binding claim arbitration in lieu of any other remedy provided
 1205 for in this chapter to resolve all issues in dispute regarding
 1206 an injury. Arbitrations agreed to pursuant to this section shall
 1207 be governed by chapter 682, the Revised Florida Arbitration
 1208 Code, except that, notwithstanding any provision in chapter 682,
 1209 the term "court" shall mean a judge of compensation claims. An
 1210 arbitration award in accordance with this section is ~~shall be~~
 1211 enforceable in the same manner and with the same powers as any
 1212 final compensation order.

1213 Section 41. Paragraph (a) of subsection (1) of section
 1214 489.1402, Florida Statutes, is amended to read:

1215 489.1402 Homeowners' Construction Recovery Fund;
 1216 definitions.-

1217 (1) The following definitions apply to ss. 489.140-
 1218 489.144:

1219 (a) "Arbitration" means alternative dispute resolution
 1220 entered into between a claimant and a contractor either pursuant
 1221 to a construction contract that contains a mandatory arbitration
 1222 clause or through any binding arbitration under the Revised
 1223 Florida Arbitration Code.

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1224 Section 42. Subsection (2) of section 731.401, Florida
 1225 Statutes, is amended to read:

1226 731.401 Arbitration of disputes.—

1227 (2) Unless otherwise specified in the will or trust, a
 1228 will or trust provision requiring arbitration shall be presumed
 1229 to require voluntary trial resolution ~~binding arbitration~~ under
 1230 s. 44.104.

1231 Section 43. The Division of Statutory Revision is directed
 1232 to redesignate the title of chapter 44, Florida Statutes, as
 1233 "Alternative Dispute Resolution."

1234 Section 44. The Division of Statutory Revision is directed
 1235 to replace the phrase "the effective date of this act" wherever
 1236 it occurs in this act with the date this act becomes a law.



1237 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.

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.

1 A bill to be entitled
 2 An act relating to suspension of driver licenses and
 3 motor vehicle registrations; amending s. 61.13016,
 4 F.S.; revising provisions providing for an obligor who
 5 is delinquent in support payments to petition the
 6 circuit court to direct the Department of Highway
 7 Safety and Motor Vehicles to issue to the obligor a
 8 driver license restricted to business purposes only;
 9 requiring that the court, before approving a schedule
 10 for an obligor's delinquent support payments, find
 11 that the obligor has the present ability to pay the
 12 child support arrearage and support obligation;
 13 requiring that the court direct the Department of
 14 Highway Safety and Motor Vehicles to suspend the
 15 obligor's driver license if the obligor fails to
 16 comply with the schedule of payments and if the
 17 obligor has the ability to pay; amending s. 322.058,
 18 F.S.; requiring that the Department of Highway Safety
 19 and Motor Vehicles reinstate the driving privilege and
 20 allow registration of a motor vehicle of a person who
 21 has a delinquent support obligation or who has failed
 22 to comply with a subpoena, order to appear, order to
 23 show cause, or similar order, if the Title IV-D agency
 24 in IV-D cases, or the depository or the clerk of the
 25 court in non-IV-D cases, provides an affidavit to the
 26 department stating that the court has directed that
 27 the person be issued a license for driving privileges
 28 restricted to business purposes only; amending s.

29 409.256, F.S.; revising provisions to conform to
 30 changes made by the act; providing an effective date.

31

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

33

34 Section 1. Section 61.13016, Florida Statutes, is amended
 35 to read:

36 61.13016 Suspension of driver ~~driver's~~ licenses and motor
 37 vehicle registrations.—

38 (1) The driver ~~driver's~~ license and motor vehicle
 39 registration of a support obligor who is delinquent in payment
 40 or who has failed to comply with subpoenas or a similar order to
 41 appear or show cause relating to paternity or support
 42 proceedings may be suspended. When an obligor is 15 days
 43 delinquent making a payment in support or failure to comply with
 44 a subpoena, order to appear, order to show cause, or similar
 45 order in IV-D cases, the Title IV-D agency may provide notice to
 46 the obligor of the delinquency or failure to comply with a
 47 subpoena, order to appear, order to show cause, or similar order
 48 and the intent to suspend by regular United States mail that is
 49 posted to the obligor's last address of record with the
 50 Department of Highway Safety and Motor Vehicles. When an obligor
 51 is 15 days delinquent in making a payment in support in non-IV-D
 52 cases, and upon the request of the obligee, the depository or
 53 the clerk of the court must provide notice to the obligor of the
 54 delinquency and the intent to suspend by regular United States
 55 mail that is posted to the obligor's last address of record with
 56 the Department of Highway Safety and Motor Vehicles. ~~In either~~

57 | ~~ease,~~ The notice must state:

58 | (a) The terms of the order creating the support
59 | obligation;

60 | (b) The period of the delinquency and the total amount of
61 | the delinquency as of the date of the notice or describe the
62 | subpoena, order to appear, order to show cause, or other similar
63 | order that ~~which~~ has not been complied with;

64 | (c) That notification will be given to the Department of
65 | Highway Safety and Motor Vehicles to suspend the obligor's
66 | driver ~~driver's~~ license and motor vehicle registration unless,
67 | within 20 days after the date the notice is mailed, the obligor:

68 | 1.a. Pays the delinquency in full and any other costs and
69 | fees accrued between the date of the notice and the date the
70 | delinquency is paid;

71 | b. Enters into a written agreement for payment with the
72 | obligee in non-IV-D cases or with the Title IV-D agency in IV-D
73 | cases; or in IV-D cases, complies with a subpoena or order to
74 | appear, order to show cause, or a similar order; or

75 | c. Files a petition with the circuit court to contest the
76 | delinquency action; and

77 | 2. Pays any applicable delinquency fees.

78 |
79 | If the obligor in non-IV-D cases enters into a written agreement
80 | for payment before the expiration of the 20-day period, the
81 | obligor must provide a copy of the signed written agreement to
82 | the depository or the clerk of the court.

83 | (2) (a) If the obligor files a ~~Upon petition filed by the~~
84 | ~~obligor~~ in the circuit court within 20 days after the mailing

85 date of the notice, the court may, ~~in its discretion,~~ direct the
 86 department to issue a license for driving privileges restricted
 87 to business purposes only, as defined by s. 322.271, if the
 88 person is otherwise qualified for such a license. As a condition
 89 for the court to exercise its discretion under this subsection,
 90 the obligor must agree to a schedule of payment on any child
 91 support arrearages and to maintain current child support
 92 obligations. Before approving the schedule of payment, the court
 93 must find that the obligor has the present ability to pay the
 94 schedule of payment for the child support arrearage and the
 95 current child support obligation.

96 (b) If the obligor fails to comply with the schedule of
 97 payment and if the obligor has the present ability to do so, the
 98 court shall direct the Department of Highway Safety and Motor
 99 Vehicles to suspend the obligor's driver ~~driver's~~ license.

100 (c) ~~(b)~~ The obligor must serve a copy of the petition on
 101 the Title IV-D agency in IV-D cases or on the depository or the
 102 clerk of the court in non-IV-D cases. When an obligor timely
 103 files a petition to set aside a suspension, the court must hear
 104 the matter within 15 days after the petition is filed. The court
 105 must enter an order resolving the matter within 10 days after
 106 the hearing, and a copy of the order must be served on the
 107 parties. The timely filing of a petition under this subsection
 108 stays the intent to suspend until the entry of a court order
 109 resolving the matter.

110 (3) If the obligor does not, within 20 days after the
 111 mailing date on the notice, pay the delinquency, enter into a
 112 payment agreement, comply with the subpoena, order to appear,

113 | order to show cause, or other similar order, or file a motion to
 114 | contest, the Title IV-D agency in IV-D cases, or the depository
 115 | or clerk of the court in non-IV-D cases, shall file the notice
 116 | with the Department of Highway Safety and Motor Vehicles and
 117 | request the suspension of the obligor's driver ~~driver's~~ license
 118 | and motor vehicle registration in accordance with s. 322.058.

119 | (4) The obligor may, within 20 days after the mailing date
 120 | on the notice of delinquency or noncompliance and intent to
 121 | suspend, file in the circuit court a petition to contest the
 122 | notice of delinquency or noncompliance and intent to suspend on
 123 | the ground of mistake of fact regarding the existence of a
 124 | delinquency or the identity of the obligor. The obligor must
 125 | serve a copy of the petition on the Title IV-D agency in IV-D
 126 | cases or depository or clerk of the court in non-IV-D cases.
 127 | When an obligor timely files a petition to contest, the court
 128 | must hear the matter within 15 days after the petition is filed.
 129 | The court must enter an order resolving the matter within 10
 130 | days after the hearing, and a copy of the order must be served
 131 | on the parties. The timely filing of a petition to contest stays
 132 | the notice of delinquency and intent to suspend until the entry
 133 | of a court order resolving the matter.

134 | (5) The procedures prescribed in this section and s.
 135 | 322.058 may be used to enforce compliance with an order to
 136 | appear for genetic testing.

137 | Section 2. Section 322.058, Florida Statutes, is amended
 138 | to read:

139 | 322.058 Suspension of driving privilege ~~privileges~~ due to
 140 | support delinquency; reinstatement.—

141 (1) When the department receives notice from the Title IV-
 142 D agency or depository or the clerk of the court that a ~~any~~
 143 person licensed to operate a motor vehicle in the State of
 144 Florida under the provisions of this chapter has a delinquent
 145 support obligation or has failed to comply with a subpoena,
 146 order to appear, order to show cause, or similar order, the
 147 department shall suspend the driver ~~driver's~~ license of the
 148 person named in the notice and the registration of all motor
 149 vehicles owned by that person.

150 (2) The department shall reinstate the driving privilege
 151 and allow registration of the motor vehicle of a person who has
 152 a delinquent support obligation or who has failed to comply with
 153 a subpoena, order to appear, order to show cause, or similar
 154 order, if the Title IV-D agency in IV-D cases, or the depository
 155 or the clerk of the court in non-IV-D cases, provides to the
 156 department an affidavit stating that the person has agreed to a
 157 schedule of payment on child support arrearages and to maintain
 158 support obligations, and the court has directed that the person
 159 be issued a license for driving privileges restricted to
 160 business purposes only, as defined by s. 322.271 and pursuant to
 161 s. 316.13016.

162 (3) ~~(2)~~ The department shall also ~~must~~ reinstate the
 163 driving privilege and allow registration of a motor vehicle when
 164 the Title IV-D agency in IV-D cases or the depository or the
 165 clerk of the court in non-IV-D cases provides to the department
 166 an affidavit stating that:

- 167 (a) The person has paid the delinquency;
- 168 (b) The person has reached a written agreement for payment

169 with the Title IV-D agency or the obligee in non-IV-D cases;

170 (c) A court has entered an order granting relief to the
 171 obligor ordering the reinstatement of the license and motor
 172 vehicle registration; or

173 (d) The person has complied with the subpoena, order to
 174 appear, order to show cause, or similar order.

175 (4)~~(3)~~ The department is ~~shall~~ not ~~be held~~ liable for a
 176 ~~any~~ license or vehicle registration suspension resulting from
 177 the discharge of its duties under this section.

178 (5)~~(4)~~ This section applies only to the annual renewal in
 179 the owner's birth month of a motor vehicle registration and does
 180 not apply to the transfer of a registration of a motor vehicle
 181 sold by a motor vehicle dealer licensed under chapter 320,
 182 except for the transfer of registrations which is inclusive of
 183 the annual renewals. This section does not affect the issuance
 184 of the title to a motor vehicle, notwithstanding s.
 185 319.23(7)(b).

186 Section 3. Subsection (7) of section 409.256, Florida
 187 Statutes, is amended to read:

188 409.256 Administrative proceeding to establish paternity
 189 or paternity and child support; order to appear for genetic
 190 testing.—

191 (7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a
 192 person who is served with an order to appear for genetic testing
 193 fails to appear without good cause or refuses to submit to
 194 testing without good cause, the department may take one or more
 195 of the following actions:

196 (a) Commence a proceeding to suspend the driver ~~driver's~~

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197 license and motor vehicle registration of the person ordered to
 198 appear, as provided in s. 61.13016;

199 (b) Impose an administrative fine against the person
 200 ordered to appear in the amount of \$500; or

201 (c) File a petition in circuit court to establish
 202 paternity, obtain a support order for the child, and seek
 203 reimbursement from the person ordered to appear for the full
 204 cost of genetic testing incurred by the department.

205
 206 As provided in s. 322.058(3) ~~s. 322.058(2)~~, a suspended driver
 207 ~~driver's~~ license and motor vehicle registration shall ~~may~~ be
 208 reinstated when the person ordered to appear complies with the
 209 order to appear for genetic testing. The department may collect
 210 an administrative fine imposed under this subsection by using
 211 civil remedies or other statutory means available to the
 212 department for collecting support.

213 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 <i>VML</i>	Bond <i>MB</i>
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 teachers¹ 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 associations⁷ for unfair labor practices.⁸

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 teacher 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

1 A bill to be entitled
 2 An act relating to teacher protection; providing a
 3 short title; creating s. 16.0152, F.S.; authorizing
 4 certain teachers who are made a party to a civil suit
 5 to request representation by the Attorney General;
 6 requiring the Attorney General to defend the teacher
 7 if the Attorney General determines that the suit has
 8 arisen out of an act that the teacher in good faith
 9 believed was within the scope of his or her duties;
 10 requiring annual notice to teachers of their options
 11 under this provision; providing that certain
 12 determinations by the Attorney General are not
 13 admissible in evidence; providing construction;
 14 amending s. 447.203, F.S.; excluding certain
 15 professional teacher associations from the definition
 16 of "employee organization" for purposes of provisions
 17 relating to public employee organizations unless such
 18 associations apply for registration under specified
 19 provisions; providing an effective date.

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

22
 23 Section 1. This act may be cited as the "Teacher
 24 Protection Act."

25 Section 2. Section 16.0152, Florida Statutes, is created
 26 to read:

27 16.0152 Suits against K-12 classroom teachers; defense by
 28 Attorney General.—

29 (1) A K-12 classroom teacher as defined in s.
 30 1012.01(2)(a), other than a substitute teacher, who is made a
 31 party to a civil suit for enforcing discipline policies
 32 developed under s. 1003.32 may request legal representation by
 33 the Attorney General. Such request must be in writing and
 34 submitted to the Attorney General as soon as possible, but no
 35 later than 14 days after the teacher receives the complaint.

36 (2) The Attorney General shall defend the teacher
 37 throughout the civil action if the Attorney General determines
 38 that the suit has arisen out of an act that the teacher in good
 39 faith believed was within the scope of the teacher's duties in
 40 enforcing discipline policies developed under s. 1003.32.

41 (3) No later than August 15 of each year, the Attorney
 42 General shall draft and the Commissioner of Education shall
 43 disseminate a notice to each K-12 classroom teacher concerning
 44 the teacher's options under this section.

45 (4) A determination made by the Attorney General not to
 46 represent a teacher under this section is not admissible as
 47 evidence in the trial of any such civil action.

48 (5) This section does not deprive any person of the
 49 person's right to select counsel of the person's own choice at
 50 the person's own expense.

51 Section 3. Subsection (11) of section 447.203, Florida
 52 Statutes, is amended to read:

53 447.203 Definitions.—As used in this part:

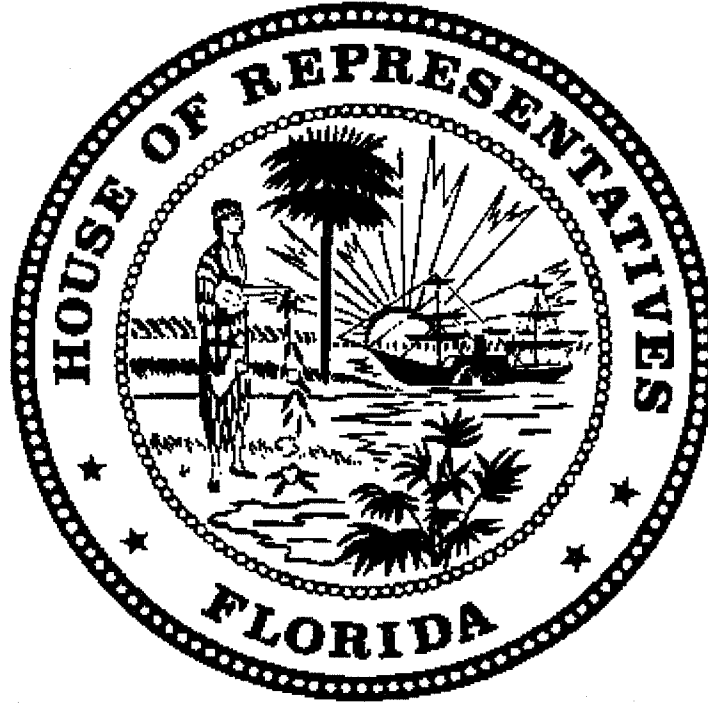
54 (11) "Employee organization" or "organization" means any
 55 labor organization, union, association, fraternal order,
 56 occupational or professional society, or group, however

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57 | organized or constituted, that ~~which~~ represents, or seeks to
58 | represent, any public employee or group of public employees
59 | concerning any matters relating to their employment relationship
60 | with a public employer, except that a "professional teacher
61 | association" as defined in s. 1001.03(4) shall not be included
62 | in this definition until it applies for registration pursuant to
63 | s. 447.305.

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



Civil Justice Subcommittee

Wednesday, January 18, 2012

8:30 AM

404 HOB

AMENDMENT PACKET

**Dean Cannon
Speaker**

**Eric Eisnaugle
Chair**

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
6 Section 1. Paragraph (a) of subsection (6) and subsection
7 (10) of section 61.075, Florida Statutes, are amended to read:
8 61.075 Equitable distribution of marital assets and
9 liabilities.-

10 (6) As used in this section:

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

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

14 b. The enhancement in value and appreciation of nonmarital
15 assets resulting either from the efforts of either party during
16 the marriage or from the contribution to or expenditure thereon
17 of marital funds or other forms of marital assets, or both.

Amendment No. 1

18 c. The value of the marital portion of the passive
19 appreciation of nonmarital real property as provided in s. 36
20 61.0765(2).

21 d.e. Interspousal gifts during the marriage. 38

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

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

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

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

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

Amendment No. 1

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

53 Section 2. Section 61.0765, Florida Statutes, is created to
54 read:

55 61.0765 Valuation of marital portion of nonmarital real
56 property.—

57 (1) (a) The total value of the marital portion of nonmarital
58 real property consists of the sum of the following:

59 1. The value of the active appreciation of the property as
60 described in s. 61.075(6)(a)1.b.

61 2. The amount of the mortgage principal paid from marital
62 funds.

63 3. A portion of any passive appreciation of the property,
64 if the mortgage principal was paid from marital funds.

65 (b) The value of the marital portion of nonmarital real
66 property may not exceed the total net equity of the property on
67 the valuation date in the dissolution action.

68 (2) The marital portion of the passive appreciation as
69 provided in subparagraph (1)(a)3. is calculated by multiplying
70 the passive appreciation of the property by the marital
71 fraction.

Amendment No. 1

72 (a) The passive appreciation of the property is calculated
73 by subtracting all of the following from the value of the
74 property on the valuation date in the dissolution action:

75 1. The gross value of the property on the date of the
76 marriage or on date the property was acquired, whichever is
77 later.

78 2. The value of the active appreciation of the property
79 during the marriage as described in s. 61.075(6) (a)1.b.

80 3. The amount of any additional debts secured by the
81 property during the marriage.

82 (b) The numerator of the marital fraction consists of the
83 amount of the mortgage principal paid on any mortgage on the
84 property from marital funds. The denominator consists of the
85 value of the property on the date of the marriage, the date of
86 acquisition of the property, or the date the property was first
87 encumbered by a mortgage on which principal was paid from
88 marital funds, whichever is later.

89 (3) The court in a dissolution action must apply the
90 formulas provided in this section to determine the value of the
91 marital portion of nonmarital real property subject to equitable
92 dissolution unless a party presents sufficient evidence to
93 establish that the application of these formulas is not
94 equitable under the particular circumstances of the case.

95 Section 3. This act shall take effect July 1, 2012.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 565 (2012)

Amendment No. 1

100 Remove the entire title and insert:

101 An act relating to equitable distribution of marital assets and
102 liabilities; amending s. 61.075, F.S.; redefining the term
103 "marital assets and liabilities" to include the value of the
104 marital portion of the passive appreciation of nonmarital real
105 property; authorizing a court to require security and the
106 payment of a reasonable rate of interest if installment payments
107 are required for the distribution of marital assets and
108 liabilities; requiring the court to provide written findings
109 regarding any installment payments; creating s. 61.0765, F.S.;
110 providing formulas for the calculation of the value of the
111 marital portion of nonmarital real property subject to equitable
112 distribution; requiring the court in the dissolution action to
113 use the formulas unless sufficient evidence is presented showing
114 that the application of the formulas is not equitable; providing
115 an effective date.

116

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 715 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
4 Amendment
5 on lines 33, 40, 54 and 64, remove:
6 ", along"

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 921 (2012)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

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

5 Remove lines 52-67
6
7
8

9 -----
10 **T I T L E A M E N D M E N T**

11 Remove lines 3-5
12

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 921 (2012)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

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

3
4 **Amendment**

5 Remove line 115 and insert:
6 required to give a new or additional notice solely because the
7 depository has
8

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 921 (2012)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

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

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

5 Remove lines 292-293
6
7
8

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

11 Remove lines 22-24 and insert:
12 screens; amending s. 83.56, F.S.; revising
13

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice Subcommittee
Representative Costello offered the following:

Amendment (with title amendment)

Remove lines 137-212 and insert:

(6) A person whose driver license and registration has been suspended under this section may petition for relief under subsection (2). A petition under this subsection does not act as a stay of any suspension.

Section 2. Subsection (2) of section 322.058, Florida Statutes, is amended to read:

322.058 Suspension of driving privileges due to support delinquency; reinstatement.—

(2) (a) The department must reinstate the full 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 electronic notification affidavit stating that:

1.(a) The person has paid the delinquency;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1023 (2012)

Amendment No. 1

48 Vehicles reinstate the driving privilege and allow registration
49 of a motor vehicle of a person who has a delinquent support
50 obligation or who has failed to comply with a subpoena, order to
51 appear, order to show cause, or similar order, if the Title IV-D
52 agency in IV-D cases, or the depository or the clerk of the
53 court in non-IV-D cases, provides electronic notification to the
54 department stating that the court has directed that the person
55 be issued a license for driving privileges restricted to
56 business purposes only; providing an effective date.

57

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

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

5 Remove lines 37-40 and insert:
6 throughout the civil action if the teacher has not been
7 subjected to disciplinary proceedings for the same act by the
8 employing school district or the Education Practices Commission.

9
10 -----
11 **T I T L E A M E N D M E N T**

12 Remove lines 7-9 and insert:
13 if the teacher has not been subjected to disciplinary
14 proceedings for the same act by the employing school
15 district or the Education Practices Commission;