



Civil Justice Subcommittee

February 13, 2013

2:00 PM

404 HOB

Action Packet

Will Weatherford
Speaker

Larry Metz
Chair

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

Summary:

Civil Justice Subcommittee

Wednesday February 13, 2013 02:00 pm

HB 229	Favorable With Committee Substitute	Yeas: 10	Nays: 0
	Amendment 386203 Adopted Without Objection		
HB 231	Favorable With Committee Substitute	Yeas: 10	Nays: 2
	Amendment 668555 Adopted Without Objection		
HB 267	Favorable	Yeas: 12	Nays: 0
HB 457	Favorable With Committee Substitute	Yeas: 10	Nays: 2
	Amendment 549405 Adopted Without Objection		
PCB CJS 13-02	Favorable	Yeas: 8	Nays: 4

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Larry Metz (Chair)	X		
Jim Boyd	X		
Michael Clelland	X		
Daniel Davis	X		
Tom Goodson	X		
Bill Hager	X		
Jose Oliva	X		
Kathleen Passidomo	X		
José Rodríguez	X		
Ross Spano			X
Cynthia Stafford	X		
Charlie Stone	X		
James Waldman	X		
Totals:	12	0	1

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

HB 229 : Land Trusts

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager			X		
Jose Oliva			X		
Kathleen Passidomo	X				
José Rodríguez	X				
Ross Spano			X		
Cynthia Stafford	X				
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
Total Yeas: 10		Total Nays: 0			

HB 229 Amendments

Amendment 386203

Adopted Without Objection

Appearances:

Dunbar, Peter (Lobbyist) - Proponent
Real Property, Probate & Trust Law Section
c/o The Florida Bar 651 E Jefferson St
Tallahassee FL 32399
Phone: (850)222-3533

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM



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WITHDRAWN	___	(Y/N)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	_____	

*favorable
2.13.13*

1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Rodríguez, J. offered the following:

Amendment (with title amendment)

5 Remove lines 186-599 and insert:

6 property to the trustee of a land trust and conferring upon the
7 trustee the power and authority prescribed in s. 689.073(1), in
8 ~~this state, including, but not limited to, a leasehold or~~
9 ~~mortgagee interest, to any person or any corporation, bank,~~
10 ~~trust company, or other entity duly formed under the laws of its~~
11 ~~state of qualification, in which recorded instrument the person,~~
12 ~~corporation, bank, trust company, or other entity is designated~~
13 ~~"trustee" or "as trustee,"~~ whether or not reference is made in
14 the recorded instrument to the beneficiaries of such land trust
15 or to the trust agreement or any separate collateral unrecorded
16 declarations or agreements, is effective to vest, and is hereby
17 declared to have vested, in such trustee both legal and
18 equitable title, and full rights of ownership, over the trust
19 ~~real~~ property or interest therein, with full power and authority
20 as granted and provided in the recorded instrument to deal in



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21 and with the trust property or interest therein or any part
22 thereof. The recorded instrument does not itself create an
23 entity, regardless of whether the relationship among the
24 beneficiaries and the trustee is deemed to be an entity under
25 other applicable law; provided, the recorded instrument confers
26 on the trustee the power and authority to protect, to conserve,
27 to sell, to lease, to encumber, or otherwise to manage and
28 dispose of the real property described in the recorded
29 instrument.

30 (4) STATUTE OF USES INAPPLICABLE.—Section 689.09 and the
31 statute of uses do not execute a land trust or vest the trust
32 property in the beneficiary or beneficiaries of the land trust,
33 notwithstanding any lack of duties on the part of the trustee or
34 the otherwise passive nature of the land trust.

35 (5) DOCTRINE OF MERGER INAPPLICABLE.—The doctrine of
36 merger does not extinguish a land trust or vest the trust
37 property in the beneficiary or beneficiaries of the land trust,
38 regardless of whether the trustee is the sole beneficiary of the
39 land trust.

40 (6) PERSONAL PROPERTY.—In all cases in which the recorded
41 instrument or the trust agreement, as hereinabove provided,
42 contains a provision defining and declaring the interests of
43 beneficiaries of a land trust thereunder to be personal property
44 only, such provision is shall be controlling for all purposes
45 when such determination becomes an issue under the laws or in
46 the courts of this state. If no such personal property
47 designation appears in the recorded instrument or in the trust



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48 agreement, the interests of the land trust beneficiaries are
49 real property.

50 (7) TRUSTEE LIABILITY.—In addition to any other limitation
51 on personal liability existing pursuant to statute or otherwise,
52 the provisions of ss. 736.08125 and 736.1013 apply to the
53 trustee of a land trust created pursuant to this section.

54 (8) LAND TRUST BENEFICIARIES.—

55 (a) Except as provided in this section, the beneficiaries
56 of a land trust are not liable, solely by being beneficiaries,
57 under a judgment, decree, or order of court or in any other
58 manner for a debt, obligation, or liability of the land trust.

59 ~~(b)~~ Any beneficiary acting under the trust agreement of a
60 land trust is not liable to the land trust's trustee or to any
61 other beneficiary for the beneficiary's good faith reliance on
62 the provisions of the trust agreement. A beneficiary's duties
63 and liabilities under a land trust may be expanded or restricted
64 in a trust agreement or beneficiary agreement.

65 (b)1. If provided in the recorded instrument, in the trust
66 agreement, or in a beneficiary agreement:

67 a. A particular beneficiary may own the beneficial
68 interest in a particular portion or parcel of the trust property
69 of a land trust;

70 b. A particular person may be the holder of the power of
71 direction with respect to the trustee's actions concerning a
72 particular portion or parcel of the trust property of a land
73 trust; and

74 c. The beneficiaries may own specified proportions or
75 percentages of the beneficial interest in the trust property or



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76 in particular portions or parcels of the trust property of a
77 land trust.

78 2. Multiple beneficiaries may own a beneficial interest in
79 a land trust as tenants in common, joint tenants with right of
80 survivorship, or tenants by the entireties.

81 (c) If a beneficial interest in a land trust is determined
82 to be personal property as provided in subsection (6), chapter
83 679 applies to the perfection of any security interest in that a
84 beneficial interest in a land trust. If a beneficial interest in
85 a land trust is determined to be real property as provided in
86 subsection (6), then to perfect a lien or security interest
87 against that beneficial interest, the mortgage, deed of trust,
88 security agreement, or other similar security document must be
89 recorded in the public records of the county that is specified
90 for such security documents in the recorded instrument or in a
91 declaration of trust or memorandum of such declaration of trust
92 recorded in the public records of the same county as the
93 recorded instrument. If no county is so specified for recording
94 such security documents, the proper county for recording such a
95 security document against a beneficiary's interest in any trust
96 property is the county where the trust property is located. The
97 perfection of a lien or security interest in a beneficial
98 interest in a land trust does not affect, attach to, or encumber
99 the legal or equitable title of the trustee in the trust
100 property and does not impair or diminish the authority of the
101 trustee under the recorded instrument, and parties dealing with
102 the trustee are not required to inquire into the terms of the



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103 unrecorded trust agreement or any lien or security interest
104 against a beneficial interest in the land trust.

105 (d) The trustee's legal and equitable title to the trust
106 property of a land trust is separate and distinct from the
107 beneficial interest of a beneficiary in the land trust and in
108 the trust property. A lien, judgment, mortgage, security
109 interest, or other encumbrance attaching to the trustee's legal
110 and equitable title to the trust property of a land trust does
111 not attach to the beneficial interest of any beneficiary; and
112 any lien, judgment, mortgage, security interest, or other
113 encumbrance against a beneficiary or beneficial interest does
114 not attach to the legal or equitable title of the trustee to the
115 trust property held under a land trust, unless the lien,
116 judgment, mortgage, security interest, or other encumbrance by
117 its terms or by operation of other law attaches to both the
118 interest of the trustee and the interest of such beneficiary. A
119 ~~beneficiary's duties and liabilities may be expanded or~~
120 ~~restricted in a trust agreement or beneficiary agreement.~~

121 (e) Any subsequent document appearing of record in which a
122 beneficiary of a land trust transfers or encumbers any the
123 beneficial interest in the land trust does not transfer or
124 encumber the legal or equitable title of the trustee to the
125 trust property and does not diminish or impair the authority of
126 the trustee under the terms of the recorded instrument. Parties
127 dealing with the trustee of a land trust are not required to
128 inquire into the terms of the unrecorded trust agreement.

129 (f) ~~The An unrecorded trust agreement giving rise to a~~
130 ~~recorded instrument~~ for a land trust may provide that one or



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131 | more persons ~~or entities~~ have the power to direct the trustee to
132 | convey property or interests, execute a mortgage, distribute
133 | proceeds of a sale or financing, and execute documents
134 | incidental to administration of the land trust. The power of
135 | direction, unless provided otherwise in the ~~land~~ trust agreement
136 | of the land trust, is conferred upon the holders of the power
137 | for the use and benefit of all holders of any beneficial
138 | interest in the land trust. In the absence of a provision in the
139 | ~~land~~ trust agreement of a land trust to the contrary, the power
140 | of direction shall be in accordance with the percentage of
141 | individual ownership. In exercising the power of direction, the
142 | holders of the power of direction are presumed to act in a
143 | fiduciary capacity for the benefit of all holders of any
144 | beneficial interest in the land trust, unless otherwise provided
145 | in the ~~land~~ trust agreement. A beneficial interest in a land
146 | trust is indefeasible, and the power of direction may not be
147 | exercised so as to alter, amend, revoke, terminate, defeat, or
148 | otherwise affect or change the enjoyment of any beneficial
149 | interest in a land trust.

150 | (g) A land trust ~~relating to real estate~~ does not fail,
151 | and any use relating to the trust property ~~real estate~~ may not
152 | be defeated, because beneficiaries are not specified by name in
153 | the recorded instrument ~~deed of conveyance~~ to the trustee or
154 | because duties are not imposed upon the trustee. The power
155 | conferred by any recorded instrument ~~deed of conveyance~~ on a
156 | trustee of a land trust to sell, lease, encumber, or otherwise
157 | dispose of property described in the recorded instrument ~~deed~~ is
158 | effective, and a person dealing with the trustee of a land trust



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159 is not required to inquire any further into the right of the
160 trustee to act or the disposition of any proceeds.

161 (h) The principal residence of a beneficiary shall be
162 entitled to the homestead tax exemption even if the homestead is
163 held by a trustee in a land trust, provided the beneficiary
164 qualifies for the homestead exemption under chapter 196.

165 (i) In a foreclosure against trust property or other
166 litigation affecting the title to trust property of a land
167 trust, the appointment of a guardian ad litem is not necessary
168 to represent the interest of any beneficiary.

169 (9) SUCCESSOR TRUSTEE.—

170 ~~(a) The provisions of s. 736.0705 relating to the~~
171 ~~resignation of a trustee do not apply to the appointment of a~~
172 ~~successor trustee under this section.~~

173 ~~(a)(b)~~ If the recorded instrument and the unrecorded ~~land~~
174 trust agreement are silent as to the appointment of a successor
175 trustee of a land trust in the event of the death, incapacity,
176 resignation, or termination due to dissolution of a ~~land~~ trustee
177 or if a ~~land~~ trustee is unable to serve as trustee of a land
178 trust, one or more persons ~~or entities~~ having the power of
179 ~~direction of the land trust agreement~~ may appoint a successor
180 trustee or trustees of the land trust by filing a declaration of
181 appointment of a successor trustee or trustees in the public
182 records of office of the recorder of deeds in the county in
183 which the trust property is located. The declaration must be
184 signed by a beneficiary or beneficiaries of the land trust and
185 by the each successor trustee or trustees, must be acknowledged



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186 in the manner provided for acknowledgment of deeds, and must
187 contain:

- 188 1. The legal description of the trust property.
189 2. The name and address of the former trustee.
190 3. The name and address of the each successor trustee or
191 trustees.

192 4. A statement that ~~each successor trustee has been~~
193 ~~appointed by one or more persons or entities~~ having the power of
194 direction of the land trust appointed the successor trustee or
195 trustees, together with an acceptance of appointment by the each
196 successor trustee or trustees.

197 ~~(b)-(e)~~ If the recorded instrument is silent as to the
198 appointment of a successor trustee or trustees of a land trust
199 but an unrecorded ~~land~~ trust agreement provides for the
200 appointment of a successor trustee or trustees in the event of
201 the death, incapacity, resignation, or termination due to
202 dissolution of the ~~land~~ trustee, of a land trust, then upon the
203 appointment of any successor trustee pursuant to the terms of
204 the unrecorded ~~land~~ trust agreement, the each successor trustee
205 or trustees shall file a declaration of appointment of a
206 successor trustee in the public records of ~~office of the~~
207 ~~recorder of deeds in~~ the county in which the trust property is
208 located. The declaration must be signed by both the former
209 trustee and the each successor trustee or trustees, must be
210 acknowledged in the manner provided for acknowledgment of deeds,
211 and must contain:

- 212 1. The legal description of the trust property.
213 2. The name and address of the former trustee.



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214 3. The name and address of the successor trustee or
215 trustees.

216 4. A statement of resignation by the former trustee and a
217 statement of acceptance of appointment by the ~~each~~ successor
218 trustee or trustees.

219 5. A statement that the ~~each~~ successor trustee or trustees
220 were ~~was~~ duly appointed under the terms of the unrecorded ~~land~~
221 trust agreement.

222

223 If the appointment of any successor trustee of a land trust is
224 due to the death or incapacity of the former trustee, the
225 declaration need not be signed by the former trustee and a copy
226 of the death certificate or a statement that the former trustee
227 is incapacitated or unable to serve must be attached to or
228 included in the declaration, as applicable.

229 ~~(c)-(d)~~ If the recorded instrument provides for the
230 appointment of any successor trustee of a land trust and any
231 successor trustee is appointed in accordance with the recorded
232 instrument, no additional declarations of appointment of any
233 successor trustee are required under this section.

234 ~~(d)-(e)~~ Each successor ~~land~~ trustee appointed with respect
235 to a land trust is fully vested with all the estate, properties,
236 rights, powers, trusts, duties, and obligations of the
237 predecessor ~~land~~ trustee, except that any successor ~~land~~ trustee
238 of a land trust is not under any duty to inquire into the acts
239 or omissions of a predecessor trustee and is not liable for any
240 act or failure to act of a predecessor trustee. A person dealing
241 with any successor trustee of a land trust pursuant to a



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242 declaration filed under this section is not obligated to inquire
243 into or ascertain the authority of the successor trustee to act
244 within or exercise the powers granted under the recorded
245 instruments or any unrecorded trust agreement declarations ~~or~~
246 ~~agreements~~.

247 ~~(e)-(f)~~ A ~~land~~ trust agreement may provide that the trustee
248 of a land trust, when directed to do so by the holder of the
249 power of direction ~~or~~ by the beneficiaries of the land trust or
250 legal representatives of the beneficiaries, may convey the trust
251 property directly to another trustee on behalf of the
252 beneficiaries or to another representative named in such
253 directive ~~others named by the beneficiaries~~.

254 (10) TRUSTEE AS CREDITOR.—

255 (a) If a debt is secured by a security interest or
256 mortgage against ~~in~~ a beneficial interest in a land trust or by
257 a mortgage on ~~land~~ trust property of a land trust, the validity
258 or enforceability of the debt, security interest, or mortgage
259 and the rights, remedies, powers, and duties of the creditor
260 with respect to the debt or the security are not affected by the
261 fact that the creditor and the trustee are the same person ~~or~~
262 ~~entity~~, and the creditor may extend credit, obtain any necessary
263 security interest or mortgage, and acquire and deal with the
264 property comprising the security as though the creditor were not
265 the trustee.

266 (b) A trustee of a land trust does not breach a fiduciary
267 duty to the beneficiaries, and it is not evidence of a breach of
268 any fiduciary duty owed by the trustee to the beneficiaries for
269 a trustee to be or become a secured or unsecured creditor of the



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270 land trust, the beneficiary of the land trust, or a third party
271 whose debt to such creditor is guaranteed by a beneficiary of
272 the land trust.

273 (11) NOTICES TO TRUSTEE.—Any notice required to be given
274 to a trustee of a land trust regarding trust property by a
275 person who is not a party to the trust agreement must identify
276 the trust property to which the notice pertains or include the
277 name and date of the land trust to which the notice pertains, if
278 such information is shown on the recorded instrument for such
279 trust property.

280 (12) DETERMINATION OF APPLICABLE LAW.—Except as otherwise
281 provided in this section, chapter 736 does not apply to a land
282 trust governed by this section.

283 (a) A trust is not a land trust governed by this section
284 if there is no recorded instrument that confers on the trustee
285 the power and authority prescribed in s 689.073(1).

286 (b) For a trust created before the effective date of this
287 act:

288 1. The trust is a land trust governed by this section if a
289 recorded instrument confers on the trustee the power and
290 authority described in s 689.073(1) and if:

291 a. The recorded instrument or the trust agreement
292 expressly provides that the trust is a land trust; or

293 b. The intent of the parties that the trust be a land
294 trust is discerned from the trust agreement or the recorded
295 instrument;

296



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297 without regard to whether the trustee's duties under the trust
298 agreement are greater than those limited duties described in s.
299 689.071(2)(c).

300 2. The trust is not a land trust governed by this section
301 if:

302 a. The recorded instrument or the trust agreement
303 expressly provides that the trust is to be governed by chapter
304 736, or by any predecessor trust code or other trust law other
305 than this section; or

306 b. The intent of the parties that the trust be governed by
307 chapter 736, or by any predecessor trust code or other trust law
308 other than this section, is discerned from the trust agreement
309 or the recorded instrument;

310
311 without regard to whether the trustee's duties under the trust
312 agreement are greater than those limited duties listed in s.
313 689.071(2)(c), and without consideration of any references in
314 the trust agreement to provisions of chapter 736 made applicable
315 to the trust by chapter 721, if the trust is a timeshare estate
316 trust complying with s. 721.08(2)(c)4. or a vacation club trust
317 complying with s. 721.53(1)(e).

318 3. Solely for the purpose of determining the law governing
319 a trust under subparagraph 1. or subparagraph 2., the
320 determination shall be made without consideration of any
321 amendment to the trust agreement made on or after the effective
322 date of this act, except as provided in paragraph (d).

323 4. If the determination of whether a trust is a land trust
324 governed by this section cannot be made under either



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325 subparagraph 1. or subparagraph 2., the determination shall be
326 made under paragraph (c) as if the trust was created on or after
327 the effective date of this act.

328 (c) If a recorded instrument confers on the trustee the
329 power and authority described in s. 689.073(1) and the trust was
330 created on or after the effective date of this act, the trust
331 shall be determined to be a land trust governed by this section
332 only if the trustee's duties under the trust agreement,
333 including any amendment made on or after such date, are greater
334 than those limited duties described in s. 689.071(2)(c).

335 (d) If the trust agreement for a land trust created before
336 the effective date of this act is amended on or after such date
337 to add to or increase the duties of the trustee beyond the
338 duties provided in the trust agreement as of the effective date
339 of this act, the trust shall remain a land trust governed by
340 this section only if the additional or increased duties of the
341 trustee implemented by the amendment are greater than those
342 limited duties described in s. 689.071(2)(c).

343 (13) UNIFORM COMMERCIAL CODE TRANSITION RULE.—This section
344 does not render ineffective any effective Uniform Commercial
345 Code financing statement filed before July 1, 2014, to perfect a
346 security interest in a beneficial interest in a land trust that
347 is determined to be real property as provided in subsection (6),
348 but such a financing statement ceases to be effective at the
349 earlier of July 1, 2019, or the time the financing statement
350 would have ceased to be effective under the law of the
351 jurisdiction in which it is filed, and the filing of a Uniform
352 Commercial Code continuation statement after July 1, 2014, does



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353 not continue the effectiveness of such a financing statement.
354 The recording of a mortgage, deed of trust, security agreement,
355 or other similar security document against such a beneficial
356 interest that is real property in the public records specified
357 in subsection (8)(c) continues the effectiveness and priority of
358 a financing statement filed against such a beneficial interest
359 before July 1, 2014, if:

360 (a) The recording of the security document in that county
361 is effective to perfect a lien on such beneficial interest under
362 subsection (8)(c);

363 (b) The recorded security document identifies a financing
364 statement filed before July 1, 2014, by indicating the office in
365 which the financing statement was filed and providing the dates
366 of filing and the file numbers, if any, of the financing
367 statement and of the most recent continuation statement filed
368 with respect to the financing statement; and

369 (c) The recorded security document indicates that such
370 financing statement filed before July 1, 2014, remains
371 effective.

372
373 If no original security document bearing the debtor's signature
374 is readily available for recording in the public records, a
375 secured party may proceed under this subsection with such
376 financing statement filed before July 1, 2014, by recording a
377 copy of a security document verified by the secured party as
378 being a true and correct copy of an original authenticated by
379 the debtor. This subsection does not apply to the perfection of



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380 a security interest in any beneficial interest in a land trust
381 that is determined to be personal property under subsection (6).

382 (14)(11) REMEDIAL ACT.—This act is remedial in nature and
383 shall be given a liberal interpretation to effectuate the intent
384 and purposes hereinabove expressed.

385 (15)(12) EXCLUSION.—This act does not apply to any deed,
386 mortgage, or other instrument to which s. 689.07 applies.

387 Section 3. Section 736.0102, Florida Statutes, is amended
388 to read:

389 736.0102 Scope.—

390 (1) Except as otherwise provided in this section, this
391 code applies to express trusts, charitable or noncharitable, and
392 trusts created pursuant to a law, judgment, or decree that
393 requires the trust to be administered in the manner of an
394 express trust.

395 (2) This code does not apply to constructive or resulting
396 trusts; conservatorships; custodial arrangements pursuant to the
397 Florida Uniform Transfers to Minors Act; business trusts
398 providing for certificates to be issued to beneficiaries; common
399 trust funds; ~~land trusts under s. 689.071, except to the extent~~
400 ~~provided in s. 689.071(7);~~ trusts created by the form of the
401 account or by the deposit agreement at a financial institution;
402 voting trusts; security arrangements; liquidation trusts; trusts
403 for the primary purpose of paying debts, dividends, interest,
404 salaries, wages, profits, pensions, or employee benefits of any
405 kind; and any arrangement under which a person is nominee or
406 escrowee for another.



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407 (3) This code does not apply to any land trust under s.
408 689.071, except to the extent provided in s. 689.071(7), s.
409 721.08(2)(c)4. or s. 721.53(1)(e). A trust governed at its
410 creation by chapter 736, former chapter 737, or any prior trust
411 statute superseded or replaced by any provision of former
412 chapter 737, is not a land trust regardless of any amendment or
413 modification of the trust, any change in the assets held in the
414 trust, or any continuing trust resulting from the distribution
415 or retention in further trust of assets from the trust.

416 Section 4. The Division of Law Revision and Information is
417 directed to replace the phrase "the effective date of this act"
418 wherever it occurs in this act with such date.

419

420

421

422

423

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

424

Remove lines 3-5 and insert:

425

F.S.; transferring and renumbering portions of s. 689.071, F.S.;

426

providing title estoppel language for vesting full title in

427

trustees; providing

428

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

HB 231 : Dissolution of Marriage

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager	X				
Jose Oliva	X				
Kathleen Passidomo	X				
José Rodríguez		X			
Ross Spano			X		
Cynthia Stafford		X			
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
Total Yeas: 10		Total Nays: 2			

HB 231 Amendments

Amendment 668555

Adopted Without Objection

Appearances:

Lowell, Paul (Lobbyist) - Proponent
Family Law Reform
106 E College Ave, Suite 900
Tallahassee FL 32301
Phone: 850-222-6100

Pitts, Brian - Information Only
Justice-2-Jesus
1119 Newton Ave. S.
St. Petersburg FL 33705
Phone: 727-897-9291

Power, Terrance (General Public) - Waive In Support
2291 Sweetgrass Court
Clearwater FL 33759
Phone: 813-281-0707

Dwyer, Ann (General Public) - Opponent
120 Lake Oaks Blvd
Longwood FL 32750
Phone: 407-489-8783

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

HB 231 : Dissolution of Marriage (continued)

Appearances: (continued)

Albarran, Guido (General Public) - Proponent

Florida Alimony Reform
1998 NE 7th Street
Deerfield Beach FL 33441
Phone: 561-329-5353

Killilea, Jan (General Public) - Opponent

18036 Mambo Drive
Boca Raton FL 33496
Phone: 561-483-3717

Friser, Alan (General Public) - Proponent

Co-Director, Florida Alimony Reform
7630 N Wickham Road
Melbourne FL 32940
Phone: 321-242-7526

Duggar, Thomas (General Public) - Opponent

Family Law Section of the Florida Bar
1391 Timberlane
Tallahassee FL

MacMillan, Tarie (General Public) - Proponent

Florida Alimony Reform
15822 Aurora Lake Circle
Wiwauma FL 33598
Phone: 813-545-3342

Manz, David - Opponent

Florida Bar Family Law Section
5800 Overseas Highway Suite 40
Marathon FL 33013
Phone: (305) 731-3600

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM



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	_____	

*favorable
2-13-13*

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

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:

6 Section 1. Section 61.071, Florida Statutes, is amended to
7 read:

8 61.071 Alimony pendente lite; suit money.—In every
9 proceeding for dissolution of the marriage, a party may claim
10 alimony and suit money in the petition or by motion, and if the
11 petition is well founded, the court shall allow alimony
12 calculated in accordance with s. 61.08 and a reasonable sum of
13 suit money therefor. If a party in any proceeding for
14 dissolution of marriage claims alimony or suit money in his or
15 her answer or by motion, and the answer or motion is well
16 founded, the court shall allow alimony calculated in accordance
17 with s. 61.08 and a reasonable sum of suit money therefor.

18 Section 2. Section 61.08, Florida Statutes, is amended to
19 read:

20 61.08 Alimony.—



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21 (1) For purposes of this section, the term:

22 (a) "Alimony" means a court-ordered payment of support by
23 an obligor to an obligee after the dissolution of a marriage.

24 (b) "Long-term marriage" means a marriage having a
25 duration of 20 years or more, as measured from the date of the
26 marriage to the date of filing the petition for dissolution.

27 (c) "Mid-term marriage" means a marriage having a duration
28 of more than 10 years but less than 20 years, as measured from
29 the date of the marriage to the date of filing the petition for
30 dissolution.

31 (d) "Net income" means net income as determined in
32 accordance with s. 61.30.

33 (e) "Short-term marriage" means a marriage having a
34 duration equal to or less than 10 years, as measured from the
35 date of the marriage to the date of filing the petition for
36 dissolution.

37 (2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the
38 court may grant alimony to either party in the form of, ~~which~~
39 ~~alimony may be~~ bridge-the-gap, rehabilitative, or durational
40 ~~alimony, or a permanent in nature or any~~ combination of these
41 forms of alimony, but shall prioritize an award of bridge-the-
42 gap alimony, followed by rehabilitative alimony, over any other
43 form of alimony. In ~~an any~~ award of alimony, the court may order
44 periodic payments, ~~or~~ payments in lump sum, or both. Alimony may
45 not be awarded in any other action.

46 (b) The court shall make written findings regarding the
47 basis for awarding a combination of forms of alimony, including
48 the type of alimony and length of time for which it is awarded.



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49 The court may award only a combination of forms of alimony to
50 provide greater economic assistance in order to allow the
51 recipient to achieve rehabilitation.

52 (c) The court may consider the adultery of either party
53 spouse and the circumstances thereof in determining the amount
54 of alimony, if any, to be awarded.

55 (d) In all dissolution actions, the court shall include
56 written findings of fact relative to the factors enumerated in
57 subsection (3)-(2) supporting an award or denial of alimony.

58 (e) An award of alimony granted under this section
59 automatically terminates without further action of either party
60 or the court upon the earlier of:

- 61 1. The durational limits specified in this section; or
62 2. The obligee's normal retirement age for social security
63 retirement benefits.

64
65 If the obligee proves by clear and convincing evidence that the
66 need for alimony continues to exist and the court determines
67 that the obligor continues to have the ability to pay, the court
68 shall issue written findings justifying an extension of alimony
69 consistent with the provisions of this section.

70 (f) The clerk of the court shall, upon request, indicate
71 in writing that an alimony obligation has terminated in
72 accordance with paragraph (e), unless there is a pending motion
73 before the court disputing the fulfillment of the alimony
74 obligation.

75 (3)-(2) The party seeking alimony has the burden of proof
76 of demonstrating a need for alimony in accordance with



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77 subsection (8) and that the other party has the ability to pay
78 alimony. In determining whether to award alimony ~~or maintenance~~,
79 the court shall ~~first~~ make, in writing, a specific factual
80 determination as to whether the other ~~either~~ party has ~~an actual~~
81 ~~need for alimony or maintenance~~ and whether ~~either~~ party has the
82 ability to pay alimony ~~or maintenance~~. If the court finds that
83 the a party seeking alimony has met its burden of proof in
84 demonstrating a need for alimony ~~or maintenance~~ and that the
85 other party has the ability to pay alimony ~~or maintenance~~, then
86 in determining the proper type and amount of alimony ~~or~~
87 ~~maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall
88 consider all relevant factors, including, ~~but not limited to:~~
89 ~~(a) The standard of living established during the~~
90 ~~marriage.~~
91 (a) ~~(b)~~ The duration of the marriage.
92 (b) ~~(c)~~ The age and the physical and emotional condition of
93 each party.
94 (c) ~~(d)~~ The financial resources of each party, including
95 the portion of nonmarital assets that were relied upon by the
96 parties during the marriage and the marital assets and
97 liabilities distributed to each.
98 (d) ~~(e)~~ The earning capacities, educational levels,
99 vocational skills, and employability of the parties and, when
100 applicable, the time necessary for either party to acquire
101 sufficient education or training to enable such party to find
102 appropriate employment.



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103 ~~(e)-(f)~~ The contribution of each party to the marriage,
104 including, but not limited to, services rendered in homemaking,
105 child care, education, and career building of the other party.

106 ~~(f)-(g)~~ The responsibilities each party will have with
107 regard to any minor children that the parties they have in
108 common.

109 ~~(g)-(h)~~ The tax treatment and consequences to both parties
110 of an any alimony award, which must be consistent with
111 applicable state and federal tax laws and may include including
112 the designation of all or a portion of the payment as a
113 nontaxable, nondeductible payment.

114 ~~(h)-(i)~~ All sources of income available to either party,
115 including income available to either party through investments
116 of any asset held by that party which was acquired during the
117 marriage or acquired outside the marriage and relied upon during
118 the marriage.

119 (i) The net income and standard of living available to
120 each party after the application of the alimony award. There is
121 a rebuttable presumption that both parties will have a lower
122 standard of living after the dissolution of marriage than the
123 standard of living they enjoyed during the marriage. This
124 presumption may be overcome by a preponderance of the evidence.

125 (j) Any other factor necessary to do equity and justice
126 between the parties, if that factor is specifically identified
127 in the award with findings of fact justifying the application of
128 the factor.

129 ~~(4)-(3)~~ To the extent necessary to protect an award of
130 alimony, the court may order any party who is ordered to pay



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131 alimony to purchase or maintain a decreasing term life insurance
132 policy or a bond, or to otherwise secure such alimony award with
133 any other assets that which may be suitable for that purpose, in
134 an amount adequate to secure the alimony award. Any such
135 security may be awarded only upon a showing of special
136 circumstances. If the court finds special circumstances and
137 awards such security, the court must make specific evidentiary
138 findings regarding the availability, cost, and financial impact
139 on the obligated party. Any security may be modifiable in the
140 event that the underlying alimony award is modified and shall be
141 reduced in an amount commensurate with any reduction in the
142 alimony award.

143 ~~(4) For purposes of determining alimony, there is a~~
144 ~~rebuttable presumption that a short term marriage is a marriage~~
145 ~~having a duration of less than 7 years, a moderate term marriage~~
146 ~~is a marriage having a duration of greater than 7 years but less~~
147 ~~than 17 years, and long term marriage is a marriage having a~~
148 ~~duration of 17 years or greater. The length of a marriage is the~~
149 ~~period of time from the date of marriage until the date of~~
150 ~~filing of an action for dissolution of marriage.~~

151 (5) Bridge-the-gap alimony may be awarded to assist a
152 party by providing support to allow the party to make a
153 transition from being married to being single. Bridge-the-gap
154 alimony is designed to assist a party with legitimate
155 identifiable short-term needs, and the length of an award may
156 not exceed 2 years. An award of bridge-the-gap alimony
157 terminates upon the death of either party or upon the remarriage



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158 of the party receiving alimony. An award of bridge-the-gap
159 alimony ~~is shall~~ not be modifiable in amount or duration.

160 (6) (a) Rehabilitative alimony may be awarded to assist a
161 party in establishing the capacity for self-support through
162 either:

163 1. The redevelopment of previous skills or credentials; or

164 2. The acquisition of education, training, or work
165 experience necessary to develop appropriate employment skills or
166 credentials.

167 (b) In order to award rehabilitative alimony, there must
168 be a specific and defined rehabilitative plan which shall be
169 included as a part of any order awarding rehabilitative alimony.

170 (c) An award of rehabilitative alimony may be modified or
171 terminated only during the rehabilitative period in accordance
172 with s. 61.14 based upon a substantial change in circumstances,
173 upon noncompliance with the rehabilitative plan, or upon
174 completion of the rehabilitative plan.

175 (7) Durational alimony may be awarded ~~when permanent~~
176 ~~periodic alimony is inappropriate. The purpose of durational~~
177 ~~alimony is to provide a party with economic assistance for a set~~
178 ~~period of time following a short-term, mid-term, or long-term~~
179 ~~marriage of short or moderate duration or following a marriage~~
180 ~~of long duration if there is no ongoing need for support on a~~
181 ~~permanent basis. When awarding durational alimony, the court~~
182 ~~must make written findings that an award of another form of~~
183 ~~alimony or a combination of the other forms of alimony is not~~
184 ~~appropriate.~~ An award of durational alimony terminates upon the
185 death of either party or upon the remarriage of the party



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186 receiving alimony. The amount of an award of durational alimony
187 shall may be modified or terminated based upon a substantial
188 change in circumstances or upon the existence of a supportive
189 relationship in accordance with s. 61.14. ~~However,~~ The length of
190 an award of durational alimony may not ~~be modified except under~~
191 ~~exceptional circumstances and may not~~ exceed 50 percent of the
192 length of the marriage, unless the party seeking alimony proves
193 by clear and convincing evidence that exceptional circumstances
194 justify the need for a longer award of alimony, which
195 exceptional circumstances must be set out in writing by the
196 court the length of the marriage.

197 (8) (a) There is a rebuttable presumption against awarding
198 alimony for a short-term marriage. A party seeking alimony may
199 overcome this presumption by demonstrating by clear and
200 convincing evidence a need for alimony. If the court finds that
201 the party has met its burden in demonstrating a need for alimony
202 and that the other party has the ability to pay alimony, the
203 court shall determine a monthly award of alimony that may not
204 exceed 20 percent of the obligor's monthly net income.

205 (b) There is no presumption in favor of either party to an
206 award of alimony for a mid-term marriage. A party seeking such
207 alimony must prove by a preponderance of the evidence a need for
208 alimony. If the court finds that the party has met its burden in
209 demonstrating a need for alimony and that the other party has
210 the ability to pay alimony, the court shall determine a monthly
211 alimony obligation that may not exceed 30 percent of the
212 obligor's monthly net income.



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213 (c) There is a rebuttable presumption in favor of awarding
214 alimony for a long-term marriage. A party against whom alimony
215 is sought may overcome this presumption by demonstrating by
216 clear and convincing evidence that there is no need for alimony.
217 If the court finds that the party against whom alimony is sought
218 fails to meet its burden to demonstrate that there is no need
219 for alimony and that the party has the ability to pay alimony,
220 the court shall determine a monthly alimony obligation that may
221 not exceed 33 percent of the obligor's monthly net income.

222 (9) The court may order alimony exceeding the monthly net
223 income limits established in subsection (8) if the court
224 determines, in accordance with the factors in subsection (3),
225 that there is a need for additional alimony, which determination
226 must be set out in writing. Permanent alimony may be awarded to
227 provide for the needs and necessities of life as they were
228 established during the marriage of the parties for a party who
229 lacks the financial ability to meet his or her needs and
230 necessities of life following a dissolution of marriage.
231 Permanent alimony may be awarded following a marriage of long
232 duration if such an award is appropriate upon consideration of
233 the factors set forth in subsection (2), following a marriage of
234 moderate duration if such an award is appropriate based upon
235 clear and convincing evidence after consideration of the factors
236 set forth in subsection (2), or following a marriage of short
237 duration if there are written findings of exceptional
238 circumstances. In awarding permanent alimony, the court shall
239 include a finding that no other form of alimony is fair and
240 reasonable under the circumstances of the parties. An award of



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241 ~~permanent alimony terminates upon the death of either party or~~
242 ~~upon the remarriage of the party receiving alimony. An award may~~
243 ~~be modified or terminated based upon a substantial change in~~
244 ~~circumstances or upon the existence of a supportive relationship~~
245 ~~in accordance with s. 61.14.~~

246 (10) A party against whom alimony is sought who has met
247 the requirements for retirement in accordance with s. 61.14(12)
248 before the filing of the petition for dissolution is not
249 required to pay alimony unless the party seeking alimony proves
250 by clear and convincing evidence the other party has the ability
251 to pay alimony, in addition to all other requirements of this
252 section.

253 (11)(9) Notwithstanding any other law, alimony may not be
254 awarded to a party who has a monthly net income that is equal to
255 or more than the other party. Except in the case of a long-term
256 marriage, in awarding alimony, the court shall impute income to
257 the obligor and obligee as follows:

258 (a) In the case of the obligor, social security retirement
259 benefits may not be imputed to the obligor, as demonstrated by a
260 social security retirement benefits entitlement letter.

261 (b) In the case of the obligee, if the obligee:

262 1. Is unemployed at the time the petition is filed and has
263 been unemployed for less than 1 year before the time of the
264 filing of the petition, the obligee's monthly net income shall
265 be imputed at 90 percent of the obligee's prior monthly net
266 income.

267 2. Is unemployed at the time the petition is filed and has
268 been unemployed for at least 1 year but less than 2 years before



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269 the time of the filing of the petition, the obligee's monthly
270 net income shall be imputed at 80 percent of the obligee's prior
271 monthly net income.

272 3. Is unemployed at the time the petition is filed and has
273 been unemployed for at least 2 years but less than 3 years
274 before the time of the filing of the petition, the obligee's
275 monthly net income shall be imputed at 70 percent of the
276 obligee's prior monthly net income.

277 4. Is unemployed at the time the petition is filed and has
278 been unemployed for at least 3 years but less than 4 years
279 before the time of the filing of the petition, the obligee's
280 monthly net income shall be imputed at 60 percent of the
281 obligee's prior monthly net income.

282 5. Is unemployed at the time the petition is filed and has
283 been unemployed for at least 4 years but less than 5 years
284 before the time of the filing of the petition, the obligee's
285 monthly net income shall be imputed at 50 percent of the
286 obligee's prior monthly net income.

287 6. Is unemployed at the time the petition is filed and has
288 been unemployed for at least 5 years before the time of the
289 filing of the petition, the obligee's monthly net income shall
290 be imputed at 40 percent of the obligee's prior monthly net
291 income, or the monthly net income of a minimum wage earner at
292 the time of the filing of the petition, whichever is greater.

293 7. Proves by a preponderance of the evidence that he or
294 she does not have the ability to earn the imputed income through
295 reasonable means, the court shall reduce the imputation of
296 income specified in this paragraph. If the obligee alleges that



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297 a physical disability has impaired his or her ability to earn
298 the imputed income, such disability must meet the definition of
299 disability as determined by the Social Security Administration.
300 ~~The award of alimony may not leave the payor with significantly~~
301 ~~less net income than the net income of the recipient unless~~
302 ~~there are written findings of exceptional circumstances.~~

303 (12) (a) ~~(10) (a)~~ With respect to any order requiring the
304 payment of alimony entered on or after January 1, 1985, unless
305 ~~the provisions of~~ paragraph (c) or paragraph (d) applies apply,
306 the court shall direct in the order that the payments of alimony
307 be made through the appropriate depository as provided in s.
308 61.181.

309 (b) With respect to any order requiring the payment of
310 alimony entered before January 1, 1985, upon the subsequent
311 appearance, on or after that date, of one or both parties before
312 the court having jurisdiction for the purpose of modifying or
313 enforcing the order or in any other proceeding related to the
314 order, or upon the application of either party, unless ~~the~~
315 ~~provisions of~~ paragraph (c) or paragraph (d) applies apply, the
316 court shall modify the terms of the order as necessary to direct
317 that payments of alimony be made through the appropriate
318 depository as provided in s. 61.181.

319 (c) If there is no minor child, alimony payments need not
320 be directed through the depository.

321 (d)1. If there is a minor child of the parties and both
322 parties so request, the court may order that alimony payments
323 need not be directed through the depository. In this case, the
324 order of support must shall provide, or be deemed to provide,



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325 that either party may subsequently apply to the depository to
326 require that payments be made through the depository. The court
327 shall provide a copy of the order to the depository.

328 2. If ~~the provisions of~~ subparagraph 1. applies apply,
329 either party may subsequently file with the depository an
330 affidavit alleging default or arrearages in payment and stating
331 that the party wishes to initiate participation in the
332 depository program. The party shall provide copies of the
333 affidavit to the court and the other party or parties. Fifteen
334 days after receipt of the affidavit, the depository shall notify
335 all parties that future payments shall be directed to the
336 depository.

337 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same
338 rights as the obligee in requesting that payments be made
339 through the depository.

340 Section 3. Section 61.09, Florida Statutes, is amended to
341 read:

342 61.09 Alimony and child support unconnected with
343 dissolution.—If a person having the ability to contribute to the
344 maintenance of his or her spouse and support of his or her minor
345 child fails to do so, the spouse who is not receiving support
346 may apply to the court for alimony and for support for the child
347 without seeking dissolution of marriage, and the court shall
348 enter an order as it deems just and proper. Alimony awarded
349 under this section shall be calculated in accordance with s.
350 61.08.

351 Section 4. Subsection (1) of section 61.14, Florida
352 Statutes, is amended, paragraph (c) is added to subsection (11)



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353 of that section, and subsection (12) is added to that section,
354 to read:

355 61.14 Enforcement and modification of support,
356 maintenance, or alimony agreements or orders.—

357 (1) (a) When the parties enter into an agreement for
358 payments for, or instead of, support, maintenance, or alimony,
359 whether in connection with a proceeding for dissolution or
360 separate maintenance or with any voluntary property settlement,
361 or when a party is required by court order to make any payments,
362 and the circumstances or the financial ability of either party
363 changes or the child who is a beneficiary of an agreement or
364 court order as described herein reaches majority after the
365 execution of the agreement or the rendition of the order, either
366 party may apply to the circuit court of the circuit in which the
367 parties, or either of them, resided at the date of the execution
368 of the agreement or reside at the date of the application, or in
369 which the agreement was executed or in which the order was
370 rendered, for an order terminating, decreasing, or increasing
371 the amount of support, maintenance, or alimony, and the court
372 has jurisdiction to make orders as equity requires, with due
373 regard to the changed circumstances or the financial ability of
374 the parties or the child, decreasing, increasing, or confirming
375 the amount of separate support, maintenance, or alimony provided
376 for in the agreement or order. A finding that medical insurance
377 is reasonably available or the child support guidelines schedule
378 in s. 61.30 may constitute changed circumstances. Except as
379 otherwise provided in s. 61.30(11)(c), the court may modify an
380 order of support, maintenance, or alimony by terminating,



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381 increasing, or decreasing the support, maintenance, or alimony
382 retroactively to the date of the filing of the action or
383 supplemental action for modification as equity requires, giving
384 due regard to the changed circumstances or the financial ability
385 of the parties or the child.

386 (b)1. If the court has determined that an existing alimony
387 award as determined by the court at the time of dissolution is
388 insufficient to meet the needs of the obligee, and that such
389 need continues to exist, an alimony order shall be modified
390 upward upon a showing by clear and convincing evidence of a
391 permanently increased ability to pay alimony. Clear and
392 convincing evidence must include, but need not limited to,
393 federal tax returns. An increase in an obligor's income may not
394 be considered permanent in nature unless the increase has been
395 maintained without interruption for at least 2 years, taking
396 into account the obligor's ability to sustain his or her income.

397 2.1. Notwithstanding subparagraph 1., the court shall may
398 reduce or terminate an award of alimony upon specific written
399 findings by the court that since the granting of a divorce and
400 the award of alimony, a supportive relationship has existed
401 between the obligee and another a person, except upon a showing
402 by clear and convincing evidence by the obligee that his or her
403 long-term need for alimony, taking into account the totality of
404 the circumstances, has not been reduced by the supportive
405 relationship with whom the obligee resides. On the issue of
406 whether alimony should be reduced or terminated under this
407 paragraph, the burden is on the obligor to prove by a



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408 preponderance of the evidence that a supportive relationship
409 exists.

410 ~~3.2.~~ In determining whether an existing award of alimony
411 should be reduced or terminated because of an alleged supportive
412 relationship between an obligee and a person who is not related
413 by consanguinity or affinity and with whom the obligee resides,
414 the court shall elicit the nature and extent of the relationship
415 in question. The court shall give consideration, without
416 limitation, to circumstances, including, but not limited to, the
417 following, in determining the relationship of an obligee to
418 another person:

419 a. The extent to which the obligee and the other person
420 have held themselves out as a married couple by engaging in
421 conduct such as using the same last name, using a common mailing
422 address, referring to each other in terms such as "my husband"
423 or "my wife," or otherwise conducting themselves in a manner
424 that evidences a permanent supportive relationship.

425 b. The period of time that the obligee has resided with
426 the other person in a permanent place of abode.

427 c. The extent to which the obligee and the other person
428 have pooled their assets or income or otherwise exhibited
429 financial interdependence.

430 d. The extent to which the obligee or the other person has
431 supported the other, in whole or in part.

432 e. The extent to which the obligee or the other person has
433 performed valuable services for the other.

434 f. The extent to which the obligee or the other person has
435 performed valuable services for the other's company or employer.



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436 g. Whether the obligee and the other person have worked
437 together to create or enhance anything of value.

438 h. Whether the obligee and the other person have jointly
439 contributed to the purchase of any real or personal property.

440 i. Evidence in support of a claim that the obligee and the
441 other person have an express agreement regarding property
442 sharing or support.

443 j. Evidence in support of a claim that the obligee and the
444 other person have an implied agreement regarding property
445 sharing or support.

446 k. Whether the obligee and the other person have provided
447 support to the children of one another, regardless of any legal
448 duty to do so.

449 ~~4.3.~~ This paragraph does not abrogate the requirement that
450 every marriage in this state be solemnized under a license, does
451 not recognize a common law marriage as valid, and does not
452 recognize a de facto marriage. This paragraph recognizes only
453 that relationships do exist that provide economic support
454 equivalent to a marriage and that alimony terminable on
455 remarriage may be reduced or terminated upon the establishment
456 of equivalent equitable circumstances as described in this
457 paragraph. The existence of a conjugal relationship, though it
458 may be relevant to the nature and extent of the relationship, is
459 not necessary for the application of the provisions of this
460 paragraph.

461 5. There is a rebuttable presumption that any modification
462 or termination of an alimony award is retroactive to the date of
463 the filing of the petition. In an action under this section, if



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464 it is determined that the obligee unnecessarily or unreasonably
465 litigated the underlying petition for modification or
466 termination, the court may award the obligor his or her
467 reasonable attorney fees and costs pursuant to s. 61.16 and
468 applicable case law.

469 (c) For each support order reviewed by the department as
470 required by s. 409.2564(11), if the amount of the child support
471 award under the order differs by at least 10 percent but not
472 less than \$25 from the amount that would be awarded under s.
473 61.30, the department shall seek to have the order modified and
474 any modification shall be made without a requirement for proof
475 or showing of a change in circumstances.

476 (d) The department may ~~shall have authority to~~ adopt rules
477 to administer ~~implement~~ this section.

478 (11)

479 (c) If the court orders alimony payable concurrent with a
480 child support order, the alimony award may not be modified
481 solely because of a later reduction or termination of child
482 support payments, unless the court finds the obligor has the
483 ability to pay the modified alimony award, the existing alimony
484 award as determined by the court at the time of dissolution is
485 insufficient to meet the needs of the obligee, and such need
486 continues to exist.

487 (12)(a) The fact that an obligor has reached a reasonable
488 retirement age for his or her profession, has retired, and has
489 no intent to return to work, or has reached the normal
490 retirement age for social security benefits, is considered a
491 substantial change in circumstances as a matter of law. An



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492 obligor who has reached the normal retirement age for social
493 security benefits shall be considered to have reached a
494 reasonable retirement age. With regard to an obligor who has
495 retired before the normal retirement age for social security
496 benefits, the court shall consider the following in determining
497 whether the obligor's retirement age is reasonable:

498 1. Age.

499 2. Health.

500 3. Type of work.

501 4. Normal retirement age for that type of work.

502 (b) In anticipation of retirement, the obligor may file a
503 petition for termination or modification of the alimony award
504 effective upon the earlier of the retirement date or the date
505 the obligor reaches the normal retirement age for social
506 security benefits. The court shall terminate the award or reduce
507 the award based on the circumstances of the parties after
508 retirement and based on the factors in s. 61.08, unless the
509 obligee proves by clear and convincing evidence that the need
510 for alimony at the present level continues to exist and that the
511 obligor's ability to pay has not been diminished.

512 Section 5. Section 61.19, Florida Statutes, is amended to
513 read:

514 61.19 Entry of judgment of dissolution of marriage; ~~7~~ delay
515 period; separate adjudication of issues.-

516 (1) A ~~Ne~~ final judgment of dissolution of marriage may not
517 be entered until at least 20 days have elapsed from the date of
518 filing the original petition for dissolution of marriage, ~~7~~ but
519 the court, on a showing that injustice would result from this



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520 delay, may enter a final judgment of dissolution of marriage at
521 an earlier date.

522 (2) (a) During the first 180 days after the date of service
523 of the original petition for dissolution of marriage, the court
524 may not grant a final dissolution of marriage with a reservation
525 of jurisdiction to subsequently determine all other substantive
526 issues unless the court makes written findings that there are
527 exceptional circumstances that make the use of this process
528 clearly necessary to protect the parties or their children and
529 that granting a final dissolution will not cause irreparable
530 harm to either party or the children. Before granting a final
531 dissolution of marriage with a reservation of jurisdiction to
532 subsequently determine all other substantive issues, the court
533 shall enter temporary orders necessary to protect the parties
534 and their children, which orders remain effective until all
535 other issues can be adjudicated by the court. The desire of one
536 party to remarry does not justify the use of this process.

537 (b) If more than 180 days have elapsed after the date of
538 service of the original petition for dissolution of marriage,
539 the court may grant a final dissolution of marriage with a
540 reservation of jurisdiction to subsequently determine all other
541 substantive issues only if the court enters temporary orders
542 necessary to protect the parties and their children, which
543 orders remain effective until such time as all other issues can
544 be adjudicated by the court, and makes a written finding that no
545 irreparable harm will result from granting a final dissolution.

546 (c) If more than 365 days have elapsed after the date of
547 service of the original petition for dissolution of marriage,



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548 absent a showing by either party that irreparable harm will
549 result from granting a final dissolution, the court shall, upon
550 request of either party, immediately grant a final dissolution
551 of marriage with a reservation of jurisdiction to subsequently
552 determine all other substantive issues. Before granting a final
553 dissolution of marriage with a reservation of jurisdiction to
554 subsequently determine all other substantive issues, the court
555 shall enter temporary orders necessary to protect the parties
556 and their children, which orders remain effective until all
557 other issues can be adjudicated by the court.

558 (d) The temporary orders necessary to protect the parties
559 and their children entered before granting a dissolution of
560 marriage without an adjudication of all substantive issues may
561 include, but are not limited to, temporary orders that:

- 562 1. Restrict the sale or disposition of property.
- 563 2. Protect and preserve the marital assets.
- 564 3. Establish temporary support.
- 565 4. Provide for maintenance of health insurance.
- 566 5. Provide for maintenance of life insurance.

567 (e) The court is not required to enter temporary orders to
568 protect the parties and their children if the court enters a
569 final judgment of dissolution of marriage which adjudicates
570 substantially all of the substantive issues between the parties
571 but reserves jurisdiction to address ancillary issues such as
572 the entry of a qualified domestic relations order or the
573 adjudication of attorney fees and costs.

574 Section 6. (1) The amendments to chapter 61, Florida
575 Statutes, made by this act apply to all initial awards of, and



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576 agreements for, alimony entered before July 1, 2013, and to all
577 modifications of such awards or agreements made before July 1,
578 2013, with the exception of agreements that are expressly
579 nonmodifiable. Such amendments may serve as a basis to modify
580 the amount or duration of an award existing before July 1, 2013.
581 Such amendments may also serve as a basis to modify an agreement
582 for alimony if the agreement is 25 percent or more in duration
583 or amount than an alimony award calculated under the amendments
584 made by this act.

585 (2) An obligor whose initial award or modification of such
586 award was made before July 1, 2013, may file a modification
587 action according to the following schedule:

588 (a) An obligor who is subject to an alimony award of 15
589 years or more may file a modification action on or after July 1,
590 2013.

591 (b) An obligor who is subject to an alimony award of 8
592 years or more, but less than 15 years, may file a modification
593 action on or after July 1, 2014.

594 (c) An obligor who is subject to an alimony award of less
595 than 8 years may file a modification action on or after July 1,
596 2015.

597 (3) An obligor whose initial agreement or modification of
598 such agreement was made before July 1, 2013, may file a
599 modification action according to the following schedule:

600 (a) An obligor who has agreed to permanent alimony may
601 file a modification action on or after July 1, 2013.



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602 (b) An obligor who has agreed to durational alimony of 10
603 years or more may file a modification action on or after July 1,
604 2014.

605 (c) An obligor who has agreed to durational alimony of
606 more than 5 years but less than 10 years may file a modification
607 action on or after July 1, 2015.

608 Section 7. This act shall take effect July 1, 2013.

609

610

611

612

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

613

Remove everything before the enacting clause and insert:

614

An act relating to dissolution of marriage; amending

615

s. 61.071, F.S.; requiring that alimony pendente lite

616

be calculated in accordance with s. 61.08, F.S.;

617

amending s. 61.08, F.S.; defining terms; revising

618

factors to be considered for alimony awards; requiring

619

a court to make written findings regarding the basis

620

for awarding a combination of forms of alimony,

621

including the type of alimony and length of time for

622

which it is awarded; revising factors to be considered

623

when deciding whether to award alimony; providing that

624

an award of alimony granted automatically terminates

625

without further action under certain circumstances;

626

providing that the party seeking alimony has the

627

burden of proof of demonstrating a need for alimony

628

and that the other party has the ability to pay

629

alimony; requiring the court to consider specified



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630 relevant factors when determining the proper type and
631 amount of alimony; revising provisions relating to the
632 protection of awards of alimony; revising provisions
633 for an award of durational alimony; specifying
634 criteria related to the rebuttable presumption to
635 award or not to award alimony; deleting a provision
636 authorizing permanent alimony; requiring written
637 findings regarding the incomes and standard of living
638 of the parties after dissolution of marriage; amending
639 s. 61.09, F.S.; providing for the calculation of
640 alimony; amending s. 61.14, F.S.; authorizing a party
641 to apply for an order to terminate the amount of
642 support, maintenance, or alimony; requiring that an
643 alimony order be modified upward upon a showing by
644 clear and convincing evidence of an increased ability
645 to pay alimony by the other party; prohibiting an
646 increase in an obligor's income from being considered
647 permanent in nature until it has been maintained for a
648 specified period without interruption; providing an
649 exemption from the reduction or termination of an
650 alimony award in certain circumstances; providing that
651 there is a rebuttable presumption that any
652 modification or termination of an alimony award is
653 retroactive to the date of the filing of the petition;
654 providing for an award of attorney fees and costs if
655 it is determined that an obligee unnecessarily or
656 unreasonably litigates a petition for modification or
657 termination of an alimony award; revising provisions



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658 relating to the effect of a supportive relationship on
659 an award of alimony; providing that income and assets
660 of the obligor's spouse or the person with whom the
661 obligor resides may not be considered in the
662 redetermination in a modification action; prohibiting
663 an alimony award from being modified providing that if
664 the court orders alimony concurrent with a child
665 support order, the alimony award may not be modified
666 because of the later modification or termination of
667 child support payments; providing that the attaining
668 of retirement age is a substantial change in
669 circumstances; requiring the court to consider certain
670 factors in determining whether the obligor's
671 retirement is reasonable; requiring a court to
672 terminate or reduce an alimony award based on certain
673 factors; amending s. 61.19, F.S.; authorizing separate
674 adjudication of issues in a dissolution of marriage
675 case in certain circumstances; providing for
676 retroactive application of the act to alimony awards
677 entered before July 1, 2013; providing allowable dates
678 for the modification of such awards; providing an
679 effective date.

680

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

HB 267 : Real Property Liens and Conveyances

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager	X				
Jose Oliva	X				
Kathleen Passidomo	X				
José Rodríguez	X				
Ross Spano			X		
Cynthia Stafford	X				
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
Total Yeas: 12		Total Nays: 0			

Appearances:

Adams, Howard "Gene" (Lobbyist) - Waive In Support
Real Property, Probate and Trust Law Section of the Florida Bar
215 S Monroe St
Tallahassee FL 32301
Phone: 850-222-3533

Pitts, Brian - Waive In Support
Justice-2-Jesus
1119 Newton Ave. S.
St. Petersburg FL 33705
Phone: 727-897-9291

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

HB 457 : Worthless Checks, Drafts, or Orders of Payment

Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland	X				
Daniel Davis	X				
Tom Goodson	X				
Bill Hager	X				
Jose Oliva	X				
Kathleen Passidomo	X				
José Rodríguez		X			
Ross Spano			X		
Cynthia Stafford		X			
Charlie Stone	X				
James Waldman	X				
Larry Metz (Chair)	X				
Total Yeas: 10		Total Nays: 2			

HB 457 Amendments

Amendment 549405

Adopted Without Objection

Appearances:

Pitts, Brian - Information Only

Justice-2-Jesus
1119 Newton Ave. S.
St. Petersburg FL 33705
Phone: 727-897-9291

Diaz, Pablo (Lobbyist) - Information Only

National Federation of Independent Business
110 E Jefferson St
Tallahassee FL 32301
Phone: (850)681-0416

Johnson, Carolyn (Lobbyist) - Waive In Support

Policy Director, Florida Chamber of Commerce
136 S Bronough Street
Tallahassee FL 32311
Phone: 850-521-1235

Joiner, Melissa (Lobbyist) - Waive In Support

Director of Government Affairs, Florida Retail Federation
Phone: 850-570-0269

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

HB 457 : Worthless Checks, Drafts, or Orders of Payment (continued)

Appearances: (continued)

Lozano, Lance (Lobbyist) - Proponent
Florida United Businesses Association
PO Box 1302
Tallahassee FL 32302
Phone: (850)681-6265

Reeves, Teye (Lobbyist) - Waive In Support
Associated Industries of Florida
108 S Monroe Street
Tallahassee FL 32301
Phone: 850-681-0024

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM



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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	___	

*favorable
2.13.13*

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

Amendment (with title amendment)

5 Remove everything after the enacting clause and insert:
6 Section 1. Section 68.065, Florida Statutes, is amended to
7 read:

8 68.065 Actions to collect worthless checks, drafts, ~~or~~
9 orders of payment, debit card orders, or electronic funds
10 transfers; attorney ~~attorney's~~ fees and collection costs.-

11 (1) The payee of any check, draft, order of payment, debit
12 card order, or electronic funds transfer of which was refused by
13 the drawee because of the lack of funds, credit, or an account,
14 or where the maker or drawer stops payment on the check, draft,
15 order of payment, debit card order, or electronic funds transfer
16 with intent to defraud, may lawfully collect bank fees actually
17 incurred by the payee in the course of tendering the payment,
18 plus a service charge of \$25, if the face value does not exceed
19 \$50, \$30, if the face value exceeds \$50 but does not exceed
20 \$300, \$40, if the face value exceeds \$300, or 5 percent of the



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21 face amount of the check, draft, order of payment, debit card
22 order, or electronic funds transfer, whichever is greater. The
23 right to damages under this subsection may be claimed without
24 the filing of a civil action. This service charge is not in
25 addition to any right to a service charge pursuant to subsection
26 (2), s. 832.062(4)(a), or s. 832.07.

27 (2)(1) In any civil action brought for the purpose of
28 collecting a check, draft, ~~or~~ order of payment, debit card
29 order, or electronic funds transfer, the payment of which was
30 refused by the drawee because of the lack of funds, credit, or
31 an account, or where the maker or drawer stops payment on the
32 check, draft, or order of payment with intent to defraud, and
33 where the maker or drawer fails to pay the amount owing, in
34 cash, to the payee within 30 days following a written demand
35 therefor, if required by ~~as provided in~~ subsection (4)(3), the
36 maker or drawer shall be liable to the payee, in addition to the
37 amount owing upon such check, draft, ~~or~~ order of payment, debit
38 card order, or electronic funds transfer, for damages of triple
39 the amount so owing. However, in no case shall the liability for
40 damages be less than \$50. The maker or drawer shall also be
41 liable for any court costs and reasonable attorney fees incurred
42 by the payee in taking the action. Criminal sanctions, as
43 provided in s. 832.07, may be applicable.

44 (3)(2) The payee may also charge the maker or drawer of
45 the check, draft, or order of payment a service charge not to
46 exceed the service fees authorized under s. 832.08(5) or 5
47 percent of the face amount of the instrument, whichever is
48 greater, when making written demand for payment. In the event



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49 that a judgment or decree is rendered, interest at the rate and
50 in the manner described in s. 55.03 may be added toward the
51 total amount due. Any bank fees incurred by the payee may be
52 charged to the maker or drawer of the check, draft, ~~or~~ order of
53 payment, debit card order, or electronic funds transfer.

54 ~~(4)~~(3) Before recovery under this section may be claimed,
55 a written demand must be delivered by certified or registered
56 mail, evidenced by return receipt, or by first-class mail,
57 evidenced by an affidavit of service of mail, to the maker or
58 drawer of the check, draft, ~~or~~ order of payment, debit card
59 order, or electronic funds transfer to the address on the check
60 or other instrument, to the address given by the drawer at the
61 time the instrument was issued, or to the drawer's last known
62 address. The form of such notice shall be substantially as
63 follows:

64 "You are hereby notified that a check numbered in the
65 face amount of \$.... issued by you on ...(date)..., drawn upon
66 ...(name of bank)..., and payable to, has been dishonored.
67 Pursuant to Florida law, you have 30 days from receipt of this
68 notice to tender payment in cash of the full amount of the check
69 plus a service charge of \$25, if the face value does not exceed
70 \$50, \$30, if the face value exceeds \$50 but does not exceed
71 \$300, \$40, if the face value exceeds \$300, or 5 percent of the
72 face amount of the check, whichever is greater, the total amount
73 due being \$.... and cents. Unless this amount is paid in
74 full within the 30-day period, the holder of the check or
75 instrument may file a civil action against you for three times
76 the amount of the check, but in no case less than \$50, in



Amendment No. 1

77 addition to the payment of the check plus any court costs,
78 reasonable attorney fees, and any bank fees incurred by the
79 payee in taking the action."

80 ~~(5)(4)~~ A subsequent person receiving a check, draft, ~~or~~
81 order of payment, debit card order, or electronic funds
82 transfer, from the original payee or a successor endorsee has
83 the same rights that the original payee has against the maker of
84 the instrument, provided such subsequent person gives notice in
85 a substantially similar form to that provided above. A
86 subsequent person providing such notice shall be immune from
87 civil liability for the giving of such notice and for proceeding
88 under the forms of such notice, so long as the maker of the
89 instrument has the same defenses against the subsequent person
90 as against the original payee. However, the remedies available
91 under this section may be exercised only by one party in
92 interest.

93 ~~(6)(5)~~ Subsequent to the commencement of the action but
94 prior to the hearing, the maker or drawer may tender to the
95 payee, as satisfaction of the claim, an amount of money equal to
96 the sum of the check or other instrument, the service charge,
97 court costs, and incurred bank fees. Other provisions
98 notwithstanding, the maker or drawer is liable to the payee for
99 all attorney fees and collection costs incurred by payee as a
100 result of the payee's claim.

101 ~~(7)(6)~~ If the court or jury determines that the failure of
102 the maker or drawer to satisfy the dishonored check or other
103 instrument was due to economic hardship, the court or jury has
104 the discretion to waive all or part of the statutory damages.



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105 Section 2. This act shall take effect July 1, 2013.

106

107

108 -----

109

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

110

Remove everything before the enacting clause and insert:

111

An act relating to worthless checks, drafts, orders of payment,
112 debit card orders, or electronic funds transfers; amending s.

113

68.065, F.S.; permitting recovery of bank fees and a service

114

charge related to worthless checks, drafts, or orders of payment

115

without the sending of a specified written demand or the filing

116

of a civil action; providing an effective date.

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

PCB CJS 13-02 : Expert Testimony

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Jim Boyd	X				
Michael Clelland		X			
Daniel Davis	X				
Tom Goodson	X				
Bill Hager	X				
Jose Oliva	X				
Kathleen Passidomo	X				
José Rodríguez		X			
Ross Spano			X		
Cynthia Stafford		X			
Charlie Stone	X				
James Waldman		X			
Larry Metz (Chair)	X				
Total Yeas: 8		Total Nays: 4			

Appearances:

Pitts, Brian - Information Only
Justice-2-Jesus
1119 Newton Ave. S.
St. Petersburg FL 33705
Phone: 727-897-9291

Newsome, Rich (General Public) - Opponent
201 S Orange Avenue, Suite 1500
Orlando FL 32801
Phone: 321-217-9864

Diaz, Pablo (Lobbyist) - Waive In Support
National Federation of Independent Busines
110 E Jefferson St
Tallahassee FL 32301
Phone: (850)681-0416

Hart, David (Lobbyist) - Proponent
Executive Vice President, Florida Chamber
136 S Bronough
Tallahassee FL 32301
Phone: 850-521-1200

Hess, Glenn (State Employee) - Opponent
Florida Prosecuting Attorneys' Association
421 Magnolia Avenue
Panama City FL 32401
Phone: 850-872-7680

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM

COMMITTEE MEETING REPORT

Civil Justice Subcommittee

2/13/2013 2:00:00PM

Location: 404 HOB

PCB CJS 13-02 : Expert Testimony (continued)

Appearances: (continued)

Kroeger, Leslie (General Public) - Opponent
Florida Justice Association
2035 SW Panther Trace
Stuart FL 34997

Large, William (Lobbyist) - Waive In Support
Florida Justice Reform Institute
210 S Monroe St
Tallahassee FL 32301
Phone: (850)222-0170

Winn, Stephen (Lobbyist) - Waive In Support
Florida Osteopathic Medical Association
2007 Apalachee Pky
Tallahassee FL 32301
Phone: (850)878-7364

Scott, Jeff (Lobbyist) - Waive In Support
Florida Medical Association
1430 E Piedmont Drive
Tallahassee FL 32308
Phone: 850-251-2439

Meros, George (Lobbyist) - Proponent
U.S. Chamber of Commerce
301 S. Bronough
Tallahassee FL 32302
Phone: 850-577-9090

Reeves, Teye (Lobbyist) - Waive In Support
Associated Industries of Florida
108 S Monroe Street
Tallahassee FL 32301
Phone: 850-681-0024

Committee meeting was reported out: Wednesday, February 13, 2013 6:32:46PM